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Recommended Findings

**PLANNING COMMISSION HEARING – SEPTEMBER 16, 2020
RECOMMENDED FINDINGS**

**Nickel and Nickel Winery, Use Permit Major Modification Application No. P17-00400-MOD
8164 St. Helena Highway, Oakville
Assessor's Parcel No. 031-010-013**

ENVIRONMENTAL:

The project is subject to the requirements of the California Environmental Quality Act (CEQA, Public Resources Code Section 21000 *et seq.*) The Planning Commission has received and reviewed the Initial Study and Mitigated Negative Declaration for the Use Permit Major Modification request, pursuant to the provisions of CEQA, the State CEQA Guidelines and Napa County's Local Procedures for Implementing CEQA, and finds that:

1. The Planning Commission has read and considered the Initial Study and Mitigated Negative Declaration, any comments received thereon, and the Mitigation Monitoring and Reporting Program (MMRP) prior to taking action on the Mitigated Negative Declaration and the proposed project.
2. The Mitigated Negative Declaration is based on independent judgment exercised by the Planning Commission.
3. The Initial Study and Mitigated Negative Declaration were prepared and considered in accordance with the requirements of CEQA.
4. There is no substantial evidence in the record as a whole that the proposed project will have a significant effect on the environment when made subject to compliance with standard conditions of approval and mitigation measures related to Cultural Resources and Tribal Cultural Resources.
5. 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 compatibility plan.
6. 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.
7. The Secretary of the Planning 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, Room 210, Napa, California.

USE PERMIT MODIFICATION:

The Commission has reviewed the Use Permit Major Modification request in accordance with the requirements of Napa County Code Section 18.124.070 and 18.124.130 and makes the following findings:

8. The Commission has the power to issue the Use Permit Major Modification under the Zoning Regulations in effect as applied to the property.

Analysis: The winery is located on property located in the AP (Agricultural Preserve) District. In the AP District, wineries and physical and operational modifications thereto require Planning Commission approval of a conditional use permit or use permit modification (Napa County Code Sections 18.16.030 and 18.124.130). There is no companion discretionary action necessary for the requested Use Permit Major Modification that would require action by the Board of Supervisors.

9. 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 application for a Use Permit Major Modification has been appropriately filed, and notice and public hearing requirements of Napa County Code Section 18.136.040 and CEQA Guidelines Section 15164 have been met. On or prior to August 14, 2020, notice of public hearing and intent to adopt a Mitigated Negative Declaration was published in the Napa Valley Register; posted with the Napa County Clerk; mailed via first class mail to owners of property within 1,000 feet of the subject parcel; distributed through the State Clearinghouse for review by potentially permitting State agencies; and mailed via first class mail or electronic mail to the applicant, property owner, the owner's/applicant's representative, and other interested parties who had previously requested such notice.

10. The grant of the Use Permit Major Modification, as conditioned, will not adversely affect the public health, safety or welfare of the County of Napa.

Analysis: The proposed modification to increase employment, production, and daily visitor and annual marketing event guest counts will increase water demands, but estimated water use (25.8 acre-feet per year) will still fall within acceptable use thresholds for groundwater use, not exceeding 1 acre-foot per parcel acre per year for the 34.64-acre site, and before accounting for reductions in groundwater demand from reuse of treated and disinfected wastewater for vineyard irrigation. Trip generation and vehicle miles traveled by winery employees would triple compared to the permitted number of winery employees. However, as most of the winery's employees have transitioned temporarily to remote work environments due to current stay-at-home health orders, without negative impacts on business operations, winery operators anticipate a longer-term increase in the number of full-time employees that opt to work from home everyday or some days of the week, reducing employee home-work trips and miles traveled overall. The winery operators will continue to promote trip reduction measures for guests through shuttle services but will also be subject to payment of fees to fund improvements to mitigate the winery's traffic impacts on regional facilities, should the Board adopt an applicable fee program prior to the issuance of a building permit for the project. Existing State Route 29 roadway improvements at the project frontage include bicycle lanes and a center two-way left turn lane that allows queuing and merging area outside of through travel lanes for vehicles turning into and out of the winery driveway, and driver sight distance along the flat, straight stretch of highway at the property frontage exceeds minimum standards. Adequate area exists on-site to accommodate wastewater treatment requirements that correlate with the requested production and visitation increases, with permit oversight by the Regional Water Quality Control Board for the proposed sanitary wastewater treatment, disinfection and recycling system. While the number of parking stalls on-site would increase, so would the total acreage of vineyard.

Various County divisions and departments have also reviewed the project and provided recommendations pertaining to the proposed project. Recommended conditions incorporate these comments, along with other project-specific and standard County conditions pertaining to noise, air quality and light and glare, into the project approval to assure the protection of the public health, safety, and welfare.

