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## Recommended Findings

**PLANNING COMMISSION HEARING – SEPTEMBER 7, 2016  
RECOMMENDED FINDINGS**

**Chanticleer Winery Use Permit and Variance  
Application Numbers P14-00304-UP and P14-00305-VAR  
4 Vineyard View Drive, Yountville, California  
APN #034-150-045**

**ENVIRONMENTAL:**

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 finds that:

1. The Planning Commission has read and considered the Negative Declaration prior to taking action on said Negative Declaration and the proposed project.
2. The Negative Declaration is based on independent judgment exercised by the Planning Commission.
3. The Negative Declaration was prepared and considered in accordance with the requirements of the California Environmental Quality Act (CEQA).
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.
7. The Secretary of the 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, Room 210, Napa, California.

**VARIANCE:**

The Commission has reviewed the attached Variance application and makes the following findings:

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

Analysis: An application has been submitted for a variance accompanied with a statement from the applicant outlining the reasons for the request. The required processing fees have been included in the processing of the Use Permit application. Site plans depicting the location of the project and elevation drawings showing the appearance of the proposed structure have also been submitted. Noticing and public hearing requirements have been met. The hearing notice was posted on August 17, 2016, and copies were forwarded to property owners within 1,000 feet of the subject parcel and all other interested parties. The CEQA public comment period ran from August 17, 2016 to September 6, 2015.

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: The property has a split zoning, locating it within the Agricultural Watershed and Agricultural Preserve zoning districts in which wineries are permitted upon approval of a use permit. The property meets the minimum lot size for a winery and the applicant presented evidence that the property could support the proposed 10,000 gallon winery.

Special Circumstances

The applicant provided a comparison to other properties in the vicinity (parcels with 10 acres or more and within a 1,000 foot radius), demonstrating that the subject property has a unique combination of characteristics including parcel shape, lineal feet of Vineyard View Drive bisecting the property, topography, and oak woodland habitat that are not shared by other properties in the vicinity of the parcel. These physical constraints are further increased by the requirements of the 300-foot road setback. Overall, approximately 6 acres or 15% of the parcel are free from combined constraints. See summary table below [Jeff Redding, letter dated August, 25, 2016, Table 3].

| Parcel Number        | Parcel Area | Depth/Width Ratio* | Lineal Feet of Vineyard View Drive | Area Within 300' Setback (acres) | % of Parcel Area Affected by 300' Setback | % of Parcel >30% Slope |
|----------------------|-------------|--------------------|------------------------------------|----------------------------------|---|------------------------|
| <b>034-150-045**</b> | <b>40</b>   | <b>12:1</b>        | <b>950'</b>                        | <b>16.75</b>                     | <b>42</b>                                 | <b>47%</b>             |
| 034-150-016***       | 21.11       | 2:1                | 490'                               | 8.24                             | 39  | 39%                    |
| 034-150-021          | 20.83       | 3:1                | 79                                 | 2.28                             | 11  | 47%                    |
| 034-150-032          | 79          | 2:1                | 0                                  | 0                                | 0   | 86%                    |
| 034-150-033          | 65          | 1:1                | 0'                                 | 0                                | 0   | 84%                    |
| 034-150-034          | 62.63       | 5:1                | 543'                               | 2.60                             | 4   | 78%                    |
| 034-150-046          | 97          | 3:1                | 0'****                             | 0                                | 0   | 1%                     |

\*Rounded to nearest whole number

\*\* The **bold** indicates the proposed winery parcel

\*\*\*This is the location of the Keever Winery. A variance to the required winery setback was granted to this winery in 2003 (#02586-VAR).

\*\*\*\* While it appears that Vineyard View Drive borders this property, it is not subject to a 300 foot setback from it as Vineyard View Drive is not contiguous to the parcel and thus pursuant to 18.104.235(A)(2) no setback is required for future winery development.

### Unnecessary Hardship

Meeting the setback will present a practical difficulty, requiring additional grading and site development and removal of mature vineyard. This will result in increased development costs and income loss from vineyard removal, further compounded by the inability to feasibly replace lost vineyard on site.

