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Agenda Date: 3/23/2016

Agenda Placement: 9A

## Napa County Planning Commission Board Agenda Letter

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**TO:** Napa County Planning Commission

**FROM:** David Morrison - Director  
Planning, Building and Environmental Services

**REPORT BY:** KELLI CAHILL, PLANNER III - 265-2325

**SUBJECT:** Caymus Vineyards Use Permit Modification #P12-00221 and Development Agreement

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### **RECOMMENDATION**

#### **CAYMUS VINEYARDS - USE PERMIT MAJOR MODIFICATION NO. P12-00221 & DEVELOPMENT AGREEMENT**

**CEQA Status:** Consideration and possible adoption of a Categorical Exemption Class 1: It has been determined that this type of project does not have a significant effect on the environment and is exempt from the California Environmental Quality Act. [See Class 1 ("Existing Facilities") which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15301; see also Napa County's Local Procedures for Implementing the California Environmental Quality Act, Appendix B.]

Consideration and possible adoption of a Categorical Exemption. Class 2: It has been determined project does not have a significant effect on the environment and is exempt from the California Environmental Quality Act (CEQA) pursuant to Class 2 ("Replacement or Reconstruction") which may be found in the guidelines for the implementation of the CEQA at 14 CCR §15302.

**Request:** The Applicant requests:

(1) Approval of a Use Permit Modification P12-00221-UP to stagger project implementation occurring in two phases. In Phase One, the applicant requests (a) a decrease in production to 110,000 gallons, (b) demolition of 6,695 square feet from existing Buildings B2, B6, B7, and B8, (c) remodeling of Buildings B3 and B5, (d) installation of fire suppression sprinkler systems within the existing Building B5 and associated outdoor water storage tanks within an already developed area; (e) remodeling of the existing Building B3 to reduce its size, and remodeling of the interior of the existing Building B5; (f) removal of concrete and structures within the creek setback and restoration of the creek bank; (g) improvement of an existing access road, relocation of interior vehicle access roads, and relocation of parking; (h) on-premises consumption of wine for customers in accordance with Business and Professions Code Sections 23358, 23390 and 23396.5 (AB 2004 -Evans Bill also known as the Picnic Bill) in the areas located on the patio area located between Building B5 and the proposed greenhouse, the grass areas located direction east and west of the greenhouse, and the garden located outside the tasting/sales area on the

west side of Building B5 as specified in the application; and (i) food and wine pairing.

In Phase Two, the Applicant proposes (a) to increase production by 550,000 gallons for a total of 660,000 gallons of wine per year, (b) demolition of Building B9, (c) to construct an 8,205 square foot agricultural greenhouse, and (d) to upgrade to the existing Lyve equipment process wastewater system. No increase in the existing number of employees, number of parking spaces, number of visitors, or marketing events is requested. The proposed Use Permit Modification would result in a reduction in environmental impacts through the reduction in wine production and the demolition of certain structures and overall reduction in the size of the facility.

(2) Adoption of an ordinance approving a Development Agreement between the Applicant and the County whereby the Applicant agrees to terms that would address the impacts of the project which could not have been otherwise required under applicable law.

The project is located on a 69.5 acre parcel at 8700 Conn Creek Road, approximately at the intersection with Rutherford Road/State Route 128, within the Agricultural Preserve zoning district, designated Assessor's Parcel Number: 030-200-066.

**Staff Recommendation:** Recommend the Board of Supervisors find the project Categorically Exempt from CEQA, and approve the Use Permit Major Modification as conditioned and the Development Agreement as proposed.

**Staff Contact:** Kelli Cahill, Planner III, (707) 265-2325 or [kelli.cahill@countyofnapa.org](mailto:kelli.cahill@countyofnapa.org)

**Applicant Contact:** Michael Carlson. Vice President and General Counsel, Wagner Family Wines, (707) 967-3000 x262

**Owner Representative:** Katherine Philippakis, Farella, Braun and Martel, LLP; 899 Adams Street, Suite G, St. Helena CA 94574; (707) 967-4000

## **EXECUTIVE SUMMARY**

### **Proposed Actions:**

That the Planning Commission recommend that the Board of Supervisors:

1. Adopt the Categorical Exemptions;
2. Approve a Major Modification to Use Permit No. P12-00221-MOD subject to the recommended conditions of approval in Exhibit B, and based on proposed Findings 1 through 5 of Exhibit A; and,
3. Adopt an Ordinance approving the Development Agreement.

### **Discussion:**

Where the Board of Supervisors is the decision maker on any companion action (i.e. a proposed Development Agreement), which is necessary to approve the use permit, the Commission shall make recommendations to the Board of Supervisors pursuant to County Code Section 18.124.010 to approve or disapprove the entire action. The Board shall thereafter make the final decision on the entire action, including any determination to be made under the California Environmental Quality Act (CEQA).

The Applicant is requesting to stagger project implementation within two phases. As part of the phasing, winery production levels will decrease in Phase One to 110,000 gallons, and then be increased up to 660,000 gallons in

Phase Two. Additionally, the applicant requests relocation of the existing driveway entrance, upgrades to the existing Lyve equipment process wastewater system, recognition of its existing Pre-WDO marketing program, and on-site consumption of wine. The proposed Use Permit Modification would result in a reduction in environmental impacts through the reduction in wine production and the demotion of certain structures and overall reduction in size of the facility.

