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Agenda Date: 3/8/2016  
Agenda Placement: 9B  
Set Time: 9:30 AM PUBLIC HEARING  
Estimated Report Time: 2.5 Hours

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors  
**FROM:** David Morrison - Director  
Planning, Building and Environmental Services  
**REPORT BY:** John McDowell, Deputy Planning Director - 299-1354  
**SUBJECT:** Girard Winery Appeal Hearing

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### **RECOMMENDATION**

Consideration and possible action regarding an appeal filed by Scott Greenwood-Meinert, Esq. on behalf of Vintage Wine Estates dba **Girard Winery** to a tie-vote of the Napa County Planning Commission on October 21, 2015, which resulted in denial of the Girard Winery Use Permit No. P14-00053-UP request for a new winery with an annual production capacity of 200,000 gallons as follows: 1) A new winery building, totaling 32,771 sq. ft. in area to include 28,955 sq. ft. production area (crush area, fermentation and barrel storage, restrooms) and  $\pm 3,816$  sq. ft. of accessory use area (offices, tasting rooms, retail storage, catered food prep area, and visitor restrooms), maximum building height 33.5 ft. with two 15 ft. tall decorative cupolas to 45 ft. In addition, a  $\pm 2,560$  sq. ft. covered veranda and a  $\pm 2,871$  sq. ft. covered work area; 2) Hosted daily tours and tastings for wine trade personnel and consumers by appointment only for a maximum of 75 persons per weekday (Monday-Friday); maximum of 90 persons per weekend day (Saturday-Sunday); 3) Hours of operation: 8:00 AM to 6:00 PM (production hours, except during harvest) and 10:00 AM to 6:00 PM (visitation hours), seven days a week; 4) Eleven employees (8 full-time; 3 part-time) non harvest; 19 additional employees (12 full-time and 7 part-time) during harvest, for a total maximum of 30; 5) Employee hours: production, 7:00 AM to 3:00 PM; hospitality/tasting room, 9:30 AM to 6:30 PM; 6) Construction of twenty-two parking spaces; 7) Installation of landscaping, an entry gate and a winery sign; 8) A Marketing Program as follows: a) Four events per year with a maximum of 75 guests; b) Four events per year with a maximum of 200 guests; c) One Harvest event per year with a maximum of 500 guests; d) All food to be catered utilizing a  $\pm 184$  sq. ft. small prep/staging area; 9) On-premises consumption of the wines produced on-site, consistent with Business and Professions Code §§23356, 23390, and 23396.5 (also known as the Picnic Bill) within the tasting rooms, covered veranda, and within a 4,000 sq. ft. portion of the front entry landscaped winery garden; 10) Construct a new 24-ft. wide access driveway from Dunaweal Lane to the winery; 11) Construction of additional piping and service connections to the existing Clos Pegase water system on the site, and update the existing Clos Pegase Transient Non-Community Water System contract to include the Girard Winery; 12) Installation of on-site sanitary disposal improvements and installation of connections into the existing on-site winery wastewater processing ponds serving the Clos Pegase Winery (APN: 020-150-012); and, 13) Installation of a  $\pm 45,000$  gallon water storage tank ( $\pm 30$  ft. diameter;  $\pm 12$  ft. height) (the "Winery Project" or "Project"). The Project is located on a 26.53 acre parcel on the east side of Dunaweal Lane, approximately 1000 ft. south of its

intersection with Silverado Trail, within the AP (Agricultural Preserve) Zoning District; 1077 Dunaweal Lane; Calistoga, CA 94515, APN: 020-150-017 (the "Property").

**ENVIRONMENTAL DETERMINATION:** Consideration and possible adoption of a Revised Negative Declaration. According to the proposed Revised Negative Declaration, the proposed project would have no potentially significant environmental impacts. This project site is not on any of the lists of hazardous waste sites enumerated under Government code section 65962.5.

