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Agenda Date: 6/3/2015

Agenda Placement: 9B

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission

FROM: Melissa Frost for David Morrison - Director
Planning, Building and Environmental Services

REPORT BY: John McDowell, Deputy Planning Director - 299-1354

SUBJECT: Reverie on Diamond Mountain Winery Use Permit Modification

RECOMMENDATION

REVERIE ON DIAMOND MOUNTAIN WINERY / REVERIE ON DIAMOND MOUNTAIN, LLC. - USE PERMIT MAJOR MODIFICATION NO. P13-00027 and USE PERMIT EXCEPTION TO THE CONSERVATION REGULATIONS NO. P15-00141

CEQA Status: Consideration and possible adoption of a Negative Declaration. According to the proposed negative declaration, the project would not have any potentially significant environmental impacts. The project site is not on any lists of hazardous waste sites enumerated under Government Code Section 65962.5.

Request: Request for approval of a modification to Use Permit #94254-UP, a Use Permit Exception to the Conservation Regulations (P15-00141) and an Exception to the Napa County Roads & Street Standards to allow the following: A) Recognize and authorize an increase the approved production capacity from 5,000 to 9,200 gallons per year; B) Recognize and authorize the 1,460 sq.ft. (Second Floor) of the winery building allocated to accessory use; C) Recognize and authorize the use of the 4,710 +/-sq.ft. cave for wine production, case storage and wine barrel storage and once fire sprinklers are installed use of the cave for tours , tastings and some events (Cave spoils were kept on the property and used to improve the vineyard roads); D) Recognize and authorize an increase in the approved "by appointment visitation" of 20 persons per day with an average of 20 per week to a maximum of 40 persons per day with an average of 200 persons per week; E) Recognize and authorize expansion of the existing marketing plan from the following: 1) tours and tastings for wine trade personnel at 10 persons per year with 5 to 10 (average 6) persons per event; 2) private promotional dinners at 4 per year with 6 to 18 (average 12) persons per event; and 3) wine auction related events such as barrel tastings and auctions at 2 per year with an average attendance of 25 persons to allow 1) 4 events per year with up to 60 persons; 2) 2 events per year with up to 40 persons; 3) 12 events per year with up to 10 guests; and 4) participation in the wine auction; F) Recognize and authorize an increase in the approved number of employees from 2 employees plus 1 temporary employee during harvest to a maximum of 5 employees; G) Recognize and authorize on-premise consumption of the wines produced on-site, consistent with Business and Professions Code §§23356, 23390, and 23396.5 (also known as AB 2004 (Evans 2008 or the Picnic Bill) within the winery building and improved lawn areas, and under the mature

redwood grove; H) Recognize and authorize catered food pairings; I) Abandonment of an existing septic system and the installation of a new code compliant domestic and winery waste system. Both hold and haul and rapid aerobic treatment with storage are proposed; J) Installation of a new well; K) Installation of a new automatic storm water diversion valve and a temporary crush pad cover; and L) Installation of a new ADA compliant parking space.

The proposal also includes a Use Permit Exception (#P15-00141) to the Conservation Regulations with regards to retention of the following 1) the portal for the existing wine cave encroaches into the 45 ft. creek setback for the small tributary creek on the property; and 2) the minor landscaping improvements along a portion of Teale Creek that are within the required setback of that creek. The proposal also includes an Exception to the Napa County Road & Street Standards (RSS) to allow for a reduction in the required 20 foot roadway width to preserve unique features of the natural environment.

The project is located on a 39.83 acre parcel approximately 1,000 feet west of Diamond Mountain Road and approximately 4,000 feet from its intersection with State Highway 29/128, within the AW (Agricultural Watershed) Zoning District; 1530 Diamond Mountain Road, Calistoga, CA, APN: 020-440-005.

Staff Recommendation: Adopt the Negative Declaration and approve the Use Permit Modification, Use Permit Conservation Regulation Exception, and Road & Street Standard Exception request as conditioned.

