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## Variance Application Packet



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FILE # P17-00345

**NAPA COUNTY**  
**PLANNING, BUILDING, AND ENVIRONMENTAL SERVICES**  
1195 Third Street, Suite 210, Napa, California, 94559 • (707) 253-4417

**VARIANCE APPLICATION FORM**

FOR OFFICE USE ONLY

ZONING DISTRICT: \_\_\_\_\_ Date Submitted: \_\_\_\_\_  
TYPE OF APPLICATION: \_\_\_\_\_ Date Published: \_\_\_\_\_  
REQUEST: \_\_\_\_\_ Date Complete: \_\_\_\_\_

**TO BE COMPLETED BY APPLICANT**  
PROJECT NAME: Dry Creek - Mt. Veeder Project / Oakville Winery LLC

Assessor's Parcel #: 027-310-039 Existing Parcel Size: 55.50

Site Address/Location: Dry Creek 1 Mt. Veeder Rds. (address pending)  
No. Street City State Zip

Property Owner's Name: Oakville Winery LLC

Mailing Address: PO Box 222 Oakville CA 94562-9200  
No. Street City State Zip

Telephone #: ( ) - - Fax #: ( ) - - E-Mail: \_\_\_\_\_

Applicant's Name: Oakville Winery LLC

Mailing Address: (Same as above.)  
No. Street City State Zip

Telephone #: ( ) - - Fax #: ( ) - - E-Mail: \_\_\_\_\_

Status of Applicant's Interest in Property: owner

Representative Name: Thomas F. Carey

Mailing Address: PO Box 5062 Napa CA 94558  
No. Street City State Zip

Telephone # (707) 479-2836 Fax #: ( ) - - E-Mail: +carey.law@gmail.com

I certify that all the information contained in this application, including but not limited to the information sheet, water supply/waste disposal information sheet, site plan, floor plan, building elevations, water supply/waste disposal system site plan and toxic materials list, is complete and accurate to the best of my knowledge. I hereby authorize such investigations including access to County Assessor's Records as are deemed necessary by the County Planning Division for preparation of reports related to this application, including the right of access to the property involved.

[Signature] 9/5/17  
Signature of Property Owner Date  
Steven Christopher LLC manager  
Print Name Print Name

**TO BE COMPLETED BY PLANNING, BUILDING, AND ENVIRONMENTAL SERVICES**  
Total Fees: \$ \_\_\_\_\_ Receipt No. \_\_\_\_\_ Received by: \_\_\_\_\_ Date: \_\_\_\_\_

## VARIANCE REQUEST FOR DRY CREEK-MT. VEEDER PROJECT

### OAKVILLE WINERY LLC

DRY CREEK AND MT. VEEDER ROADS, NAPA, CALIFORNIA (APN 027-310-039)

Dry Creek-Mt. Veeder Project/Oakville Winery LLC is applying for a Use Permit to establish a small (30,000 gallons annual production) winery and barrel storage cave located at the Southwest corner of Dry Creek Road and Mt. Veeder Road. All materials submitted as part of that application are hereby incorporated by reference into this variance request.

The entire proposed winery development, with the exception of a portion of the proposed winery caves, is located within the 300-foot setback for new and expanded wineries required under Napa County Code section 18.104.230A2. We therefore seek the variance to locate the winery approximately 84 feet (measured from Crush Pad Roof Cover) and 104 feet (measured from winery building) from the centerline of Mt. Veeder Road. (For more detail, see the Applied Civil Engineering Use Permit Conceptual Site Improvement Plans dated September 13, 2017, the "Civil Plans," submitted as part of the Use Permit Application and hereby incorporated into this request.)

#### 1. Project Setting.

As shown on Sheet V1 of the Civil Plans (the "Opportunities & Constraints Site Plan") and the Environmental Sensitivity Maps maintained by the Napa County Planning, Building and Engineering Services Department (the "Environmental Sensitivity Maps"), the subject 55.50-acre parcel is comprised of mixed hardwood forest with varied terrain, with areas of relatively steep slopes interspersed with very steep slopes equal to or exceeding 30 percent. Two existing clearings exist: (1) a small, relatively flat clearing southwest of the intersection of Dry Creek Road and Mt. Veeder Road at the confluence of Dry Creek and Montgomery Creek (the "Lower Flat"), and (2) a small clearing located approximately 1,000 feet horizontal feet and 300 feet vertical upslope from the Lower Flat (the "clearing with brush"). (For more detail regarding the topography and geology of the parcel, see the Condor Earth Preliminary Geologic Hazards Evaluation dated September 8, 2017, the "Geotechnical Evaluation," submitted as part of the Use Permit Application and hereby incorporated into this request.) The Environmental Sensitivity Maps indicate that the parcel has Spotted Owls potentially occurring "in the general area" and three areas abutting the winery site on the Lower Flat contain arrows noting "small landslide deposits." The parcel is located in an area designated as Very High Fire Hazard Severity.