**(CONTINUED FROM JANUARY 26, 2016)**

### **EXECUTIVE SUMMARY**

The matter before the Board is an applicant-generated appeal by Vintage Wine Estates dba Girard Winery ("Applicant" or "Appellant") to a 2-2 tie-vote (Commissioner Gill recused herself) of the Napa County Planning Commission on October 21, 2015. The tie-vote resulted in denial of the Applicant's (Use Permit No. P14-00053) request to establish a new 200,000 gallons per year winery in a new building and related improvements, tours and tastings by appointment only, and connect to a waste water and transient non-community water system shared with the adjacent Clos Pegase Winery. Pursuant to the Planning Commission's bylaws, a tie vote constitutes disapproval of the motion and if a deadlock results in denial of a permit, it is deemed an appealable action.

The Girard Winery is located on a 26.53 acre parcel on the east side of Dunaweal Lane, approximately 1,000 feet south of its intersection with Silverado Trail within the Agricultural Preserve (AP) zoning district; 1077 Dunaweal Lane; Calistoga, CA, 94515, APN 020-150-017.

On October 22, 2015 and within the prescribed filing period, a Notice of Intent to Appeal was filed by Scott Greenwood-Meinert, Esq. on behalf of Appellant. On November 5, 2015, an Appeal Packet was timely submitted by Appellant. On January 26, 2016, the Board opened the public hearing and continued the hearing to March 8, 2016, at Appellant's request.

### **PROCEDURAL REQUIREMENTS**

Because of a software malfunction, there is no recording of the October 21, 2015 Planning Commission's final hearing regarding the Winery Project. Pursuant to Napa County Code Section 2.88.090 (A), if the hearing held before the approving authority (e.g., Planning Commission) was not recorded electronically or by a certified court reporter, the hearing on the appeal shall be de novo. Here, although the public hearings before the Commission on December 17, 2014, January 21, 2015, and August 19, 2015, were recorded and transcripts were made available to the Board and the public, the final hearing on October 21st was not recorded. As a result, the appeal hearing will be held de novo. That means that a new hearing will occur and Appellant may present new evidence and arguments that were not presented to the Planning Commission so long as the evidence and argument relates to the grounds raised in the Appeal Packet.

1. Chairman introduces item and requests Staff report presentation.
2. Chairman opens public hearing, requests testimony from Appellant followed by any other interested parties.
3. After the Board has heard testimony and received evidence from the Appellant, Staff and interested parties, Chairman closes the public hearing.
4. A motion of intent is made and seconded to affirm, reverse or modify the decision being appealed.
5. Chairman calls for the vote on the motion of intent to affirm, reverse, or modify the decision being appealed and refer the matter to the County Counsel's office for preparation of a Resolution of Findings and Decision on Appeal.

**FISCAL IMPACT**

Is there a Fiscal Impact?                      No

**ENVIRONMENTAL IMPACT**

**ENVIRONMENTAL DETERMINATION:** Consideration and possible adoption of a Revised Negative Declaration. According to the proposed Revised Negative Declaration, the proposed project would have no potentially significant environmental impacts. This project site is not on any of the lists of hazardous waste sites enumerated under Government code section 65962.5

**BACKGROUND AND DISCUSSION**

The matter before the Board is an applicant-generated appeal by Vintage Wine Estates dba Girard Winery ("Applicant" or "Appellant") to a 2-2 tie vote (Commissioner Gill recused herself) of the Napa County Planning Commission on October 21, 2015, which resulted in the denial of the Applicant's (Use Permit No. P14-00053) request to establish a new 200,000 gallons per year winery in a new building and related improvements, tours and tastings by appointment only, and connect to a waste water and transient non-community water system shared with the adjacent Clos Pegase Winery ("Winery Project").

The Girard Winery is located on a 26.53 acre parcel on the east side of Dunaweal Lane, approximately 1,000 feet south of its intersection with Silverado Trail within the Agricultural Preserve (AP) zoning district; 1077 Dunaweal Lane; Calistoga, CA, 94515, APN 020-150-017.

