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NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Hillary Gitelman - Director
Conservation, Development & Planning
REPORT BY: Heather McCollister, Principal Planner , 299-1348
SUBJECT: Public Hearing - Harris v. Gamble Appeal

RECOMMENDATION

Consideration and possible action regarding an appeal filed by David Rice on behalf of Ren and Marilyn Harris of a decision by the Planning Commission on July 19, 2006 to approve Tom and Collette Gamble / Gamble Winery Variance Application No. 03156-VAR and Use Permit Application No. 03155-UP, located at 1851 Cook Road, Yountville, CA on a +10.00-acre parcel (after a Lot Line Adjustment) at the terminus of Cook Road approximately 2,050 feet from its intersection with Yount Mill Road within an Agricultural Preserve (AP) zoning district, (Assessor's Parcel No. 031-110-018). The appeal challenges the Commission's adoption of the Mitigated Negative Declaration and approval of the Variance and Use Permit.

ENVIRONMENTAL DETERMINATION: Mitigated Negative Declaration prepared. According to the Mitigated Negative Declaration, the proposed Project may have, if mitigation measures, are not included, potentially significant environmental impacts in the following area: Geology & Soils; Hydrology & Water Quality. If the Board decides to deny the appeal, it would need to readopt the Mitigated Negative Declaration prior to approving the Project.

EXECUTIVE SUMMARY

The hearing before the Board is to consider an appeal filed by attorney David Rice on behalf of Ren and Marilyn Harris ("Appellants") to the Planning Commission's decision to approve the Tom and Collette Gamble / Gamble Winery ("Applicant") Variance Application No. 03156-VAR and Use Permit Application No. 03155-UP (the "Project" or the "Winery"), located at 1851 Cook Road, Yountville, CA on a +10.00-acre parcel (after a Lot Line Adjustment) at the terminus of Cook Road approximately 2,050 feet from its intersection with Yount Mill Road within an Agricultural Preserve (AP) zoning district, (Assessor's Parcel No. 031-110-018) (the "Property"). The appeal challenges the Commission's adoption of the Mitigated Negative Declaration ("IS/MND") and approval of the Variance and Use Permit.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

Mitigated Negative Declaration prepared. According to the Mitigated Negative Declaration, the proposed Project may have, if mitigation measures, are not included, potentially significant environmental impacts in the following area: Geology & Soils; Hydrology & Water Quality. If the Board decides to deny the appeal, it would need to readopt the Mitigated Negative Declaration prior to approving the Project.

BACKGROUND AND DISCUSSION

On July 19, 2006, the Planning Commission approved the Applicant's request for the Variance and Use Permit to allow a 12,000 gallon per year Winery and related improvements and a variance from the 300 foot winery setback requirements. On August 1, 2006, subsequent to the Planning Commission's final decision and within the prescribed appeal period, an appeal was filed by attorney David Rice on behalf of Appellants.

CURRENT STATUS AND ACTIONS REQUESTED BY THE BOARD OF SUPERVISORS:

The matter before the Board is an appeal of the Planning Commission's decision approving Applicant's request for the Variance and Use Permit for the Winery. County Code section 2.88.090 provides for appeals of Planning Commission decisions and indicates that the Board's appeal hearing shall be based on the documentary record, including a transcript of the Planning Commission hearing, plus any additional evidence that could not have been presented at that time, unless the Board affirmatively permits additional evidence. The Code further states that following the appeal hearing, the Board may affirm, reverse, or modify the decision by the Planning Commission. Should the Board deny the appeal and approve the Project, the Board would also need to readopt the Mitigated Negative Declaration.

The Board should first consider whether any new evidence should be admitted as part of the appeal hearing, and then consider whether to adopt an intent to deny or uphold the appeal, and refer the matter to County Counsel for preparation of formal findings accordingly.

STATED BASIS FOR THE APPEAL AND STAFF RESPONSE:

The following outlines the basis of the appeal as contained in the Appellants' submittal dated August 1, 2006, and staff's response. For convenience, staff has numbered each issue and provided a summary, but recommends that the Board review the actual appeal in its entirety for more details.

Ground of Appeal No. 1: The Planning Commission Adopted Mitigation Measures at Its July 19th Hearing that Trigger CEQA's Requirements for Recirculation. At its hearing on July 19, 2006, at least one member of the Commission expressed concern that the Project's impacts had not been appropriately mitigated and requested reductions in the intensity of the proposed Winery use. Consequently, Appellants contend that the Planning Commission adopted several measures necessary to justify the conclusions in the IS/MND, which triggered CEQA's requirements for recirculation of the environmental document for public review and comment before it could be properly adopted. (CEQA Guidelines, §§ 15072, 15073.5.)

Staff Response: As noted in the transcript from the Planning Commission meeting, Commissioner King's discussions regarding a reduction in the marketing events and tours and tastings was an effort to reach a compromise between the Applicant's Winery request and neighbor concerns about additional noise and traffic.

None of the other four Commissioners considered the modest marketing proposal as having impacts that would warrant a reduction in the Winery's size, scale or intensity of use. In fact, Gamble voluntarily agreed to: (a) reduce the number of marketing events from 12 to ten; (b) to close the Winery to tours and tastings two days a week; and (c) reduce the average number of visitors per week from 50 to 25. The Applicant's changes to the Winery's operations were voluntary, accepted by the Commission and incorporated as conditions of approval on the Project. [See Planning Commission transcript pages 94 & 95.]

Furthermore, a reduction in the Winery's days of operation, number of marketing events and average visitors per week would result in less environmental impacts not more. The concessions made by the Applicant which were incorporated as revisions to the conditions of approval had no bearing on the IS/MND and were not adopted in response to a new, unavoidable impact or to address an impact or as a mitigation measure. Pursuant to CEQA Guidelines Section 15073.5 (c)(3) "recirculation is not required [where] measures or conditions of approval are added after circulation of the negative declaration which are not required by CEQA, which do not create new significant effects and are not necessary to mitigate an avoidable significant effect."