Staff Contact: John McDowell, (707) 299-1354, john.mcdowell@countyofnapa.org, or Charlene Gallina, (707) 299-1355, charlene.gallina@countyofnapa.org

Applicant Contact: Scott Greenwood-Meinert, (707) 252-7122, or ScottGM@dpf-law.com

EXECUTIVE SUMMARY

Proposed Actions:

That the Planning Commission:

1. Adopt the Negative Declaration for the **project** based on Findings 1-6 of Exhibit A; and,
2. Approve an Exception to Road & Street Standards based on Findings 7-8 of Exhibit A, and subject to the Conditions of Approval (Exhibit B)
3. Approve Use Permit Major Modification (P13-00027-MOD) and Conservation Regulation Exception Findings (P15-00141) based on Findings 9-20 of Exhibit A, and subject to the Conditions of Approval (Exhibit B)

Discussion:

On June 21, 1995 the Planning Commission approved the original use permit for the Reverie on Diamond Mountain Winery establishing a 5,000 gallon per year estate winery within a 2,237 sq.ft. portion of an existing 2,951 sq.ft. barn and guest cottage, as well as the addition of a 3,000 sq.ft. crush and tank pad. By appointment visitation and retail sales were set at a maximum of 20 visitors per day with an average of 20 visitors per week. The marketing plan was authorized as follows: 1) tours and tastings for wine trade personnel at 10 persons per year with 5 to 10 (average 6) persons per event; 2) private promotional dinners at 4 per year with 6 to 18 (average 12) persons per event; and 3) wine auction related events such as barrel tastings and auctions at 2 per year with an average attendance of 25 persons. At some point in the late 1990's after the originally approved winery improvements were completed, the permittee constructed a 4,710 sq. ft. cave located adjacent to crush and tank pad and converted the upstairs guest cottage within the winery building to winery office. These improvements were

made without use permit and building permit approval. Also after grant of final occupancy, the permittee began exceeding approved wine production levels purportedly up to 8,400 gallons per year, and increased visitation over approved limits. The current request seeks approval of these existing elements and as augmented in the project description detailed in the preceding section of this report. This application was not filed in respond to a code compliance investigation, but the property had been selected for review in the Wine Audit prior to filing of this application.

The County's long standing procedure for addressing code violations begins with seeking voluntary compliance from property owners. Subsequent progressive steps include citations, civil actions, and referrals to the District Attorney. The voluntary compliance step often results in property owner's exercising their right to file a use permit modification seeking after-the-fact approval of previously unauthorized improvements and/or uses. As with all projects, the Planning Commission's role in reviewing the request is limited to weighing the merits of the proposal for consistency with guiding General Plan policies, and applying the standards and required findings of the Zoning Ordinance for grant of a use permit. It is not the Commission's role to determine punitive measures, or seek restitution for unfair business practices. Likewise, the Commission is in no way obligated to approve the request as submitted.

Staff has reviewed the request from a standpoint as if the improvements had yet to be installed and the expanded uses had yet to be implemented. From that perspective, staff believe that several aspects of the proposal would have been supported but not to the extent requested by the applicant as follows:

- The increased wine production from 5,000 gallons to 9,200 gallons annually is small, and sourced entirely from on the property and would have been supported.
- Construction of a 4,710 sq. ft. cave could have been supported, but the location of the portals in proximity to creek setbacks would not have been supported without some form of commensurate stream restoration project or alternative configuration consistent with the required findings for grant of a Conservation Regulation Use Permit Exception.
- Conversion of the guest quarters to winery use would have been supported.
- Outdoor visitation areas and event space could have be supported, but not within creek setbacks and the extent of that area is quite large when considered in relation to the size of the winery structures.

What remains unresolved for staff is the fact that the Commission has little in the way of flexibility on project design given the improvements already exist and the expanded use is already occurring to a certain degree beyond the permit. In one regard, the Commission has the advantage of seeing how the project would turn out if they were to approve it, but in the other regard, the question cannot be answered if the Commission would have found the existing design acceptable had it been developed in the proper order. It is within that context of this conundrum that staff cannot support the project as proposed and requests that the Commission pursue a reduced development alternative as follows:

- The production increase should be allowed but limited solely to production of wines to grapes that are 100% grown on-site.
- Visitation and marketing levels should not increase from originally approved levels, but the use permit conditions should be updated to reflect current condition language.
- Conversion of the second story guest cottage space to winery offices (only) should be permitted.
- In lieu of removing and replacing the eastern cave portal and unauthorized visitation areas on the west side of

Teal Creek, the property owner should implement a stream corridor restoration project on the south side of Teal Creek converting much of the unauthorized outdoor tasting areas.

In moving forward, the Commission has four general decision making options as follows and as detailed in the main body of this report: 1) Approve the project as requested by the applicant; 2) approved some level of down-scaled/reduced development alternative as recommended by staff; C) denial of the request; and D) denial of the request and commencement of revocation or suspension of the underlying use permit. Revocation would need to be agendaized for a future meeting.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

According to the proposed Negative Declaration, the proposed project would have no potentially significant environmental impacts. This project site is not on any of the lists of hazardous waste enumerated under Government Code Section 65962.5.