On October 22, 2015 and within the prescribed filing period, a Notice of Intent to Appeal was filed by Appellant. On November 5, 2015, an Appeal Packet was timely submitted by Appellant. On January 26, 2016, the Board opened the public hearing and continued the hearing to March 8, 2016, at Appellant's request.

**Pre-Hearing Conference**

In an effort to clarify the County's procedural requirements and expectations regarding appeals of Planning Commission decisions, the County Counsel's office has initiated a program whereby a pre-hearing conference is held with the parties (applicants and appellants) and the Chairman of the Board to discuss estimates of the time length of presentations, scope of evidence, and testimony to be presented, together with witness lists. Any witness not appearing on a witness list at the pre-hearing conference will be treated as an ordinary member of the public and be allotted the usual three minutes of speaking time.

A pre-hearing conference was held on December 18, 2015 with Appellant's counsel and a deputy from County Counsel's office. At that time, Appellant's counsel stated that he would present four witnesses to testify on traffic, hydrology, engineering, and architecture in addition to the Appellant for a total presentation of approximately one hour.

Because of a software malfunction, there is no recording of the October 21, 2015 Commission's final hearing regarding the Winery Project. Pursuant to Napa County Code Section 2.88.090 (A), if the hearing held before the approving authority (e.g., Planning Commission) was not recorded electronically or by a certified court reporter, the hearing on the appeal shall be de novo. Here, although the public hearings before the Commission on December

17, 2014, January 21, 2015, and August 19, 2015, were recorded and transcripts were made available to the Board and the public, the final hearing on October 21st was not recorded. As a result, the appeal hearing will be held de novo. This means that a new hearing will occur and Appellant may present new evidence and arguments that were not presented to the Planning Commission so long as the evidence and argument relates to the grounds raised in the Appeal Packet.

Subsequent to the Planning Commission's final hearing on the Winery Project, the County has updated its Standard Conditions of Approval for winery projects. The older version of the Standard Conditions of Approval is included in the administrative record for this hearing. However, should the Board express an intent to approve the Winery Project or a modified version of the Winery Project, Staff will provide the updated Conditions along with the findings for consideration and adoption.

#### **STATED BASIS FOR THE APPEAL AND STAFF RESPONSE:**

The following outlines the basis of the Appeal as contained in the Appeal Packet submitted by Appellant. For convenience, Staff has summarized the issues and provided a summary in response, but recommends the Board review the actual Appeal for details. Background materials and staff reports from the Planning Commission's hearings with the exception of the October 21st meeting are attached, and the hearing transcripts have been provided to the Board.

**Girard Appeal Ground No. 1:** Appellant asserts a prejudicial abuse of discretion by the Planning Commission, a lack of a fair and impartial hearing, and the absence of facts to support the decision. The two Commissioners that opposed the application based their position on an opinion that a shared water and wastewater system with Clos Pegase Winery across the street showed the Property could not support the Winery Project.

#### **Staff Response:**

The Commission conducted an exhaustive and thorough hearing over the course of four meetings. All members of the Commission acted in a fair and impartial manner, including those who supported the Winery Project and those who did not. The Appellant offers no evidence that the two Commissioners who did not support the proposal, as proposed by the Applicant/Appellant, conducted themselves in an inappropriate manner. Likewise, the Appellant offers no distinction how the two dissenting Commissioners acted differently than the two Commissioners who supported the Winery Project and for whom the Appellant makes no claim of abuse of discretion on their part.

The issue is not the Commission's conduct. The issue is a policy interpretation concerning the placement of a new winery on a parcel that already contains the sewage system for an existing winery which is located across the public road. This particular policy issue has not come before the Commission in the past (that Staff is aware of), and the Board has not previously provided direction to the Commission on how the Winery Definition Ordinance (WDO) should be applied in this situation. The WDO states in Code Section 18.104.240 that wineries are permitted to be located on parcels zoned Agricultural Preserve (AP) and Agricultural Watershed (AW) only if the single parcel on which they are located were either established legally before the WDO or are on a parcel of 10 acres or larger. New wineries are therefore permitted on parcels of 10 acres or greater in size. The code is silent on how many new wineries can occur on each parcel, but it is a reasonable interpretation of that code section to find that one winery per 10 acre parcel is what was intended as an allowable agricultural use of agriculturally zoned land. It seems unlikely that the authors of the WDO intended to permit unlimited numbers of wineries on a single 10 acre or larger parcel.