Ground of Appeal No. 2: Issuing the Requested Variance Violates Government Code Section 65906 and Napa County Code Section 18.128.050. Appellants contend that the Winery was improperly granted a Variance to construct a winery building and associated improvements within 120 feet of Cook Road where a 300 foot setback is required from the centerline of a public road. Variances from the terms of the zoning ordinances shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classifications. (Government Code Section 65906; Napa County Code, § 18.128.060, subd. (A)(2).)

The Planning Commission's finding that the Project is less likely to affect the flows or how the water is dispersed during a peak event and therefore reduce the potential effects to the public health, safety and welfare of Napa County is not supported by information in the record. The purpose of the setback from Cook Road "is to protect the scenic views and preserve the rural atmosphere of Napa County." The Variance is fundamentally at odds with the purpose of the regulation (which protects the public welfare). It does not promote public health and safety, although the rationale attempts to suggest as much, and it is not warranted by any special circumstance or unnecessary hardship. Rather, it is an attempt to weigh the relative importance of County policies in favor of granting the Variance, which is impermissible under state law as well as the Napa County Code.

Staff Response: Grant of the Variance will place the Winery and structures in an area on the Property with higher elevations thereby reducing or avoiding damage from floods. There are topographical and related flood issues that are unique to the Property. Furthermore, unlike other properties in the vicinity, Cook Road runs enough of the depth of the parcel so that a significant portion of the parcel is subject to the 300 foot setback requirement. The Property is located entirely in the flood way, is subject to required setbacks from the Napa River, is developed in 12 acres of mature vineyard (including contiguously owned property) and has existing mature vegetation, none of which will be removed. All of these conditions constrain where future buildings can be located. As such, the record contains ample evidence justifying the Commission's grant of the Variance.

Ground of Appeal No. 3: There Are No Unusual, Individual Circumstances Warranting Grant of the Variance. Variances are only for use in unusual, individual circumstances. Appellants contend there is no basis for granting a Variance if, as here, the circumstances of the Project site cannot be distinguished from those on surrounding properties. The Staff Report explains that, due to the topography, the floodplain, and the existing use of the Property, it would be "optimal" to locate the Winery in the proposed area, which involves a reduction in the required Cook Road setback from 300 to 120 feet. Appellants contend that the real reason the Applicant is requesting the Variance is that deviation from the County's policies affords better views from the proposed house. Appellants believe that the property right that the Applicant would be deprived of, should the Variance be denied, is the "right" to construct the desired number of buildings of the desired sizes in the desired "optimal" location.

The Staff Report further states that, to comply with the 300-foot setback requirement, the Project (as currently scaled), would need to be located lower in the floodplain or would require the removal of existing vineyards. According to the Staff Report, either locating the Winery lower in the floodplain or removing existing vineyards would violate important Napa County General Plan policies, such as reserving prime agricultural lands for agricultural use and promoting safety in order to avoid losses of life. The environmental review of the proposed Project failed to consider smaller structures or another land use proposal that would avoid such concerns. Appellants contend that if the Applicant and the County wish to further the goals of the General Plan, they could decide not to pursue the Project at all. A finding that the "right" to build a winery on the subject parcel justifies the grant of a Variance is highly suspect, particularly when the property is already improved with a single family residence and other facilities. (Staff Report, p. 6.)

Staff Response: See Staff Response to Ground of Appeal No. 2.

Ground of Appeal No. 4: CEQA Requires the County to Prepare an EIR to Disclose the Potentially Significant Environmental Impacts of the Proposed Project. A mitigated negative declaration is appropriate only if there is no substantial evidence in the record supporting a "fair argument" that significant impacts may occur. Expert information from FEMA and others regarding Project-related increases in base flood elevations indicates substantially increased risk of loss of life or property. The existing environmental setting is a rural residential site along a rural lane that is now proposed for commercial use to access a Winery proposed in the floodway, 25 feet away from the Napa River, and in close proximity to both Conn Creek and the Napa River Ecological Reserve. Cook Road is a ten to 11 foot wide driveway located entirely in the floodway with no turnouts or shoulders, bisecting Appellants' property before extending to the Applicant's residence. Vehicles entering and exiting the proposed Project cannot pass and would be required to travel in reverse for significant distances or encroach onto Appellants' property, which is farmed up to the edge of Cook Road on both sides.

Staff Response: The Applicant prepared an engineering report (referred to as a HEC-2 analysis) containing hydrological calculations for both existing floodway and proposed floodway base elevations post-construction. FEMA reviewed the submitted documents and issued a conditional letter of map revision (CLOMR). FEMA is the authorized agency required to review and approve work within the floodway per Napa County Code Chapter 16.04. The change in base elevation has been determined to be a less than significant impact. No evidence was provided to staff or the Commission that there would be an increased risk of flooding from the Project.^[1]

Contrary to Appellants' assertion, wineries are not considered a commercial use in Napa County and the Property is not designated as rural residential. Wineries are considered an agricultural use under the County's General Plan and zoning regulations. The Property is zoned Agricultural Preserve (AP) with a General Plan land use designation of Agricultural Resource (AR), both of which support residential and agricultural uses, including a winery.

No new winery development is proposed within 25 feet of the Napa River. An existing garage is to be replaced and angled differently to decrease impacts during a peak event. Re-positioning of the garage will disperse the water to provide less of a peak flow. In addition, the existing dwelling unit is being demolished and constructed in a new location, outside of the Conservation Regulation setbacks, adding additional riparian habitat to the Napa River corridor. Cook Road is of similar width (10-11 feet) as many other roads serving similarly-sized wineries throughout Napa County. The Applicant is required to comply with Road and Street standards for the access on the Property and Public Works has determined that the Project as proposed complies with those standards.

