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Recommended Findings

**PLANNING COMMISSION HEARING – APRIL 5, 2017
RECOMMENDED FINDINGS**

**Behrens Family Winery Use Permit Major Modification and Variance
Application Numbers P1500203-MOD and P15-00341-VAR
4078 Spring Mountain Road, St. Helena, California
APN #020-300-035**

ENVIRONMENTAL:

The 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 finds that:

1. The Planning Commission has read and considered the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (MMRP) prior to taking action on said Mitigated Negative Declaration and the proposed project.
2. The Mitigated Negative Declaration and MMRP is based on independent judgment exercised by the Planning Commission.
3. The Mitigated Negative Declaration and MMRP 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 provided that measures to mitigate potentially significant impacts to biological resources, noise, and transportation/traffic are incorporated into the project approval.
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 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.

EXCEPTION TO ROAD AND STREET STANDARDS:

The Commission has reviewed the attached described Road and Street Standards (RSS) Exception request in accordance with Road and Street Standards Section 3 and makes the following findings:

8. The exception will preserve unique features of the natural environment which includes, but is not limited to, steep slopes, heritage oak trees, or other trees of at least 6"dbh and found by the decision-maker to be of significant importance, but does not include man made

environmental features such as vineyards, rock walls, ornamental or decorative landscaping, fences or the like.

Analysis: There are a number of mature trees within the access road area that will be preserved with the granting of this request. These trees are important because they define the natural land forms and character of the area, which is generally forested and very rural. Minimizing the amount of grading on steep slopes in excess of 20 percent and tree removal necessary for providing safe access will retain the unique feature of the natural environment, and will also provide shelter and habitat for a wide range of animal and plant species. The trees also provide screening of development on adjoining properties and from the view of passerby on the access road.

9. Grant of the Road and Street Standards Exception will provide the same overall practical effect as the Standards do in providing defensible space, and does not adversely affect the life, safety, and welfare of the public or persons coming to the property.

Analysis: The County Engineering Division has discussed the request with the Napa County Fire Department and has conducted two site visits. Engineering staff recommends approval of the requested road exception, subject to recommended conditions in their memo of June 9, 2016. The proposed improvements are shown to meet the same overall practical effect of the RSS while preserving the unique features of the natural environment by implementing a vegetation management plan for the private lane and employing additional vegetation management at strategic locations along the driveway. The proposed improvements in the request will serve as an alternate method by which adherence to the RSS may be achieved and would provide the same overall practical effect as the RSS towards providing defensible space, preserving the natural environment and protecting the life, safety and welfare of the public.

VARIANCE:

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

10. 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 Major Modification application. Site plans depicting the location of the project and elevation drawings showing the appearance of the proposed structures have also been submitted. Noticing and public hearing requirements have been met. The hearing notice was posted on March 3, 2017, 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 March 3, 2017 to April 4, 2017.

11. 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: This property is located at the end of a private drive off of Spring Mountain Road. The property already is developed with a permitted winery as are three other parcels sharing access off the same private drive. The property is located in the Agricultural Watershed

(AW) zoning district in which wineries are permitted upon approval of a use permit. The County's winery database lists seventeen other wineries in the vicinity (i.e. listed with a Spring Mountain Road address). The property meets the minimum lot size for a winery, and the applicant has provided evidence showing that the property can support the proposed expansion of the existing winery. The proposed location of the winery expansion will not meet the 300 foot setback from the private drive, which provides access to one other parcel past the winery.

Special Circumstances

The property's topography consists of very steep slopes and encompasses Spring Mountain itself. Seventy-five percent of the 20-acre parcel (roughly 15 acres) is over 30% slope. The applicant has provided a site plan (Exhibit L) confirming that there is no location on the property outside of the 300 foot setback that is under 30 percent in slope. Therefore, any development on these areas would require significant grading and a use permit exception to the Conservation Regulations (NCC §18.108.060(A)). The unique shape of the property places the areas of moderate slope near the private drive, which creates an exceptional and extraordinary hardship that is not common to many properties, if any, in Napa Valley. As shown in the exhibits prepared as part of the Variance application packet (Attachment G), while the surrounding properties include ample areas outside of the required 300-foot winery setback from the access roadway with slopes of less than 30%, the project site has none. The special circumstances of the project site are not shared by other properties within the vicinity.

Unnecessary Hardship

By adhering to the strict application of the setback, building any new winery structures on this property would be impossible without costly and environmentally damaging hillside grading, thus creating a severe hardship not experienced by other properties in the County under identical zoning. The strict application of the setback would create an extraordinary hardship on this property that will prohibit the winery expansion. Meeting the setback would provide two practical difficulties. First, meeting the setback would require the placement of new winery buildings approximately 300 feet away from the existing winery. Spacing winery structures and associated operations over 300 feet apart results in: a) increased impervious surfaces; b) increased infrastructure (pipes, power lines, etc.) to serve the facility; and c) much less efficient winemaking operations.

Second, the project engineer, Applied Engineering, has estimated the approximate cost of the work required to complete the development outside the setback. The estimate evaluated costs for increased rough grading to build a road and grade a pad for the proposed winery structures as well as extending utilities to that location. The estimate, assuming the Commission would be willing to make the necessary use permit exemption findings to grade slopes in excess of 30%, totaled an additional cost of \$250,000 to \$350,000 to construct outside the setback. This estimate excludes any cost of mitigation that may be required to reduce impacts of development on such steep slopes.

