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Recommended Findings

**PLANNING COMMISSION HEARING – SEPTEMBER 2, 2020
RECOMMENDED FINDINGS**

**Ballentine Vineyards Use Permit Major Modification
Application Number P18-00382-MOD & Variance Application Number P19-00006
2820 St. Helena Highway North, St. Helena, California
APN #022-200-003**

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 and MMRP is based on independent judgment exercised by the Planning Commission.
3. The Mitigated Negative Declaration and 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 provided that measures to mitigate potentially significant impacts to cultural resources, 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 Major Modification 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 July 31, 2020, 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 July 31, 2020 to September 1, 2020.

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 application (P19-00006) is requested to allow construction of the proposed covered work area approximately 375 feet from the centerline of State Highway 29 and the proposed covered pomace bin approximately 430 feet from the centerline of State Highway 29. Both will be located within the minimum 600-foot winery setback As shown on the variance site plan exhibits (Sheets A0.02 and A0.03A of Attachment F) prepared by MH Architects on November 2, 2018, strict application of the required setbacks will result in development of the proposed covered work area and pomace bin within the Napa River floodway. Meeting the setback presents a practical difficulty and will result in detrimental environmental impacts associated with additional grading, and water quality.

Special Circumstances

The 21-acre parcel has a significant environmental constraint not shared by other properties in the vicinity: floodway. Much of the parcel is located within the 600-foot winery setback from State Highway 29 or located within the floodway. Construction of the proposed winery improvements outside of this area of the parcel would require excessive grading and potential water quality impacts within the floodway. Ballentine Vineyards is one of five wineries located within the immediate vicinity. Revanna, Morlet and St. Clement are not located within the floodway. Markham Winery has areas of its site located within the floodway, but has sufficient area available outside of the floodway where additional winery improvements could be constructed. The granting of this variance would not confer a special privilege as the subject parcel contains a unique combination of constraints.

Unnecessary Hardship

Relocation of the proposed winery improvements outside of the 600-foot road setback would create a substantial hardship in that any alternative location on the 21-acre parcel would necessitate the construction of structures, including access driveways, drainage and erosion control, in the floodway of the proposed site. This would necessitate the permanent loss of approximately 1.0 acres of existing vineyard and the placement of up to six feet of fill within the floodway to create a new building pad that is above the Base Flood Elevation (BFE).

The economic burden of grading an extended access driveway and the placement of up to six-feet of fill to create a building pad above the BFE to serve these alternative sites would create substantial hardship. A comparison table of the costs of constructing the proposed canopy in the proposed location versus a location in compliance with the 600-foot setback was prepared by the project architect, MHA, and is included within Attachment F. As shown in the table, the costs of constructing the proposed canopy in a compliant location would result in a cost difference of over \$350,000 when compared to the proposed location without a corresponding benefit to either the public or applicant. The costs of compliance with the 600-foot setback would add an additional 60 percent to the costs of the project in order to comply with current County regulations.

According to the applicant the varieties planted in this portion of the property (Chenin Blanc and Malvasia) yield seven tons per acre. The area where the conforming driveway extension and pad would be located was planted three years ago. According to the applicant, the two varieties are valued at \$3,000 per ton. At a value of \$3000 per ton, an annual loss of approximately \$21,000 would be projected for the permanent loss of vineyard acreage taken out of production if the structure is built in compliance with the 600-foot setback. Conservatively, the life span of a vineyard is 25 years. With an estimated remaining productive life of 22 years, an annual loss of \$21,000 would result in a cumulative loss of approximately \$483,000.

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 AP 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 maintain this property for conforming agriculture, either agriculture or agricultural processing facility, without excessive grading, vineyard removal, water quality impacts because the proposed covered work area and pomace bin would be located within the floodway. Approval of the variance would allow the subject property to continue to be efficiently used as 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 by the pre-existing conditions 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 major modification. Grant of the variance would bring the parcel into "parity" with other properties zoned AP that have been granted use permits and subsequent modifications 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 would adversely impact the public health, safety, or welfare of the County of Napa. Construction of the new canopy and pomace bin would 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 would not adversely affect the health or safety of persons residing or working in the neighborhood of the property. The proposed additional site improvements would be located outside of the floodway and mostly screened from view from State Highway 29 by existing structures and landscaping. Various County departments have reviewed the project and commented regarding water, waste water disposal, access, building permits, and fire protection. Conditions are recommended which would 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 Major Modification 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 13.784 AF/YR, represents an increase of 2.443 AF/YR over the existing condition and is below the water allotment for the parcel. Based upon current County Water Availability Analysis policies, the allowable water allotment for the project site is 21.12 acre-feet per year (af/yr), determined by multiplying the 21.12 acre Valley floor site by a one AF/YR/acre fair share water use factor. The project does not have a significant impact on groundwater resources and this finding can be met. (Refer to groundwater availability discussion above).