From the outset of the winery design process, the applicant has focused on locating the winery in those areas of the property that minimize impacts related to sensitive plant and animal species, streams and other watercourses, and avoid areas with significant landslide potential, particularly areas with steep slopes and other geologic hazards. Our consultants, Applied Civil Engineering, Condor Earth and Northwest Biosurvey were retained early in the design process for this purpose.

#### 2. Project Design.

Condor Earth performed a Preliminary Geologic Hazards Evaluation of the property consisting of site reconnaissance and review of project site conditions and available published data. As discussed on Page 2 of the Geotechnical Evaluation, the proposed winery location avoids areas underlain by historic

landslides noted in published studies and containing deposits from small, non-recent landslides as indicated on the Environmental Sensitivity Maps. The "clearing with brush" upslope from this site was considered environmentally inferior for winery development due to the proximity of a seasonal drainage (see Figure 2B of the Condor Report), the grading and tree removal that would be necessary to construct an winery access roadway to meet the County's Road and Street Standards and CalFire requirements and geologic conditions described in the Geotechnical Evaluation. This clearing, however, was considered suitable for the winery's subsurface drip septic system and reserve area. (See Sheet C1 of the Civil Plans.)

In addition to avoiding the environmental conditions stated above, the proposed winery location uses an existing disturbed area for the above-ground winery improvements, thereby reducing the amount of grading and tree removal required for construction, and a cave for barrel storage and other production activities (racking, blending, finishing), thereby reducing building footprint, noise and visibility.

### 3. Grounds for Variance.

Variations must satisfy the criteria set forth in Government Code section 65906 and Napa County Code section 18.128.060. The following paragraphs demonstrate that this request meets these criteria (this analysis follows the format specified by PBES for variance applications, but adds a discussion of "no grant of special privileges" as required by state law).

- Please describe what exceptional or extraordinary circumstances or conditions apply to your property (including the size, shape, topography, location or surroundings), which do not apply generally to other land, buildings, or use and because of which, the strict application of the zoning district regulations deprives your property of the privileges enjoyed by other property in the vicinity and under identical zoning classification.

Special Circumstances. As shown on Sheet C2 of the Site Plan, the entirety of the "Lower Flat" lies within either the Dry Creek Road or Mt. Veeder Road 300-foot setbacks. As shown on Figures 2A, 2B and 3A of the Geotechnical Evaluation, and as discussed at length therein, areas of the parcel outside of the proposed winery location on the Lower Flat are subject to elevated landslide and geological hazard potential. As shown on Sheet V1 of the Civil Plans and on Sheet 2A of the Geotechnical Evaluation, the construction of a winery in the midst of the steep slopes, seasonal drainage course and mature forest outside the proposed winery location would necessitate substantial grading, tree removal and other man-made disturbances having significant negative impacts to water quality, plant and animal habitat and aesthetics. These factors present a significant hardship to the effective and environmentally sensitive use of the project parcel if the variance is not granted.

No Special Privileges. This request does not grant the subject parcel a "special privilege" as compared to similar properties in the Agricultural Watershed and Agricultural Preserve Zoning Districts and in the vicinity. Three wineries lie within 2.5 miles of the project, Harlan II (Promontory), located at 1601 Oakville Grade; Futo Winery, located at 1575 Oakville Grade; and Far Niente Winery located at 1350 Acacia Drive. Each of these wineries are located on properties with features comparable to the proposed winery parcel and are able to operate (and modify operations) within the 300-foot setback for various historical, environmental and legal reasons not available to the subject parcel due to special circumstances.

Harlan II was established prior to the adoption of the Winery Definition Ordinance (WDO) in 1990, which exempts winery's pre-WDO building footprint from the 300-foot winery setback. (The pre-WDO footprint is within 50 feet of Oakville Grade.) Furthermore, Harlan II has modified its buildings within the setback area without removing significant vegetation, grading on steep slopes and removing existing vineyards under various exceptions in the zoning ordinance for pre-WDO wineries.

The driveway for Futo is off of a "private road used by the public" (a road used as primary access to one or more parcels other than the winery parcel) to which the 300-foot setback applies. The Futo parcel contains steep slopes, mature trees and existing vineyards, but contained a flat, previously disturbed home site outside the setback where it was possible to establish a small winery. The construction of the driveway to the winery site, however, required substantial grading, vegetation removal and the construction of retaining walls in order to comply with the Napa County Road and Street Standards and CalFire FireSafe regulations. This construction was able to occur within the 300-foot setback due to the historic County practice to not apply the setback to driveway improvements, even though they may be visible from the road.