Ground of Appeal No. 5: The County Failed to Consider Impacts to the Sebastopol Meadowfoam. The Napa River Ecological Reserve is managed by the California Department of Fish and Game. The Reserve is

habitat for approximately 150 species of birds and other animals, and supports a diverse community of 238 plants, including the federal and state endangered Sebastopol meadowfoam (*Limnanthes vincularis*). Appellants contend the County's environmental review does not indicate any consideration of whether this plant is found on the proposed Project site.

Staff Response: A review of the County's Environmental Sensitivity Maps (red-legged frog, vernal pools, vegetation and plant surveys/CNPS layers) disclosed no evidence that the Sebastopol meadowfoam is present on the Project site. Additionally, the majority of the Winery and related development will occur in an area that has been previously disturbed. No credible evidence was submitted to staff or the Commission regarding the presence or potential habitat for the Sebastopol meadowfoam on the Project site.

Ground of Appeal No. 6: The Data that Underlies the County's Impact Conclusions Has Not Been Made Available for Public Review as Required Under CEQA. (CEQA Guidelines § 15072 (f).)

Staff Response: All of the data relied on by the County in support of its conclusions is contained in the Project file maintained in the Planning Department. As noted on Page 3 of the IS/MND, the documentation relied on was made available for the public's review and inspection during the review period.

Ground of Appeal No. 7: The County Must Consult With All Responsible and Trustee Agencies to Determine Whether an EIR is Required. Public Resources Code section 21080.3 and the County's Local Procedures for Implementing CEQA require the County to consult with responsible agencies, trustee agencies, and agencies with jurisdiction by law over resources that may be affected by the project. (Pub. Res. Code § 21080.3 (a); Napa County Local Procedures for Implementing CEQA pp. 14-15.) Appellants assert that in the present situation, these agencies include, at a minimum, the Department of Fish and Game, the Regional Water Quality Control Board and State Water Resources Control Board, and the California Department of Forestry and Fire Protection, FEMA, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service. Pursuant to the County's CEQA procedures, the proposed IS/MND must be circulated through the State Clearinghouse. The Staff Report indicates that the proposed Project has not complied with this requirement. Appellants contend that the public review period of only 20 days, from March 16, 2006 through April 4, 2006, was legally inadequate. (CEQA Guidelines § 15073 (a) and (d).)

Staff Response: Staff agrees with Appellants that the County is required to consult with responsible agencies, trustee agencies, and agencies with jurisdiction by law over resources that may be affected by a project. A responsible agency is one that has some discretionary authority for carrying out or approving the project. (CEQA Guidelines § 15381.) A trustee agency is a state agency with jurisdiction by law over natural resources that are held in trust for the people of the State of California and that may be affected by a project. (CEQA Guidelines § 15386.) An agency with some secondary authority will not be required to act as a responsible agency, however, unless that authority rises to the level of a discretionary approval subject to CEQA. (*Lexington Hill Ass'n v. State* (1988) 200 CA3d 415, 433.)

Staff disagrees with Appellants' assertion that there are trustee or responsible agencies that may be affected by the Gamble Winery. There are no permits or approvals required from the Department of Fish & Game, the Regional Water Quality Control Board, the State Water Resources Control Board, the California Department of Forestry and Fire Protection, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. FEMA has issued a CLOMR-Conditional Letter of Map Revisions. The County consulted with FEMA and ultimately FEMA issued a CLOMR-Conditional Letter of Map Revisions. There are no responsible or trustee agencies with jurisdiction by law over the Project. Since there are no responsible or trustee agencies, the IS/MND was not required to be circulated through the State Clearinghouse and the 20 day public comment and review period complied with the requirements of CEQA.

Ground of Appeal No. 8: The Project Description Is Incomplete, Inconsistent, and Inaccurate. The County

has determined that the Project will involve twenty people a day visiting the Winery by appointment only. Appellants contend no measure of monitoring or enforcement is described, and the IS/MND appears to rely on the face value of the Applicant's implausible and incomplete descriptions of Project features. The application indicates that the Winery will function with only one full-time employee, with two additional part-time employees only during harvest. Appellants allege that based on their experience as winery operators, these representations are not realistic because tastings require more than one employee; winery operations require more than one employee; and release events require substantially more than one employee.

In addition to catering vehicles, case goods trucks, and visitor vehicles, the Winery also will necessarily be served by grape trucks. Appellants assert that the Applicant's description of a self-contained "family winery" ignores the practical reality that a vintner would not base any winery only on sauvignon blanc, which is the variety currently grown in the existing vineyard. Yet, the environmental review accepts the Applicant's figures notwithstanding their inherent inconsistency with other basic elements of the proposed Project.

Staff Response: The Applicant is proposing a very limited marketing plan with a maximum of 20 visitors per day. At 2.6 persons per vehicle this equals approximately eight trips per day, with ten deliveries per day on the busiest day, plus two employees, for a total of approximately 21 trips per day. The existing Level of Service (LOS) at the intersection of Yount Mill and Cook Roads during peak hours is D. Because of the small amount of additional trips generated by this Project, the hours of operation, and the existing conditions at the intersection, no change in the current level of service would occur or cause any discernable additional impact to the roadways.

Tours and tastings may not occur when marketing events are scheduled. One release event per year with a maximum of 125 people (with 2.6 people per vehicle) equates to approximately 48 trips one day per year. The private promotional tastings proposed once a month with a maximum of 30 people equates to approximately 12 trips one day a month. Primary traffic analysis is based on the typical daily trips, which would be 21 trips per day or essentially less than five trips during any given hour of the day which is consequently less than significant. Given the small size of the Winery, the modest marketing plan, and that it will be a "family winery," the number of employees does not seem unreasonable or inconsistent with other similarly sized wineries in the County. The County analyzes environmental impacts based on a winery's production levels and marketing. Not on the type of grapes.

Ground of Appeal No. 9: The Project Description Fails to Describe the Size and Scope of Public Access and Entertainment Aspects. The Project description contains no discussion of outdoor facilities such as picnic areas and affords no description of the size and scope of the public access and entertainment aspects of the Project. The Project site is right on the Napa River, but the Project description provides no discussion of the limits of public access or by what means the Applicant will control visitors and prevent impacts from littering, parking on unpaved surfaces, and other tourist activities. Appellants are concerned about how the Applicant will prevent trespass on private property, unmanaged access to riparian zones, or other areas not designed for public use.

