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Planning, Building & Environmental Services

1195 Third Street, Suite 210
Napa, CA 94559
www.countyofnapa.org

David Morrison
Director

Planning Commission Mtg.
Apr 18 2018
Agenda Item # 7B

MEMORANDUM

To: Napa County Planning Commission	From: Jason Hade, Planner III
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Date: April 17, 2018

Re: Dry Creek/Mount Veeder Winery Use Permit No. P17-00343-UP & Variance No. P17-00345
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Staff received the attached comments from two project neighbors and the California Department of Fish and Wildlife (DFW). Comments provided by Mr. Margadant are also attached. Recommended revised mitigation measures (MM BIO-3 and MM BIO-4) are attached in response to the comments received from the DFW. All comments will be addressed as part of our staff presentation at tomorrow's hearing.

Attachments.

Hade, Jason

From: Ridgie Barton <ridgie@pixvfm.com>
Sent: Tuesday, April 10, 2018 12:57 PM
To: Hade, Jason
Cc: Buttons@pixvfm.com
Subject: Oakville winery -

Dear Mr. Hade,

My wife (Buttons) and I have lived on on Mt. Veeder @ 3181 for more than 20 years. One of our pleasures was to stop off at Chateau Potelle and bring visitors when it's tasting room existed on Mt Veeder. We have heard of and seen some drawings of the potential Oakville Winery project at the corner of Oakville Grade and Mt Veeder and feel it would be a much needed addition to the Mt Veeder appellation. With doing little to affect traffic on Mt Veeder, (most visitors would access from Oakville grade) having another Mt Veeder based winery will enhance our region in value and reputation.

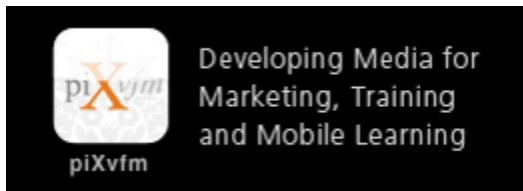
As local residents we are in favor of this project.

Ridgie (Alfred) and Buttons Barton

--

Ridgie Barton
Principal

Direct: 949.419.2568



See a mobile concept at tasting411.com

4/11/18

Jason R Hade - AICP Planner III
Napa County Planning, Building & Environmental Services Department
1195 Third Street - Suite 210, Napa, CA 94558

RE: Oakville Winery, LLC - Planning Commission Review

Hello Jason - You and I exchanged emails a few months ago regarding the water usage study for this project and I wanted to write you an email in support of Oakville Winery, LLC that is currently in the permitting/review process. My wife and I own one of the properties that borders up against the proposed winery property (on the South / West side - 6067 Dry Creek Road) and we have been in contact with some of the folks working on this project. They have been kind and forth coming about their plans and have made every attempt to keep us up to speed with the process. One of my first jobs was for winery in the area and one of my brothers owns a small winery on the Silverado Trail, so I am a supporter of the industry and want to let the Planning Commission know we have no problem with a new winery coming into the area. My one concern had to do with water usage given the proximity of our well to the wells on the property under review, however, after reading the in depth ground water/geology/rainfall study that you sent me, it appears that this should not adversely affect the current water needs of the surrounding properties.

It's no secret that the wine industry is the backbone of the Napa Valley and I don't see any reason why this winery shouldn't be allowed to come into the Dry Creek/Mount Veder area. I'm sure it will add some traffic and noise to the area, but it will also bring solid jobs and tourist revenue.

Please include this letter in the file for the Planning Department's review. Thank you for your time and take care.