In this case, the two dissenting Commissioners could not support the proposal for a new winery, as proposed, because a portion of the improvements for an existing winery already were present on the Winery Project parcel and thus inconsistent with Code Section 18.104.240 because there would be improvements for two wineries on a

single parcel. The two dissenting Commissioners also expressed reservations over the size and scale of the facility given its location north of St. Helena and the amount of prior vineyard acreage that would be lost to new buildings and site improvements. On the other hand, the two supporting Commissioners appeared to agree with all or most of the Appellant's assertions (as detailed in the attached Appeal Packet), and expressed support for a shared sewage treatment facility thus interpreting the WDO in a different manner than their peers.

Supporting Commissioners felt that sharing of water and wastewater treatment facilities of two (or more) wineries was consistent with the intent of the agricultural land use and zoning designations, and did not conflict with Code Section 18.104.240.

One Commissioner recused herself, which contributed to the tie vote and the summary Project denial. The Project denial resulting from a tie vote does not constitute a prejudicial abuse of discretion. Given the policy implications of this decision, it is appropriate that this matter is before the Board for a final determination and direction.

**Girard Appeal Ground No. 2:** Appellant asserts that a shared water and wastewater system is smart land use policy because it is an efficient use of natural resources.

**Staff Response:**

The County General Plan and Zoning Ordinance have provisions that can be interpreted to support shared water and wastewater systems, or could be interpreted to prohibit a new winery from locating on a property that already contains improvements from another winery. This particular issue of a new winery locating on a property that contains the sewage system for a pre-WDO winery has not previously come before the Commission on other projects (to the best of Staff's knowledge). There have been cases of legally established nonconforming commercial use sewage systems occurring on agricultural zoned land, but that does not directly translate to this situation of a conditionally allowed use locating on the same property of an existing conditionally allowed use. There are however several circumstances of wineries spanning two or more parcels, and/or containing water/wastewater improvements on one parcel and winery structures on another parcel. The Winery Project falls somewhere in between these related scenarios, but does not translate directly to past actions.

Staff does not object to the Appellant's assertions that sharing water and wastewater facilities may be an efficient use of natural resources. However, it is noted that there is no expressly stated policy in the General Plan or Zoning Ordinance either mandating or encouraging this to happen. This is not to say that a policy is required in order for the Board to approve the Winery Project. The Board has broad discretion in interpreting its General Plan and Zoning Ordinance, and can find that the Winery Project as proposed is either consistent or inconsistent with those documents. Likewise, should the Board find that this particular case pertains to a broader policy matter, the Board may direct Staff by separate action to return with new policy or ordinance language addressing this topic. Staff believe this particular situation is rare, as evidenced by the apparent fact that it has not come up in 25 years since the adoption of the WDO. The likelihood of future requests for new wineries on parcels already containing winery improvements appears quite low. As such, it is recommended that the Board simply weigh the merits of this particular case within the context of the current General Plan and Zoning Ordinance, and take an action to either approve, deny or modify the requested use permit.

**Disposition:**

In absence of a majority decision by the Commission, Staff is forwarding its original recommendation to support approval of the Winery Project for the following reasons: 1) the proposal includes substantial greenhouse gas offset features; 2) the proposal will be incorporated into an existing water/wastewater recycling system, lessening project demand on groundwater resources; 3) County policy regarding new winery development, although currently under review, has not changed and Staff is reviewing developments under current regulations; 4) Girard is currently producing wine from Napa Valley fruit in Sonoma County and approval of this facility will return its production to

Napa County;

5) the Winery Project will be subject to the County's expanded housing impact fees; 6) visitation is within the scope of what has been approved at other similar facilities, and marketing is on the low end; 7) the amount of visitation space is relatively modest in comparison to the amount of production space; and, 8) the Winery Project requires no reductions, variances, or alternatives to winery zoning standards.

