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Recommended Findings

**PLANNING COMMISSION HEARING – DECEMBER 19, 2018
RECOMMENDED FINDINGS**

**Bergman Family Winery Use Permit
Application Number P17-00428-UP & Exception to Road and Street Standards
3285 St. Helena Highway, St. Helena, California
APN #022-080-010**

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 biological resources, cultural resources 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.

EXCEPTION TO ROAD AND STREET STANDARDS:

The Commission has reviewed the attached described Road and Street Standards (RSS) Exception request in accordance with Road and Street Standards Section 3 and makes the following findings:

8. The exception will preserve unique features of the natural environment which includes, but is not limited to, steep slopes, heritage oak trees, or other trees of at least 6"dbh and found by the decision-maker to be of significant importance, but does not include man made

environmental features such as vineyards, rock walls, ornamental or decorative landscaping, fences or the like.

Analysis: Strict application of the requirement to improve the existing driveway to current standards will result in mature oak tree removal on steeply sloping hillsides. It will also increase the need for grading on steep slopes. Granting of the exception will minimize impacts to biological resources. This is important based upon the project site's close proximity to a State Park and the need to maintain the area in a natural state to the greatest extent possible. As discussed in the Biological Resources section of the Initial Study/Mitigated Negative Declaration, all potential biological resources related impacts will be less than significant with implementation of a mitigation measure. This exception has been reviewed by the County Engineering Services Division and Fire Marshal who have determined that the request will preserve unique features in the natural environment and recommend approval.

9. The exception is necessary to accommodate other limiting factors such as recorded historical sites or legal constraints.

Analysis: While the applicant would like to implement further improvements to Segments B and C including widening and improving the turning radii, they are not able to do so because the segments of driveway are located on land owned by the State Parks. As noted in the legal constraint letter dated March 12, 2018 prepared by Perkins Cole international law firm (included within Exhibit B), the access easement is very limited and does not permit additional widening. Further, any widening completed for these two segments of driveway would require removal of mature trees in a densely forested area of the State Park on slopes that exist along both sides of the driveway in the park.

10. Grant of the Road and Street Standards Exception will provide the same overall practical effect as the Standards do in providing defensible space, and does not adversely affect the life, safety, and welfare of the public or persons coming to the property.

Analysis: The County Engineering Services Division has discussed the request with the Napa County Fire Department and has conducted a site visit. Engineering staff recommends approval of the requested road exception, subject to recommended conditions in their memo of April 16, 2018. The proposal has been determined to meet the same overall practical effect of the RSS while protecting the life, safety and welfare of the public by providing horizontal and vertical vegetation management, minimizing average daily trips by requesting no visitation or marketing program, and installing a commercial driveway that fully complies with the 2017 NCRSS on the subject parcel to provide ingress and egress from the proposed winery to the private shared drive.

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:

11. 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.

12. 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 November 16, 2018, and copies were forwarded to appropriate persons on the mailing list. The public comment period ran from November 16, 2018 to December 18, 2018.

13. 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, upgrading the existing 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.

14. 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 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 subject to an approved use permit. The proposed project includes the construction of a new winery building and will comply with the development standards of the AW 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 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 proposed 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 proposed agricultural use, the requested Use Permit supports the economic viability of both the existing vineyard and requested 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-24(c): Maintain and improve oak woodland habitat to provide for slope stabilization, soil protection, species diversity, and wildlife habitat through appropriate measures including one or more of the following:

c) Provide replacement of lost oak woodlands or preservation of like habitat at a 2:1 ratio when retention of existing vegetation is found to be infeasible. Removal of oak species limited in distribution shall be avoided to the maximum extent feasible.

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 would 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.

15. 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 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 "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 Richard C. Slade and Associates, LLC on March 7, 2018 which included a parcel specific recharge evaluation. According to the recharge evaluation, "groundwater recharge at the subject property is estimated to be 7.1 AF/YR; this value is based on the conservative estimates of rainfall recharge (0.436 AF/YR) that have been used by others for a County-approved WAA at the nearby Sodhani Winery property." (Richard C. Slade & Associates, 2018).

The parcel water demand can be met with the existing project wells and groundwater use on the project parcel from the onsite vineyard well and is shown to be less than the annual recharge. Water sources for the project consist of an onsite vineyard well which provides water for the existing vineyard and landscaping and an offsite well which provides domestic water for the existing primary residence and second dwelling unit. The vineyard well would be the only well used to meet the water demands of the proposed winery. This well was constructed in July 2014 by Huckfeldt Well Drilling of Napa to a depth of 780 feet below ground surface. An October 2014 constant rate pump test at 86 gpm concluded that the well is capable of pumping at rates needed to meet the future groundwater recharge demands needed from the project well which is 25 gpm peak rate. The applicant submitted a Tier 2 Water Availability Analysis (WAA) completed by Richard C. Slade and Associates on March 7, 2018 showing the projected water use from both wells for the project plus existing demand is 8.152 AF/YR. The anticipated total overall water demand for the project site would be 8.152 AF/YR representing a 0.374 AF/YR increase of the existing water demand of 7.778 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 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.