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Agenda Date: 10/21/2009  
Agenda Placement: 9A

## Napa County Planning Commission Board Agenda Letter

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**TO:** Napa County Planning Commission  
**FROM:** John McDowell for Hillary Gitelman - Director  
Conservation, Development & Planning  
**REPORT BY:** John McDowell, Deputy Director - 299-1354  
**SUBJECT:** Fisher Winery - FIV Partners - P08-00346-UP

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### **RECOMMENDATION**

#### **FISHER WINERY / FIV PARTNERS LP - USE PERMIT #P08-00346-UP**

**CEQA Status:** Mitigated Negative Declaration prepared. According to the proposed mitigated negative declaration the proposed project would have, if mitigation measures are not included, potentially significant environmental impacts to the following areas: Archaeology/Cultural Resources. The project site is listed as a closed hazardous waste site enumerated under Government Code section 65962.5.

**Request:** Approval of a use permit to establish a 30,000 gallon per year winery to include: (1) a 16,186 square foot winery building with laboratory, office space, hospitality area, conference room, offices, case and barrel storage, and a commercial kitchen; (2) installation of winery wastewater systems; (3) 2 full-time employees, 2 part-time employees and an additional 4 seasonal employees during harvest/crush; (4) 14 parking spaces for employees and visitors; (5) tours and tastings by-prior-appointment for a maximum of 10 visitors per day and 50 visitors per week; and (6) 23 marketing events per year with a maximum of 25 visitors per event. The project is located on a 55.7-acre parcel on the southwest side of Silverado Trail approximately 350 ft. from its intersection with Pickett Road and within the Agricultural Preserve (AP) zoning district. APN: 020-150-004. 4771 Silverado Trail, Calistoga.

**Staff Recommendation:** Adopt the Negative Declaration and approve the Use Permit with proposed conditions of approval.

**Staff Contact:** John McDowell, 299-1354, [jmcdowel@co.napa.ca.us](mailto:jmcdowel@co.napa.ca.us)

### **EXECUTIVE SUMMARY**

**Proposed Action:**

1. That the Planning Commission adopt the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Fisher Winery, based on findings 1-6 of Exhibit A;
2. That the Planning Commission approve the Fisher Winery Use Permit P08-00346-UP based on findings 7-11 of Exhibit A and subject to the recommended conditions of approval in Exhibit B.

**Discussion:** The project consists of a new 30,000 gallon per year winery on a 55.7 acre parcel south of the City of Calistoga and accessed off of Silverado Trail. The parcel contains a primary residence, a farm worker residence and vineyards. The winery will be located at the rear of the property approximately 2,000 ft. from Silverado Trail near an existing irrigation pond. Approximately 16,200 sq. ft. of new structures will be constructed featuring board on board siding with stone veneers and corrugated metal roofing. The project is in close proximity to the City of Calistoga's sewage treatment plant. The City has requested that the owner indemnify the City against potential odors originating from the plant, for which the applicant is currently refusing. Staff is recommending approval of the project, and does not believe the County has a nexus to require the owner to indemnify the City.

### **FISCAL IMPACT**

Is there a Fiscal Impact?                      No

### **ENVIRONMENTAL IMPACT**

Mitigated Negative Declaration prepared. According to the proposed mitigated negative declaration the proposed project would have, if mitigation measures are not included, potentially significant environmental impacts to the following areas: Archaeology/Cultural Resources. The project site is listed as a closed hazardous waste site enumerated under Government Code section 65962.5.

The project site contains an archeological site in close proximity to the proposed facility. The site has been previously surveyed by qualified archeologists. For protection of the resource, the specific location of the site cannot be disclosed as mandated by State law. Mitigation measures are necessary to prevent disturbance of the known site, and to monitor the construction activities due to the possibility that additional, unknown resources may be unearthed. The mitigation monitoring and report plan detail those mitigation measures. With mitigation, the project has a less-than-significant potential to affect cultural resources.

