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## Recommended Findings

**PLANNING COMMISSION HEARING – APRIL 18, 2018  
RECOMMENDED FINDINGS**

**Dry Creek / Mount Veeder Winery Use Permit and Variance  
Application Numbers P17-00343-UP and P17-00345-VAR  
Dry Creek Road & Mount Veeder Road, Oakville, California  
APN# 027-310-039**

**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 is based on independent judgment exercised by the Planning Commission.
3. The Mitigated Negative Declaration 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, geology and soils, noise, transportation/traffic, and tribal cultural resources 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.

**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

structure have also been submitted. Noticing and public hearing requirements have been met. The hearing notice was posted on March 16, 2018, 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 16, 2018 to April 17, 2018.

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: A Variance is requested for approval of the proposed covered crush pad and winery building within the required 300-foot winery setback from Mount Veeder Road. The covered crush pad is proposed approximately 84 feet from the centerline of Mount Veeder Road and the winery building is proposed approximately 104 feet from the centerline of Mount Veeder Road. As shown on the "Opportunities and Constraints Site Plan for Variance Request" exhibit (Sheet V1 of Attachment J) prepared by Applied Civil Engineering, Incorporated on November 3, 2017, strict application of the required setbacks will result in development of the proposed winery on steep slopes in excess of 30 percent.

#### Special Circumstances

The 55.5-acre parcel has environmental constraints not shared by other properties in the vicinity including: steep slopes; and elevated landslide and geological hazard potential. Three wineries lie within 2.5 miles of the subject site: 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 similar environmental features as compared to the proposed winery parcel and are able to operate and modify operations within the required 300-foot winery setback because of historical, environmental, and legal reasons not available to the subject site due to special circumstances. The granting of this variance will not confer a special privilege as the subject parcel contains a unique combination of constraints.

#### Unnecessary Hardship

As discussed in the Preliminary Geologic Hazards Evaluation (Attachment I) and illustrated on Sheet V1 (Attachment J), the entire flat previously disturbed area of the parcel lies within the 300-foot winery setbacks from Dry Creek Road and Mount Veeder Road. Construction of the proposed winery outside of this area of the parcel would require excessive grading, tree removal, potential seasonal drainage course impacts, and the construction of retaining walls to facilitate site access into the hillside. Meeting the setback presents a practical difficulty and would result in detrimental environmental impacts associated with vegetation removal, destruction of plant and animal habitat, soil loss, and water quality.

Relocation of the winery outside of the 300-foot road setback would create a substantial hardship in that any alternative location on the 55.5-acre parcel would necessitate the construction of structures, including access driveways, drainage and erosion control, on steeply sloping heavily forested lands northwest of the proposed site. This would necessitate substantial removal of mixed hardwood forest habitat, grading and slope re-contouring and would move development from an area on low geologic instability to areas of elevated geologic hazard.

The economic burden of grading a winery access driveway to serve these alternative sites would create substantial hardship. According to various building contractors contacted by

the applicant on this issue, approximately 1,500 lineal feet of road with a 300-foot gain in total elevation would cost \$500,000 for earthmoving and \$250,000 for asphalt and paving. Slope stabilization and other erosion control measures would cost approximately \$100,000, not including expected repair and annual maintenance. (According to various professionals consulted by the applicant, other associated “soft” costs, such as additional detailed topographic surveys, geologic evaluation, storm water runoff retention design and habitat loss mitigation studies would cost, conservatively, another \$250,000.)

This winery road cost estimate of \$850,000 of “hard” costs and \$250,000 of “soft” costs is consistent with the actual cost of construction of a one-way loop winery access drive built during 2008-2010 for another winery project in the vicinity. That project was for County and Fire Department mandated improvements to an existing (pre-WDO) winery road to meet then-existing road and street standards, and generated hard construction costs, based on the record of actual owner payments to contractors involved in the work, of \$730,043.98.