Far Niente was established pre-WDO; a portion of the winery is located within 300 feet of Acacia Drive, a "private road used by the public." The County has approved modifications to the winery buildings and operational areas over the years under exceptions utilized by Harlan II and visual impacts have been mitigated through the use of landscaping, natural topography and caves for winery operations.

In all three above cases, other wineries were able to operate and evolve within the 300-foot setback due to specific planning tools available to their parcels; this variance request is our tool.

- Please state why the granting of your variance request is necessary for the preservation and enjoyment of your substantial property rights.

The development of a small winery (30,000 gallons/year production) in a desirable and environmentally superior location within an existing disturbed area is one of handful of property rights permitted in the Agricultural Watershed (AW) Zoning District. Strict application of the 300-foot road setback for wineries to the subject property would result in detrimental environmental impacts related to vegetation removal, destruction of plant and animal habitat, soil loss and water quality. It would also necessitate construction of the winery in areas of the parcel with greater geologic sensitivity and potential hazards, as described in the Geotechnical Evaluation. Furthermore, the proposed winery location close to Mt. Veeder Road facilitates the efficient delivery of winery-related deliveries of grapes and supplies and mitigates risk to persons and property from wildfire. Building a winery in a suitable location outside of the road setback in the steep, forested interior of the parcel would necessitate a long, tortuous ingress route for firefighting personnel and vehicles and a similarly perilous egress for winery employees and visitors.

- Please state why the granting of your variance request will not adversely affect the health or safety of persons residing or working in the neighborhood of your property, and will not be materially detrimental to the public welfare or injurious to property or improvements in your neighborhood.

As has been discussed in previous variance requests in Napa County, the WDO established the 300-foot road setback for new or expanded wineries to prevent construction of "a wall" of winery buildings

visible from roads traversed by members of the public. Here, the existing riparian vegetation along Dry Creek north of the proposed winery screens winery-related buildings and activities from view. This existing vegetation is protected from removal by the 55-foot stream setback mandated by the Napa County Conservation Regulations (Napa County Code section 18.108.025). Other than grape delivery and crush, the bulk of winemaking activities will occur in a cave out of view. Furthermore, the southern elevation of the winery building and attached roof cover is almost entirely obscured from view of northbound travelers on Mt. Veeder road due to the hillside adjacent to the road; southbound travelers will be greeted by a fleeting view of the attractive barn-like winery building screened by appropriate landscape vegetation.

For the above reasons, we submit this variance request for your approval.


09182017 revised version

## INDEMNIFICATION AGREEMENT

Pursuant to Chapter 1.30 of the Napa County Code, as part of the application for a discretionary land use project approval for the project identified below, Applicant agrees to defend, indemnify, release and hold harmless Napa County, its agents, officers, attorneys, employees, departments, boards and commissions (hereafter collectively "County") from any claim, action or proceeding (hereafter collectively "proceeding") brought against County, the purpose of which is to attack, set aside, void or annul the discretionary project approval of the County, or an action relating to this project required by any such proceeding to be taken to comply with the California Environmental Quality Act by County, or both. This indemnification shall include, but not be limited to damages awarded against the County, if any, and cost of suit, attorneys' fees, and other liabilities and expenses incurred in connection with such proceeding that relate to this discretionary approval or an action related to this project taken to comply with CEQA whether incurred by the Applicant, the County, and/or the parties initiating or bringing such proceeding. Applicant further agrees to indemnify the County for all of County's costs, attorneys' fees, and damages, which the County incurs in enforcing this indemnification agreement.

Applicant further agrees, as a condition of project approval, to defend, indemnify and hold harmless the County for all costs incurred in additional investigation of or study of, or for supplementing, redrafting, revising, or amending any document (such as an EIR, negative declaration, specific plan, or general plan amendment) if made necessary by said proceeding and if the Applicant desires to pursue securing approvals which are conditioned on the approval of such documents.

In the event any such proceeding is brought, County shall promptly notify the Applicant of the proceeding, and County shall cooperate fully in the defense. If County fails to promptly notify the Applicant of the proceeding, or if County fails to cooperate fully in the defense, the Applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the County. The County shall retain the right to participate in the defense of the proceeding if it bears its own attorneys' fees and costs, and defends the action in good faith. The Applicant shall not be required to pay or perform any settlement unless the settlement is approved by the Applicant.

 Steven Christopher  
llc manager

Applicant

Oakville Winery LLC  
Property Owner (if other than Applicant)

8/15/17  
Date

Dry Creek - Mt. Veeder Project  
Project Identification  
(ADN 027-310-039)