### **BACKGROUND AND DISCUSSION**

**Owner:** FIV Partners LP

**Applicant:** Robert Fisher

**Representative (Project Manager):** Jon Webb, Albion Surveys

**Zoning:** AP (Agricultural Preserve)

**General Plan Designation:** AR (Agricultural Resource)

**Filed:** May 8, 2008

**Building Size:** 16,186 square feet (including accessory structure below)

**Accessory Structures:** 1,320 square feet wine lab and storage building, solar panel array

**Production Capacity:** 30,000 gallons per year

**Visitation:** A maximum of 10 visitors per day with no more than 50 visitors week

**Marketing:** 23 events per year with a maximum of 25 persons per event

**Number of Employees:** Two full-time, two part-time employees, and 4 seasonal employees during harvest

**Days and Hours of Operation:** 7:00 AM to 5:00 PM, five days a week (Marketing Events: Potentially any day of the week -12 noon to 10 PM)

**Parking:** 14 parking spaces, including one ADA-accessible space

#### **Adjacent Zoning / Land Use:**

##### Northeast

AP - Vineyards and residence (21.45 acres)

##### Southeast

AP - Vineyards and residences on 3 parcels (9.18, 20.39 and 24.69 acres)

##### Northwest

AP – Vineyards and residence (26.6 acres)

##### Southwest

City of Calistoga - Bike path and Sewage Treatment Plant

#### Nearby Wineries (within one mile of the project site):

Clos Pegas Winery - 1060 Dunaweal Ln. - Approved 1984 - 200,000 gal/yr - 43,100 sq. ft. - Open to public

Twomey Cellars – 1083 Dunaweal Ln – Approved 1973 - 81,400 gal/yr – 25,510 sq. ft. - Open to public

Cuvaision Winery – 4550 Silverado Trail – Approved 1970 – 155,000 gal/yr – 46,026 sq. ft. - Open to public

Pavitt Winery – 4660 Silverado Trail - Approved 2009 but not production - 10,000 gal/yr - 3,360 sq. ft. - By appt.

Venge Winery - 4708 Silverado Trail - Pending - 2361 Greenwood Avenue - 20,000 gal/yr – 24,400 sq. ft. – By appt.

Araujo Estate Wines - 2155 Pickett Road - Approved 1988 - 20,000 gal/yr - 24,000 sq. ft. - By appt.

#### **Property History:**

1969 - Building permit issued to rehabilitate decades old farmhouse on front of property near Silverado Trail

1976 - Building permit issued for second unit located in central portion of the property

1977 - Agricultural contract issued on property

June 2003 - 25-acre foot reservoir approved on rear portion of the property, which included improvement of the existing agricultural service drive to County standards for drive aisle.

### **Code Compliance History:**

Based on a review of the County Planning and Building files, there have been no complaints or code compliance issues filed against this property.

### **Discussion Points:**

#### 1. City of Calistoga November 10, 2008 Letter

The County has received comments from the City of Calistoga Planning and Building Department. The letter includes five points that the City requests be addressed in the conditions of approval for the project. First is a request that the property owner indemnify the City over any claims resulting from the operation and maintenance of their sewage treatment plant. Other points raised requests consideration and/or conditions of approval for: control of post-development peak stormwater discharge; inclusion of a traffic study to include impacts associated with use of the Silverado Trail/Highway 29 intersection; mitigations for project related housing needs; and notes the City's Fire Chief will transmit comments directly to the County Fire Marshall.

A. Sewage Plant Indemnification - The City's preferred form of indemnification agreement is attached to their letter and included with this report. The letter and agreement were forwarded to the applicant, and the applicant responded that they do not consent to entering into such an agreement. County Staff notified the City of the applicant's unwillingness. County Staff also questioned City Staff whether the City was willing to purchase an odor easement or perhaps trade out indemnifications with the property owner concerning the property owner's right-to-farm, but City Staff did not respond to these questions.

County Staff views this issue as a neighbor matter separate from the Use Permit request. It does not appear that the City has any jurisdiction over the project, although the project site adjoins the City and is within the City's planning area. Consequently, the City does not have the ability to apply conditions of approval to the project, nor can they mandate that the County apply conditions on their behalf. In granting a Conditional Use Permit, the County has the authority to apply conditions of approval, but all conditions must have a rational nexus, or binding connection, between the condition/requirement and the project. In this case, the applicant wishes to build a winery in close proximity to a sewage treatment plant, which in itself does not constitute a nexus. If the record (as a whole) for the project were to indicate that the sewage treatment plant resulted in significant odors and noise that would potentially result in harm, impact or annoyance to the winery property owner and its customers, then the Planning Commission could find that a nexus exists and apply conditions of approval to address the concern. However, County Staff does not believe that such a nexus exists. The City is required by State law to operate the facility in accordance with certain health and safety requirements, which include applying best management practices to reduce odors and noise at the facility, which County Staff has concluded results in less-than-significant amounts of off-site noise and odor impacts. There are other wineries in close proximity to the sewage treatment plant, most notably Clos Pegas, which operate without being significantly impacted by the treatment plant. Wineries, as agricultural process facilities, produce noise and odors during certain periods as well.