The Applicant is also proposing to enter into a Development Agreement with the County. Development Agreements are authorized by state law (Govt. Code Section 65864 et seq.). The purpose of a Development Agreement in this case would be to provide the Applicant with a vested right to develop the project for a period of years in accordance with the applicable laws and entitlements in effect at the time of project approval. In exchange, the Applicant would agree to terms that would address the impacts of the project which could not have been otherwise required under applicable law. A summary of the material terms and conditions proposed by the Applicant include the following:

- | All production of wine between 110,000 gallons and 660,000 gallons would be subject to the 75 percent rule established by County Code Section 18.104.250(c);
- | Payment of current housing and other impact fees on illegal buildings (estimated \$56,000);
- | Construction of a left turn lane on Rutherford Road (State Route 128) and realignment of State Route 128 and Conn Creek Road intersection;
- | Payment of a financial contribution to the Rutherford Fire Department (\$50,000);
- | Recognition of the winery's pre-WDO right to continue to sell wines from its tasting room without regard to the source of grapes or location of production, so long as such wines are produced by Caymus or Caymus affiliates;
- | Production limitations of 1.8 million gallons in calendar year 2016; and 800,000 gallons in calendar year 2017 (pending approval of a subsequent amendment to the Judgment in order to allow for the extension of the Temporary Certificate of Occupancy (TCO) and production of wine over 110,000 gallons for calendar year 2017); and
- | Participation in the winery audit for three years, unless superseded by any new winery compliance program adopted by the County.

Staff supports the proposed project and requests that the Planning Commission recommend to the Board of Supervisors approval of Decision Making Option 2 for a two phased visitation scenario. Under proposed Phase One, the existing wastewater treatment system and leach field would be utilized. As part of the wastewater feasibility report, a review of the existing leach field located only 1,200 feet of leach line, sufficient to treat no more than 900 gallons of wastewater per day. Therefore, under Option 2, staff would recommend that existing visitation be reduced during Phase One of the proposed project from the existing maximum of 450 per day to any configuration of visitors and employees so long as the overall waste water generated does not exceed 900 gallons per day based on 3.0 gallons per visitor and 15 gallons per employee as conditioned by Environmental Health Division (Attachment D). In Phase Two, once the Lyve system has been upgraded and is fully operation, visitation will be allowed to increase to a maximum of 450 people per day, and 42 full-time and 14 part-time employees daily, consistent with the winery's historic, pre-WDO levels.

### **FISCAL IMPACT**

Is there a Fiscal Impact?                      No

### **ENVIRONMENTAL IMPACT**

Consideration and possible adoption of a Categorical Exemption Class 1: It has been determined that this type of project does not have a significant effect on the environment and is exempt from the California Environmental Quality Act. [See Class 1 (“Existing Facilities”) which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15301; see also Napa County’s Local Procedures for Implementing the California Environmental Quality Act, Appendix B.]

Consideration and possible adoption of a Categorical Exemption Class 2: It has been determined that the project does not have a significant effect on the environment and is exempt from the California Environmental Quality Act. [See Class 2 (“Replacement or Reconstruction”) which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15302.]

## **BACKGROUND AND DISCUSSION**

**Owner:** Caymus Vineyards

**Owner's Representative:** Michael Carlson, Caymus Vineyards; 8700 Conn Creek Road, St. Helena CA 94573; (707) 967-3000

**Owner's Representative:** Katherine Philippakis, Farella, Braun and Martel, LLP; 899 Adams Street, Suite G, St. Helena CA 94574; (707) 967-4000

**Zoning:** Agricultural Preserve (AP)

**GP Designation:** Agricultural Resource (AR)

**Filed:** July 5, 2012

**Resubmittal Received:** May 29, 2013, October 31, 2013, August 28, 2014, October 14, 2014, January 20, 2015, April 28, 2015, and October 19, 2015.

**Deemed Complete:** June 2015

**Parcel Size:** 69.5 acres

**Existing Development:** The existing pre-WDO winery covers approximately 98,000 square feet or 3.24 percent of the parcel consisting of 9,806 square feet of fermentation and bottling buildings (B2 and B4); 33,761 square foot tasting room, barrel storage, case goods, and offices (B5); 3,440 square feet of office space (B6, B7, and B8); a 2,486 square foot dwelling; a 15,458 square foot tank farm (25 tanks); 3,296 square foot wastewater treatment building (B3); 10,917 square foot covered crush pad; 1,730 square foot uncovered press pad; 11,915 square foot receiving area; 25 employee parking stalls; 99 public parking stalls; access driveway, scale house, and 55 acres of vineyard. The project proposes to reduce the overall existing winery development area by 5,808 sq. ft (2.19 acres) or 3.15 percent of the parcel.

