

**PLANNING COMMISSION HEARING – DECEMBER 16, 2015  
EXHIBIT A – FINDINGS**

**DAKOTA SHY WINERY  
P14-00335-UP AND P14-00336-VAR  
771 SAGE CANYON ROAD  
(APN: 030-090-033)**

**ENVIRONMENTAL DETERMINATION:**

The Planning Commission (Commission) has received and reviewed the proposed 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. That:

1. The Planning Commission has read and considered the Initial Study, as well as any comments received thereon, prior to taking action on the statement of Negative Declaration and the proposed project.
2. The Negative Declaration is based on independent judgment exercised by the Planning Commission.
3. The Initial Study and Negative Declaration were prepared and considered in accordance with the requirements of the California Environmental Quality Act.
4. There is no substantial evidence in the record as a whole, that the project will have a significant effect on the environment.
5. There is no evidence, in considering the record as a whole that the proposed project will have a potential adverse effect on wildlife resources or habitat upon which the wildlife depends.
6. The site of this proposed project is not on any of the lists of hazardous waste sites enumerated under Government Code Section 65962.5 and is not within the boundaries of any airport land use plan.
7. The Secretary of the Planning Commission is the custodian of the records of the proceedings on which this decision is based. The records are located at the Napa County Planning, Building & Environmental Services Department, 1195 Third Street, Second Floor, Napa, California.

**VARIANCE:**

The Commission has reviewed the variance request in accordance with the requirements of the Napa County Code §18.124.060 and makes the following findings:

8. That the procedural requirements set forth in Chapter 18.128.060 have been met.

**Analysis:** An application and required processing fees has been submitted for a variance accompanied with a statement from the applicant outlining the reasons for the request. Site plans depicting the location of the project and elevation drawings showing the appearance of the proposed winery buildings have also been submitted. Noticing and public hearing requirements have been met.

9. 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.

**Analysis:** There is no location on the site where a variance from the 600 foot setback from Silverado Trail and 300 foot setback from Sage Canyon Road would not be necessary. A portion of the site is even encumbered with overlapping setbacks from both roadways (see attached variance exhibit). This is result of a rather unique dual street frontage setting with streets located on opposite sides of the property, which is the basis for staff's support of the proposed variance. Although it is relatively common for winery property to have multiple winery road setbacks, it is very unusual to have setback roads located on opposite side of the property.

The property was developed with a 1,000 gallon per year winery in 1988 prior to the adoption of the Winery Definition Ordinance (WDO) regulations which established the 600 ft. and 300 ft. road setbacks as well as a 10 acre minimum lot size. At 6 acres, the property would not be eligible for a new winery today. However, the WDO expressly provided that wineries that were entitled prior to the WDO (know as pre-WDO wineries) were not rendered nonconforming uses and are thus allowed to expand despite being on a substandard lot. Within this context, building additions are allowed within required setbacks without a variance provided that the new structure is attached to the original structure and is not any closer to a winery setback roadway. New, detached buildings are subject to the setback.

In this case, the applicant is requesting to replace the original winery building with a new building at the end of an existing driveway on the opposite side of the property in an area that is currently occupied by a tennis court. The proposed winery location places the winery in closer proximity to Silverado Trail thus triggering the request for a variance. This location provides a clear separation between the winery and the existing residences to differentiate those separate uses. So while the winery building would be located within the required Silverado Trail setback, there is minimal visual impact along the roadway due to an existing solid wall and extensive mature trees along the property line. The slope of the property ranges from zero to five percent and the proposed location has a slope of two percent and has been previously disturbed which will reduce the amount of grading necessary to construct the new building.

In order to determine if the new building qualified for a variance, Staff considered whether a building addition which would not require a variance was possible. Although there is some room to add onto the existing building without getting any closer to Sage Canyon Road, the room for that addition is highly constrained from the 20 ft. side yard setback and the setback for Silverado Trail (see attached variance exhibit). This represents a special circumstance that prevents a reasonably designed winery addition from occurring without a variance and would thus deny this property owner privileges enjoyed by other winery owners with properties less than 10 acres in size.

10. Grant of the variance is necessary for the preservation and enjoyment of substantial property rights.

**Analysis:** This is the most difficult finding for the Planning Commission to make. The site already contains a single family residence and a small winery, which in themselves are substantial property rights. Replacement of that small winery with a new larger, but still small, winery is potentially an expansion of property rights. It can be argued that expansion is not necessary to preserve the substantial property rights that already exist. However, at the time the WDO was adopted, inclusive of its 10 acre minimum lot size and 300 ft. and 600 ft. setbacks, it was anticipated and permitted existing wineries located on substandard parcels could expand. It has been the County practices to recognize the changing business needs of

small wineries and to allow reasonable expansions of those facilities. Staff believe the currently proposed major modification is a reasonable expansion. Denial of the variance would effectively prohibit not only this expansion but virtually any expansion of the existing facility. Although the County is not obligated to approve the variance since arguably substantial property rights presently exist, withholding of the variance request appears to run contrary to WDO recitals supporting expansion of pre-WDO small wineries on substandard winery properties.