This request primarily involves recognition of improvements and activities that are already occurring, including recognition of a cave and associated improvements, conversion of an existing second story guest cottage with winery offices, and visitation and wine production levels exceeding the current permit. New aspects of the project are limited to installation of a replacement septic system with hold and haul for wine process waste, and minor widening to the private access road.

BACKGROUND AND DISCUSSION

Owner / Applicant: Norman Kiken, Reverie on Diamond Mountain, LLC., 1520 Diamond Mountain Road, Calistoga, CA 94515

Representative: Scott Greenwood-Meinert, 1455 First Street Suite 301, Napa, CA 94559, (707)252-7122, ScottGM@dpf-law.com

Zoning District: Agricultural Watershed (AW)

General Plan Designation: Agriculture, Watershed and Open Space (AWOS)

Parcel Size: 39.83 acres

Vineyard Acreage (Approved and Existing): ± 27 acres

Vineyard Acreage (Proposed): ± 27 acres

Winery Characteristics:

Winery Size (Approved): ±5,236 sq. ft. (2,237 sf building only)

Winery Size (Existing and Proposed): ±10,661sq. ft. (2,951 sf building only)

Production Capacity (Approved): 5,000 gallons annually
Production Capacity (Existing): 8,400 gallons annually
Production Capacity (Proposed): 9,200 gallons annually

Winery Coverage (Approved): approximately 7,000 sq. ft., or .02%
Winery Coverage (Existing and Proposed): approximately 650 sq. ft. larger, or 7,650 sq. ft., or .02%
(Maximum 25% or 15 acres)

Accessory/Production Ratio (Approved): ±714 sq.ft. accessory/4,511 sq.ft. production; approximately 16% (not including the 714 sq. ft. guest cottage within winery building)
Accessory/Production Ratio (Existing and Proposed): ±1,440 sq.ft. accessory/9,221 sq.ft. production; approximately 16%
(Maximum 40% allowed)

Outdoor areas to be utilized for tasting and marketing activities: approximately 100 ft. by 150 ft., or 15,000 sq. ft. lawn, redwood grove and graveled area with small gazebo across creek (this does not include approximately 100 ft. by 50 ft., or 5,000 sq. ft. garden with pathways located between winery and redwood grove)

Number of Employees (Approved): 2 full-time and 1 part-time employees
Number of Employees (Proposed): 5 employees

Visitation (Approved): Maximum of 20 visitors per day, and average of 20 visitors per week (by appointment only)
Visitation (Proposed): Maximum 40 visitors per day; Average of 200 per week (by appointment only)

Marketing Program (Approved): 1) tours and tastings for wine trade personnel at 10 persons per year with 5 to 10 (average 6) persons per event; 2) private promotional dinners at 4 per year with 6 to 18 (average 12) persons per event; and 3) wine auction related events such as barrel tastings and auctions at 2 per year with an average attendance of 25 persons.

Marketing Program (Proposed): 1) 4 events per year with up to 60 persons; 2) 2 events per year with up to 40 persons; 3) 12 events per year with up to 10 guests; and 4) participation in the wine auction;

Days and Hours of Operation (Approved and Existing): 8 am-5 pm, daily
Days and Hours of Operation (Proposed): no change

Parking (Existing): 5 parking spaces
Parking (Proposed): 6 parking spaces, addition of 1 Americans with Disabilities space

Adjacent General Plan Designation/Zoning District/Land Use:

North:

City of Calistoga – Vacant hillside property approved for Enchanted Hills Resort Project

South:

AWOS General Plan Designation, AWP Zoning – Diamond Creek Vineyards Winery with residence and vineyards

West:

AWOS General Plan Designation, AW Zoning – 3 hillside parcels containing residences ranging in size from 5 to 7 acres each

East:

AWOS General Plan Designation, AW Zoning – Von Strasser Winery with residence and vineyards

Wineries in Vicinity (located within 1 mile of the projet)