Staff Response: According to the Applicant's materials and site plan, no outdoor picnic or entertainment facilities are proposed as part of the Project. The conditions of approval adopted by the Planning Commission prohibit outdoor amplified music, require a separate permit for any temporary or special events not specifically authorized under the terms of the Use Permit or Variance and do not authorize outdoor picnic or entertainment facilities. (See Conditions of Approval Nos. 14 and 10.) A berm exists between the Napa River and all proposed Winery related development which will function as a natural barrier between the public areas of the Winery and the riparian zones. However, there is no requirement that riparian areas be closed off from visitors to the Winery. Appellants' concerns about littering, parking problems, trespass and unmanaged access to riparian zones is unfounded speculation and does not constitute substantial evidence about the Project's potential environmental impacts. As with all other approved wineries in the County, it is assumed that the Applicant will manage the Project in a lawful manner including preventing littering, complying with visitation and marketing numbers and adhering to all other conditions of their use permit.

Ground of Appeal No. 10: Inadequate Project Description Regarding Capacity of Winery Facilities. The capacity of the Winery facilities are represented in various places in the Project documents as 12,000 gallons per year (upon which the water supply and wastewater treatment discussions have been based), which other places (such as the proposed approval documents) represent the proposed capacity to be 15,000 gallons per year. For this reason and others, Appellants contend the septic feasibility analysis for the proposed Project is dubious because it fails to consider actual levels of use.

Staff Response: The IS/MND evaluated the environmental impacts of a 12,000 gallon per year Winery. Likewise, the Planning Commission Staff Reports and adopted conditions of approval refer to a 12,000 gallon per year Winery. The septic feasibility analysis also analyzed a 12,000 gallon per year Winery. The public hearing notice and Planning Commission agenda erroneously listed production at 15,000 gallons. During the Planning Commission's hearing on the Project, the typographical error was pointed out and the correct production capacity of 12,000 gallons was noted on the record.

Ground of Appeal No. 11: Possible Alternatives for Locating the Winery Should be Evaluated in an EIR. The Applicant's Statement of Use asserts that "[t]he applicants are seeking county approval to construct a new winery-residential compound so that they may realize a longstanding dream of processing wine grapes that are already grown [sic] on site and on other family vineyards into awarding [sic] winning white and red wines." (Statement of Use, Gamble Family Winery, December 15, 2005.) Appellants question how much Applicant really intends to do here with this "family winery". Because the Applicant owns adjacent parcels, in addition to presenting possible alternatives for locating the Winery that should be evaluated in an EIR, they point to longer range plans and cumulative effects that also should be evaluated in a comprehensive environmental document.

Staff Response: Aside from development of the Property with a single family residence, the County is unaware of any other reasonably foreseeable projects on the Property or on any adjacent properties. The adjacent parcels owned by Applicant total 15 acres and are currently developed entirely with vineyards, and also located within the floodway at a lower base elevation. There is no evidence in the record suggesting that these adjacent vineyard properties would be converted to some other use in the foreseeable future. Evaluation of alternative sites is not required by CEQA for Projects reviewed under an IS/MND.

Ground of Appeal No. 12: Failure to Consider Ministerial Elements of the Project. Appellants contend the County has failed to account for the impacts of the Project as a whole, including its "ministerial" elements, such as a ten-bedroom residence which likely will support tourist uses and which cannot be ignored, understated, or piecemealed away. (CEQA Guidelines, § 15378.)

Staff Response: The first page of the IS/MND identifies the new home, swimming pool and garage as reasonably foreseeable ministerial projects which were considered as part of the Project under environmental review. The total new on site improvements including the residence, Winery and other impervious surfaces will increase by approximately 4,179 square feet. Appellants' assertion that the residence will be used to support tourists is unfounded speculation and contrary to the Applicant's statements. Potential impacts on hydrology and water quality, population/housing, traffic, public services resulting from the reasonably foreseeable residence were considered in the IS/MND.

Ground of Appeal No. 13: Inadequate and Inaccurate Description of Project Features. The limited Project information that is provided is small and virtually illegible, and does not appear to accurately depict Project features. To comply with CEQA, the proposed site plan should clearly show, at a minimum, Project access in relation to existing roadways and ingress and egress for all Project components.

Staff Response: The Project site plan clearly depicted the Project as proposed and its access to Cook Road. These graphics are part of the Project file and were scanned and provided in the Planning Commission's

packet for public review.

Ground of Appeal No. 14: The Project May Result in Significant Adverse Traffic Safety Impacts.

Appellants contend the Project proposes 12 private, catered events for 30 people, as well as two catered release events for 125 people, in addition to weekly visits by 140 people and the associated grape trucks, case goods trucks, catering trucks, and other vehicles needed to service the facility. The only access to the Project site is along nearly half a mile of a narrow rural lane that bisects Appellants' property. Cars cannot pass on this driveway, which has no shoulders or turnouts. Appellants allege that it does little good to require the Applicant to provide an 18-foot wide driveway with two-foot shoulders on the Project site, when it is preceded by access only along this rural lane for nearly half a mile. Nothing in the County's environmental review accounts for the public safety impacts, including inadequate vehicular ingress and egress; inadequate emergency equipment access; and pedestrian/bicycle/vehicle conflicts where Cook Road bisects Appellants' property. The Project will cause significant adverse impacts because it results in inadequate emergency access and inadequate parking, and Project-generated traffic will substantially increase traffic safety hazards for pedestrians, bicycles, and automobiles on Project area roadways.