Making this finding appears to come down to a matter of code interpretation. The large winery setbacks prescribed by the WDO are intended to lessen the visual appearance of wineries from public roads. This serves several purposes, but mostly to ensure that wineries "convey a permanence and attractiveness" (General Plan Policy A.G. LU-10) wherein wineries are first and foremost agricultural processing facilities as opposed to commercial centers designed to attract customers off of public roads. This project is in keeping with this overarching policy. The new building, although closer to Silverado Trail than the existing building, will be largely screened from view by the substantial existing visitation surrounding the property. Consequently, the new building is not considered to substantially change the degree of visibility of the winery from setback roads over that which exists today.

11. Grant of the variance will not adversely affect the public health, safety or welfare of the County of Napa.

**Analysis:** There is nothing included in the variance proposal that would result in a measurable impact on the public health, safety, or welfare of the County of Napa. Construction of the new winery would be subject to County Codes and regulations including but not limited to California building codes, fire department requirements, and water and wastewater requirements. The granting of the variance to the winery road setback will not adversely affect the health or safety of persons residing or working in the neighborhood of the property. There have been no adverse impacts to public health, safety or welfare from the existing pre-1990 buildings. 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, safety, and welfare.

12. In the case of groundwater basins identified as "groundwater deficient areas" under Section 13.15.010, grant of the variance would not require a new water system or improvement, or utilize an existing water system or improvement causing significant adverse effects, either individually or cumulatively, on said groundwater basins in Napa County, unless that variance would satisfy any of the other criteria specified for approval or waiver of a groundwater permit under Section 13.15.070 or 13.15.080.

**Analysis:** The subject property is not located in a "groundwater deficient area" as identified in Section 13.15.010 of the Napa County Code. The parcel lies on the Valley Floor, which groundwater studies have determined has maintained stable depth to groundwater levels.

13. Grant of the variance in the case of other groundwater basins, or areas which do not overlay an identified groundwater basin, where grant of the variance cannot satisfy the criteria specified for approval or waiver of a groundwater permit under Section 13.15.070 or 13.15.080, substantial evidence has not been presented demonstrating that the grant of the variance might cause a significant adverse effect on any underlying groundwater basin or area which does not overlay an identified groundwater basin.

**Analysis:** There is nothing included in the variance proposal that would result in a measurable impact on groundwater. The existing water use for the project is 6.75 AF/YR

projected water use for the project is 1.55 AF/YR. Existing water use for residential purposes is 1.00 AF/YR and will remain the same with the proposed project. The winery as part of the proposed project is expected to use 0.42 AF/YR. Landscaping currently utilizes 0.1 AF/YR and will increase to 0.36 AF/YR. The new vineyards will utilize 0.80 AF/YR. Napa County has established a threshold of 6.0 AF/YR for this parcel which is calculated by applying a rate of 1.0 AF/YR multiplied by the acreage of the site; therefore the estimated water demand of 1.55 AF/YR is below the threshold established for the parcel. The decrease of water is substantial, and primarily achieved through removal of an existing orchard, and would not have an adverse effect on the 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, for purposes of the application of the County's Groundwater Conservation Ordinance, assumed not to have a significant effect on groundwater levels.

14. In the case of a development or improvement with a reasonably foreseeable connection to a public water supply as defined in 13.15.010, regardless of the number of parcels served, grant of the variance would not require a new water system or utilize an existing water system necessitating a groundwater permit pursuant to Chapter 13.15. This finding shall not be required if the applicant presents substantial evidence demonstrating that grant of the variance for such development or improvement would not have a significant adverse effect on the underlying groundwater basin; or if that variance would satisfy any of the other criteria specified for approval or waiver of a groundwater permit under Section 13.15.070 or 13.15.080 of this code.

**Analysis:** The nearest public water supply is the City of St. Helena, however as the property is traversed by a City of Napa water line the City of Napa does in fact does provide water to the existing residences on the property. However, the City's policy and Napa LAFCO policies do not support additional water provisions for commercial purposes outside the City's boundaries. There are no indications that the sphere of influence of St. Helena would be extended to include the Property. Based on the above, a connection to a public water system for winery purposes is not reasonably foreseeable.