Refer to the attached Commission staff reports for details and discussion of the Winery Project components and issues. At the heart of the Commission's deliberations was the shared water and wastewater issue. Briefly summarized below are the other major Winery Project issues vetted during the Commission's hearings:

Traffic - A detailed traffic study was prepared that finds that the Winery Project does not result in significant traffic impacts, either individually or cumulatively, although additional traffic will occur on the network. Public concerns were raised over new traffic generation potentially impacting both the road network and general rural quality of life.

Groundwater - A detailed water analysis was prepared that finds that the Winery Project does not result in a significant impact to groundwater resource, either individually or cumulatively. Interested members of the public expressed concerns on the validity of the study and noted ground water quality and availability issues in the vicinity.

Project Size - The Winery Project meets the coverage and accessory/production space limitations of the WDO, but public concerns were raised over the size of the building both in its northern Napa Valley location as well as the loss of several acres of valley floor vineyards to a new building and site improvements.

Visitation / Marketing - On a case-by-case basis the Commission determines whether proposed visitation and marketing activities are compatible with a project, the setting, and most importantly whether clearly accessory to the production of wine at a facility. The Commission applied its relatively new "visitation matrix" to the Winery Project which indicated that the proposed level of visitation and marketing was on the low end of wineries with similar production levels and/or in geographic proximity. Public concerns were raised over the Winery Project and its potential relationship to the neighboring Clos Pegase facility also owned and operated by the Applicant.

The following is a summary of the Winery Project as presented in the Commission's staff reports:

**Zoning:** Agriculture Preserve – AP

**GP Designation:** Agricultural Resource – AR

**Filed:** February 28, 2014; **Completed:** November 12, 2014

**Parcel Size:** 26.53± acres

**Existing Development:** 12± acres of vineyard; one well with associated water system serving Clos Pegase Winery; one irrigation reservoir and two wastewater ponds with associated equipment serving Clos Pegase Winery.

**Proposed Winery Characteristics:**

**Winery Size (Proposed):** 32,771 sq.ft. production building including: 28,955 sq.ft. production area (crush area, fermentation and barrel storage, restrooms); 3,816 sq.ft of accessory use area (offices, tasting rooms, retail storage, catered food prep area, and visitor restrooms), maximum height 35 ft. with 45 ft. tall cupolas; with a 2,628 sq. ft. covered veranda; and a 2,871 sq. ft. covered work area.

**Production Capacity (Proposed):** 200,000 gallons per year.

**Development Area (Proposed):** 139,763 sq. ft., or 3.21 acres.

**Winery Coverage (Proposed):** 132,793 sq. ft.; 3.05 acres; 11.49% of the 26.53± acre parcel (Maximum 25% or 15 acres).

**Accessory/Production Ratio (Proposed):** 10.23,816 sq. ft. accessory and 37,129 sq. ft. production; 10.2% (maximum 40% allowed).

**Accessory Ratio Compliance:** The Planning Commission requested that Staff conduct an accessory / production ratio evaluation that includes outdoor visitation areas as well as enclosed visitation areas. The Winery Project includes an entry garden and covered veranda at the entrance to the hospitality area of the winery. Graphics (attached) include elevations of the proposed seating on the covered veranda. The proposed plans indicate that the production uses (barrel storage and tank area) are 28,955 sq. ft. with a 2,781 sq. ft. covered work area. The hospitality area (tasting room and office) is 3,816 sq. ft., plus the 2,628 sq. ft. covered veranda. The ±4,000 sq. ft. of paths within the 13,360 sq. ft. landscaped garden would also be available to the public. Although the uses of these outdoor areas vary greatly in purpose and intensity, even with inclusion of all outdoor spaces, the overall accessory/production ratio would be 33%, which is substantially below the 40% maximum permitted by Code Section 18.104.200.