## **Proposed and Existing Winery Characteristics**

**Winery Development area:** 98,043 square feet

**Winery Size- Existing:** 98,000 square feet (The existing winery development area was stipulated in the Amended Judgment)

**Winery Size- Proposed:** 85,374 square feet

**Production Capacity Approved:** 110,000 gallons per year

**Production Capacity Existing:** In 2009 during participation in a random winery audit, it was revealed that production levels had increased to 650,000 gallons per year. In 2011, production had increased an additional 1.2 million gallons per year. In 2012, production had increased an additional 1.3 million gallons per year.

**Production Capacity Proposed:** Upon approval by the Napa County Superior Court of a Second Amendment to the Judgment extending the temporary certificate of occupancy (TCO), the Applicant may produce up to 800,000 gallons of wine in calendar year 2017. Beginning in calendar year 2018 annual production shall be decreased to 110,000 gallons of wine. Beginning in calendar year 2019, annual production may be increased from 110,000 gallons to a maximum of 660,000 gallons. Thereafter annual production shall not exceed 660,000 gallons. If the Second Amendment to the Judgment is not approved, production levels for 2016 would not exceed 1.8 million gallons as stipulated in the Amendment to Judgment (entered on June 8, 2015), and the Use Permit Modification phased implementation schedule for wine production would begin in 2017 with annual production decreased to 110,000 gallons, followed by Phase Two with a maximum increase in wine production of 660,000 gallons for calendar year 2018, and thereafter.

**Winery Coverage Approved:** 195,995 (4.5 acres) 6.47 percent of the parcel.

**Winery Coverage Proposed:** 161,667 (3.71 acres) 5.71 percent of the parcel.

**Accessory/Production Ratio Approved:** 13,413 sq. ft. / 40,533 sq. ft. (33%)

**Accessory/Production Ratio Proposed:** 17,923 sq. ft. / 84,061 sq. ft. (21.3%)

**Number of Employee Approved:** 17 full-time and zero part-time

**Number of Employees Existing:** 42 full-time and 14 part-time

**Number of Employees Proposed:** 42 full-time and 14 part-time (no change)

**Visitation- Approved:** The existing winery was established prior to the County's Winery Definition Ordinance (WDO) without a condition of approval regarding the number of visitors. No specific conditions of approval were found within the previously approved Use Permits which address any limitations on visitation. The application packet for Use Permit #U-438788 (approved by the Planning Commission in 1988) included a request to increase the daily visitation from a maximum of 50 to 75 per day, and a maximum of 140 to 180 per week. However, a wastewater permit issued by the County in 1989 approved a wastewater system which could accommodate 450 visitors per day. Please refer to the Visitation and Marketing section below for additional discussion regarding this issue.

**Visitation- Existing:** Maximum 450 per day

**Visitation- Proposed:** Under Use Permit Modification #91474, the originally approved stand alone tasting room of 1,140 sq. ft. was dropped from the plans and replaced by a 1,794 enclosed area attached to Building B5, which includes the tasting/sales area, conference rooms, two offices, and restrooms. The proposed tasting/sales area would be increased by 2,702 sq. ft.; however, the Applicant does not propose and this use permit would not authorize an increase in visitation beyond the existing level of 450 per day.

**Marketing Program- Approved, Existing, and Proposed:**

Event Type	Approved Marketing Plan	Existing Marketing Plan	Proposed Marketing Plan
	Events per year/Attendance (persons)	Events per year/Attendance (persons)	Events per year/Attendance (persons)
Winery Dinners	Not included in the original permit approval	2/month 50 maximum	2/month 50 maximum

Winery Lunch	Not included in the original permit approval	3/month 50 maximum	3/month 50 maximum
Harvest Event	Not included in the original permit approval	1/year 250 maximum	1/year 250 maximum
Wine Auction	Not included in the original permit approval	1/year 100 maximum	1/year 100 maximum
Friends of the Winery	Not included in the original permit approval	1/year 250 maximum	1/year 250 maximum

**Days and Hours of Operation- Approved:** Saturday to Sunday 7am to 5pm

**Days and Hours of Operation- Existing:** Saturday to Sunday 7am to 5pm

**Days and Hours of Operation- Proposed:** Saturday to Sunday 5am to 8pm

**Days and Hours of Visitation- Approved:** Monday to Sunday 9:30am to 4:30pm

**Days and Hours of Visitation- Proposed:** Monday to Sunday 9:30am to 8:30pm

**Parking- Approved:** 20 visitor parking stalls, 10 employee parking stalls

**Parking- Existing:** 99 visitor parking stalls, 25 employee parking stalls

**Parking- Proposed:** 124 parking stalls, of which 25 will be dedicated employee use only.

#### **Adjacent General Plan Designation/Zoning/Land Use:**

North: Agricultural Resource (AR) / Agricultural Preserve (AP) / agricultural use (vineyards), agricultural support business, rural residential

South: Agricultural Resource (AR) / Agricultural Preserve (AP) / agricultural use (vineyards), agricultural support business, rural residential

East: Agriculture, Watershed, and Open Space (AWOS) / Agricultural Watershed (AW) / agricultural use (vineyards), agricultural support business, rural residential,

West: Agricultural Resource (AR) / Agricultural Preserve (AP) / agricultural use (vineyards), agricultural support business, rural residential

**Nearby Wineries (located within 1 mile of the project):** Please refer to Attachment C

#### **Parcel History**

The Applicant has been operating the Caymus Vineyards Winery in Napa County since 1972 which was prior to enactment of the Napa County Zoning Ordinance in 1976 requiring a use permit for wineries. In 1988, the Applicant applied for a use permit to expand their operations. In September 1988, Use Permit #U-438788 was granted by the Planning Commission which authorized the production of up to 110,000 gallons of wine per year, retail sales, and public tasting and tours visitation (e.g., without a prior appointment).

