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## Recommended Findings

**PLANNING COMMISSION HEARING – JUNE 7, 2017  
RECOMMENDED FINDINGS**

**LMR RUTHERFORD ESTATE WINERY  
USE PERMIT #P16-00289-MOD & VARIANCE #P16-00290  
1790 ST.HELENA HIGHWAY SO., RUTHERFORD, CALIFORNIA  
APN 030-100-016**

**ENVIRONMENTAL:**

1. The Planning Commission (Commission) has received, independently reviewed, and considered the Addendum to the LMR Rutherford Estate Winery Negative Declaration pursuant to the provisions of the California Environmental Quality Act (CEQA) and of Napa County's Local Procedures for Implementing CEQA as further described in the attached Addendum. The proposed changes will not substantially increase the severity of the impacts previously disclosed in the Initial Study/Negative Declaration and/or the proposed changes will not involve any of the other conditions related to new information that can require a subsequent or supplemental MND or an EIR under Public Resources Code section 21166 and CEQA Guidelines section 15162.

**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:

2. 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 hearing notice was posted on May 26, 2017 and copies were forwarded to property owners within 1000 feet of the subject parcel and all other interested parties.

3. 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 majority of the property is located the Flood Hazard Zone of Bale Slough and Napa River. Bale Slough flows along the northeasterly boundary of the property. There are County and Federal regulations in place which would not restrict the construction of the winery in a flood hazard area, but the construction regulations would require the elevation of the building pad or require a specially engineered building design for a water-tight building below the base flood level. This would not preclude the development of a winery on this portion of the property, but would require alteration of the land with the on-haul of fill and significant grading, further disturbing the vineyards existing on the property.

In addition, there are many properties along State Highway 29 that would be able to comply with the 600' winery setback and would not be required to significantly alter the land to construct a winery, permitted upon grant of a use permit in this zoning district.

Near Bale Slough, flowing along the northeasterly side of the property, there is an environmentally sensitive area, which was surficially surveyed with no materials found. Further, avoidance of Bale Slough riparian area is important to future proposed improvements to the stream. Avoiding development in this area would further reduce the developable area of the property for structures.

The property is currently developed as a commercial working farm and orchard, along the southerly side of the property and planted in vineyard. The applicant indicates that the best and worst soils have been identified, and the proposed office and storage building, also within the 600 foot setback, will be located within the existing residential farming compound area where the soils are not suitable for farming, will be located outside the Flood Hazard Zone, and will be located on land already disturbed by the homestead development.

The proposed winery will also be constructed within an area close to the highway, some distance from the direct flood source, Bale Slough, reducing the flood risk. The location on this site will result in the removal of vines, but a significant amount of the vineyard removed will be replanted on the site of the original homestead residence (removed in 2013).

Granting of this variance would result in the development of this winery and accessory buildings within the area of the properties that have historically been the developed residential areas; would keep the project within a small, consolidated portion of the property; and would avoid dispersing buildings and accessory uses throughout the visual landscape.

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

Analysis: The property is located within the Agricultural Preserve (AP) district, which allows wineries, and accessory uses are permitted upon approval of a conditional use permit. As discussed in the above special circumstances finding, the approval of this variance from the 600' setback requirement from State Highway 29, will allow the applicant to minimize the disturbance to their property through confinement of the development within the existing developed areas, and will not significantly increase the developed area of the property via removal of vineyards, while at the same time allowing the applicant to mitigate any potential adverse visual impacts through providing a "living wall" of vines on the sides of the winery building visible to the state highway and northerly property owner. The winery will not be visible to the southerly residence because of the existing development and orchards.

Authorization of this variance moves a portion of the existing entitlements from one area to another, thus reducing the overall area to be developed. The grant of this variance will not confer a special privilege to the applicant since the property has existing mature trees along the frontage of the property, providing natural screening of the proposed winery from the State Highway, and conditions have been placed on the project requiring that these trees be maintained to provide continued screening. Further, the granting of this variance would not confer a special privilege as the Commission has previously granted variances to allow the construction of wineries, including accessory facilities, within roadway setbacks on properties with the same zoning and substantially similar property characteristics. Additionally, the grant of this variance would not confer a special privilege as the subject parcel has already been developed with permitted commercial and residential farming activities within the 600' setback requirements and now the applicant wants to only expand development within previously disturbed area and coordinate the winery operations with the commercial farming activities.

5. 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 (within 160± feet, 160± feet and 260± feet from State Highway 29 where 600 feet is required) 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.

6. 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 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, assumed not to have a significant effect on groundwater levels. Based on the submitted *Phase One* water availability analysis, the 30 acre subject valley-area parcel has a water availability calculation of 30 acre feet per year (af/yr), which is arrived at by multiplying its approximately 30 acre size by a one acre feet per year per acre fair share water use factor. The Water Demand Calculations submitted for the project placed water demand for the winery including hospitality functions and incidental retail and office use, residential, vineyard, commercial farm and landscaping at 22.5 af/yr. Existing conditions for water demand is 20.9 af/yr. The vineyard demand is reduced 1 af/yr from existing conditions due to proposed wastewater recycling development. Based upon this figure, the project would be below the established threshold for groundwater use on the property. The County is not aware of, nor has it received any reports of, groundwater shortages near the project area. 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.

#### **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:

7. 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 AP (Agricultural Preserve) 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 18.16.030) are permitted in an AP 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.

8. 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 hearing notice was posted on May 26, 2017 and copies were forwarded to property owners within 1000 feet of the subject parcel and all other interested parties.

9. 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 and safety.

10. 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 Agricultural Resource (AR) 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, incorporating a “living wall” of vines on the exterior of the winery buildings.

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 AR 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.

11. 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 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-Napa Subarea. A Phase 1 Water Availability Analysis was prepared and submitted with the original use permit (P13-000167-UP) for the 30 acre parcel (APN: 030-100-016), which stated that the Allowable Water Allotment for the property is 30 acre-feet per year (af/yr), calculated by multiplying its 30 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 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, assumed not to have a significant effect on groundwater levels. Based on the submitted *Phase One* water availability analysis, the 30 acre subject valley-area parcel has a water availability calculation of 30 acre feet per year (af/yr), which is arrived at by multiplying its approximately 30 acre size by a one acre feet per year per acre fair share water use factor. The Water Demand Calculations submitted for the project placed water demand for existing uses on the property at 20.9 af/yr (residential-0.4 af/yr; vineyard-20 af/yr; commercial farm-0.5 af/yr). The proposed winery buildings with visitation and marketing activities, residence, additional landscaping, commercial farming, and vineyards (residence-0.4 af/yr; winery-2.15 af/yr; vineyard-19 af/yr; other agriculture-0.5 af/yr; landscaping-0.15 af/yr) placed water demand at 22.5 af/yr. The proposed additional barrel storage building would not generate an additional water demand nor will the proposed fire equipment storage shed. Based upon the original calculations, the project would be below the established threshold for groundwater use on the property. The County is not aware of, nor has it received any reports of, groundwater shortages near the project area. 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.