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Recommended Findings

**PLANNING COMMISSION HEARING – SEPTEMBER 20, 2017
RECOMMENDED FINDINGS**

**Truchard Family Winery
Use Permit No. P14-00330-UP & Variance No. P14-00331-VAR
4062 Old Sonoma Road, Napa, CA
APN 043-040-001**

ENVIRONMENTAL:

The Planning Commission (Commission) has received and reviewed the updated proposed Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (MMRP) 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 MMRP prior to taking action on said Negative Declaration and the proposed project.
2. The Mitigated Negative Declaration & MMRP is based on independent judgment exercised by the Planning Commission.
3. The Mitigated Negative Declaration & 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.
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 on the California Environmental Protection Agency's list of hazardous sites (Government Code Section 65962.5), but is listed as a closed site. In 2005, there was a minor spill of chlorinated pesticides and/or hazardous material contamination in the soil. The spill was remediated and the site was closed in 2006, and is therefore not considered to have any potential significant environmental effect.
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.

VARIANCE:

The Commission has reviewed the 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

structures have also been submitted. Noticing and public hearing requirements have been met. The hearing notice and intent to adopt a Mitigation Negative Declaration and MMRP was posted on August 18, 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 August 18, 2017 to September 18, 2017.

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 11.52-acre parcel has a unique shape with constraints not shared by other properties in the vicinity. As shown on the "Variance Plan" exhibit (Attachment F of the Staff Report dated May 3, 2017) prepared by RSA+, on October 13, 2016, the subject property is irregular in shape with the west property boundary following the curvature of the road which makes the rear property boundary an arc and a very unusual shape in this area, and giving a range of depth ranging from 457 to 624 feet. With the widest portion of the property being 624 feet, the zoning regulations for a rear setback is 20' thereby making it impossible to comply with the road setback. Given that the subject parcel meets the minimum size requirement (10 acres) for development of a winery, it cannot meet the setbacks due to its unique and irregular shape. It should be further noted that there are no eligible properties located within 1000' of the property that are hampered by the same irregular shape and setback limitations as those that apply to the subject property. The granting of this variance would not confer a special privilege as the subject parcel contains unique constraints in size, competing setback requirements and geographic configuration making it difficult to develop a winery absent the requested variance.

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 would be denied to the applicant's parcel due to special circumstances of the property and unnecessary hardship.

The property is located within the AW zoning district in which wineries are permitted upon approval of a use permit. Denial of a variance would deprive the applicant of the ability to develop this property for any conforming agriculture, either agriculture or agricultural processing facility. Approval of the variance would allow the subject property to be developed to an agricultural use consistent with the site's zoning and General Plan land use designations. Further, the variance to the winery setbacks would allow the applicants to achieve a degree of parity with other properties in the vicinity within the same zoning district that are currently in agricultural use and are not constrained in size, competing setback requirements and geographic configuration described above. Strict application of the setbacks, 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 properties zoned AW that have been granted use permits for wineries.

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 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 setbacks 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, safety, and welfare.

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. The project is categorized as being located within "Other Areas – Parcel Specific" and is required to submit a water use analysis and a ground water recharge report based upon current County Water Availability Analysis policies. The Groundwater Recharge Report prepared by RSA, dated October 13, 2016 identified a water use criteria of .53 ac-ft. per year, and an annual of 6.3 ac-ft. in an average rainfall year. In accordance with the Napa County Water Availability Analysis (WAA), the estimated groundwater recharge rate in a dry year is assumed to be 75% of the average year. In accordance with the Water Availability Analysis (WAA) prepared by RSA, also dated October 13, 2016, two water supply alternatives were analyzed. Alternative One analysis relies on the existing municipal water connection for winery domestic and process from Congress Valley Water District and irrigation water from an existing project well located on APN 043-061-022. However, the water supplier is changing from Congress Valley Water District to the City of Napa. There is a current "will serve" from the Congress Valley Water District to serve the expected water demands. Because of the reasonable and foreseeable uncertainty, the project demonstrated that the proposed new winery can be also provided by Alternative Two which relies on groundwater from a new well for winery domestic and process water and irrigation water from an existing project well all located on APN 043-061-022.