In 1991, the Applicant filed a modification to Use Permit #U-438788 (Modification #91474), requesting to move the tasting room, conference center and office area into an existing semi-enclosed space at the end of the main storage building (also known as Building B5), convert the existing tasting room to office space, and delete the detached tasting room from the master plan that was approved under #U-438788. This application was approved by the Zoning Administrator on July 10, 1992.

In 2008, a Very Minor Modification (P08-00519) to the 1988 Use Permit was approved administratively by the Department on October 17, 2008 to install a packaged sewer treatment plant to be located within an existing building, and allow for an optional hold and haul system for process waste only.

## Code Compliance History

In 2009, the Applicant was randomly selected to participate in the County's wine audit. The audit concluded that production levels had increased to nearly 650,000 gallons annually, when their permitted level was only 110,000 gallons. The County issued a Notice of Violation, requiring that the Applicant either comply with the approved 1988 Use Permit or submit a Use Permit Modification to legitimize the expanded production. Neither action was taken. In 2010, the County issued a letter to the Applicant stating that the winery was out of compliance with the terms of their Use Permit. Correspondence from the Applicant stated that a Use Permit Modification would be filed within 90 days, with submittal on or before August 11, 2010. The application was not submitted. In 2011, as a part of the ongoing compliance effort, the County requested copies of the Applicant's Federal ATTB (Alcohol and Tobacco Tax and Trade Bureau) forms. The forms indicated that production levels had increased to 1.2 million gallons annually. By 2012, annual production had increased to 2.5 million gallons. During this time, two additional issues arose. The first was a difference between the County and the Applicant with regards to the level of public tours and tasting room visitation that had been legally allowed under the 1988 Use Permit. The second was a dispute as to whether the winery had exceeded its pre-WDO "development area" and therefore whether wine production in excess of 110,000 gallons per year was subject to the 75 percent local grape source requirement.

The subject Use Permit Modification was filed by the Applicant in July of 2012, seeking to allow the existing winery to make improvements in two phases. After review of the application, the County determined that there were violations concerning the construction of buildings without permit and the re-use of existing structures without permit, and other unauthorized improvements.

On August 2, 2013, the County and the Applicant agreed to resolve the violations and ensure compliance through a Judgment. On August 5, 2013, the two parties stipulated and consented to the entry of the terms of the Final Judgment. As part of the Judgment, the Applicant was required to pay the County compensatory damages in the amount of \$1 million for alleged environmental and community impacts associated with past unauthorized wine production levels and agreed to a compliance timeline. The \$1 million in damages has been paid in full by the Applicant. The Court-approved Judgment allowed the Applicant to continue production up to 1.8 million gallons annually and defined the existing "winery development area," as defined by County Code Section 18.104.120, at 98,000 square feet. Over the next two years, discussions between the Applicant and the County were ongoing to clearly define the extent of the violations and the means of compliance, where otherwise unspecified in the Judgment.

On June 8, 2015, the County and the Applicant agreed to an Amendment to the Judgment, entered by the Napa County Superior Court, stipulating that the Use Permit Modification process would be completed by December 5, 2016. The Amended Judgment also allowed the unpermitted areas of Buildings B5, B6 and B7, the tank farm area/tank pad area/tanks outside B4, and the parking area to be occupied under a TCO through December 5, 2016. The Applicant is also authorized to produce 1.8 million gallons of wine for calendar year 2016, after which time production is required to be reduced to 110,000 gallons for calendar year 2017.

On October 19, 2015, the Applicant submitted revisions to the pending Use Permit Modification, which resulted in the reduced project description currently under consideration by the Commission.

Subsequently, on January 21, 2016, the Applicant requested a Second Amendment to the Judgment. Upon approval by the Napa County Superior Court of a Second Amendment to the Judgment extending the TCO, the Applicant may produce up to 800,000 gallons of wine in calendar year 2017. Beginning in calendar year 2018 annual production shall be decreased to 110,000 gallons of wine. Beginning in calendar year 2019, annual production may be increased from 110,000 gallons to a maximum of 660,000 gallons. Thereafter annual production shall not exceed 660,000 gallons. If the Second Amendment to the Judgment is not approved, production levels for 2016 would not exceed 1.8 million gallons as stipulated in the Amendment to Judgment

(entered on June 8, 2015), and the Use Permit Modification phased implementation schedule for wine production would begin in 2017 with annual production decreased to 110,000 gallons, followed by Phase Two with a maximum increase in wine production of 660,000 gallons for calendar year 2018, and thereafter.