Sincerely,



Nicholas & Stephanie Stephens



State of California – The Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
7329 Silverado Trail
Napa, CA 94558
(707) 944-5500
www.wildlife.ca.gov

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



April 12, 2018

Mr. Jason Hade
Napa County Department of Planning, Building & Environmental Services
1195 Third Street, Suite 210
Napa, CA 94559

Dear Mr. Hade:

Subject: Dry Creek/Mount Veeder Winery Use Permit, Mitigated Negative Declaration,
SCH #2018032038, County of Napa

The California Department of Fish and Wildlife (CDFW) received the Dry Creek/Mount Veeder Winery Use Permit (Project) draft Mitigated Negative Declaration (MND) from Napa County. CDFW is submitting comments on the draft MND to inform Napa County, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

The Project site is located on an approximately 55.5-acre site at the intersection of Dry Creek Road and Mount Veeder Road (Assessor's Parcel Number: 027-310-039) in rural Napa County. The Project includes the construction of a 2,400 square-foot winery building; a 17,220 square-foot cave; 800 square-foot crush pad; 2,942 square-foot covered outdoor work area; and a 619 square-foot owner/winemaker residence with a 519 square-foot covered patio. In addition, the Project will construct one 20,000-gallon water storage tank.

CDFW is identified as a Trustee Agency pursuant to the California Environmental Quality Act (CEQA) Section 15386, and is responsible for the conservation, protection, and management of the State's biological resources. CDFW is considered a Responsible Agency if a project would require discretionary approval; such as the California Endangered Species Act (CESA) Permit, the Native Plant Protection Act, the Lake and Streambed Alteration Agreement (LSAA), and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

Pursuant to our jurisdiction, CDFW is concerned the Project could have a significant impact on northern spotted owls and roosting bats. The northern spotted owl (NSO; *Strix occidentalis caurina*) is listed as threatened under CESA, and the pallid bat (*Antrozous pallidus*) is a state Species of Special Concern.

Special-Status Species

CESA prohibits unauthorized take of candidate, threatened, and endangered species. Therefore, if "take" or adverse impacts to NSO or any other species listed under CESA cannot be avoided either during Project activities or over the life of the Project, a CESA Incidental Take Permit (ITP) must be obtained (pursuant to Fish and Game Code Section 2080 *et seq.*). Issuance of a CESA ITP is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the proposed Project will impact any CESA-listed species, early consultation is

encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA ITP. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

Migratory Birds

CDFW has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code Sections protecting birds, their eggs, and nests include 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Fully protected species may not be taken or possessed at any time (Fish and Game Code Section 3511). Migratory raptors are also protected under the federal Migratory Bird Treaty Act.

Northern Spotted Owl (Strix occidentalis caurina)

Page nine of the MND, section IV: Biological Resources, discusses potential impacts to sensitive wildlife species. The MND references the *Biological Resource Assessment with Botanical and Bat Habitat Surveys, Woodland Assessment, and Delineation of Waters of the U.S. for the Dry Creek-Mt. Veeder Project APN 027-310-039 Napa County, CA* (BRA), prepared by Northwest Biosurvey (2018), to discuss potential impacts to special-status species because of Project activities. The BRA states that the Project site has suitable habitat for NSO; and that there are several observations of NSO near the Project site. Mitigation Measure BIO-3 (MM BIO-3) states that a qualified biologist will perform pre-construction surveys for NSO if vegetation removal and earth-disturbing activities occur during the nesting season from February 1 to July 9. CDFW highly recommends that Napa County revise MM BIO-3 to include that a qualified biologist will conduct pre-construction surveys for NSO using the U.S. Fish and Wildlife Service's (USFWS) *Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls* (2012). The survey protocol states that the general survey period for NSO throughout its range is from March 15 to August 31. CDFW recommends that Napa County revise MM BIO-3 to include this date range.

The Project may have short-term and long-term adverse impacts on NSO; however, CDFW cannot determine potential impacts to NSO without knowing if NSO habitat will be removed; plus, CDFW is concerned that the nesting season dates are incorrect and take could occur during nesting season. The MND should also state whether or not trees will be removed from the Project site; and if so, the MND should list the quantity, the species, and the diameter at breast height for each tree that will be removed.