11. 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.

Analysis: Compliance with the Zoning Ordinance

The property that is the subject of this application is located in the AP District, where the continued use of the site for vineyard is permitted and wineries are conditionally permitted (Napa County Code Sections 18.16.020 and 18.16.030). Thus, the proposed use is consistent with the land use regulations of the AP District.

The proposed project is also compliant with minimum winery building setbacks allowed for the property, maximum winery lot coverage, and maximum accessory to production ratio requirements specified in Napa County Code for wineries located in the AP District. None of the new or rehabilitated structures will exceed 29 feet in height and all would be within the maximum building height regulations of Napa County Code Sections 18.104.010 and 18.104.120. Winery land coverage is proposed to increase from 6.1 to 6.4 acres with the requested modification but will still be within the maximum 25 percent (equal to 8.7 acres) of the area on the 34.64-acre site, in compliance with Napa County Code Section 18.104.220. Side and rear yard setbacks of proposed new structures also meet or exceed the 20-foot minimum required under County Code Section 18.104.010, and the proposed new and rehabilitated winery structures, though within 600 feet of the centerline of the State Route 29 right-of-way, are outside of the minimum 184-foot front setback from edge of the right-of-way as previously allowed for winery structures pursuant to approved Variance No. 98403. In compliance with County Code Section 18.104.200, which establishes a maximum allowable area for accessory uses at 40 percent of the area used for winemaking, the accessory use square footage associated with the proposed project is just over 32 percent of the proposed building and covered crush pad areas dedicated to wine production. The winery will remain subject to compliance with the requirement that at least 75 percent of grapes processed at wineries be grown in Napa County (Napa County Code Section 18.104.250.B).

Analysis: Consistency 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).

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.” The continued use of the property for vineyard and winemaking supports the economic viability of winery and agriculture in general within the County, consistent with Goal AG/LU-3, as well as Policy E-1 and Policy AG/LU-4 (“The County will reserve agricultural lands for agricultural use including land used for grazing and watershed/open space...”). General Plan Policy AG/LU-2 recognizes wineries as agricultural uses of land.

The General Plan land use designation for the subject parcel is Agricultural Resource. The intent of this land use designation is to “identify areas of the fertile valley and foothill areas of the county in which agriculture is and should continue to be the predominant land use.” The agricultural development currently on the property (vineyard) is consistent with the general uses identified in the General Plan as being compatible with the Agricultural Resource designation, and the continued and expanded operation of the winery, as an establishment engaged in the processing of agricultural products, is also consistent with the intent of the designation (Policy AG/LU-21). The proposed expansion of accessory visitation and marketing event programming for the winery is consistent with the General Plan definition of agriculture (Policy AG/LU-2), which includes raising of crops and livestock, as well as processing of agricultural products and related marketing, sales and other accessory uses. Thus, the continuation of use of the property for vineyard, wine production and associated wine tasting and wine marketing activities requested, is consistent with the uses of the property as described in the General Plan.

Water demand generated by the requested use permit major modification, including recycling of treated process and disinfected sanitary wastewater as on-site vineyard irrigation, is in line with General Plan goals supporting sustainable water use and prioritization of groundwater for agricultural purposes (CON-10 and CON-11). Consistent with General Plan Policy CON-50, adopted in an effort to preserve water quality in the County’s watersheds, streams and river, the proposed expanded winery development footprint will remain outside of the Napa River minimum stream setbacks as defined in County Code Chapter 18.108 (Conservation Regulations).

12. Substantial evidence has not been presented which demonstrates that the project water system might cause a significant adverse affect on any underlying groundwater basin.

Analysis: Water for on-site vineyard irrigation and domestic consumption is provided from two wells located near the western property line; there is a backup well for irrigation on the property. In addition to using well water, the property has surface water rights to divert 6.1 acre-feet per year from the Napa River for vineyard irrigation, frost protection and heat control (California State Water Resources Control Board, Division of Water Rights, Permit No. 16521). The property is not located in any groundwater deficient area defined by Napa County Code Title 13, Map 13-1.

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. Groundwater (GW) and surface water demand estimated for the winery as initially entitled and described in the Water Availability Analysis (WAA) provided by the applicant is approximately 16.8 acre-feet per year. This estimate assumes that approximately 20 percent of guests would have wine tasting with food. The estimated demand also conservatively assumes that vineyard water demand is 0.5 acre-feet (162,925 gallons) per acre of vineyard based on the demand factors from the County’s WAA Guidelines rather than actual records that indicate vineyard water demand of 0.37 acre-feet per vineyard acre. Water demand for landscape irrigation is also conservatively estimated as the Estimated Total Water Use (ETWU) calculated for irrigation pursuant to the State Model Water Efficient Landscape Ordinance (WELO, California Code of Regulations Title 23, Division 2, Chapter 2.7), though the WAA notes that actual irrigation water use has been lower.

