

Attachment D

Determination of Good Cause Decision



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Board of Supervisors

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Diane Dillon
Chair

**DETERMINATION OF GOOD CAUSE REQUEST TO
AUGMENT THE DOCUMENTARY RECORD AND
REQUEST FOR DE NOVO REVIEW REGARDING
THE ANTHEM WINERY APPEAL HEARING**

July 10, 2020

TO: Kathy Felch, Esq., on behalf of Appellant Patricia Damery
Kevin Block, Esq., on behalf of Appellants Jeff Atlas and Paul Rowe
Rob Anglin, Esq., on behalf of Applicants, Justin and Julie Arbuckle

FROM: Chair Diane Dillon

RE: Anthem Winery Appeal Hearing – Good Cause Determination

As the Chair of the Napa County Board of Supervisors, I have received and reviewed Appellant Patricia Damery's June 5, 2020 request for the appeal hearing to be de novo and her request to augment the record as set forth in her appeal materials. My decision on the requests is as follows:

1) **Appellants' Request for De Novo Review.** Appellant requests a de novo hearing of the appeal pursuant to Napa County Code Section 2.88.090(A). Appellant appears to claim that good cause exists because County declined to provide and Bates stamp a record of the Planning Commission hearings. On June 5, 2020, along with her request for de novo review, Appellant submitted to Napa County Counsel a California Public Records Act request made pursuant to Government Code section 6250, et seq., for records in the possession, custody and/or control of Napa County. Appellant specifically requested to know what comprises the record on appeal, stating that prior efforts by Appellant to clarify what is in the record have not resulted in a defined set of documents. Appellant asserted in her Public Records Act request that Napa County Counsel initially described the Record on Appeal as: "Scope of the record - Transcripts of hearings; staff reports; all materials and correspondence; all materials and correspondence to Planning Commission, etc." Appellant further asserted that she requested clarification of what was encompassed within the abbreviation "etc." as it was not possible to determine what the record on appeal is absent that information. Per Appellant, the Record on Appeal was then modified to: Transcripts of hearings; staff reports; all materials and correspondence provided to

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Planning Commission; or, any information that the Commission received as part of its consideration of the project. The Public Records Request sought any document considered by County to be a part of the record on appeal which was not available online as of close of business on June 5, 2020. Accordingly, Appellant is requesting a de novo review.

Decision and Rationale: Denied.

The Chair finds that Appellant's good cause justification for a de novo hearing is insufficient as County's explanation of what would comprise the "record on appeal" was reasonably defined and articulated on several occasions. Appellants have not provided a substantial reason for an entirely new hearing. County staff promptly responded to the Public Records Act submitted in tandem with the request for a de novo hearing. In responding, County confirmed that save for the transcripts of the Planning Commission hearings, all other documents comprising the record were in fact available online as of June 5.

Appellants had ample notice and opportunity to be heard at the Planning Commission hearings. A new project submittal courtesy notice was sent to Appellants on August 31, 2018, a month before the Planning Commission hearing. Notice of the public hearing was mailed to Appellants on August 30, some 33 days before the hearing on October 3. The Planning Commission staff reports were posted to the County's website one week prior to the hearing dates. In fact, Appellants testified and submitted written evidence prior to the hearings.

In Applicant's opposition to the request, dated June 5, 2020, it is noted that Appellant successfully submitted 56 pages of written comments and exhibits including 11 letters and emails between December 2014 and February 2020. The Planning Commission had the benefit of reviewing all of this material and it is part of the record before the Board.

Proper notice was given, Appellants had ample opportunity to comment on the Project and submit relevant evidence, and the Commission hearings were recorded electronically. The Board will have the benefit of the record below and the testimony that was considered by the Commission as well as the Commission's deliberations. For all of the reasons set forth above, Appellants' request for a de novo hearing is denied.

2) Appellant's Request to Augment the Record with "Findings" from State Agencies.

Appellant requests that the record be augmented to allow new information in the form of "findings" purported to be forthcoming from "California State Water Resources Board, the Natural Resources Conservation Service, the USGS and the California Department of Fish and Game" regarding erosion onto Appellant's property. Appellant states each of these agencies will be conducting site visits during the month of March 2020 "to evaluate their areas of concern, including the effect that the winery expansion and construction, deep ripping the oak savannah and the destruction of trees within the existing tree easement, will have on erosion and Class II streambeds on Appellant Damery's property."

Appellant asserts that this new information is important to both the fair hearing on the appeal as well as to the County in truly understanding the effects of the Planning Commission's decision on the Anthem application.

Decision and Rationale: Denied.

The Chair finds that as of the mutually agreed deadline for submitting a request to augment the record, County has not been provided any reports or “findings” from the above-referenced agencies. Appellant Damery did state before the Planning Commission on February 5, 2020 her concerns about erosion coming onto her property and represented that these agencies would be conducting a site visit to her property in March. Department of Fish and Wildlife (DFW) reviewed the project as part of the CEQA process and their comment letter is part of the record.

Applicant’s oppose a request to augment the record with the information cited and state that “[n]one of these agencies issue ‘findings’ on a winery use permit or vineyard erosion control plan” and also note that DFW previously commented on the project during CEQA review.

The Planning Commission did have these concerns in the record prior to making its determination. Upon further correspondence with Appellant as to when County might expect to see the documents, staff was informed on June 26th that agencies like the Water Resources Control Board were prohibited from conducting site visits during the COVID-19 pandemic and that it is unknown when such agencies may begin conducting visits again.

Because presently there are no “findings” from these agencies for the County to review, good cause does not exist at this time to augment the record with the information described above. However, should the information described above be submitted to County prior to 5:00 p.m. July 31, 2020, it will be reviewed and considered, and new determination issued as to solely the above-described information by August 14, 2020.