**Number of Employees (Proposed):** Maximum of 30 employees: maximum 11 employees (8 full time; 3 part-time), non harvest days; maximum 19 additional employees hired (12 full time and 7 part time) during harvest.

**Visitation (Proposed):** Hosted daily tours and tastings for wine trade personnel and visitors by appointment only for a maximum of 75 persons per weekday (Monday-Friday); maximum of 90 persons per weekend day (Saturday-Sunday). Maximum of 555 persons/week.

**Marketing Program (Proposed):**

Four (4) events per year with a maximum of 75 guests, between the hours of 6:00 PM – 10:00 PM;  
Four (4) events per year with a maximum of 200 guests between the hours of 6:00 PM – 10:00 PM; and,  
One (1) Harvest event per year with a maximum of 500 guests between the hours of 6:00 PM – 10:00 PM.  
All food to be catered utilizing a ±184 sq. ft. small prep/staging area located adjacent to the tasting room.

**Days and Hours of Operation (Proposed):** Employee hours: production, 7:00 AM to 3:00 PM; hospitality/tasting room, 9:00 AM to 6:00 PM

**Parking (Proposed):** 22 on-site parking spaces with 2 loading areas (15 visitor spaces and 7 employee spaces). The parking area also proposes to include an electric vehicle charging station space and one visitor clean air vehicle space.

**Setbacks (Required):** 20 foot side, 20 foot rear, 300 feet from Dunaweal Lane.

**Setback (Proposed):** No variance proposed. All required setbacks will be met.

**Winery Comparison Charts**

Exhibit A (attached to the October 21, 2015 Commission Staff Report) provides a summary of the locational and operational criteria of the Winery Project as well as information on wineries within one mile of the Winery Project site. Furthermore, Staff has updated information for the winery comparison for 175,000 to 225,000 gallon wineries. The proposed Winery Project falls below the Pre-WDO winery comparison median for visitation proposal and falls between the average and median calculation for parcel size. For the By-Appointment winery comparison, the Winery Project is somewhat greater than the average daily visitation calculations, but much lower than the average and median calculations for weekly and annual visitations. The number of events is one higher than the median,

but much lower than the average. In terms of parcel size, the Winery Project site is slightly smaller than the median which is 38.92 acres.

The following are decision making options for the Board:

Option 1 – Approve Applicant’s Proposal

This option would result in the development of a new 200,000 gallons per year winery approximately 32,771 sq.ft. in size, including a covered veranda (2,560 sq.ft.) and a covered work area (2,871 sq.ft.), a visitation and marketing program, employees, and other attributes associated with development of a winery.

Action Required – Make a tentative motion to grant the appeal and approve the Winery Project.

Option 2 – Reduced Project Alternative

This option would result in a decrease in the overall winery size which could include (but not limited to): decrease in the production, visitation and marketing program, and/or size of proposed facility.

Action Required- Make a tentative motion to partially grant the appeal and to approve a modified project. Articulate to Staff the extent of project modifications to be addressed in final conditions of approval.

Option 3 – Deny Proposed Modification

If the Board determines that the Winery Project does not, or cannot meet the required findings for grant of a use permit modification, a motion can be made to deny the Winery Project.

Action Required – Make a tentative motion to deny the appeal and deny the Winery Project, and direct Staff to prepare findings of fact in support of the decision.

**SUPPORTING DOCUMENTS**

- A . Appeal Packet
- B . Transcript December 17, 2014
- C . Transcript January 21, 2015
- D . Transcript August 19, 2015
- E . Planning Commission Staff Report 12-17-2014
- F . Planning Commission Staff Report 1-21-2015
- G . Planning Commission Staff Report 8-19-2015
- H . Planning Commission Staff Report 10-21-2015
- I . Denial Letter
- J . Graphics

CEO Recommendation: Approve

Reviewed By: Helene Franchi