#### **Discussion Points:**

##### **Use Permit Modification**

Setting - Existing improvements are detailed above under "Existing Development." Surrounding land uses consist of large lot residential development, agricultural vineyards, and an agricultural support related business/storage yard to the east, west, north and south. The nearest residence is located approximately 230 feet northwest of the winery structure. Approximately +/-0.50 acres of vineyard would be removed for the construction of the proposed project and driveway realignment.

Project Summary - The proposal includes demolition of five (5) buildings, installation of a fire suppression sprinkler system, remodel of existing buildings, including the tasting/sales area, removal of an existing concrete pad from within the creek setback and restoration of banks, improvement of the existing property access by relocating the driveway and interior access roads, relocation of parking stalls, demolition of the single family residence, construction of an 8,205 square foot agricultural greenhouse with restricted agricultural use only, and an upgrade of the existing Lyve equipment process wastewater system.

Visitation and Marketing - As with many wineries that were established prior to 1975 and the requirement to have a Use Permit, the extent of pre-WDO marketing is undefined. No specific conditions of approval were found within the previously approved Use Permits which address any limitations to the number of visitors.

Since 2010, it has been the County's practice to determine the full extent of pre-WDO visitation and marketing activities as part of processing Use Permit expansion requests. In this case, the Applicant has stated that tours and tastings in 1989 occurred at an average rate of 208 visitors per weekday and 312 during the weekend, with a maximum of 450 per day. The application packet for Use Permit #U-438788 (approved by the Planning Commission in 1988) included a request to increase the daily visitation from a maximum of 50 to 75 per day, and a maximum of 140 to 180 per week. However, as noted above, a permit issued by County Environmental Health in 1989 approved a wastewater system which was designed to handle a mix of uses, including winery processing, employees, and visitors. Depending on the intensity of the various uses, the system could accommodate up to 450 visitors per day. This occurred prior to the limitations imposed by the WDO in 1990. The wastewater system clearly was designed to handle far more than the 75 visitors per day referenced in the Use Permit application packet in 1988. Moreover, the winery was not required to obtain a use permit modification for the number of visitors prior to the WDO. Staff believes that on the basis of the approved 1989 wastewater system permit, the Applicant's request to acknowledge 450 tasting room visitors per day as a pre-WDO entitlement can be supported.

The proposed project also requests recognition of the Applicant's pre-WDO marketing program as outlined in Marketing Program table above. Under the existing marketing program, the Applicant currently has 64 events annually with a maximum of 4,350 guests.

As shown in Attachment C, the existing visitation and marketing programs are far above the average and median visitation and marketing programs, compared to wineries of similar production levels. These numbers are provided solely for reference by the Commission, as staff believes that the visitation level put forth by the Applicant is consistent with their pre-WDO levels. Compared to pre-WDO and post-WDO wineries of similar production, the existing visitation exceeds both the average and median, with the marketing program exceeding the median, but falling below the average marketing program compared to pre-WDO and post-WDO wineries of similar production. It should be noted that while the project has visitation levels that are above the average and median, they are not without precedent among pre-WDO wineries. Domaine Carneros, Rombauer, Rutherford Hill, Cakebread Cellars,



and Raymond all have similar production (432,000 to 750,000 gallons) and all have visitor levels of 400 or more per day.

Under the current request, the Applicant is not proposing any changes to the current visitation numbers or marketing events which also has been agreed upon by the County and the Applicant as outlined in the proposed Development Agreement.

Tasting Room - Under Use Permit #U-438788, the tasting/sales room was to be constructed within a separate building totaling 1,080 square feet. Under Use Permit Mod #91474 the tasting/sales area moved from the originally approved detached tasting/sales area to a semi enclosed area attached to Building B5, deleting the detached building.

Greenhouse Building - The project proposes the construction of an 8,205 square foot greenhouse to house experimental cultivars of wine grapes. The greenhouse shall be for agricultural purposes only, and constructed to the standards set forth by the Building Division and thus outlined in the attached memorandum (Attachment D). The building will be strictly off limits to winery guests, for public safety reasons. Signage shall be posted on the exterior of every access point to the greenhouse prohibiting access by all non-employees. Staff has provided a condition of approval regarding restriction of use.

Wastewater System - There are four wastewater permits currently approved for this property. They serve the winery production facility, the office building, the tasting room and barrel building, and the on-site residence.

The standard leach field wastewater treatment system serving Building B5 (tasting room, barrel storage, and offices) was permitted in 1989, and was sized to treat 1,200 gallons of wastewater per day including winery process and domestic wastewater. Winery wastewater was processed through this system, as well as a separate system which has since been replaced by the Lyve facility. In 1989 the standard for wastewater generation was 2.5 gallons per visitor and 15 gallons per employee. Assuming no process waste, for example, the Building 5 system could accommodate 5 full time employees and 450 visitors per day. A wastewater feasibility report submitted in 2008 indicated a partial inspection was conducted of this system by Napa Septic, and only a portion of the leach field was found during the inspection. The feasibility report indicated 1,200 feet of leach line was found, which would be enough to treat 900 gallons per day. Based on current wastewater generation standards of 3.0 gallons per visitor and 15 gallons per employee, which equates to a maximum of 265 visitors and 7 employees daily and no process waste for example.