Assuming that one ton of grapes yields 120 gallons of finished wine, at full production of 30,000 gallons per year that winery would have to purchase 250 tons of grapes. Based on the 2016 Napa County Agricultural Crop Report, the average price per ton Cabernet Sauvignon (the predominant grape in the Mt. Veeder AVA) is \$6,830. Using a more generous figure of \$10,000 per ton, the annual cost of grapes to the winery would be \$2,500,000. The \$1,100,000 cost of building the driveway to serve a similarly-sized winery in an alternative location outside the setback would consume 44 percent of the winery’s annual grape budget.

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. This is generally referred to as the “parity” prong. The property is located within the AW zoning district in which wineries are permitted upon approval of a use permit. Denial of a variance will deprive the applicant of the ability to develop this property for any conforming agriculture, either agriculture or agricultural processing facility, without excessive grading, vegetation removal, soil loss, water quality impacts, and wildfire risk because the access driveway will be located in the forested interior of the parcel. Approval of the variance will allow the subject property to be used as an agricultural use consistent with the site’s zoning and General Plan land use designations. Further, the variance to the winery setbacks will 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 by the pre-existing conditions described above. Strict application of the setbacks, results in both practical and financial hardships, which will restrict the ability to obtain a winery use permit. Grant of the variance will 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 building 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. The proposed winery structure, cave and site development will be located outside of the required 55-foot stream setback and partially screened from view by existing riparian vegetation along Dry Creek. The majority of winemaking activities will occur within the proposed cave with the exception of grape delivery and crush. Various County departments have reviewed the Project and commented regarding water, waste water disposal, access, building permits, and fire protection. Conditions are recommended which 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. As set forth in the attached initial study MND hydrologic section and water availability analysis the estimated groundwater demand of 2.51 AF/YR, represents an increase of 2.51 AF/YR over the existing condition. Compared to the proposed water use, the parcel would recharge approximately 3.1 times more groundwater than would be used in a normal year (7.8 AF/YR) and 1.3 times more water than would be used in the driest year (3.2 AF/YR). (Condor Earth, 2017). The project does not have a significant impact on groundwater resources and this finding can be met.

#### **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 were posted on March 16, 2018, and copies were forwarded to

appropriate persons on the mailing list. The public comment period ran from March 16, 2018 to April 17, 2018.

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 site access and 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 Section 18.104.010 and winery coverage area identified in Section 18.104.220. The project requests a Variance from the 300-foot winery setbacks prescribed in Section 18.104.230.A.2. 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 (AWOS).

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 construction of a winery at the project site, the proposed Use Permit supports the economic viability of both the nearby vineyards in the region 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 §’s13.15.070 or 13.15.080 of the County Code.

Analysis: The project is categorized as “all other areas” based upon current County Water Availability Analysis policies and therefore water use criteria is parcel specific based upon a Tier 2 analysis. A Tier 2 analysis was completed by Condor Earth on September 8, 2017 which included a parcel specific recharge evaluation. According to the recharge evaluation, the property yields “7.8 AF in normal years and 3.2 AF in the dry year.” (Condor Earth, 2017) The applicant submitted a Tier 2 WAA completed by Condor Earth on September 8, 2017 showing the projected water use for the project is 2.51 AF/YR. The subject parcel currently sources water from two wells. Fire protection system water as well as domestic water would be provided a 20,000 gallon (12,000 gallons for fire protection and 8,000 gallons for domestic use) water storage tank. Well #1 was drilled in November 2014 to a total depth of 300 feet. This well is slated for destruction as it is within the footprint of the proposed winery development. Project water would be provided from Well #2. According to the WAA, this well was drilled in May 2017 and has an estimated yield of 4 gpm after four hours of air lift pumping. (Condor Earth, 2017) The parcel water demand can be met with the existing on site well. In summary, the existing yield would be sufficient to serve all uses on the property. 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. 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. The project will not require a new water system or other improvements and will not have an impact on local groundwater.