Staff Response: The Project has ten not 12 private marketing events. The Fire Department and Department of Public Works reviewed the Project and recommended various conditions be imposed on the Project to address fire safety and traffic impacts. The conditions recommended by the Fire Department and Department of Public Works were included as part of the conditions of approval adopted by the Commission. Furthermore, at the Commission hearing, George Nicholson, a traffic consultant, opined that the Project's installation of a three-way stop sign at eastbound Yount Mill will increase visibility. The traffic consultant further opined that Cook Road is flat, has shoulder areas on each side and because of the low volume of traffic expected, vehicles would be able to get by each other. Also, construction of the Winery will also allow the Applicant to process much of the fruit grown on-site and on adjacent vineyards at the Winery thus eliminating a significant percentage of fruit transport trips from Cook Road during the harvest.

Ground of Appeal No. 15: The Project Will Create Parking Impacts and Related Emergency Access Concerns that Constitute Potentially Significant Impacts that Must Be Evaluated in an EIR. Appellants contend that four parking spaces will not accommodate the anticipated number of visitors, employees, and delivery personnel anticipated during the operation of the Winery. Twelve private events for 30 people, as well as two release events for 125 people, are proposed in addition to the daily tours. Appellants assert that a site plan establishing only four paved parking spots is inadequate to satisfy these numbers without consequences that the IS/MND has failed to consider. Should more than four vehicles attempt to park at the Winery at the same time these vehicles will park on Cook Road and perhaps on the Appellants' property. Appellants claim that these parking problems (and related emergency access concerns) constitute potentially significant impacts that must be evaluated in an EIR.

Staff Response: The conditions of approval for the Winery allow ten not 12 private marketing events and prohibit marketing events from occurring on days when the Winery is open for tours and tastings. (See Condition of Approval No. 3.) The conditions of approval also require that Applicant use off-site parking and shuttle service to the Winery if any event exceeds the available on-site parking and prohibits access roads such as Cook Road and Yount Mill Road from being used for Winery related parking. (See Condition of Approval No. 8.) It is estimated that the Winery will generate approximately 21 additional vehicle trips per day. According to the Institute of Transportation Engineers, a single-family home would generate approximately ten vehicle trips per day. The small number of additional vehicle trips would not significantly change the existing traffic load and capacity of Cook Road and would not change the Level of Service on roads providing access to the Winery.

Ground of Appeal No. 16: The Project May Result in Significant Adverse Impacts to Hydrology and Water Quality Resulting from Erosion on Cook Road. Cook Road is a rural lane that becomes a concentrated water course during the rainy season, causing erosion and sedimentation; it has high erosion potential and was

not developed to withstand the proposed intensity of use. The proposed increase in vehicular use associated with the Project would accelerate bank erosion and the potential for mass wasting and bank collapse. Increased traffic and public access thus will cause significant adverse environmental impacts, but nothing in the IS/MND discusses these impacts or identifies measures to manage public use of Cook Road to avoid increasing erosion. One of the major sources of soil erosion, sediment production, and habitat loss in the watershed is roadways. The proposed Project involves ingress and egress exclusively by way of rural driveways and access roads. Increased truck trips and auto traffic will degrade these surfaces and cause substantial increases in road-related chronic surface erosion. Road runoff is a major source of fine sediment input to nearby stream channels, and the Project will significantly increase chronic erosion through a combination of road degradation, sheet, rill, and gully erosion. Appellants contend the County's environmental review of the proposed Project violates CEQA because it ignores these issues.

Staff Response: The Project is expected to generate approximately 21 additional vehicle trips per day which is comparable to the amount of traffic generated by two single family residences and is not expected to significantly degrade roadway surfaces or increase surface erosion. The Project site is essentially flat with slopes of 2% or less. The Applicant must prepare a Storm Water Management Plan and must cover all areas of disturbance with silt barrier fencing and straw bales to ensure that potential impacts associated with sediment loss and run off are less than significant. There is also an existing berm with extensive terracing work that was approved under a Streambed Alteration permit issued by the Department of Fish and Game that acts as a natural, protective barrier between the proposed development area and the Napa River. Appellants have provided no credible evidence demonstrating how 21 additional trips per day would degrade roadway surfaces or create erosion related impacts.

Ground of Appeal No. 17: The Project May Result in Significant Adverse Impacts to Hydrology and Water Quality Resulting from Runoff from Impervious Surfaces. The Staff Report asserts that "[n]o increase in impervious area is proposed," (Staff Report, page 9), but this statement is not supported by the record and is flatly contradicted by the IS/MND, which states that "[a]pproximately 4,179 square feet of new impervious area is proposed" as part of the Project. (IS/MND, p. 6.) In light of the rural nature of the existing environmental setting, the proposed increase in impervious surface area is substantial. (CEQA Guidelines § 15064(b).) Furthermore, the proposed improvements will be constructed very near the Napa River, with the garage constructed only 25 feet from the top of bank.

Staff Response: No new impervious surface is proposed within the stream setbacks. The IS/MND specifies that an additional 4,179 square feet of new impervious area is proposed. Given the size of the property, 12 acres, increasing impervious surface by 4,179 square feet represents a 1.3% in total impervious surface, and therefore will not substantially affect runoff rates and water quality. (See IS/MND Page 6.) The proposed new development for the Winery is located outside of the required stream setbacks. As discussed in the IS/MND, under Hydrology, minimal new impervious area is proposed. There is an existing garage that will be rebuilt in essentially the same location. The area around the garage is currently impervious surface therefore no new impervious surface is proposed within the stream setbacks. All new impervious area is located outside of the stream setbacks. All work, not just in the vicinity of the stream, is required to obtain a SWMP (Storm Water Management Plan). Therefore any siltation or sediment will be contained within these measures. Additionally, the existing berm previously mentioned provides an additional barrier to the Napa River.

Ground of Appeal No. 18: The Project May Result in Significant Adverse Impacts to Hydrology and Water Quality By Altering the Existing On-Site Drainage. Appellants assert that the Project could alter the existing on-site drainage pattern in a manner that would substantially degrade water quality in downstream receiving water bodies by increasing the suspended sediment load and/or contributing other pollutants to the natural waterways. The IS/MND provides no quantification of runoff or erosion impacts related to demolition and construction activities, or from new impervious surfaces; nor does the document quantify the effectiveness of mitigation upon which it relies to conclude that all impacts are mitigated to less than significant levels. Failure to do so violates CEQA.