#### **USE PERMIT:**

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

15. The Commission has the power to issue the Use Permit under the Zoning Regulations in effect as applied to property.

**Analysis:** The project is consistent with AW (Agricultural Watershed) zoning district regulations. A winery (as defined in Napa County Code Section 18.08.640) and uses in connection with a winery (see Napa County Code Section 18.20.030) are permitted in an AW zoned district with an approved use permit. The project complies with the requirements of the Winery Definition Ordinance (Ord. No. 947, 1990) and the remainder of the Napa County Zoning Ordinance (Title 18, Napa County Code) as applicable. There is no companion action, necessary for the requested Use Permit, that would require action by the Board of Supervisors.

16. The procedural requirements for a Use Permit set forth in Chapter 18.124 of the Napa County Code (zoning regulations) have been met.

**Analysis:** The Use Permit application has been appropriately filed, and notice and public hearing requirements have been met. The notice of public hearing and intent to adopt a Mitigated Negative Declaration was published by the Office of Planning and Research and posted with the Napa County Clerk on November 13, 2015, and was published in the Napa Valley Register on November 14, 2015 and copies of the notice were mailed via first class mail to owners of property within 1,000 feet of the subject parcel, as well as other interested parties. The public comment period ran from November 13, 2015, through December 15, 2015.

17. The grant of the Use Permit, as conditioned, will not adversely affect the public health, safety or welfare of the County of Napa.

**Analysis:** Granting the Use Permit as proposed and conditioned will not affect the health, safety or welfare of the County. Various County divisions and departments have reviewed the project and commented regarding waste disposal and water demands. Conditions are recommended which will incorporate these comments into the project to assure the protection of the public health, safety, and welfare.

18. 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.

**Analysis:** 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) and the applicable provisions of the Napa County Zoning Ordinance (Title 18, Napa County Code).

This proposal is consistent with the *Napa County General Plan 2008*. The subject parcel is located on land designated Agriculture Watershed (AW) on the County's adopted General Plan Land Use Map. This proposal is for modifications to an existing WDO-compliant winery use as outlined in and limited by the approved project scope. (See Exhibit 'C', Conditions of Approval.) 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.

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."

As approved here, the use of the property for the "fermenting and processing of grape juice into wine" (NCC Section 18.08.640) 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..."). Policy AG/LU-8 also states, "The County's minimum agricultural parcel sizes shall ensure that agricultural areas can be maintained as economic units and General Plan Economic Development Policy E-1 (The County's economic development will focus on ensuring the continued viability of agriculture...). Approval of this project furthers these key goals.

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 will convey permanence and attractiveness.

Agricultural Policy AG/LU-13 of the County General Plan recognizes wineries, and any use clearly accessory to a winery, as agriculture. The Land Use Standards of the General Plan Policy AG/LU-2 list the processing of agricultural products as one of the general uses recognized by the AWOS land use designations. The proposed project allows for the continuation of agriculture as a dominant land use within the county and is consistent with General Plan Agricultural Policy AG/LU-13.

The project is also consistent with General Plan Conservation Policy CON-53 and CON-55 which require that applicants, who are seeking discretionary land use approvals, prove the availability of adequate water supplies which can be appropriated without significant negative impacts on shared groundwater resources.

Finally, the "Right to Farm" is recognized throughout the General Plan and is specifically called out in Policy AG/LU-15 and in the County Code. "Right to Farm" provisions ensure that agriculture remains the primary land use in Napa County and is not threatened by potentially competing uses or neighbor complaints. 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.

19. That the proposed use would not require a new water system or improvement causing significant adverse effects, either individually or cumulatively, on an affected groundwater basin in Napa County, unless that use would satisfy any of the other criteria specified for approval or waiver of a groundwater permit under Sections 13.15.070 or 13.15.080 of the County Code.

**Analysis:** The subject property is not located in a "groundwater deficient area" as identified in Section 13.15.010 of the Napa County Code. 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, for purposes of the application of the County's Groundwater Conservation Ordinance, is assumed not to have a significant effect on groundwater levels. Based on the submitted Tier 1 Water Analysis Study, prepared by Bartelt Engineering, Inc the fair share water available is estimated to be 6.0 AF/YR. Current water use for vineyard is 0.0 AF/YR and will increase to 0.80 AF/YR. The winery is expected to use 0.42 AF/YR, an increase from 0.02 AF/YR. Landscaping currently utilizes 0.1 AF/YR and will increase to 0.36 with the project. The proposed water use of 1.55 AF/YR is well below the available groundwater of 6.0 AF/YR available to the site and no further analysis is needed.