

## **Exhibit A**

### **FINDINGS**

#### **Shutters Winery**

**Use Permit Application № P09-00222 and Variance Application № P09-00223**

**No Present Address, Lommel Road, Calistoga, Calif., 94515**

**Assessor's Parcel № 018-060-027**

#### **ENVIRONMENTAL DETERMINATION**

The Conservation, Development, and Planning Commission (Commission) has received and reviewed the proposed Mitigated Negative Declaration pursuant to the provisions of the California Environmental Quality Act (CEQA) and of Napa County's Local Procedures for Implementing CEQA, and makes the following findings:

1. That, prior to taking action on the Mitigated Negative Declaration and the proposed project, the Commission read and considered said Declaration.
2. That the Mitigated Negative Declaration is based on independent judgment exercised by the Commission.
3. That the Mitigated Negative Declaration was prepared and considered in accordance with the requirements of the California Environmental Quality Act.
4. That considering the record as whole, there is no substantial evidence that the project will have a significant effect on the environment.
5. That the Secretary of the Commission is the custodian of the records of the proceedings on which this decision is based. Records are located at the Napa County Conservation, Development, and Planning Department, 1195 Third Street, Room 210, Napa, Calif.

#### **VARIANCE**

The Commission has reviewed the variance request in accordance with the requirements of Napa County Code Section 18.128.060 and makes the following findings:

6. The requirements set forth in Chapter 18.128 of the Napa County Code have been met. The variance application has been filed and notice and public hearing requirements have been met. The hearing notice and notice of availability of the proposed Mitigated Negative Declaration were posted on May 17, 2010 and

copies of the notice were forwarded to property owners within 300 feet of the Property.

7. Special circumstances exist applicable to the Property, including size, shape, topography, location or surroundings, because of which strict application of the zoning district regulations deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification. A substantial proportion of the subject parcel is on slopes exceeding 30%, all but eliminating the potential for development in those locations under the County's Conservation Regulations (see Napa County Code § 18.108.060). Much of the remaining, flatter, portions of the property are located in or near the channel of Biter Creek and the other watercourses which transect the parcel, likewise making those areas unbuildable under the Conservation Regulations (see Napa County Code § 18.108.025) absent a use permit exception. The significant environmental and regulatory constraints described above combine to force all proposed development, including roads, septic systems, caves, and structures into the space-impaired northwestern corner of the parcel. The applicants have attempted to minimize encroachment into the required 300' winery road setback by relocating the road itself to a location 69' back from the proposed winery, however there is no feasible way to meet the 300' setback without locating improvements on slopes exceeding 30% or constructing substantial roadway improvements within or directly adjacent to the channel of Biter Creek. These facts combine to create special circumstances which deprive the applicant of privileges enjoyed by other property in the vicinity and under identical zoning classification.
  
8. Grant of the variance is necessary for the preservation and enjoyment of substantial property rights. The AW (Agricultural Watershed) zoning district, in which the property is located, allows wineries and uses accessory to a winery, subject to the approval of a conditional use permit. As discussed in the above special circumstances finding, a variance from the 300 foot winery road setback is required to allow the construction of a legitimate wine production facility on the property as allowed by and even encouraged in (for reference see **Economic Development Policy E-1**) the General Plan. The operation of legally constructed and operated agricultural production facilities within the County's agricultural zoning districts is a substantial property right. Additionally, the roadway in question is now undeveloped and much of the land area to the east is held by the Land Trust of Napa County and will, presumably, never be developed. This greatly limits the public impacts of the proposed 230 feet reduction in the required winery road setback. Finally, the grant of this variance will not confer a

special privilege to the applicants, as the Commission has previously granted variances to allow the construction of new winery facilities within winery road setbacks where special circumstances inherent to the relevant properties substantially limited development elsewhere.

9. Grant of the variance will not adversely affect the public health, safety, or welfare of the County of Napa. Various County departments have reviewed the project and commented regarding water, waste water disposal, access, building permits, and fire protection. Conditions are recommended which will incorporate these comments into the project to assure protection of public health and safety. The requested variance will allow for the development of an allowed agricultural processing facility in furtherance of the goals and policies of the Napa County General Plan.
10. The subject property is not located in a “groundwater deficient area” as identified in Section 13.15.010 of the Napa County Code.
11. Minimum thresholds for water use have been established by the Department of Public Works using reports by the United States Geological Survey (USGS). These reports are the result of water resources investigations performed by the USGS in cooperation with the Napa County Flood Control and Water Conservation District. Any project which reduces water usage or any water usage which is at or below the established threshold is assumed not to have a significant effect on groundwater levels. Based on the submitted phase one water availability analysis, the 15 acre subject mountain-area parcel has a water availability calculation of 7 ½ acre feet per year (af/yr), which is arrived at by multiplying the 15 acre size by a ½ af/yr/acre fair share water use factor. This application proposes 0.53 af/yr of winery water use. Based on these figures, the project would be below the established threshold for groundwater use on the property. The project will not interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater level.