Staff Response: As mentioned in the previous response, potential impacts were analyzed and none were found with the requirements of a SWMP. Quantification is not required to adequately assess the impacts, and use of a SWMP is a common and effective measure for addressing impacts associated with storm water runoff.

Ground of Appeal No. 19: The Project May Result in Significant Adverse Impacts Because the Project Could Expose People and Structures to a Significant Risk of Loss Due to Flooding. Engineering data prepared by Roger Fry of CDM Engineering indicate that the information relied upon by the Planning Commission in approving the Project is inaccurate. The Planning Commission relied on information presented in the IS/MND stating that the Project would actually result in a reduction in the base flood elevation and would not increase flood risk. This information is incorrect, and CDM Engineering's analysis demonstrates that the Project would not lower the flood elevation and likely would increase it. The Planning Commission relied on inaccurate data to approve the Project in a manner contrary to the terms of Napa County Code section 16.04.560, which prohibits development in the floodway.

The proposed Project involves earthmoving and grading activities, construction of buildings and related facilities, and an increase in impervious surfaces that lead to changes in drainage patterns. These factors require a quantitative analysis of runoff in relation to channel stability and flooding, not only in connection with peak flood events but also during high frequency, low magnitude floods. Rural residential/winery development increases small stream peak flows by increasing impervious areas (roofs, driveways, etc.) which may increase gullying, channel downcutting and bank erosion in small and medium size channels in the watershed, such as Conn Creek.

The proposed Project could alter the existing on-site drainage pattern in a manner that could substantially increase the volume and rate of surface runoff such that on or off-site drainages become unstable (either by increased erosion or increased sediment deposition), the capacity of existing or planned stormwater drainage systems (which include natural drainage channels and not only "public works" stormwater systems as suggested in the Staff Report) could be overwhelmed, and significant flooding could occur. Furthermore, the Project would place housing within a 100-year flood hazard area and would place structures within a 100-year flood hazard area that would impede or redirect flood flows. The County's environmental review must quantify these effects of the proposed Project and assess their significance.

Staff Response: Roger Fry of CDM Engineering testified before the Commission that he had not yet completed his review of the information and therefore was unable to render an opinion on the effect of the Project on floodway. Subsequent to the Commission meeting and in connection with the appeal, Appellants submitted a technical report from CDM Engineering which suggests that additional study may be warranted to more accurately define the floodway and 100-year water surface elevations. The report does not provide evidence that the proposed project will cause or exacerbate flooding in the vicinity. It is also unclear whether the applicant's analysis considers aspects of the project design such as water flow under the house and proposed site grading. Napa County relies on FEMA to review and approval of work within the floodway and will provide a copy of the CDM report to FEMA for their consideration.

In light of the appellant's report, staff proposes to consolidate mitigation measures numbers three and four in the initial study, and modify the combined measure as follows (new text is underlined): "3. Prior to any permitting, the applicant/owner shall provide to the Planning Department written verification from FEMA that the proposed water tanks were included in the CLOMR, and written documentation that FEMA has received the additional information provided by the appellant. If required by FEMA, a revised CLOMR shall be submitted to the Planning Department prior to the issuance of any permits. In addition, prior to a temporary or final certificate of occupancy (whichever comes first), written documentation from FEMA that all provisions of the applicable CLOMR have been met shall be submitted to the Planning Department and the Department of Public Works."

This modification would not necessitate changes to the mitigation monitoring program or recirculation of the environmental document. Pursuant to State CEQA Guidelines Section 15073.5(c)(1), recirculation is not required where mitigation measures are replaced with equal or more effective measures.

Ground of Appeal No. 20: The Project May Result in Significant Adverse Impacts on Groundwater Contamination. The IS/MND includes no discussion of groundwater quality and the relationship of groundwater to surface water in the Project area. The surface-groundwater connection and Project effects on groundwater quality as well as on neighboring wells and surface water sources need to be discussed in an EIR. The need for study is particularly important given the Project's dubious reliance on a septic system that may not be feasible for the wastewater capacity at issue.

The septic feasibility report for the Project acknowledges two site evaluations by experts who determined that the soils on the Project site are "unacceptable soils for any type of sewage disposal system." (Riechers Spence & Associates, p. 2 (Attachment 4).) A percolation test was done "to replace the unacceptable results of the previous site evaluations," and reached its conclusions based on limited uses of the facilities that according to Appellants do not accurately represent the proposed Project. This study assumes a 12,000 gallon per year Winery and one employee. No account is made for visitors. Although release events purportedly will be served by portable toilets, some public use of the Winery's facilities is unavoidable and must be included in the County's analysis. An overloaded septic system can cause untreated wastewater and its contaminants to move to the groundwater, the rise of wastewater to the surface, or both. Subsurface overload and contamination may go unnoticed, with harmful effects on groundwater and/or surface water quality. An EIR must be prepared to evaluate the risk of inundation, flushing of contaminants and system washout due to flooding.

Staff Response: The septic feasibility report was reviewed by the Department of Environmental Management and was found adequate to support the peak daily visitation. For larger events, porta-potties are utilized. The Department of Environmental Management's evaluation and consequent conditions of approval are based on years of reviewing dozens of similar winery operations throughout Napa County. The Project, as conditioned, does not have a significant potential to impact groundwater quality, and there is no evidence in the record to suggest otherwise.

