

“A”

Recommended Findings

**PLANNING COMMISSION HEARING – JANUARY 18, 2017
RECOMMENDED FINDINGS**

**LAURA MICHAEL WINES
USE PERMIT #P16-00033-MOD
2250 LAKE COUNTY HIGHWAY, CALISTOGA, CA 94515
APN 017-230-009**

ENVIRONMENTAL DETERMINATION:

The Planning Commission (Commission) has received and reviewed the proposal pursuant to the provisions of the California Environmental Quality Act (CEQA), and finds that:

1. The proposed project is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15303, Class 3 (New Construction or Conversion of Small Structures) , which consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure; and, Section 13504 Class 4 (Minor Alterations to Land), where Class 4 consists of minor public or private alterations in the condition of land, water and/or vegetation which do not involve removal of health, mature, scenic trees except for forestry and agricultural purposes.
2. The proposed project is categorically exempt from CEQA pursuant to Napa County's Local Procedures for Implementing CEQA Appendix B of Categorical Exemption Class 1, Existing roads, streets, highways and pedestrian paths, and appurtenant facilities. Repair, maintenance, reconstruction, replacement and minor expansion including, but not limited to:
 - (a) reconstructing, resurfacing, and/or seal coating of the pavement; and under Class 3: New Construction or Conversion of Small Structure, #10 for the Construction and operation of small wineries, other agricultural processing facilities, and farm management uses which meet the listed criteria. The proposed winery meets the criteria inasmuch as the winery is less than 5,000 square feet in size; will involve no cave excavation; will produce less than 30,000 gallons per year; will generate less than 40 vehicle trips per day and 5 peak hour trips except on those days when marketing events are taking place; will hold no more than 10 marketing events per year, each with no more than 30 attendees, except for one wine auction event with up to 100 persons in attendance; and will hold no temporary events.
3. The project site is not included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.

VARIANCE REQUIRED FINDINGS:

The Commission has reviewed the above-described variance request and, in accordance with the requirements of Napa County Code Section 18.128.060, makes the following findings. That:

4. The procedural requirements set forth in Chapter 18.128 of the Napa County Code have been met.

Analysis: The variance application has been filed and notice and public hearing requirements have been met. The public hearing notice was posted on January 7, 2017,

and copies were forwarded to property owners within 1000 feet of the subject parcel and all other interested parties.

5. 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: County Code Section 18.104.230(A) requires a 600 foot setback for wineries located on State Highway 29. Section 18.104.230(B) provides that any winery existing on the date of adoption of the ordinance codified in this section may expand within the minimum setback specified in subsection A of this section. Notwithstanding the previous sentence, expansions may be permitted within the minimum setback area only if the expansion is placed no closer to the centerline of the right-of-way than the nearest point of the existing structure to which the expansion is attached. Any new freestanding structure shall comply with the setback provisions of subsection A of this section.

The size of the parcel will not allow the construction of a freestanding restroom on the property, in compliance with the 600 foot setback. The measurement of 600 feet from the centerline of State Highway 29 would be located east of the property boundary lines.

Furthermore, the existing building has limitations on where it can be expanded to add a bathroom addition; therefore a free-standing restroom building is proposed.

The applicant is proposing to add visitation to the use permit for the existing 12 tasting visitors per day occurring at the winery. Therefore, a new ADA accessible parking space and a 50 sq. ft. ADA accessible restroom building is required to be constructed to serve the winery. The proposed parking space will be located on the east side of the winery building and the proposed restroom located on the east side of the parking space, approximately 40 feet east of the winery building. The barn was converted into the winery building and no bathroom facilities were provided. The winery was approved to use an existing barn. There were no employees proposed and the winery would be operated by the property owners only. The approved change to commercial use did not require the construction of a restroom.

A setback variance is being requested for this property because the applicant proposes to construct a freestanding 50 sq. ft. ADA accessible restroom to serve the winery, rather than an attachment to the existing winery building. NCC Section 18.08.070 defines attached structure as a structure that is permanently roofed, enclosed on no less than two sides with walls, not more than twenty feet in length; and not less than eight feet in width. All four walls of the winery building are utilized for winery operation purposes as stated in the applicant's variance request application. In addition, since the winery building is old, any attachment to the building would require engineering to ensure that such attachment would be structurally secure. The closest point of the existing winery from the highway is approximately 72 feet and the location of the proposed restroom is ±94 feet.

The winery has been in operation since 1980, and the use of the original barn as a winery did not require a restroom be provided. Current regulations would require a restroom for conversion of a barn into a winery with visitation and employees.

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

Analysis: The property is developed with an existing operating 5,000 gallon winery, approved in 1980 for use of an existing barn for winery purposes. The winery has been operating without restroom facilities. The applicants wish to allow visitation at the winery and to employ an employee to assist them. The building codes require the availability of a toilet facility, a maximum travel distance not to exceed 500 feet. In addition, the Americans with Disability act require accessibility to a restroom.