#### **WINERY USE PERMIT**

The Commission has reviewed the use permit modification request in accordance with the requirements of the Napa County Code §18.124.070 and makes the following findings:

12. The Commission has the power to issue a use permit under the Zoning Regulations in effect as applied to the Property. The project is consistent with

AW (Agricultural Watershed) zoning district regulations. A winery (as defined in Napa County Code §18.08.640) and uses in connection with a winery (see Napa County Code § 18.20.030) are permitted in an AW-zoned district subject to use permit approval. The project complies with the requirements of the Winery Definition Ordinance (Ord. No. 947, 1990, *as amended*) and the remainder of the Napa County Zoning Ordinance (Title 18, Napa County Code), as applicable.

13. The procedural requirements for a use permit set forth in Chapter 18.124 of the Napa County Code have been met. The use permit application has been filed and noticing and public hearing requirements have been met. The hearing notice and notice of availability of the proposed Mitigated Negative Declaration were posted on May 17, 2010 and copies of the notice were forwarded to property owners within 300 feet of the Property. The CEQA public comment period ran from May 17 through June 15, 2010.
14. The grant of a use permit, as conditioned, will not adversely affect the public health, safety, or welfare of the County of Napa. Various County departments have reviewed the project and commented regarding water, waste water disposal, access, building permits and fire protection. Conditions are recommended which will incorporate these comments into the project to assure the ongoing protection of public health and safety.
15. The proposed use complies with applicable provisions of the Napa County Code and is consistent with the policies and standards of the Napa County General Plan.

The Winery Definition Ordinance (WDO) was established to protect agriculture and open space and to regulate winery development and expansion in a manner that avoids potential negative environmental effects. The project complies with the requirements of the Winery Definition Ordinance (Ord. No. 947, 1990), the 2009-2010 Winery Definition Ordinance Update (Ord. No. 1340, 2010), and the remainder of the Napa County Zoning Ordinance (Title 18, Napa County Code), all as applicable.

**General Plan Agricultural Preservation and Land Use Goal AG/LU-1** guides the County to, “preserve existing agricultural land uses and plan for agriculture and related activities as the primary land uses in Napa County.” **General Plan Agricultural Preservation and Land Use Goal AG/LU-3** states the County should, “support the economic viability of agriculture, including grape growing, winemaking, other types of agriculture, and supporting industries to ensure the

preservation of agricultural lands.” Approval of this project furthers both of these key goals.

The subject parcel is located on land designated Agriculture, Watershed, and Open Space (AWOS) on the County’s adopted **General Plan Land Use Map**. This project is comprised of an agricultural processing facility (winery), along with wine storage, marketing, and other WDO-compliant accessory uses as outlined in and limited by the approved project scope (see attachment B, Condition of Approval № 1 et seq.) These uses fall within the County’s definition of agriculture and thereby preserve the use of agriculturally designated land for current and future agricultural purposes.

As approved here, the use of the property for the “fermenting and processing of grape juice into wine” (NCC §18.08.640) and for uses accessory thereto supports the economic viability of agriculture within the county consistent with **General Plan Agricultural Preservation and Land Use Policy AG/LU-4** (“The County will reserve agricultural lands for agricultural use including lands used for grazing and watershed/ open space...”) and **General Plan Economic Development Policy E-1** (“The County’s economic development will focus on ensuring the continued viability of agriculture...”).

The General Plan includes two complimentary policies requiring that new wineries, “...be designed to convey their permanence and attractiveness.” (**General Plan Agricultural Preservation and Land Use Policy AG/LU-10** and **General Plan Community Character Policy CC-2**) The proposed winery has a distinguished architectural design and quality materials and will be fully compliant with the requirements of policies **AG/LU-10** and **CC-2**.

As analyzed at item № 16, below, the winery will not interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater level. The project is consistent with **General Plan Conservation Policies CON-53** and **CON-55**, which require that applicants for discretionary land use approvals prove the availability of adequate water supplies which can be appropriated without significant negative impacts on shared groundwater resources.

Napa County’s adopted General Plan reinforces the County’s long-standing commitment to agricultural preservation, urban centered growth, and resource

conservation. On balance, this project is consistent with the General Plan's overall policy framework and with the Plan's specific goals and policies.

16. The proposed use would not require a new water system or improvement causing significant adverse effects, either individually or cumulatively, on the affected groundwater basin. Minimum thresholds for water use have been established by the Department of Public Works using reports by the United States Geological Survey (USGS). These reports are the result of water resources investigations performed by the USGS in cooperation with the Napa County Flood Control and Water Conservation District. Any project which reduces water usage or any water usage which is at or below the established threshold is assumed not to have a significant effect on groundwater levels. Based on the submitted phase one water availability analysis, the 15 acre subject mountain-area parcel has a water availability calculation of 7 ½ acre feet per year (af/yr), which is arrived at by multiplying the 15 acre size by a ½ af/yr/acre fair share water use factor. This application proposes 0.53 af/yr of winery water use. Based on these figures, the project would be below the established threshold for groundwater use on the property. The project will not interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater level.