Nearby Wineries

Von Strasser -- 1510 Diamond Mountain Rd -- 4,400sf -- 25,000 gal/yr -- 20 average visitors/wk -- 18 events/yr -- 4 employees
Diamond Creek --1500 Diamond Mountain Rd --9,000sf -- 10,000 gal/yr -- 10 average visitors/wk -- 5 events/yr -- 5 employees
Wallis Family Estate -- 1670 Diamond Mountain Rd -- 11,711sf -- 30,000 gal/yr -- 108 average visitors/wk -- 3 events/yr -- 4 employees
Teachworth Winery -- 4451 N. St. Helena Hwy -- 800sf -- 5,000 gal/yr -- 2 average visitors/wk -- 2 events/yr -- 0 employees
Diamond Mountain --2121 Diamond Mountain Rd -- 1,408sf -- 10,000 gal/yr -- 25 average visitors/wk -- 16 events/yr -- 2 employees
Joseph Cellars -- 4455 N. St. Helena Hwy -- 4,941sf -- 30,000 gal/yr -- 525 average visitors/wk -- 106 events/yr -- 6 employees
Twomey Cellars -- 1183 Dunawear Ln -- 18,940sf -- 81,500 gal/yr -- 530 average visitors/wk -- 5 events/yr -- 4 employees
T-Vine Cellars -- 810 Foothill Blvd, Calistoga -- 3,300 sf -- 6,000 gal/yr -- Open to the Public -- Events restricted to 24 people

Property History:

1993 - The property was purchased by the Kiken's. At the time of Kiken's purchase the 39 acre property contained 27 acres of vineyards and the 2,951 sq. ft. barn with upstairs cottage. This structure is evident on the 1940 aerial photograph but had apparently been substantially altered before 1993 and did not qualify as a historic structure. Prior to the installation of the vineyards, purportedly in the late 1980's, the property contained a mix of natural vegetation and remnant orchards which dated back to at least 1940.

August 1994 - Erosion Control Plan #93391-ECPS was administratively approved authorizing the construction of a 2,000+/- ft. access drive, an approximately 5,000 sq.ft. single residence, pool and on-site septic waste water system on slopes averaging 20%. Building Permit #55073 was issued for this residence on August 11, 1994 and finalized on July 14, 1995.

June 1995 - Use Permit #94254-UP was approved by the Planning Commission on June 21, 1995 authorizing the establishment of a 5,000 gallon per year estate winery through the conversion of 2,237 sq.ft. of an existing 2,951 sq.ft. barn, and the addition of a 3,000 sq.ft. crush and tank pad. By appointment visitation and retail sales were set at 20 visitors per day with an average of 20 visitors per week. The marketing plan was authorized as follows: 1) tours and tastings for wine trade personnel at 10 persons per year with 5 to 10 (average 6) persons per event; 2) private promotional dinners at 4 per year with 6 to 18 (average 12) persons per event; and 3) wine auction related events such as barrel tastings and auctions at 2 per year with an average attendance of 25 persons. Hours of operation was set at 8 am-5 pm, daily. The number of employees was set at 2 full-time plus 1 temporary employee during harvest. Parking was limited to five (5) spaces. The guest cottage within the winery was deemed accessory to the residence and was prohibited from having any connection to the winery or used for marketing or other winery activities. A Variance (#94255-VAR) to allow the winery to be within the 300 foot setback from a minor private road was also submitted; however, the Planning Commission found the road to not serve the public because it was a secondary access and, therefore, the variance request was officially withdrawn at the public hearing. Building permits for such approval was obtained from the County of Napa.

Late 1990's - Over time, the entire second floor was converted for winery purposes without obtaining a use permit

modification and building permit. Presently, no residential use remains within the former barn/guest cottage. A 4,710+/- cave was also excavated in the hillside immediately adjacent to the winery/barn without obtaining a use permit modification, building permit and/or grading permit. According to Rick Stone of Nordby Wine Cave, the cave excavator, the cave was constructed in accordance with accepted industry standards at the time, and the cave spoils were disposed on site and used to improve vineyard roads.

July 2012 - The property was selected to participate in the 2012 Wine Audit which was conducted at the conclusion of the 2012 with results reported in July 2013.

February 4, 2013 - Use Permit Major Modification P13-00027 was voluntarily submitted by the property owner, as well as in advance of submitting required information in the Winery Audit process. The request seeks approval of the cave and other existing winery-related site improvements improved without benefit of permit as well as authorization of wine production and visitation/marketing exceeding levels contemplated in the original use permit entitlement. Processing of the application has been delayed by several factors including availability of staff and applicant driven changes to the project description. The original staff planner assigned to the project went out on a leave of absence and eventually left employment with the County. Upon taking over the project, the new staff planner worked with the applicant on developing substantial amounts of background study work on roadway engineering, water availability, biological analysis, traffic analysis and other project details.