Potential short-term adverse impacts from Project activities to NSO include disturbance from elevated sound levels, and human presence near nest sites. Disturbance may reach the level of take when at least one of the following conditions is met: Project-generated sound exceeds ambient nesting conditions by 20 to 25 decibels (dB); Project-generated sound, when added to existing ambient conditions, exceeds 90 dB; and human activities occur within a visual line-of-site distance of 40 meters or less from a nest. If NSO are within the Project vicinity, the MND should address noise and visual disturbance on NSO from Project activities, and provide measures to avoid or minimize disturbance to active nest sites near the Project footprint.

In order to avoid take of NSO, CDFW recommends avoiding all project-related disturbance within 0.25 miles of nesting NSO during the breeding season from March 15 to August 31. USFWS has provided technical guidance for analyzing when sound and visual disturbance reaches a level that may result in take in their document, *Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California*, dated July 26, 2006. Avoidance and minimization measures should include: seasonal no-work buffers around the activity center, as described in USFWS's *Northern Spotted Owl Take Avoidance Analysis and Guidance* (2011), or alternative measures approved by USFWS and CDFW.

Pallid Bat (Antrozous pallidus) and other Roosting Bats

The BRA prepared by Northwest Biosurvey, dated November 11, 2017, discusses the potential for pallid bat to occur at the Project site. The BRA states that bat habitat surveys were conducted, though it does not detail the survey methodology used; it states that the trees on the property are generally too young to provide habitat for special-status bat species. In addition, the BRA states that a large number of trees within the Project area were damaged by the Nuns Fire in October 2017; and that more surveys are not recommended if work occurs this year. CDFW recommends that Napa County include reference to the baseline conditions they used when evaluating the Project's potential impacts on fish and wildlife resources, i.e., pre-Nuns Fire or post Nuns Fire conditions.

MM BIO-4 states that if trees are to be removed outside of the period between September 15 and October 15, when young of the year are capable of flying, or between February 15 and April 1, to avoid any hibernating bats; and prior to formation of maternity sites, then a pre-construction survey shall be conducted no earlier than 14 days prior to Project activities. MM BIO-4 prescribes a 50-foot buffer from all trees that have roosting pallid bats, or other special-status bats. CDFW highly recommends that Napa County revise MM BIO-4 to read: Tree trimming and/or removal should only be conducted during seasonal periods of bat activity; August 31 through October 15, when young bats would be able to fly and forage independently, and March 1 to April 15 to avoid hibernating bats, and prior to formation of maternity colonies. Any trees proposed for removal containing suitable bat roost habitat shall be removed using a two-day phased removal method. On day one (in the afternoon), limbs and branches would be removed using chainsaws only. Limbs with cavities, crevices, and deep bark fissures would be avoided. On day two, the rest of the tree would be removed under the supervision of a qualified bat expert. If tree removal must occur outside of the seasonal activity periods mentioned above, i.e., between October 16 and February 28/29, or between April 16 and April 30, a qualified bat expert should conduct pre-construction surveys within 14 days of starting construction. Survey methods, timing, duration, and species should be reviewed and approved by CDFW prior to starting construction. If bats or evidence of their presence is found during the survey then the qualified bat expert should develop a plan for removal and exclusion, in conjunction with CDFW.

Erosion Control

Neither the MND nor Project documents discuss the preparation of an Erosion Control Plan for the Project. The Project includes earthmoving on slopes greater than 30%. Erosion control measures should be in place to ensure that construction debris and fine sediment do not pass into Dry Creek and other tributaries on the Project site. CDFW recommends that construction

Mr. Jason Hade
April 12, 2018
Page 4

personnel use erosion control materials not containing plastic monofilament, because wildlife can get entangled in the material.

CDFW appreciates the opportunity to provide comments on the draft MND for the proposed Project and is available to meet with you to further discuss our concerns. If you have any questions, please contact Mr. Garrett Allen, Environmental Scientist, at (707) 944-5565; or Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at (707) 944-5525.