The wastewater permit for Building 6 (offices) has the capacity to treat 150 gallons of wastewater, which could serve 10 employees.

The proposal includes upgrades to the existing Lyve wastewater treatment system to accommodate the increased production in Phase Two. The existing Lyve system which currently processes winery waste will be improved to accommodate a combined process wastewater system and sanitary sewage system, which will be piped through an existing 2" forcemain crossing Conn Creek out to an existing irrigation pond. The irrigation pond is proposed to be converted to an effluent storage pond, where the effluent water (or recycled water) will be utilized for onsite irrigation purposes.

Under the two phase implementation schedule, the existing Lyve system and optional hold & haul will be used along with existing leach fields for the sanitary sewer located on the south side of Building B5 during Phase One of the project. Under Phase Two, only the Lyve System will be utilized, and the use of the leach field and hold & haul option will cease. The peak flow rate for the two waste streams proposed under Phase Two is expected to be approximately 20,000 gallons per day (16,500 gallons of process waste per day and 3,690 gallons per day sanitary sewage).

Phase One of the facility will utilize the existing leach field; therefore, staff has conditioned the project to protect the existing leach field by prohibiting vehicles from driving or parking over the existing leach fields until the Lyve system has been upgraded and is fully operational.

Water Availability Analysis - Summit Engineering prepared a water availability analysis which includes data collection from two previous years when production levels exceeded 2 million gallons and 1.8 million gallons, respectively. In 2013 production levels were determined to be approximately 2.5 million gallons with 4.34 million gallons in water demand (or 13.33 acre feet). In 2014 the Applicant and the County agreed to resolve compliance issues through a Judgment (detailed above under Code Compliance History), and production levels decreased to 1.8 million gallons resulting in water use of 3.11 million gallons (or 9.55 acre feet). Water demand totals are inclusive of domestic uses; however, for purposes of reporting, winery process water demands, domestic water demands, and irrigation demands have been separated.

Under the current proposal domestic water demands would remain unchanged from that which exist today. The current proposal includes two phases; however, on January 21, 2016 the Applicant requested a second Amendment to the Judgment. The new amendment would extend the TCO to allow the Applicant to produce up to 800,000 gallons of wine in calendar year 2017. Beginning in calendar year 2018, annual production will decrease to 110,000 gallons of wine. Beginning in calendar year 2019, annual production will increase from 110,000 gallons to a maximum of 660,000 gallons. According to Summit Engineering :

<b>Extension Request</b>	<b>Proposed Water Demand 2017</b>
Proposed annual production	800,000 gallons of wine/year
Process wastewater (PW) rate (assumed)	4 gallons of PW/year
Annual process wastewater flow	3.2 million gallons PW/year
Annual production water demand	(3.2 million gallons water/year) / (325,851 gallons/acre feet)
	<b>9.82 acre feet of water per year</b>

Based on the same methodology, proposed Phase One would result in water use of 440,000 gallons per year (or 1.35 acre feet). Phase Two would increase production by 550,000 gallons, for a total of 660,000 gallons with water demand of 2.64 million gallons (or 8.1 acre feet). As mentioned, domestic water demands would remain unchanged from existing conditions, which include full-time and part-time employees, maximum number of daily tasting visitors, and marketing events as follows:

<b>Use Type</b>	<b>Max quantity (persons/day)</b>	<b>Water Demand (gallons/person)</b>	<b>Daily Demand (gallons/person)</b>	<b>Number of days (days/year)</b>	<b>Annual Water Use (gallons/year)</b>
FT Employee	42	15	630	365	229,950
PT Employee	14	15	210	365	76,650
Tasting Visitors	450	3	1,350	365	492,750
Tastings w/ meals	50	15	750	52	39,000
Food Pairing	30	8	240	156	37,440
Tasting Events	100	15	1,500	10	15,000

<b>Total water use</b>	<b>890,790</b>
<b>Average water use (gallons/day)</b>	<b>2,440</b>
<b>Total water use (acre feet/year)</b>	<b>2.73</b>

The property currently has approximately 55 acres of vineyard and 1.65 acres of domestic landscaping with water demands of 22 acre feet and 1.5 acre feet, respectively. In addition, approximately 2 acres of vineyard requires frost protection, accounting for an additional 0.5 acre feet annually. Cumulatively, water demand for the property under the proposed Amendment to Judgment and Phased Use Permit request would be as follows in the Water Demand Comparison Table:

	Existing water use (acre feet)	Amended Judgment request (acre feet)	Proposed Phase One (acre feet)	Proposed Phase Two (acre feet)
Annual Wine Production	1.8 million gallons	800,000 gallons	110,000 gallons	660,000 gallons
Wine production (process water)	13.33	9.82	1.35	8.1
Domestic Use	2.73	2.73	2.73	2.73
Irrigation	24	24	24	24
<b>Total:</b>	<b>40.06</b>	<b>36.55</b>	<b>28.08</b>	<b>34.83</b>

Based on information provided by the engineer in the Water Availability Analysis, there are a total of three groundwater wells currently in use on the parcel, wells 1, 2 and 4 with capacities of 60 gallons per minute (gpm), 20 gpm, and 180 gpm, respectively. Based on the average water demand of 46,367 gallons per day (32.19 gpm over 24 hours), according to the project Engineer the existing wells have sufficient capacity to meet the projected demand.

