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Recommended Findings

**PLANNING COMMISSION HEARING – JULY 21, 2021
RECOMMENDED FINDINGS**

**Chateauneuf du Pott Winery Use Permit and Variance
Application Numbers P19-00408-UP and P19-00409-VAR
2072 Mount Veeder Road, Napa, California
APN# 034-100-046**

ENVIRONMENTAL:

The Planning Commission (Commission) has received and reviewed the proposed Categorical Exemptions 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. Because of the minimal construction and limited operations, the project is categorically exempt from the California Environmental Quality Act ("CEQA") under Section 15303, Class 3 (New Construction or Conversion of Small Structures) and Appendix B of Napa County's Local Procedures for Implementing the California Environmental Quality Act under Class 3: New Construction or Conversion of Small Structures, #10 for the construction and operation of small wineries, other agricultural processing facilities, and farm management uses and Section 15305(a), Class 5 (Minor Alterations in Land Use Limitations).
2. 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.
3. 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:

4. 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 July 9, 2021 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 9, 2021 to July 20, 2021.

5. 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 winery building within the required 300-foot winery setback from Mount Veeder Road. The winery building is proposed approximately 66 feet from the centerline of Mount Veeder Road. As shown on the "Chateauneuf du Pott Variance Application - Slope Analysis Exhibit (Attachment K), strict application of the required setbacks will result in development of the proposed winery on steep slopes in excess of 30 percent. Meeting the setback presents a practical difficulty and will result in detrimental environmental impacts associated with vegetation removal, destruction of plant and animal habitat, soil loss, and water quality.

Special Circumstances

The subject property has special circumstances unique to it that are not shared by other properties in the vicinity, and that make requiring a setback inconsistent with the aesthetics the 300-foot setback is intended to protect. Napa County Code Section 18.104.230 requires a 300-foot setback from Mount Veeder Road. This Section's intent and purpose are to protect views of the traveling public along Mount Veeder Road. The existing historic development area on the subject parcel lies entirely within the roadway setback and was formerly developed with a single-family dwelling, wooden barn, carport and a steel pole barn. All structures, except for the steel pole barn, and landscaping were destroyed by fire in October 2017. Except for the existing development area, the parcel is characterized by steep slopes, unstable slopes and mature forest. The parcel is bisected by Pickle Creek. It is not physically possible, therefore, to develop the winery facilities outside of the 300-foot setback from the centerline of Mount Veeder Road without significant earthmoving and tree removal on the steep wooded hillsides.

Unnecessary Hardship

Relocation of the winery outside of the 300-foot road setback will create a substantial hardship in that any alternative location on the 40-acre parcel will necessitate the construction of structures, including access driveways, drainage and erosion control, on steeply sloping heavily forested lands to the northeast of the proposed development area. This will necessitate substantial removal of mixed hardwood forest habitat, grading and slope re-contouring and will move development from an area on low geologic instability to areas of elevated geologic hazard.

The only alternative to utilization of the existing historic development area will be to establish a new development area and infrastructure across Pickle Creek on the eastern side of the Property. Such a development will require extensive grading on steep slopes (>50%) and the permanent removal of approximately three to five acres of mature trees. Location outside of the 300-foot setback will also make the facility directly visible from Mount Veeder Road. Requiring the applicant to convert existing natural woodland habitat to buildings and impervious surfaces, instead of a modest development on an existing historic development area screened from view, will be a severe hardship.

The additional construction costs entailed in building an equivalent winery located on the outside of the 300-foot roadway setback will likely total more than \$3,000,000.00. This total includes: (1) the additional costs of grading to develop a County-compliant access roadway and bridge to a new development site on the east side of Pickle Creek, (2) the additional costs of grading and fill to develop a level building site on the east side of Pickle Creek; (3) the additional cost of widening, grading and paving the existing driveway on the west side of Pickle Creek to the alternate location; and (4) the additional cost of establishing water, electric, sewer, and septic pipes and other infrastructure to this location.

6. 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 will 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.

Other Napa County wineries, including ZD Winery and Sawyer Winery, have been granted Variances from the regulation allowing for development within the setback that is no closer to the centerline than the existing development (Per Napa County Code Section 18.104.230.B). The proposed winery will not be visible from vehicles driving along Mount Veeder Road due to the natural topography and existing mature vegetation. This design provides screening and viewshed protections consistent with the intent and spirit of the setback regulations described in the Napa County Winery Definition Ordinance (WDO) and Code Section 18.104.230. The proposed development location is entirely within the sole existing development footprint as well as the historic development area that pre-dates the WDO. As referenced above, several properties in the County under similar or identical zoning classification enjoy permitted wineries (and subsequent expansions) within the setback. These wineries include ZD, LMR Rutherford, Cakebread, Madrigal, and Gandona. Thus, in addition to avoiding severe hardship to the applicant, approval of the requested variance will allow the applicant to achieve parity with other properties.

7. 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 and site development will be located outside of the required 65-foot stream setback and partially screened from view by existing riparian vegetation along Pickle Creek. 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.

8. 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 water availability analysis the estimated groundwater demand of 0.58 AF/YR, represents a decrease of 0.09 AF/YR over the existing condition because the existing well will no longer be used for vineyard irrigation. Compared to the proposed water use, the parcel will recharge approximately 79 times more groundwater than will be used in a normal year (46.3 AF/YR) and 19 times more water than will be used in the driest year (11.2 AF/YR). (O'Connor Environmental, Inc, 2021). 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:

9. 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.

10. 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 Categorical Exemptions were posted on July 9, 2021, and copies were forwarded to appropriate persons on the mailing list. The public comment period ran from July 9, 2021 to July 20, 2021.

11. 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.

12. 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 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 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.

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.

13. 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 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 (Attachment F) was completed by O'Connor Environmental, Inc. on July 1, 2021 which included a parcel specific recharge evaluation. According to the recharge evaluation, "application of the Soil Water Balance model (SWB) to the project recharge area revealed that average water year recharge was approximately 8.3 inches/yr or 46.3 acre-ft/yr. During drought conditions, recharge was significantly lower at 2.0 inches/yr or 11.2 acre-ft/yr. The total proposed water use for the project recharge area is estimated to be 0.58 acre-ft/yr. This represents approximately 1% of the mean annual recharge indicating that the project is unlikely to result in declines in groundwater elevations or depletion of groundwater resources over time. The nearest neighboring well is located more than 500-ft from the project well indicating that a Tier 2 well interference analysis is not required." (O'Connor Environmental, Inc., 2021). The well which will supply water to the proposed winery (i.e., the project well, Well 1) is located on top of the ridge between Pickle and Dry Creeks on an adjacent parcel owned by the project applicant (APN 034-100-045). This well was drilled to a depth of 440 feet and is completed to a depth of 338 feet. At the time the well was completed (January 2017), the well had a static water level of 146 feet and an estimated yield of 60 gpm. The well is screened between 138 and 278 feet in a thick layer of shale with sandstone stringers, strata that are consistent with the geology of the Great Valley Sequence. The parcel water demand can be met with the existing project well. In summary, the existing yield will 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.