The submitted WAA estimated groundwater demand for the requested entitlement to be 25.8 acre-feet. This estimated increase in water demand accounts for: 1) the additional employees above permitted levels; 2) the additional visitation guests and marketing event attendees, again assuming that 20 percent of tours and tastings guests would have food with wine tasting; 3) the requested, additional 100,000 gallons of annual wine production; 4) an additional 0.4 acres of grapevines; and 5) additional ornamental landscaping. The subject property is located within the Napa Valley Floor – St. Helena subarea of Napa County according to Figure 2-2 of the Napa County Groundwater Monitoring Plan 2013, for which the County has determined that an annual groundwater draw of up to 1 acre-foot of water per acre of a parcel is a scientifically and operationally adequate threshold. With 34.64 acres within the boundaries of the property, the estimated 25.8 acre-feet of groundwater demand is within acceptable levels, before accounting for reduction in demand as a result of proposed reuse of treated and disinfected domestic sanitary wastewater for vineyard and landscape irrigation.

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-1: Agriculture and related activities are the primary land uses in Napa County.
- 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-9: The County shall evaluate discretionary development projects, re-zonings, and public projects to determine their potential for impacts on farmlands mapped by the State Farmland Mapping and Monitoring Program, while recognizing that the state’s farmland terminology and definitions are not always the most relevant to Napa County, and shall avoid converting farmland where feasible.
- Where conversion of farmlands mapped by the state cannot be avoided, the County shall require long-term preservation of one acre of existing farm land of equal or higher quality for each acre of state-designated farmland that would be converted to non-agricultural uses. This protection may consist of establishment of farmland easements or other similar mechanism, and the farmland to be preserved shall be located within the County and preserved prior to the proposed conversion. The County shall recommend this measure for implementation by the cities and town and LAFCO as part of annexations involving state-designated farmlands.
- Policy AG/LU-10: New wineries and other agricultural processing facilities as well as expansions of existing wineries and facilities in agricultural areas should be designed to convey their permanence and attractiveness.
- Policy AG/LU-21: The following standards shall apply to lands designated as Agricultural Resources on the Land Use Map of this General Plan.
- Intent:** To identify areas in the fertile valley and foothill areas of the county in which agriculture is and should continue to be the predominant land use, where uses incompatible with agriculture should be precluded, and where the development of urban type uses would be detrimental to the continuance of agriculture and the maintenance of open space which are economic and aesthetic attributes and assets of the County of Napa.

General Uses: Agriculture, processing of agricultural products, single-family dwellings.

Minimum Parcel Size: 40 acres, except that parcels with a minimum of 2 acres may be created for the sole purpose of developing farm labor camps [subject to certain conditions]

Maximum Building Intensity: One dwelling per parcel (except as specified in the Housing element). Nonresidential building intensity is non-applicable, but where practical, buildings will be located off prime soils.

Policy CIR-7: All applicants for development projects or modifications thereto shall be required to evaluate the vehicle miles traveled (VMT) associated with their projects, in order to determine the projects' environmental impacts pursuant to the California Environmental Quality Act. Applicants shall specify feasible measures to reduce a proposed project's VMT and shall provide an estimate of the VMT reduction that would result from each measure. Upon the effective date of the pertinent State CEQA Guidelines, projects for which the specified VMT reduction measures would not reduce unmitigated VMT by 15 or more percent shall be considered to have a significant environmental impact.

Policy CIR-27: The County shall encourage the use of alternative transportation by tourists, visitors and commuters, and will work with wineries, the local hospitality industry, public and private employers, and the cities and town to develop incentives that encourage the use of these options and the development of private transit services.

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 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-27: The County shall enforce compliance and continued implementation of the intermittent and perennial stream setback requirements set forth in existing stream setback regulations, provide education and information regarding the importance of stream setbacks and the active management and enhancement/restoration of native vegetation within setbacks, and develop incentives to encourage greater stream setbacks where appropriate.

Incentives shall include streamlined permitting for certain vineyard proposals on slopes between 5 and 30 percent and flexibility regarding yard and road setbacks for other proposals.

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-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.
- Goal CON-16: Promote the economic and environmental health of Napa County by conserving energy, increasing the efficiency of energy use, and producing renewable energy locally.
- Policy CON-70: The County shall seek to increase the amount of energy produced through locally available energy sources, including establishing incentives for, and removing barriers to, renewable and alternative energy resources (solar, wind) where they are compatible with the maintenance and preservation of environmental quality.
- 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.