Sincerely,



Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse

- c. **MM BIO-3:** Prior to commencement of vegetation removal and earth-disturbing activities during nesting season from ~~February 1~~ March 15 to ~~July 9~~ August 31, a qualified wildlife biologist shall conduct preconstruction surveys for Northern Spotted Owls using the U.S. Fish and Wildlife Service's (USFWS) *Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls (2012)* within 500-feet of earthmoving activities. The preconstruction survey shall be conducted no more than 14 days prior to vegetation removal and ground disturbing activities are to commence. A copy of the survey shall be provided to the County Planning Division and the California Department of Fish and Wildlife (CDFW) prior to commencement of work. If Northern Spotted Owls are found during preconstruction survey, a 500-foot no-disturbance buffer shall be created around active owl sites. These buffer zones may be modified in coordination with CDFW based on existing conditions at the project site. Buffer zones shall be incorporated into the project plans and maintained for the duration of the project. If a 15 day or greater lapse of project-related work occurs, another pre-construction survey and consultation with CDFW shall be required before project work can be reinitiated.

No surveys shall be required if construction activity occurs outside of the nesting season from ~~February 1~~ March 15 to ~~July 9~~ August 31.

Method of Monitoring: If construction activity is to occur during the nesting season from ~~February 1~~ March 15 to ~~July 9~~ August 31, the pre-construction survey prepared by a qualified wildlife biologist shall be submitted to Planning Division staff prior to issuance of the grading permit.

Responsible Agency: PBES

- d. **MM BIO-4:** ~~If trees are to be removed outside of the dates listed below, any tree to be removed that is suitable for use by bats shall be surveyed for signs of bats. This survey shall occur no earlier than 14 days prior to tree removal. Suitable trees include those with hollows and/or shedding bark. If pallid bats, or other bats with sensitive regulatory status, are discovered during the surveys, a buffer of 50 feet shall be established depending on the recommendations of the surveying biologist. Removal of these roost trees shall be restricted to between September 15 and October 15, when young of the year are capable of flying, or between February 15 and April 1 to avoid hibernating bats and prior to formation of maternity sites. Tree trimming and/or removal should only be conducted during seasonal periods of bat activity; August 31 through October 15, when young bats would be able to fly and forage independently, and March 1 to April 15 to avoid hibernating bats, and prior to formation of maternity colonies. Any trees proposed for removal containing suitable bat roost habitat shall be removed using a two-day phased removal method. On day one (in the afternoon), limbs and branches would be removed using chainsaws only. Limbs with cavities, crevices, and deep bark fissures would be avoided. On day two, the rest of the tree would be removed under the supervision of a qualified bat expert. If tree removal~~

must occur outside of the seasonal activity periods mentioned above, i.e., between October 16 and February 28/29, or between April 16 and April 30, a qualified bat expert should conduct pre-construction surveys within 14 days of starting construction. Survey methods, timing, duration, and species should be reviewed and approved by CDFW prior to starting construction. If bats or evidence of their presence is found during the survey then the qualified bat expert should develop a plan for removal and exclusion, in conjunction with CDFW.

Method of Monitoring: If trees are to be removed outside of the dates listed above, the pre-construction bat survey shall be submitted to Planning Division staff prior to issuance of the grading permit.

Responsible Agency: PBES

Possible Creek Setback Violation

6 messages

Gary Margadant <gsmargadant@gmail.com>

Wed, Sep 14, 2016 at 11:39 AM

To: David Giudice <David.Giudice@countyofnapa.org>, Brian Bordona <brian.bordona@countyofnapa.org>

David & Brian

On Parcel **027-310-039-000**, at the corner of

Gary Margadant

Napa Vision 2050

H 707.257.3351

C 707.291.0361

Gary Margadant <gsmargadant@gmail.com>

Wed, Sep 14, 2016 at 11:57 AM

To: David Giudice <David.Giudice@countyofnapa.org>, Brian Bordona <brian.bordona@countyofnapa.org>

To finish this email after a wrong button push:

On Parcel 027-310-039-000, at the corner of Mt Veeder and Dry Creek Road, the new owners of this parcel, I believe their family name is Morris, have started a bit of vegetation clearing on the flat land adjacent Dry Creek, a class one water way crossing a corner of their property. This Creek is a listed spawning stream for SteelHead trout. The clearing of vegetation in the riparian zone is depicted in the attached photos. The land is being worked by a small tractor and chain saws to clear the open area adjacent to the creek and property boundaries.