Ground of Appeal No. 21: The Project Improperly Defers Mitigation. The IS/MND recognizes substantial evidence of a potentially significant impact associated with the proposed wastewater system, but Appellants assert it punts the duty to mitigate the impact to the Department of Environmental Management ("DEM"). The DEM does not conduct comprehensive review (e.g., in relation to surface water or the groundwater table) as required under CEQA. The IS/MND violates CEQA because it relies only on a percolation test (IS/MND, page 11), and defers mitigation to future study without any performance standard. Wastewater from the Project includes disease-causing microorganisms such as viruses and bacteria, as well as nutrients that degrade water quality. The pathogens and nutrients must be treated with an effective soil absorption system. The Project will rely on an on-site treatment system that may not function properly to destroy the bacteria in the system. Appellants assert that Applicant's septic feasibility report likely understates the Project's wastewater volume, and even assuming that the numbers are correct, the feasibility report shows that soils on the site lack sufficient ability to absorb, treat, and properly dispose of effluent. To be effective, the septic system requires a stable land surface not subject to flooding, well-drained permeable soil, and a location above the maximum expected level of groundwater. Because the site lacks these elements, the Project may create a public health hazard or contaminate surface or groundwater.

Staff Response: The IS/MND under Hydrology and Water Quality found that due to the minimal amount of new impervious area, incorporation of best management practices and with final review and approval of the proposed wastewater by DEM, all County regulations can be met. The septic feasibility report submitted by Riechers-Spence and Associates found that adequate soil conditions exist in which a 1.0 in/hr, with a trench bottom at 32 inches below existing grade would meet necessary design criteria for the installation of the system;

therefore, the liquefaction has been analyzed. The septic system and Winery waste water system was analyzed by DEM and found to meet the requirements of the County Code. The IS/MND properly discloses the project's potential impacts, and applies appropriate mitigation measures. CEQA does not require an applicant to fully design a septic system prior to discretionary approval of the project. The applicant submitted the required amount of information for the Department of Environmental Management to evaluate the proposal and recommend approval with conditions. The Department of Environmental Management's review of the waste water system is based off of decades of experience evaluating similar winery facilities in similar soil conditions. There is no factual evidence on the record to conclude that this project may create a public health hazard or contaminate surface groundwater.

Ground of Appeal No. 22: The Project May Result in Significant Adverse Impacts to Special Status Aquatic Species. The Napa River and its tributaries were listed based on widespread erosion and concerns regarding adverse impacts to fish habitat, particularly for steelhead and salmon. The IS/MND includes no discussion of potential impacts associated with erosion and its effects on special status species such as the central California coast steelhead. Nor does the IS/MND account for potential impacts to western pond turtles, which inhabit rivers and creeks in the area and use upland for nesting. Ground disturbing and drainage activities, such as the construction activities associated with the proposed Project, impact these species.

Staff Response: Please see Staff Response to Ground of Appeal No. 5, 9, 16, 17, and 26. The new impervious area is proposed outside of the required stream setbacks. Information in the County's files indicate there are no listed species or candidate species on the Project site. No evidence of any listed species, candidate species or potential impacts to the Napa River resulting from the Project was presented to staff or the Commission.

Ground of Appeal No. 23: The Project May Result in Significant Adverse Impacts Related to Geology and Soils. The IS/MND acknowledges that there is substantial evidence of potentially significant impact in connection with liquefaction. (IS/MND, p. 7.) Construction related activities can increase water pressure, which decreases the strength of the soil, and the ability of the soil to support foundations for buildings and other structures is reduced. Ground failure can result. Liquefaction also exerts higher pressure on retaining walls, bank protection, etc., and can cause them to tilt or slide and can also trigger landslides. The liquefaction hazard is significant in the Project area because it is underlain by unconsolidated alluvium and a relatively shallow groundwater table. Liquefaction may cause major sliding and slumping of soil toward the Napa River or Conn Creek, and can push foundations out of place. A mitigation measure requires that all development to comply with all the latest building standards and codes, including the California Building Code to reduce any potential impacts to the maximum extent possible and requires a soils report, prepared by a qualified Engineer will be required as part of the building permit submittal. The report will address the soil stability, potential for liquefaction and will be used to design specific foundation systems and grading methods. (Staff Report, p. 5.)

Appellants assert that mitigation "to the maximum extent possible" does not in any way assure that the impact will be less than significant and therefore violates CEQA. (*Schaeffer Land Trust v. City Council* (1989) 215 Cal.App.3d 612; *Sacramento Old City Assn. v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011.) The proposed Project would be located on soil that may result in liquefaction, bank collapse, or mass wasting.

Accordingly, the Seismic Safety Element of the Napa County General Plan requires a geologic/seismic report for all proposed structures and facilities open to the public and serving 100 persons or more. (Napa County General Plan, Goal A, policy 2(c).) This report must be part of the County's environmental review, not simply a deferred "mitigation measure" with no objective performance standard and no measure of effectiveness. (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359.)

Staff Response: The project is required to comply with the requirements of the Uniform Building Code. Prior to the issuance of a building permit the Applicant will submit a project-specific soils report, and all improvements must be in compliance with the Uniform Building Code, and consequent the General Plan policy,

before construction can commence. High liquefaction is found throughout the State of California and with proper engineering design anything can be built in a high liquefaction area. There are several State-recognized engineered building systems approved for use in areas of high liquefaction

Ground of Appeal No. 24: The IS/MND Violates CEQA by Improperly Deferring Analysis of Impacts and Formulation of Mitigation Measures. The IS/MND for the Project relies on “mitigation” that states nothing more than that the Applicant must comply with building codes, zoning standards, and requirements of other agencies and County Departments. (Staff Report, p. 14.) Future studies, plans, and conditions are bound by no objective performance standards, and compliance with these “mitigation measures” has been set up with only a measure of “substantial compliance.” (Staff Report, p. 14, Condition 11.) This approach violates CEQA; it by no means establishes either the effectiveness or the enforceability of the so-called mitigation, and leaves resolution of important environmental issues for a later date, after the project has already been approved. (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359.)

The Appellants contend the Project does not comply with the County’s Local Procedures for Implementing CEQA specifically, Section 802, which describes the minimum contents of the mitigation monitoring program and recognizes that mitigation measures must include “identification of the specific results or performance standards that the mitigation measure is intended to accomplish.” (Napa County’s Local Procedures for Implementing CEQA, p. 18.)