The project engineer, RSA+, prepared a Preliminary Estimate of Probable Costs (August 23, 2016) to estimate the work required to complete the development outside of the setback. The estimate evaluated the costs for increased rough grading, lineal feet of utility extensions for storm drain, water supply, and wastewater systems, and site work including paving, retaining walls, and retention basins. The estimate totaled an additional \$112,000 [Jeff Redding, letter dated August, 25, 2016].

The proposed project location requires a smaller acreage of existing vineyards to be removed. The project as proposed includes removal of approximately 0.25 acres of vineyards (3.6% of existing vineyard). In order to locate the winery outside of the setback, approximately 0.8 acres (12% of existing vineyard) would need to be removed. Meeting the setback would result in an incremental "loss" of 0.55 acres. Based on the estimate of the prices of grapes per ton, the applicant calculated this as resulting in a loss of approximately \$18,700 per year or \$467,500 over an assumed 25-year life span of the vineyard [Jeff Redding, letter dated August, 25, 2016].

Due to the parcel shape, topography, slopes, and oak woodland habitat (approximately 34% of the parcel) there is limited area to replant vineyards. Based on a recent purchase of vineyards in the vicinity, the applicant calculated the cost to purchase 0.55 acres of "replacement" vineyards at approximately \$137,500 [Jeff Redding, letter dated August, 25, 2016].

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

Analysis: This finding requires the applicant to demonstrate that grant of the variance is necessary for the preservation and enjoyment of substantial property rights generally enjoyed by other property in the same zone and vicinity but which would be denied to applicant's parcel due to special circumstances and unnecessary hardship.

The property has a split zoning, locating it within the Agricultural Watershed and Agricultural Preserve zoning districts in which wineries are permitted upon approval of a use permit. The property exceeds the minimum lot size for a winery (10 acres) and the applicant has provided evidence that the property could support the proposed 10,000 gallon winery. As discussed above, the parcel has unique physical characteristics and strict application of the setback, results in both practical and financial hardships, which would restrict the ability to obtain a winery use permit. Grant of the variance would bring the parcel into "parity" with other 10+ acre properties zoned AP or AW that have been granted use permits for wineries.

There are nine (9) properties within one mile of the subject parcel, zoned either AP or AW, that have been granted winery use permits. All of those parcels, except one, are located on relatively flat land. Keever Winery, located on Vineyard View Drive, was granted a variance to allow construction of a winery within the 300-foot road setback. The Keever parcel has similar characteristics, including topographical constraints, to the subject parcel. The subject parcel has constraints that are more restrictive than the Keever parcel, including a greater

percentage of the property subject to 30% slopes and more parcel impacted by the road setback. Overall, a smaller percentage of the subject parcel that is free from combined constraints; 15% for the subject parcel and 35% for Keever Winery parcel.

Granting the variance would bring the subject parcel into parity with other properties in the vicinity that meet the requirement to allow granting a winery use permit and which do not contain the same unique circumstances. Granting the variance would also not confer a special privilege as the subject parcel contains a unique combination of topographical and regulatory constraints, including slope, parcel shape, and above-average setback coverage.

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 adversely impact the public health, safety, or welfare of the County of Napa. Construction of the new building 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. The proposed winery structure and site development would be located in the approximate location of the existing barn, access road, and vegetable garden. 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.

12. 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: The County requires all Use Permit and Variance applicants to complete necessary water analyses in order to document that sufficient water supplies are available for the proposed project. For this project a Water Feasibility Study (September 19, 2014), a County Water Availability Analysis - Phase One Study form (March 13, 2015), and a Water Availability Analysis (January 8, 2016) were prepared by RSA+. The analyses included a water demand analysis detailing the existing and proposed groundwater uses, an analysis of the aquifer recharge rate, and a Tier 2 well interference analysis. The water demand for the existing residential structures, existing vineyard, and proposed winery was determined to be approximately 5.05 acre feet per year. The winery results in a water use increase of approximately 0.45 acre feet per year above existing conditions. The recharge rate was calculated at 0.66 acre-feet per acre per year, resulting in a total parcel recharge of 26.4 acre-feet per year. The reports demonstrate that the parcel has a sufficient recharge rate to support the winery.