Please inform these owners as to the required riparian setback and their need to adhere to the conservation regulations. I do not have any contact information

Best Regards,
Gary

Gary Margadant

Napa Vision 2050

H 707.257.3351

C 707.291.0361

[Quoted text hidden]

4 attachments

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1777K

IMG_20160913_132806.jpg
2257K

IMG_20160913_132821.jpg
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IMG_20160913_132853.jpg
2604K





April 16, 2018

Gary Margadant
4042 Mount Veeder Road
Napa CA 94558

Napa County Planning Commission

Anne Cottrell, Chair

re: OAKVILLE WINERY, LLC/DRY CREEK / MOUNT VEEDER WINERY / USE PERMIT NO. P17-00343-UP & VARIANCE NO. P17-00345-VAR

Please accept my concerns about the proposed Use permit and Variance for this project.

1) The Creek Setback and what the owner is allowed to do inside that setback. What are the CFG (CA fish & game) rules, along with the NC rules).

Also, as described in the Mitigated Negative Declaration under MM BIO-5: If any placement of fill within the tributary marked as channel "B" in the *Biological Resource Assessment with Botanical and Bat Habitat Surveys, Woodland Assessment, and Delineation of Waters of the U.S. for the Dry Creek-Mt. Veeder Project APN 027-310-039 Napa County, CA* is proposed, consultation and permitting must be obtained from the U.S. Army Corps of Engineers, Regional Water Quality Control Board, and California Department of Fish and Wildlife prior to and during the construction.

Where is the Channel "B" located and is it shown on the plans and drawings for this project? Is this report in the document available to the public in the

2) This parcel was described in an email (attached) on September 14, 2016 indicating brush clearing and earth movement within the stream setback. Was this activity considered to be illegal activity within that setback?

3) The size of the caves in relationship to the proposed production of the winery. 17,000 sqft for 30,000 gallons is excessive in relationship to those wineries in the Comparison Charts

4) The required setback of the winery from Mt Veeder and Dry Creek Road. The reduction in the setback to 85' imposes an undue burden on the neighbors and travelers using Mt Veeder and Dry Creek Roads. The traffic in addition to normal considerations, includes heavy bicycle traffic and extra heavy equipment.. Heavy trucks cannot use the south exit from Mt Veeder Road onto Redwood Road due to a 12 ton road weight limit, imposed by Napa County Dept of Public works to avoid damage to a stone river culvert for Pickle Creek. This imposes a large safety and Health concern due to the increased congestion that has not been studied for the winery impact on road usage.

Also, the setback reduction to almost curb location presents a precedent that is not healthy for other locations along Mt Veeder. A fine example of this problem is 1801 Mt Veeder, at the Mt Veeder Magic Vineyard where the owner has attempted to use the house as a tasting room, and the barn as a winery, all without permits. If the owner of 1801 applies for a winery permit with use of the dwelling and barn for these purposes, than this Winery Variance Application will be used as a precedent for such a variance and close location to the Road. Such a permit and location do not represent an effective Health and Safety guideline for future proposals in this mountainous area with narrow roads, uneven pavements, road repairs, curves and poor line of sight for all vehicles, large and small, heavy and light.

5) Where are the Cave Spoils going to be stored on site as required by NC Regulations. No provisions have been shown on the drawing or mentioned in the documents for the placement, storage and water management

of the cave spoils. Other winery proposals have been required to store the spoils on site as in the Mountain Peak Winery application, P13-00320-UP, and appeal to the BOS.

The spoils in this case are rated at 10,369 Cubic Yards of Material. That means a pile of geologic debris 100ft by 233 ft and 12 ft high. That is quite a pile and one that will be very difficult to store on site without encroaching on the stream setback requirement. Not to mention the installation of the buildings and parking area on the site.

I note that the application has a Grading Spoils Disposal Question (pg 14 of 22) requiring the offsite location for Grading Spoils Disposal. This question was not answered correctly, listing the location. Also, Cave Spoils are a different classification to Grading Spoils and this response does not cover the Cave Spoils and allow removal from the site.