Staff Response: Staff disagrees with Appellants and contend the IS/MND including the Mitigation Monitoring and Reporting Program complies with CEQA and the County’s Local Procedures for Implementing CEQA. Exhibit “A” to the IS/MND includes a Mitigation Monitoring and Reporting Program that identifies the mitigation measures; the department or party responsible for monitoring the measure; the monitoring/reporting action and schedule; and a column for completion of the measure with the name and date of the party verifying completion of the measure. Prior to issuance of permits, Planning Department staff reviews all prior use permits and/or variances for compliance with the conditions of approval and the mitigation monitoring plan prior to clearing the permit for issuance. Continual on-site monitoring occurs during construction activities by all inspectors within Napa County.

Ground of Appeal No. 25: The Project May Result in Significant Adverse Impacts Related to Aesthetics and Visual Intrusion. The proposed new structures are extremely large and will cover approximately 20,000 square feet. In addition to considering the impact of these structures associated with diverting floodwaters from the Napa River and Conn Creek, the Project’s aesthetic impacts require evaluation. (*Pocket Protectors, supra*, 124 Cal.App.4th at pp. 910-918, 926-940; *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572.) The proposed garage, for example, would be located a mere 25 feet from the Napa River, yet the IS/MND includes no discussion of the view of the proposed structures from the river corridor.

The only “mitigation” identified in connection with visual intrusion is that a landscape and lighting plan will be prepared that will “provide some visual buffering, reducing associated impacts to less than significant.” (IS/MND, p. 4.) As noted above, the County lacks any basis for its determination that potential impacts have been or will be mitigated to less than significant levels. This is particularly true since the IS/MND includes no discussion of visual intrusion or privacy concerns raised by visitors’ headlights or by outdoor public access. The possibility of a significant increase to nighttime lighting is understated. The proposed Project site is located in a rural area with few homes. The proposed Project consists of a 7,400 square-foot Winery with regular daily tours and tastings. Undoubtedly, the proposed Project will include significantly more functional and artistic lighting than currently exists on the property. Fourteen private events are expected which will last until at least 10:00 p.m., not including all the traffic that will continue past 10:00 p.m. as the guests leave. Thus, on a monthly basis, the proposed Project will contribute to even more nighttime light due to the operation of the private events, will lead to substantially more nighttime lighting in the area in relation to existing conditions and will substantially alter its current rural residential character. The amount of glass associated with the proposed Project may cause a significant increase in daytime

glare and alter the character of the area as well, especially considering the height of the Project (over 45 feet).

Staff Response: The nearest neighbor is approximately 260 feet from the proposed Winery and the development will be screened from view by existing mature trees. The Winery will be open during regular business hours (7AM to 5 PM) and will only be open to the public for tours and tastings five days a week. The conditions of approval imposed by the Planning Commission authorize only 12 (not 14) marketing events per year or approximately one per month. (See Condition of Approval Nos. 1, 2 and 3.) The Winery's design is traditional Victorian style which does not have an excessive amount of glass or large areas covered with a reflective surface. The design is consistent with the County's General Plan Policy concerning aesthetics. The Project conditions of approval require that all exterior lighting be shielded and directed downward and the minimum necessary for safety and security. (See Condition of Approval No. 7.) The winery measures at 45 feet total, however, as measured by County Code, 18.104.120 the average height is less than 35 feet.

Ground of Appeal No. 26: The Project May Result in Significant Adverse Impacts Related to Biological Resources, Including Special Status Bird Species. Appellants contend that the Project site supports a number of heritage trees and habitat that provides food and shelter for a variety of bird species and thus may provide foraging and nesting habitat for a variety of special status birds. Appellants contend the County must provide measures to ensure that surveys for special status species will be conducted by qualified biologists using accepted protocols at the appropriate time of year. In addition, the County must identify measures to protect retained trees and their root systems, including appropriate restrictions regarding parking, storage of vehicles, and equipment or machinery within driplines.

Staff Response: The County's Environmental Resource Maps (the red-legged frog, vernal pools, vegetation and plant surveys/CNPS layers), did not identify the presence of any habitat that would support candidate, sensitive or special status species or the actual presence of candidate, sensitive or special status species on the Project site. This finding is consistent with the Applicant's reported review of the Department of Fish & Game's Natural Diversity Database which also indicated no known occurrences of rare, endangered or candidate specie plants or animals on the Project site or in the vicinity. None of the existing mature trees will be removed. The garage which is currently located within 25 feet of the Napa River will be reconstructed in the same location with a minor repositioning to accommodate a peak flood event. Otherwise all of the work associated with the Winery and related improvements and the new residence will occur outside of the County's stream setback requirements and outside of the tree lines. No credible evidence has been presented to the County or the Planning Commission regarding the presence of special status species or plants on the Project site.

[1] Subsequent to the Commission's decision and as part of the appeal, Appellants submitted a technical memorandum from CDM Engineering regarding flood way base elevations. The memorandum suggests that further analysis may be needed to more accurately define the floodway and 100-year water surface elevations, but does not contain evidence that suggests the project will induce or exacerbate flooding in the vicinity. FEMA is the authorized agency required to review and approve work within the floodway per Napa County Code Chapter 16.04 and would be provided with copies of the appellant's report. As a result, FEMA may choose to revise its conditional letter of map revision (CLOMR). Any project revisions required as a result of FEMA's review would be assessed to determine if additional analysis under CEQA is required pursuant to State CEQA Guidelines Section 15162. Also see Staff Response to Ground of Appeal No. 19.

SUPPORTING DOCUMENTS

A . Appellant's appeal application

- B . Appellant's supplemental information-Flood Analysis
- C . Applicant's response to appeal
- D . Planning Commission Packet
- E . Ren Harris's (and attorney representative) package to Planning Commission

CEO Recommendation: Approve
Reviewed By: Andrew Carey