Without grant of the variance, an accessory restroom would not be allowed unless it is attached to the existing winery structure or constructed within the existing structure. The applicant has stated that all the walls of the winery building are utilized for winery operation purposes, and an attachment of a new structure would be difficult. In addition, since the winery building is an old barn, any attachment to the building or interior alterations would require engineering and require compliance with the current building codes to ensure that such alterations to the structure be structurally safe and secure.

The property rights being enjoyed would not be preserved if the variance is not approved and a restroom is not provided. The two parcels to the north and to the south of the subject parcel are also less than 600 feet in depth. County Code Section 18.104.230(A) requires a 600 foot setback for new wineries located on this part State Highway 29. A winery would not be permitted on the two adjacent parcels. The parcels located on the opposite side of the highway are located within the city of Calistoga.

The winery is located within the Agricultural Watershed Zoning District, where under NCC 18.20.030, winery uses are permitted, including tours and tastings, upon grant of a use permit. As discussed in the special circumstances finding, the approval of this variance to allow the construction of the restroom, thereby preserving the property rights the owners enjoy with an approved winery on this parcel.

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

Analysis: The granting of the variance to the winery road setback (± 94 feet instead of the required 600 foot setback from State Highway 29) will not adversely affect the health or safety of persons residing or working in the neighborhood of the property.

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.

8. 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 project is consistent with General Plan Conservation Policies 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. The subject project is located in the Napa Valley Floor. A Water Availability Analysis-Phase One Study was prepared for the ±3.23 acre parcel (APN: 017-230-009) by RSA (dated May 27, 2016), which states that the Allowable Water Allotment for the property is ±3.23 acre-feet per year (af/yr), which is arrived at by multiplying its ±3.23 acre size by a one acre feet per year per acre fair share water use factor. 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.

The report indicates that the existing total water demand on the property is 1.64 af/yr (residence .75 af/yr; 1.5 acre vineyard irrigation = .75 af/yr; winery process water = .08 af/yr; landscaping = .03 af/yr; domestic water = .04). The report states that the proposed total groundwater demand by the project on the property will be increased by .05 af/yr for a total demand of 1.69 af/yr (residence = .75 af/yr; vineyard irrigation= .075 af/yr; winery process water = .08 af/yr; landscaping=.03 af/yr; domestic water =.09 af/yr) The project proposes the construction of new restroom, new visitation, and marketing activities which will result in a .05 af/yr increase in water demand. Therefore, the proposed project would not result in a substantial increase demand of ground water supplies or interfere with groundwater recharge or lowering of the local groundwater level.

USE PERMIT REQUIRED FINDINGS:

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. That:

9. The Commission has the power to issue a use permit under the zoning regulations in effect as applied to the 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.

10. The procedural requirements for a use permit set forth in Chapter 18.124 of the Napa County Code (Use Permits) have been met.

Analysis: The use permit modification application has been filed, noticed and public hearing requirements have been met. The public hearing notice was posted on January 7, 2017, and copies were forwarded to property owners within 1000 feet of the subject parcel and all other interested parties.

11. The granting of the use permit, as conditioned, will not adversely affect the public health, safety or welfare of the County of Napa.

Analysis: Various County departments have reviewed the project and commented regarding water, waste water disposal, traffic and access, and fire protection. Conditions are recommended which will incorporate these comments into the project to assure the ongoing protection of the public health, safety and welfare.

12. 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 project complies with the requirements of the AW Zoning District. 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 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, bottling, and other WDO-compliant accessory uses as outlined in and limited by the approved project scope. (See Attachment 'B', 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, to the extent that it will be publicly visible, 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. As analyzed below, the proposed winery will not interfere substantially with groundwater recharge based on the criteria established by Napa County Public Works Department.

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.

13. The proposed use would not require a new water system or improvements 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 Napa County Code Section 13.15.070 or Section 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. 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 and LSCE. LSCE concluded that the 1.0 acre-ft./acre/year (AF/YR) criteria on the Valley Floor has proven to be both scientifically and operationally adequate. 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.

The subject project is located in the Napa Valley Floor. A Water Availability Analysis-Phase One Study was prepared for the ±3.23 acre parcel (APN: 017-230-009) by RSA (dated May 27, 2016), which states that the Allowable Water Allotment for the property is ±3.23 acre-feet per year (af/yr), which is arrived at by multiplying its ±3.23 acre size by a one acre feet per year per acre fair share water use factor.

The report indicates that the existing total water demand on the property is 1.64 af/yr (residence .75 af/yr; 1.5 acre vineyard irrigation = .75 af/yr; winery process water = .08 af/yr; landscaping = .03 af/yr; domestic water = .04). The report states that the proposed total groundwater demand by the project on the property will be increased by .05 af/yr for a total demand of 1.69 af/yr (residence = .75 af/yr; vineyard irrigation=.075 af/yr; winery process water = .08 af/yr; landscaping=.03 af/yr; domestic water =.09 af/yr) The project proposes the construction of new restroom, new visitation, and marketing activities which will result in a .05 af/yr increase in water demand. Therefore, the proposed project would not result in a substantial increase demand of ground water supplies or interfere with groundwater recharge or lowering of the local groundwater level.