6) Location of Parking for the 30 guest (14 car) and 100 (45 cars) guest Events proposed. Is the proposed parking area large enough to these guest car numbers in addition to catering and winery staff vehicles? I note that street parking is not allowed under the Conditions of Approval, so how is this parking situation to be solved by the applicant. If a remote lot and/or bus transport to be utilized, where is this remote lot?? I know of none on the mountain, so if the applicant has a plan that will not impact the neighbors and road vehicles, please include this in the conditions of approval.

7) The road to the top of the hill (septic location) crosses a creek (class 2 or 3). What are the required efforts to protect the setbacks for this creek? And what temporary structures and permits by CA Fish and Wildlife were used, and will be used in the project construction? Was CAF&W consulted for these crossings.

8) Proximity of neighbors. How many neighbors are on notice for this project. 3 or 4? Yet I find the impact on the neighborhood to be extensive due to the road conditions, variance and usage proposed. This notification is very ineffective considering the mountain location.

9) The name of the owner I believe to be BRYANT L MORRIS 601 ROSSI ROAD , SAINT HELENA, CA 94574. Is he a developer or a small winemaker.

In Conclusion: I find that the proposal for the winery and caves to be an excessive overuse of the easily buildable space on the parcel. These special circumstances mentioned in the recommended findings were easily noticeable to the owner before he purchased this property, and a reasonable due diligence on his part would have not recommended the site for such a project. The importance of the creek as the major spawning stream in the Napa Rivers tributaries and the requirement for Cave Spoils retention on site makes this application incredibly dubious and ill advised.

The unnecessary hardship was very evident to all prospective buyers of the property, and these is no reason for the Napa County Administration and Taxpaying Residents to make up for a poor lack of judgment by the buyer. It is for the buyer to be aware of these physical restraints and the Napa County Requirements that might be placed on a prospective use permit for the construction of a winery.

All one has to do is look at a property across Dry Creek Road, 6000, the driveway just west of the firehouse. The driveway to the top of the hill, house location, cost in excess of \$3 million, so the examples of costs and difficulties for such a location were readily evident to any prospective buyer of the property. This proposal far exceeds the ability of the site to support such a project and the permit application should be rejected.

Regards,

Gary Margadant

April 17, 2018

Gary Margadant
4042 Mount Veeder Road
Napa CA 94558

Napa County Planning Commission

Anne Cottrell, Chair

re: OAKVILLE WINERY, LLC/DRY CREEK / MOUNT VEEDER WINERY / USE PERMIT NO. P17-00343-UP & VARIANCE NO. P17-00345-VAR

Please accept my concerns about the proposed Use permit and Variance for this project. These comments are in addition to my previous letter of 4/15/18.

Water Availability Analysis and Well Production Testing:

Well #2 production testing was complete by the Well Driller: Driller's estimated well yield was 4 gpm after 4 hours of air lift pumping.

Unfortunately, this method of well testing by the Driller is not considered a definitive testing regime by Napa County Dept of Public Works and their Hydrological Contractor Luhdorff and Scalimini. Air Lifting is a ball park estimation that is not considered accurate for the purposes of the Water Availability Analysis as defined by Napa County. It is normally an overestimation of the actual pumping production of the well and should not be used as a definitive measure for the calculations required by the WAA and other estimations for water use for this permit application.

The well must be tested by a contracting firm that is licensed by the State of California to perform and report out on such measurements for the calculations on water use and availability.

I was surprised by the Agency Approval letter from The Engineering Division of the Planning Department did not mention the well testing regime as being inadequate for the WAA and this Use Permit Evaluation, and require a proper evaluation of the well production rate. The well yield at 4 gpm is not a high yield well and the need for prolonged pumping to fill the storage tank (20,000 gal) and provide for the water needs in this proposal.

This must be verified to complete the application and assure the Napa County Administration and the Mt Veeder Neighbors that this is a viable project application.

Regards,

Gary Margadant