The Engineer also concluded that water demand would be reduced by 5.2 acre feet from existing demand. With upgrades to the Lyve wastewater treatment system in Phase Two, recycled water will be available for irrigation purposes offsetting water demands by an additional 24 acre feet, representing a total reduction in groundwater use of 69%. Therefore, total groundwater demand for the facility would be 10.8 acre feet annually, or approximately 31% of the total water availability.

**Traffic** – A traffic study was prepared by W-Trans, which reviewed existing and proposed traffic conditions. The traffic study considered a maximum of 850 visitors; however, a Focused Traffic Study was prepared in October 2015 to reflect the project reduction to existing conditions, with a maximum of 450 visitors per day. The study analyzed five separate intersections and cumulatively considered two similar winery projects under review (Frog’s Leap Winery and Frank’s Family Vineyards Winery). The Traffic Engineer evaluated the project driveway based on the Napa County Roads and Street Standards, and using the County’s criteria, the number of inbound left-turns daily would warrant a left-turn lane. Under the Development Agreement, the Applicant has voluntarily agreed to enhance the roadway, including 1) the installation of a left-hand turn lane for southbound traffic on State Route 128 entering the property at the relocated winery entrance; 2) realignment of the State Route 128 and Conn Creek Road intersection, and; 3) dedication of additional right-of-way as needed to construct the improvements. County’s Engineering Division and Public Works Department have reviewed the study and have provided guidance to the Applicant (refer to Attachment D).

**Development Agreement**

The Development Agreement is being processed concurrently with the Applicant's pending request to modify the winery's use permit. The purpose of the Development Agreement would be to provide a mutually agreed upon framework that would be binding on both parties with regards to the Applicant's pre-WDO status and rights, as well as the Applicant's obligations concerning affordable housing, traffic, fire, and other impacts. Development Agreements are authorized by state law (Govt. Code Section 65864 et seq.). The Development Agreement has been found to be generally consistent with the Napa County General Plan Goals and Policies as stated in Attachment N.

The purpose of a Development Agreement in this case would be to provide the Applicant with a vested right to develop the project for a period of years in accordance with the applicable laws and entitlements in effect at the time of project approval. In exchange, the Applicant would agree to terms that would address the impacts of the project which could not have been otherwise required under applicable law. A summary of the material terms and conditions proposed by the Applicant include the following:

- | All production of wine between 110,000 gallons and 660,000 gallons would be subject to the 75 percent rule established by County Code Section 18.104.250(c);
- | Payment of current housing and other impact fees on illegal buildings (estimated \$56,000);
- | Construction of a left-turn lane on Rutherford Road (State Route 128) and realignment State Route 128 and Conn Creek Road intersection;
- | Payment of a financial contribution to the Rutherford Fire Department (\$50,000);
- | Recognition of the winery's pre-WDO right to continue to sell wines from its tasting room without regard to the source of grapes or location of production, so long as such wines are produced by Caymus or Caymus affiliates;
- | Production limitations of 1.8 million gallons in calendar year 2016; 800,000 gallons in calendar year 2017; and 660,000 gallons thereafter beginning in calendar year 2018 (pending approval of the subsequent amendment to Judgment pursuant to Stipulation in order to allow for the extension of the TCO and production of wine over 110,000 gallons for calendar year 2017); and
- | Participation in the winery audit for three years, unless superseded by any new compliance program adopted by the County.

### **Consistency with Standards**

Zoning - The project is consistent with the AP (Agricultural Preserve) zoning district regulations. A winery (as defined in the Napa County Code Section 18.08.640) and uses in connection with a winery (refer to Napa County Code Section 18.16.030) are permitted in the AP zoning district subject to an approved Use Permit. The project, as conditioned, complies with the Napa County Winery Definition Ordinance and all other requirements of the Zoning Code.

Engineering Services Division - Recommends approval with standard conditions in the attached Memorandum, dated March 11, 2016.

Environmental Health Division - Recommends approval with standard conditions in the attached Memorandum, dated March 2, 2016.

Public Works Department - Recommends approval with conditions in the attached Memorandum, dated March 14, 2016.

Building Division - Recommends approval with conditions in the attached Memorandum, dated March 7, 2016.

Fire Department - Recommends approval with standard conditions in the attached Memorandum, dated October

21, 2014.

## **Decision Making Options**

As noted in the Executive Summary Section above, Staff is recommending approval of the project with conditions of approvals as described in Option 2 below. Decision making options also include a reduced development alternative and no project alternative.

### **Option 1 – Recommend Approval of the Applicant’s Proposal**

Disposition – This option would result in a Phased implementation schedule detailed in the Executive Summary, and continued compliance with the Amended Judgment and any subsequent Amendments to bring the property into compliance. Additionally, this option would recommend adoption of the ordinance terms of the proposed Development Agreement to address impacts of the project which could not have been otherwise required under applicable laws. No proposed changes to visitation or marketing are requested; however, the Environmental Health Division has determined that the existing leach field system is undersized for the maximum number of visitors. In order to accommodate the existing number of visitors, the Applicant will need to provide waste hauling receipts from a licensed pumping company and provide portable toilets during busy periods and marketing events until Phase II improvements are constructed and finalized as outlined by Conditions of Approval.