August 20, 2014 - Demolition Permit B14-01281 was administratively approved authorizing the demolition of a 540 sq.ft. vineyard material storage building and 400 sq.ft. vineyard equipment shop building located within the stream setback of a small tributary flowing into Teale Creek. It should be noted that such buildings existed before adoption of the Conservation Regulations in 1991 and the establishment of stream setbacks, however, these structures had been modified/expanded and/or replaced at some point after 1991 and prior to submittal of Major Modification P13-0027. As indicated, the applicant expanded and partially enclosed one of the buildings that spanned the stream and constructed another. Demolition of the buildings resolved that portion of the code violation.

Code Compliance:

As noted in the project description and property history section above, there have been several violations associated with the winery and adjacent vineyard management buildings. The violations on the vineyard management buildings were resolved in 2014. Resolution of the winery-related violations is dependent upon the outcome of this use permit process. In March 2015 the Board of Supervisors and Planning Commission requested that staff commence an update to code enforcement practices and regulations to potentially increase penalties and/or consequences for code violations. As with any use permit, the Planning Commission's role remains to consider the merits of the use permit request and not to apply punitive measure in response to the code violations.

Civil penalties and/or fines are applied by the Building Official, Code Enforcement Division and County Counsel's Office. This project will be subject to after-the-fact building permit fees, which are double standard building permit fees plus payment of all staff costs. Citations and/or court-ordered civil penalties are not being pursued at this time, as the property owner has been diligent in responding to County demands placed upon them. As noted above, processing of the use permit modification, which started in February 2013 was delayed. County Code Section 1.28 sets infraction citation levels at \$100 a day for a first infraction for a maximum period of 1 year. Citation levels increase to \$200 a day and \$500 a day if property owners fail to comply with orders. If the County elevates the case to a civil action, court-ordered civil penalties are up to \$1,000 a day for a maximum period of 1 year plus recovery of County costs.

Discussion Points:

Staff Recommendation - Staff strives to find a balance between applicant objectives, County objectives, and the

various objectives of all who may be interested in the project. In this case however, staff expects that it will not be possible to find balance on meeting all competing objectives. Consequently, formulating a recommendation on this project has been difficult and as a result the recommendation has only been finalized concurrent with the release of this staff report. As such, the applicant may have some level of frustration with staff detailing points in this report that have not been fully vetted with them beforehand. Likewise, it is anticipated that neighbors and/or other interested members of the public who are expressing concerns about the proposal, may have similar concerns with both staff's recommendation and the fact the recommendation was not vetted with them before release of this staff report. Regarding objectives, the County General Plan supports reasonable levels of additional winery development, which aspects of this project clearly contain. On the other hand, the Board of Supervisors and Planning Commission have expressed increased reluctance to reward illegal behavior with an after-the-fact approval, which aspects of this project clearly contain.

Considering these objectives equally, staff does not feel it is appropriate to endorse the applicant's proposal as proposed as it is unclear how this proposal meets Board direction to avoid rewarding violators with after-the-fact approvals. Conversely, staff does not support project denial because there are substantive elements of the underlying original approval that are problematic and need to be addressed. Therefore, staff is recommending that certain aspects of the project be approved after-the-fact, but contingent wholly upon timely implementation of an off setting restoration plan to return a substantial portion of the property to a natural state to address required findings for grant of a conservation regulation use permit exception. Absent some form of commensurate trade off for the County granting after-the-fact approval of incursions into creek setbacks, staff cannot support the proposal. This concept was suggested to the applicant on several occasions over the last several months but to date the applicant has not expressed an interest in moving forward in this direction.

Staff believe the only way to objectively consider the various components of an after-the-fact entitlement request is to evaluate the proposal from the perspective as if they had yet to be implemented, and determine if support would have been otherwise given. The scope of discretion before the Planning Commission is limited to determining if the request merits approval, either as proposed or amended, or should be denied. In addition, the Commission has the authority to commence a process for revocation or suspension of the existing use permit if the Commission believes the violations rise to a level where the required findings for revocation or suspension apply. Staff's analysis of the individual components of the request are detailed as follows:

Wine Production - The approved use permit allows 5,000 gallons of annual wine production. The applicant has indicated that current production is at 8,400 gallons annually, and 9,200 gallons of annual production is requested with this permit. County evaluation of wine production is conducted on a three year rolling average. Therefore, it is theoretically possible that the permittee can comply with the 5,000 gallon annual limit if subsequent years to the average are commensurately under the allowed production.