Granting the variance would be consistent with other properties in the vicinity that also take access from the same private drive. An adjacent parcel contains the Sherwin Family Vineyards winery (APN 020-300-045), which is within the 300-foot setback from the private drive. Barnett Vineyards (APN 020-300-047) also takes access from this private drive, and its structures are located within 300 feet of the access drive. Lastly, Smith-Madrone winery (APN 020-300-086) takes access from this same private drive and is located within the 300

foot setback. Sherwin Family Vineyards, Barnett Vineyards, and Smith-Madrone are under identical AW zoning.

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

Analysis: The AW zoning district allows a winery on this property subject to the approval of a Use Permit. The property complies with the development standards for a winery in all other manners other than the setbacks from a Private Driveway. The existing winery was granted a use permit, and all of the findings necessary for the granting of a use permit can be made. The project is consistent with the General Plan. The granting of this variance is necessary to allow the approval of the Use Permit Modification for the winery, and the preservation and enjoyment of property rights enjoyed by other properties in the AW zoning district. The variance does not allow a use that is not normally permissible on AW zoned properties, so it does not grant a special privilege. (*See Neighbors in Support of Appropriate Land Use v. County of Tuolumne* (2007) 157 Cal. App. 4th 997 (variance grants a special privilege where the variance allows a use not otherwise allowed in subject zoning district).)

13. 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 will adversely impact the public health, safety, or welfare of the County of Napa. Construction of the new buildings will 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 structures and site development will be located within a previously disturbed area. 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.

14. 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. The project is categorized as "all other areas" based upon current County Water Availability Analysis (WAA) policies and therefore water use criteria is parcel specific based upon a Tier 2 analysis. A Tier 2 analysis was completed by Richard C. Slade & Associates on January 16, 2016 which included a parcel specific recharge evaluation. According to the recharge evaluation, "groundwater recharge at the subject property on a long-term average annual basis is estimated to be 7.6 AF/YR" (*Results of Napa County Tier 1 Water Availability Analysis, 2016*). According to the WAA, the well was drilled in 1999, has a depth of 625 feet and a yield of 5 gpm (*Results of Napa County Tier 1 Water Availability*

Analysis, 2016). As previously noted, the applicant submitted a combined Tier 1 & 2 WAA completed by Richard C. Slade & Associates on January 16, 2016 showing the projected water use for the project is 1.59 AF/YR. Existing water use for the facility is 1.21 AF/YR. The analysis concluded that anticipated total water demand for the project site will be 1.59 AF/YR representing a 0.38 AF/YR increase of the existing water demand. The parcel water demand can be met with the existing on site well operating for nine hours per day at 5 gpm. Therefore, the impacts from the project will be less than significant and no further analysis is needed.

USE PERMIT:

The Commission has reviewed the Use Permit Major Modification request in accordance with the requirements of the Napa County Code §18.124.070 and makes the following findings:

15. 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) 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 project, as conditioned, complies with the Napa County Winery Definition Ordinance (WDO) and all other requirements of the Zoning Code as applicable.

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 Major Modification application has been appropriately filed and notice and public hearing requirements have been met. The hearing notice and intent to adopt a Mitigated Negative Declaration were posted on March 3, 2017, and copies were forwarded to appropriate persons on the mailing list. The public comment period ran from March 3, 2017 to April 4, 2017.

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 Major Modification 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, grading, drainage, upgrading the existing wastewater disposal 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.

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 and any applicable specific plan.

Analysis: Compliance with the Zoning Ordinance

The project is consistent with the Agricultural Watershed (AW) 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 proposed project will comply with the development standards of the AW District including the 35-foot maximum building height as prescribed in County Code Sections 18.104.010 and 18.104.220. The project requests a Variance from the 300-foot winery setback prescribed in Section 18.104.230.A.1. 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 Major Modification 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 expansion of the existing structures and construction of the proposed structures, the requested Use Permit Major Modification 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.

19. 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: The project is categorized as “all other areas” based upon current County Water Availability Analysis (WAA) policies and therefore water use criteria is parcel specific based

upon a Tier 2 analysis. A Tier 2 analysis was completed by Richard C. Slade & Associates on January 16, 2016 which included a parcel specific recharge evaluation. According to the recharge evaluation, "groundwater recharge at the subject property on a long-term average annual basis is estimated to be 7.6 AF/YR" (*Results of Napa County Tier 1 Water Availability Analysis, 2016*). According to the WAA, the well was drilled in 1999, has a depth of 625 feet and a yield of 5 gpm (*Results of Napa County Tier 1 Water Availability Analysis, 2016*). As previously noted, the applicant submitted a combined Tier 1 & 2 WAA completed by Richard C. Slade & Associates on January 16, 2016 showing the projected water use for the project is 1.59 AF/YR. Existing water use for the facility is 1.21 AF/YR. The analysis concluded that anticipated total water demand for the project site will be 1.59 AF/YR representing a 0.38 AF/YR increase of the existing water demand. The parcel water demand can be met with the existing on site well operating for nine hours per day at 5 gpm.

The proposed winery water use is less than the property's estimated annual groundwater recharge of 7.6 acre feet per year. Thus, the proposed Use Permit Major Modification 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 will not have a significant impact on groundwater supply and recharge rates. The project will not require a new water system or other improvements and will not have an impact on local groundwater.