Action Required – Follow proposed action listed in the Executive Summary. If conditions of approval are to be amended, specify conditions to be amended at time motion is made. This option has been analyzed for its environmental impacts, which were found to be less than significant. The project as proposed meets all County Code requirements and complies with General Plan policies. Under this option staff has concluded that the project merits approval as proposed.

### **Option 2 – Recommend a Phased Visitation Alternative**

Disposition – This option would result in Phased visitation schedule consistent with the Applicant’s proposed Phased Use Permit Modification implementation schedule. Environmental Health Division has determined that the existing leach field serving Building B5 was permitted in 1989 and sized to treat 1,200 gallons of wastewater per day. In 2008, a modification to Use Permit #U-438788 was filed to install a Lyve wastewater treatment system to treat winery process waste and hold & haul option. The Lyve system was installed in 2009, with the leach field left in place to treat domestic wastewater.

A wastewater feasibility report was prepared, which reviewed existing waste treatment systems. Approximately 1,200 feet of leach line was found, sufficient to treat no more than 900 gallons of wastewater per day, which equates to a maximum of 265 visitors and 7 employees daily and no process waste for example. The wastewater feasibility report indicates that under the two Phase approach to the Use Permit Modification, the facility will utilize the existing leach field during Phase I. In Phase II, the Lyve wastewater treatment system will be upgraded to a combined winery process waste system and sanitary sewage treatment system.

Under this alternative, staff would recommend that existing visitation be reduced during Phase One from the existing maximum 450 to any configuration of visitors and employees so long as the overall waste water generated does not exceed 900 gallons per day based on 3.0 gallons per visitor and 15 gallons per employee as conditioned by Environmental Health Division (Attachment D). In Phase Two, once the Lyve system has been upgraded and fully operation, visitation will be allowed to increase to a maximum of 450 people per day, and 50 full-time and 14 part-time employees daily.

Action Required - Follow proposed actions listed in the Executive Summary and amend scope and project specific conditions of approval to place limits on use. If major revisions of conditions of approval are required, the item will

need to be continued to a future date.

**Option 3 – Recommend Denial of the Proposed Modification**

Disposition – In the event the Commission determines that the project does not, or cannot meet the required findings for grant of a use permit and modification, Commissioners should articulate what aspect or aspects of the project are in conflict with required findings. State law requires the Commission to adopt findings, based in the General Plan and County Code, setting forth why the proposed use permit is not being approved. Based on the administrative record as of the issuance of this staff report, there does not appear to be any evidence supporting denial of the project.

Additionally, the County and Applicant are bound by the terms of the Amended Judgment that provides two possible options if the Commission denies the Use Permit Modification, 1) Within 30 days of the finality of the denial, the Applicant will file demolition permits with the County's Building Division to removal all improvements made to the property without the applicable building and/or Use Permit, or 2) the Applicant shall comply with the 1988 Use Permit and the conditions applicable to the 1988 Use Permit.

Action Required – Commission would recommend to the Board of Supervisors denial of the project.

**Option 4 - Recommend Approval of the Proposed Use Permit Modification, but Denial of the Terms of the Development Agreement**

Disposition - This option would be similar to Option 1, without recommendation of the terms of the Development Agreement. Under this option, the Applicant would not be subject to terms of the agreement. All production over 110,000 gallons would not be subject to the 75% rule, impact fees for past housing and future traffic would not be required, nor would the contribution to the Rutherford Fire Department. The remaining terms are currently stipulated in the Amendment to Judgment.

Action Required - Commission would recommend to the Board of Supervisors approval of the proposed Modification but denial of the terms of the draft Development agreement.

**Option 5 - Recommend revising the Terms of the Development Agreement**

Disposition - This option would be similar to Option 1 with proposed modifications to the Terms of the Development Agreement.

Action Required - Commission would recommend to the Board of Supervisors one of the previously stated Options with regards to the Use Permit Modification, and proposed modifications to the Terms of the Development Agreement.

**Option 6 –Continuance Option**

The Commission may continue an item to a future hearing date at its discretion

**SUPPORTING DOCUMENTS**

- A . Attachment A - Exhibit A - Findings
- B . Attachment B - Exhibit B - Conditions of Approval
- C . Attachment C - Winery Comparison Analysis

- D . Attachment D - Agency Comments
- E . Attachment E - Previous Project Conditions
- F . Attachment F - CEQA Memo
- G . Attachment G - Public Comments
- H . Attachment H - Use Permit Application Packet
- I . Attachment I - Water Availability Analysis
- J . Attachment J - Wastewater Feasibility Study
- K . Attachment K - Traffic Study
- L . Attachment L - Focused Traffic Study
- M . Attachment M - Development Agreement
- N . Attachment N - Development Agreement General Plan Consistency Analysis
- O . Attachment O - Latham & Watkins, LLC Response Letter
- P . Attachment P - Graphics

Napa County Planning Commission: Approve

Reviewed By: John McDowell