Staff believe it is reasonable to grant the additional production for the following reasons: 1) the grapes are being sourced from an on-site vineyard which existed prior to the approval of the winery. Hind sight being what it is, it is unclear why only 5,000 gallons of annual production was entitled for a estate-sourced winery that had 27 acres of vineyards, even in a hillside setting. At 27 acres, any grape yields over 1.23 tons per acre would produce over 5,000 gallons of juice. 2) Whether the production increase is granted or not, the 27 acres of vineyards will continue to produce more than 5,000 gallons of juice annually, meaning that fruit will be off-hauled if not produced here. This is not a major factor one way or the other, because the volume of wine is quite minor, but staff is supportive of processing grapes on-site. 3) The amount of overall production, both previously approved and proposed, is quite small.

Cave Status - Caves are common features in wineries and generally supported by staff. Issues on cave design at wineries generally pertain to 1) visibility/setbacks of portals and work areas; 2) size of the cave in relation to the amount of wine being made; 3) location of cave spoils; 4) amount of cave space dedicated to accessory uses; and 5) cave construction type as it relates to visitors. In this case, some aspects of the cave would have been

supported by staff if it were being proposed new today including its overall size in relation to production, cave type, and visibility.

At issue is the portal placement and access road in the creek setback, the use of the cave for visitation, and the inconclusive final resting places of the cave spoils. In response to the cave spoils, the applicant provided a testimonial from the cave driller stating that spoils were deposited in the vineyards on the property. Staff can neither confirm or reject this assertion as it occurred over 15 years ago and the only evidence provided came from the contractor who did the unpermitted work. It is noted that at the time the cave was drilled, the County did not require permits to dig the cave, but the contractor violated both local and state laws by completing finishing work at the cave without permits and thus it seems hypocritical to accept that contractor's testimonial as hard evidence. To some degree the final location of the cave spoils is moot since it happened years ago, but staff believe it has some bearing on the issue of the cave portal within the creek setback.

Staff's position is that the after-the-fact Conservation Regulation Use Permit Exception should only be granted if the project contains a commensurate offsetting benefit to the stream corridor that the cave and road are encroaching within. As noted in the biological report prepared for this project (attached), the creek channels on the subject property have been highly altered and evidence suggests strongly that they most of the creek zones were highly altered for some considerable period prior to the applicant's acquisition of the property. Photographs of the winery structure in 1995 (attached) provide some evidence of the level of disturbance to the creek channels before the cave portal and access road were built in these areas. This evidence suggests that the impacts to the creek zone from the cave did not result in substantial changes.

However, construction of the cave portal, access road and the unauthorized reconstruction/rehabilitation of the vineyard management building in the creek setbacks did result in some unknown level of new earth disturbance within the creek setbacks. It possible that a portion of the cave spoils were spread within creek setbacks not only adjacent to the winery and vineyard buildings but also in the vineyard roads elsewhere on the property. As such, staff sees only two options for supporting retention of the cave as built. One would be removal of the portal and access road from the creek setback and installation of a new portal (two portals are required for winery caves) outside of setbacks. This appears possible on the south side of the property where the original septic system had been placed but staff has not pursued this concept with the applicant as it seems environmentally superior to leave the cave as it is than to embark on a new construction project. Therefore, Staff has focused on the option of retaining the creek setback portal, but to require the property owner to restore a substantial amount of creek setback zone elsewhere on the site in turn for allowing the encroachment. Staff has suggested that the applicant offer up some form of attenuating off set for the creek incursion, but to date the applicant has not expressed an interest in pursuing this concept. As such, in arriving at a recommendation for this project, staff opted to suggest restoration in the area south of Teale Creek in lieu of any other measures being put forth by the applicant. This concept would require substantial further development if the Commission wish to take matters in this direction. Without laying out a concept, it appears that at least 15,000 sq. ft. of restoration area would be needed dependent upon the replacement ratio chosen by the Commission. Lastly, retention of the existing portal is arguably environmentally superior to denying the application and requiring the applicant to fill the cave in, as the property owner would only be required to return the area to the way it was before the violation, which was far from a native state. If a restoration project is not possible though, staff would withdraw support for retaining the cave. Removal is preferred to retention without a restoration component.