PLANNING AND ZONING ANALYSIS:

USE PERMIT:

The Commission has reviewed the use permit major modification 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 Preserve (AP) 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 18.16.030) are permitted in the AP 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 Major Modification 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 July 31, 2020, and copies were forwarded to property owners within 1,000 feet of the subject parcel and all other interested parties. The public comment period ran from July 31, 2020 to September 1, 2020.

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 Major Modification 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, wastewater disposal, 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. As conditioned, the divisions and the departments recommend approval.

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 AP 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 18.16.030) are permitted in the AP District with an approved use permit. The proposed project includes expansion of an existing tasting room, construction of a covered work area and pomace bin as well as the reconfiguration of an existing parking area and will comply with the development standards of the AP District. 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 Major Modification 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 Resource (AR) and Agriculture, Watershed, and 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 continued 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 continued agricultural use, the requested Use Permit Major Modification supports the economic viability of both the existing 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.

Applicable Napa County General Plan goals and policies:

Goal AG/LU-1: Preserve existing agricultural land uses and plan for agriculture and related activities as the primary land uses in Napa County.

Goal AG/LU-3: Support the economic viability of agriculture, including grape growing,

winemaking, other types of agriculture, and supporting industries to ensure the preservation of agricultural lands.

Policy AG/LU-2: “Agriculture” is defined as the raising of crops, trees, and livestock; the production and processing of agricultural products; and related marketing, sales and other accessory uses. Agriculture also includes farm management businesses and farm worker housing.

Policy AG/LU-4: The County will reserve agricultural lands for agricultural use including lands used for grazing and watershed/open space, except for those lands which are shown on the Land Use Map as planned for urban development.

Policy AG/LU-8: The County’s minimum agricultural parcel sizes shall ensure that agricultural areas can be maintained as economic units.

Policy AG/LU-15: The County affirms and shall protect the right of agricultural operators in designated agricultural areas to commence and continue their agricultural practices (a “right to farm”), even though established urban uses in the general area may foster complaints against those agricultural practices. The “right to farm” shall encompass the processing of agricultural products and other activities inherent in the definition of agriculture provided in Policy AG/LU-2.

Goal CON-10: Conserve, enhance and manage water resources on a sustainable basis to attempt to ensure that sufficient amounts of water will be available for the uses allowed by this General Plan, for the natural environment, and for future generations.

Goal CON-11: Prioritize the use of available groundwater for agricultural and rural residential uses rather than for urbanized areas and ensure that land use decisions recognize the long-term availability and value of water resources in Napa County.

Policy CON-53: The County shall ensure that the intensity and timing of new development are consistent with the capacity of water supplies and protect groundwater and other water supplies by requiring all applicants for discretionary projects to demonstrate the availability of an adequate water supply prior to approval. Depending on the site location and the specific circumstances, adequate demonstration of availability may include evidence or calculation of groundwater availability via an appropriate hydrogeologic analysis or may be satisfied by compliance with County Code “fair-share” provisions or applicable State law. In some areas, evidence may be provided through coordination with applicable municipalities and public and private water purveyors to verify water supply sufficiency.

Policy CON-54: The County shall maintain or enhance infiltration and recharge of groundwater aquifers by requiring all projects in designated groundwater deficient areas as identified in the County’s groundwater ordinance (County Code Chapter 13.15) be designed (at minimum) to maintain a site’s predevelopment groundwater recharge potential, to the extent feasible, by minimizing impervious surfaces and promoting recharge (e.g., via the use of

water retention/detention structures, use of permeable paving materials, bio-swales, water gardens, cisterns, and other best management practices).