As proposed the water demand for the project is 1.95 af/yr vineyard irrigation and 3.13 af/yr for the winery (process water - 1.53 af/yr, landscaping - 1.36 af/yr, and domestic water - 0.24 af/yr for employees, visitors and events for a total of 5.08 af/yr. Under Alternative One, the proposed well water demand of 44.51 ac-ft. per year is less than the estimated annual recharge of 65.89 ac-ft. per year in an average rainfall year and less than the estimated annual recharge rate of 49.42 ac-ft. per year in a dry year. It is proposed that winery domestic and process water will be supplied from the Congress Valley Water District (1.77 af/yr). A "will serve" letter, dated March 24, 2016 from the Congress Valley Water District has been provided to the applicant. If the above alternative is to be implemented to supply water to two parcels, the existing water usage will be 43.49 ac-ft. per year and the proposed water usage will be 44.51 ac-ft. year. Under Alternative Two, the proposed well water

demand of 46.28 ac-ft. per year is less than the estimated annual recharge of 65.89 ac-ft. per year in an average rainfall year and less than the estimated annual recharge rate of 49.42 ac-ft. per year. Existing water usage is 43.49 af/yr. 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 will not have a significant impact on groundwater supply and recharge rates.

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) 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.

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 Mitigated Negative Declaration and MMRP were posted on August 18, 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 August 18, 2017 to September 18, 2017.

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 driveways, grading, drainage, the proposed 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.

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) 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 600-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 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 and Agricultural Resource.

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...”). 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: 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 being located within “Other Areas –

Parcel Specific” and is required to submit a water use analysis and a ground water recharge report based upon current County Water Availability Analysis policies. The Groundwater Recharge Report prepared by RSA, dated October 13, 2016 identified a water use criteria of .53 ac-ft. per year, and an annual of 6.3 ac-ft. in an average rainfall year. In accordance with the Napa County Water Availability Analysis (WAA), the estimated groundwater recharge rate in a dry year is assumed to be 75% of the average year. In accordance with the Water Availability Analysis (WAA) prepared by RSA, also dated October 13, 2016, two water supply alternatives were analyzed. Alternative One analysis relies on the existing municipal water connection for winery domestic and process from Congress Valley Water District and irrigation water from an existing project well located on APN 043-061-022. However, the water supplier is changing from Congress Valley Water District to the City of Napa. There is a current “will serve” from the Congress Valley Water District to serve the expected water demands. Because of the reasonable and foreseeable uncertainty, the project demonstrated that the proposed new winery can be also provided by Alternative Two which relies on groundwater from a new well for winery domestic and process water and irrigation water from an existing project well all located on APN 043-061-022.

As proposed the water demand for the project is 1.95 af/yr vineyard irrigation and 3.13 af/yr for the winery (process water - 1.53 af/yr, landscaping - 1.36 af/yr, and domestic water - 0.24 af/yr for employees, visitors and events for a total of 5.08 af/yr. Under Alternative One, the proposed well water demand of 44.51 ac-ft. per year is less than the estimated annual recharge of 65.89 ac-ft. per year in an average rainfall year and less than the estimated annual recharge rate of 49.42 ac-ft. per year in a dry year. It is proposed that winery domestic and process water will be supplied from the Congress Valley Water District (1.77 af/yr). A “will serve” letter, dated March 24, 2016 from the Congress Valley Water District has been provided to the applicant. If the above alternative is to be implemented to supply water to two parcels, the existing water usage will be 43.49 ac-ft. per year and the proposed water usage will be 44.51 ac-ft. year. Under Alternative Two, the proposed well water demand of 46.28 ac-ft. per year is less than the estimated annual recharge of 65.89 ac-ft. per year in an average rainfall year and less than the estimated annual recharge rate of 49.42 ac-ft. per year. Existing water usage is 43.49 af/yr.

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 will not have a significant impact on groundwater supply and recharge rates.