If the cave is to be retained, it should be used. However, use of the cave for tours and tastings is not supported by staff. After-the-fact approval of the caves is only reluctantly supported because the cave is a reasonably sized storage/wine production component to a winery designed to support the production of grapes grown on-site. Tours and tasting are an accessory use to wine production, and for Staff, the rational for retaining the cave does not apply if it is to be for accessory uses. The applicant has not provided rational why visitation is needed in the caves in order to sell the wines made at the facility.

Second Floor Office Conversion from Guest Quarters - In the original approval, the guest quarters were not allowed to internally connect with the adjacent winery offices and could not be used for winery related purposes. Including non-winery facilities within a winery is generally problematic not only from a zoning/land use perspective, but from a Building Code perspective as well. Residential occupancies must have area separation walls and other delineators from commercial, agricultural and industrial occupancies. Conversion of the residential space to winery office space is highly preferred by staff to the originally approved configuration. Zoning requires guest cottages to be clearly incidental to the primary residential use on the property, which in this case is 1,300 ft. away and up the hill. Guest cottages are meant to function as part time sleeping accommodations for family members and non paying guests of the residence. Having the guest quarters as part of the winery and completely removed from the residence compromises the integrity of the use.

Visitation and Marketing Levels - Staff cannot support expansion of the visitation and marketing program for this facility. The applicant's purported need for the additional visitation and marketing is to meet market challenges resulting from the growing trend of direct-to-consumer marketing. Although staff acknowledges the competitive business pressures faced by small wineries, and accepts that small wineries need to be able to sell their wines directly to customers, staff do not feel that the applicant has made a compelling case why their existing levels of visitation are insufficient. In fact, the property is either in contract to be sold or has sold to a new owner, and it appears likely that the level of visitation and marketing requested relate more to property valuation than to the current operator's functional needs.

Staff supports reworking the visitation and marketing program to correspond with the current conditioning method that places maximum daily and weekly visitors, and maximum number and size of events, as opposed to relying on averages. Applying the Commission's currently evolving visitation matrix methodology, the applicant's proposed level of visitation and marketing is far above its peers (see attached spreadsheet). The spreadsheet has omitted the 20,000 gallon per year Small Winery Exemptions because these permit types (issued in the 1980's) did not allow visitation or marketing and would paint a much lower average and median visitation level if included. Only small wineries with use permits were included as comparison facilities. Small Winery Exemptions were administrative permits based on set ministerial criteria similar to Home Occupation and Cottage Food administrative permits although somewhat larger in overall scale.

Outdoor Visitation and Marketing Areas - The applicant is proposing that tastings and marketing events be permitted in the redwood grove, lawn area and gazebo located on the south side of Teale Creek. Tasting and marketing events have occurred in these areas in the past without record of neighbor complaint or objection although not authorized in the existing use permit. Outdoor visitation areas are common at wineries, and are not counted to the amount of accessory space at wineries. Those factors lend support toward now authorizing these areas for accessory use. However, relating these areas to resolution of the unauthorized cave construction as well as the unauthorized visitation that has occurred in these areas, staff believe it is more appropriate that this portion of the property be converted to a natural area as part of the stream restoration project staff believes is necessary to meet the required findings for grant of an exception for the creek setback incursions. Staff would support small areas of the south side of the creek being used for tastings/marketing within the restoration area, such as a path to the redwood grove from the existing decades old bridge. Removal of the lawn area and gazebo and replacement with native vegetation could qualify for offsetting the encroachments that have occurred elsewhere. The final design of the restored area could have components allowing human interaction.

Septic System & Hold and Haul – The existing septic system is located in close proximity to and above the cave and must be relocated to meet health code requirements. The applicant's engineer has designed a new domestic waste system that will be located across Teale Creek with the sewage line crossing the creek at the existing bridge which is allowed by standards. Other than the new transmission line to access the septic field, all other new septic system improvements will be installed outside of creek setbacks. The applicant is proposing the winery waste be converted to a hold and haul system. Current regulations allow hold and haul systems, although there has been some more recent public concerns raised about the sustainability of allowing hold and haul at

wineries. At 9,200 gallons of wine production, the scale of the hold and haul system is comparatively quite small to other hold and haul entitlements. Staff has no objection to implementing a hold and haul system.

Private Road Improvements, Traffic and Parking – An exception to the Road and Street Standards is proposed and supported by the Fire Marshal and Engineering Division. The existing private access road connects with Diamond Mountain Road through several properties generally east of the subject property. The applicant is required to widened sections of the road, as shown the attached project plans, but is requesting an exception in areas to retain vegetation and limit work within creek setback zones. Staff believe the project as designed can meet the required findings for grant of a road exception. The first findings is that there are substantive trees and/or terrain features that would be removed or damaged by widening roads to the full standard, and the second finding is that the alternative design contains features that meets the same overall practical effect as meeting the full standard. In this case, the Fire Marshal and Engineering Division support the design as now put forward by the applicant. The design went through several iterations before being determined to meet the same overall practical effect finding.