### **USE PERMIT:**

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

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

Analysis: The project is consistent with the Agricultural Watershed (AW) and Agricultural Preserve (AP) 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 AW and AP Districts with an approved use permit. The project, as conditioned, complies with the Napa County Winery Definition Ordinance (WDO) and all other requirements of the Zoning Code as applicable.

14. 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 hearing notice and intent to adopt a Negative Declaration were posted on August 17, 2016, and copies were forwarded to appropriate persons on the mailing list. The public comment period ran from August 17, 2016 to September 6, 2016.

15. 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 for the project as proposed and conditioned will not adversely affect the health, safety or welfare of the County. Various County divisions and departments have reviewed the project and commented regarding modifications to the existing road and driveway, grading, drainage, the existing septic system, parking, building permits, and fire protection. Conditions are recommended which will incorporate these comments into the project to ensure the protection of the public health, safety, and welfare.

16. 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 and any applicable specific plan.

Analysis: Compliance with the Zoning Ordinance

The project is consistent with the Agricultural Watershed (AW) and Agricultural Preserve (AP) 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 18.20.030) are permitted in the AW District with an approved use permit. The existing site improvements currently comply with the development regulation of the AW and AP Districts, including the minimum 600-foot road setback for winery buildings and 35-foot maximum building height as prescribed in County Code Sections 18.104.010, 18.104.220 and 18.104.230.A.1. The project requests a Variance from the 300-foot road setback prescribed in Section 18.104.230.A.2. The project, as conditioned, complies with the Napa County Winery Definition Ordinance (WDO) and all other requirements of the Zoning Code as applicable.

Analysis: Compliance with the General Plan

As proposed and as conditioned, the requested Use Permit is consistent with the overall goals and objectives of the General Plan (2008). The General Plan land use designation for the subject parcel is Agricultural Watershed & Open Space.

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 Goal AG/LU-3 states that 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.” Goal AG/LU-3 and Policy AG/LU-2 recognize wineries as agricultural uses.

The approved use of the property for fermenting and processing of grape juice into wine supports the economic viability of agriculture within the County, consistent with Goal AG/LU-3 and Policy AG/LU-4 (“The County will reserve agricultural lands for agricultural use including land used for grazing and watershed/open space...”). By allowing the existing permitted winery to increase its storage capacity in support of producing at maximum capacity, the proposed Use Permit supports the economic viability of both the vineyard and agricultural product processing uses on the property, consistent with Economic Development Goal E-1 and Policy E-1.

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.

Finally, 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 that adequate water supplies are available to serve the proposed use without causing significant negative impacts to shared groundwater resources.

17. That 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 in Napa County, unless that use would satisfy any of the other criteria specified for approval or waiver of a groundwater permit under §’s 13.15.070 or 13.15.080 of the County Code.

**Analysis:** For this project a Water Feasibility Study (September 19, 2014), a County Water Availability Analysis - Phase One Study form (March 13, 2015), and a Water Availability Analysis (January 8, 2016) were prepared by RSA+. The analyses included a water demand analysis detailing the existing and proposed groundwater uses, an analysis of the aquifer recharge rate, and a Tier 2 well interference analysis.

The Tier 1 analysis calculated an estimated annual proposed water use, for all current uses on the parcel, as 4.6 acre-feet per year. The calculated proposed water use, for all current uses on the parcel with the addition of the winery is calculated as 5.05 acre feet per year, resulting in an increase of 0.45 acre feet per year.

The proposed winery water use is less than the property’s calculated recharge rate of 26.4 acre feet per year. Thus, the proposed Use Permit is consistent with General Plan Goals CON-10 and CON-11, as well as the policies mentioned above that support preservation and sustainable use of groundwater for agricultural and related purposes.

The water availability analysis (WAA) calculations demonstrated that the project would not have a significant impact on groundwater supply and recharge rates. The project would not require a new water system or other improvements and would not have an impact on local groundwater.