Policy CON-55: The County shall consider existing water uses during the review of new water uses associated with discretionary projects, and where hydrogeologic studies have shown that the new water uses will cause significant adverse well interference or substantial reductions in groundwater discharge to surface waters that will alter critical flows to sustain riparian habitat and fisheries or exacerbate conditions of overdraft, the County shall curtail those new or expanded water uses.

Policy CON-60.5 All aspects of landscaping from the selection of plants to soil preparation and the installation of irrigation systems should be designed to reduce water demand, retain runoff, decrease flooding, and recharge groundwater.

Policy CON-72: The County shall seek to reduce the energy impacts from new buildings by applying Title 24 energy standards as required by law and providing information to the public and builders on available energy conservation techniques, products, and methods available to exceed those standards by 15 percent or more.

Policy CON-77: All new discretionary projects shall be evaluated to determine potential significant project-specific air quality impacts and shall be required to incorporate appropriate design, construction, and operational features to reduce emissions of criteria pollutants regulated by the state and federal governments below the applicable significance standard(s) or implement alternate and equally effective mitigation strategies consistent with BAAQMD's air quality improvement programs to reduce emissions. In addition to these policies, the County's land use policies discourage scattered development which contributes to continued dependence on the private automobile as the only means of convenient transportation. The County's land use policies also contribute to efforts to reduce air pollution.

Policy CON-81: The County shall require dust control measures to be applied to construction projects consistent with measures recommended for use by the BAAQMD [Bay Area Air Quality Management District].

Goal E-1: Maintain and enhance the economic viability of agriculture.

Policy E-1: The County's economic development will focus on ensuring the continued viability of agriculture in Napa County.

Policy SAF-20: All new development shall comply with established fire safety standards. Design plans shall be referred to the appropriate fire agency for comment as to:

- 1) Adequacy of water supply.
- 2) Site design for fire department access in and around structures.
- 3) Ability for a safe and efficient fire department response.
- 4) Traffic flow and ingress/egress for residents and emergency vehicles.
- 5) Site-specific built-in fire protection.

6) Potential impacts to emergency services and fire department response.

17. That the proposed use will 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 will satisfy any of the other criteria specified for approval or waiver of a groundwater permit under Sections 13.15.070 or 13.15.080 of the County Code.

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 project is categorized as being located within the Valley Floor in an area that has an established acceptable water use criteria of 1.0 acre foot per acre per year based upon current County Water Availability Analysis policies. Based upon those criteria, the Allowable Water Allotment for the project site is 21.12 acre-feet per year (af/yr), determined by multiplying the 21.12 acre Valley floor site by a one AF/YR/acre fair share water use factor.

Currently, there is only one well (Well #01) on the parcel. Historically, the yield on the well has exceeded 200 gpm. As part of this project, a new well (Well #02) with a 50' sanitary seal would be drilled and connected to all winery uses. Well #02 is expected to have a similar yield to Well #01. The proposed winery water use of 13.784 acre-feet per year equates to an average of approximately 12,300 gallons per day. At a constant rate of 9 gpm (only approximately 5 percent of expected Well #02 capacity), approximately 12,960 gallons of water would be available each day. Therefore, project water use is expected to be well within the physical capabilities of the proposed Well #02 (Madrone Engineering, 2018).

According to the Water Availability Analysis for Ballentine Vineyards 2820 St. Helena Highway North, St. Helena, CA 94574 APN: 022-200-003 prepared by Madrone Engineering on October 3, 2018, the anticipated total overall water demand for the project site would be 13.784 AF/YR representing a 2.443 AF/YR increase of the existing water demand of 11.341 AF/YR. Therefore, the project is considered not to have a potential to significantly impact groundwater resources. Because the projected water demand for the project is below the estimated water availability acre feet per year for the parcel, the requested Use Permit Major Modification is consistent with General Plan Goals CON-10 and CON-11, as well as the policies mentioned above that support reservation and sustainable use of groundwater for agricultural and related purposes. The project will not require a new water system or other improvements and will not have a negative impact on local groundwater. The project is also consistent with General Plan Conservation Policy CON-54 because it minimizes impervious surfaces and utilizes bio swales to aid in maintaining the site's predevelopment groundwater recharge potential.