Public Comments - As of printing of this staff report several letters from interested third parties have been submitted and are attached. It is anticipated that additional correspondence will be received prior to the hearing and will be distributed by the Commission Clerk at the earliest available opportunity.

Decision Making Options

Option 1- Approve Applicant's Proposal

This option would result in approval of the project essentially as it exists today with the inclusion of minor site and facility improvements. Subsequent to approval, the permittee would need to obtain building permits for all previously unpermitted work. Visitation and marketing levels would be increased and could commence once retroactive building permit work was granted a final occupancy, including installation of the new septic system facilities. The attached proposed conditions of approval are written to reflect the applicant's proposal. Highlighted areas on these conditions would need to be revised in the event the Commission wishes to pursue a reduced development option.

Action Required - Follow proposed action listed in Executive Summary. If conditions of approval are to be amended, specify conditions to be amended at the time the motion is made.

Option 2 - Reduced Development Alternative (Staff Recommendation)

This option would allow the property owner to retain the majority of previously unpermitted improvements including the cave and access road/cave portal within the creek setback and would allow wine production to increase as proposed, but visitation and marketing levels would not be increased and a stream restoration project would be required to offset the encroachments within creek setbacks. The Commission could assign the restoration project to any portion of the property but staff is recommending that it encompass the south side of the Teale Creek. The Commission also has flexibility to adjust visitation and marketing levels.

Action Required - Take a tentative action to approve the CEQA document and project, and remand the item to Staff for preparation of findings and revised conditions of approval. Final approval of this alternative and adoption of the revised conditions could occur at the next Commission meeting.

Option 3 - Deny Proposed Modification

In the event the Commission determines that the project does not, or cannot meet the required findings for grant of a use permit modification, Commissioners should articulate what aspect or aspects of the project are in conflict with required findings. In a similar fashion to use permit approvals, State law requires the Commission to adopt findings based substantial evidence, setting forth why the proposed use permit is not consistent with the General Plan and/or County Code and therefore is being denied. Based on the administrative record as of the issuance of

this staff report, staff believe it would be more appropriate to approve a downscaled project then do deny the proposal outright. Denial of the project would result in the project being remanded to the Code Enforcement Division to work with the property owner to remove all unpermitted construction and return winery production and visitation levels down to originally permitted levels. Outdoor visitation areas could not be used.

Action Required - By simple motion the Commission would adopt a tentative motion of intent to deny the project and remand the matter to staff for preparation of required findings to return to the Commission on a specified date for formal adoption.

Option 4 - Use Permit Revocation

Pursuant to County Code Section 18.124.120, the Planning Commission has the authority to revoke, suspend or modify an existing use permit entitlement if after conducting a multi-step noticed public hearing process to expressly consider such actions, the Commission finds one or more of the following findings (paraphrased) applies: Approval was obtained by fraud or misrepresentation; violation of conditions; use being conducted contrary to terms of the permit; use is detrimental to public health, safety or welfare; use constitutes a public nuisance; and/or use has ceased for a period of five years or longer. Generally, this process is only pursued on the most egregious cases where permittee repeatedly demonstrates an inability to comply leaving the local agency with no other reasonable course of action to compel compliance. Staff is not recommending that this action be pursued at this time. The applicant expressed an intent to comply with the code and followed the use permit modification process to request approval of previously unauthorized improvements.

Action Required - Separate from action on the proposed use permit modification, the majority of the Commission by minute order would direct staff and County Counsel to begin processing.

Continuance Option

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

SUPPORTING DOCUMENTS

- A . Draft Findings
- B . Draft Conditions of Approval
- C . Department Comments
- D . Original Use Permit Approval
- E . Proposed Negative Declaration
- F . Winery Comparison Chart
- G . Public Comments
- H . Application Packet
- I . Conservation Regulation Exception Request
- J . Road Exception Request
- K . Water Availability Analysis
- L . Traffic Study
- M . Stormwater Management Analysis
- N . Septic Analysis
- O . Septic Cave Setback Analysis

P . Biological Report

Q . Graphics

Napa County Planning Commission: Approve

Reviewed By: Melissa Frost