B. Storm Run-off Discharge - City Staff requested a condition of approval concerning peak stormwater runoff and erosion control. The County already thoroughly regulates both construction and post-construction discharge and has a State Regional Water Quality Board certified stormwater pollution prevention program. County standard requirements are being applied to this project.

C. Traffic Study - The City asserted that a traffic study for the project was necessary to address the project's potential to impact the City's intersection of Silverado Trail and Highway 29. The County traffic engineer considered this request, and found that evaluation of the intersection was not necessary because the project would not result in discernable number of new trips to that intersection. The traffic study prepared for the project indicates that the traffic at the project's connection with Silverado Trail is below the warrants requiring a turn lane. As is the case with most winery visitor traffic, the majority of visitor traffic accessing the site will come from, and depart to, the south. The project is generally south of the City. The exception to this would likely be from visitors utilizing City tourist facilities such as restaurants and hotels. County Staff is compelled to point out that the City has not previously required projects within the City to mitigate impacts to County roads resulting from such uses.

D. Housing Analysis - The City is concerned that the County include mitigation of housing needs associated with the employees generated by the project. The County applies a housing impact mitigation fee to all agricultural and commercial developments. The project will result in 2 full time, 2 part time, and 4 seasonal employees. There are two housing sites currently on the project site.

E. City Fire Department Comments - The City's Planning Staff indicated that the City Fire Marshall would comment on the project directly to the County Fire Marshall. The County Fire Marshall indicated that the City Fire Marshall did not comment on the project, but noted that the County Fire Marshall must rely on the same standards and code requirements that the City Fire Marshall is obligated to follow.

## 2. Silverado Trail Access

As designed, the project's production capacity, visitation and marketing levels fall below the warrants triggering installation of the left turn project. Immediately south of the project is a bridge over Simmons Canyon Creek (a.k.a. Canyon Creek). Installation of a turn lane for this winery would require either relocation of the driveway north, or widening of the bridge of Canyon Creek. Consequently, the applicant chose to design a project that result in low traffic generation so as to avoid the need for the turn lane. If in the future expansion of the winery is proposed, a turn left will be necessary.

## 3. Neighbor Comments

As of printing of this report, no written neighbor comments have been recieved on the project. However, several letters in support of the project from Napa Valley wineries/businesses have been recieved and are attached to this report.

## **Consistency with Standards:**

### Zoning

The project is consistent with AP (Agricultural Preserve) zoning district regulations. A winery (as defined in Napa County Code Section 18.08.640) and uses in connection with a winery (see Napa County Code Section 18.16.030) are permitted in the AP district with an approved use permit. This application complies with the Winery Definition Ordinance and the setbacks and other requirements of the Zoning Code.

### Building Division Requirements

The Building Division recommends approval with standard conditions. Please see their October 27, 2008 referral form (attached).

### Fire Department Requirements

The Fire Department recommends approval with standard conditions. Please see their November 12, 2008 memo (attached).

### Public Works Department Requirements

The Public Works Department recommends approval with conditions of approval under their memo of October 12,

2009. A revised water calculation was provided by the applicant but not yet incorporated into the Public Works memo. Existing water use for the property was originally 21.8 ac/ft per year, and the originally projected water use with the project was estimated at 21.6 ac/ft per year, but it assumed vineyards would be removed as part of the project. The revised water calculation projects estimated water demand at 22.6 ac/ft per year. Public Works is revising their Groundwater memo accordingly and it will be available prior to the meeting.

#### Environmental Management Department Requirements

The Department recommends approval provided all conditions of approval are satisfied. Please see their memo of August 25, 2009.

#### Sheriff's Department Requirements

The Sheriff's Department has reviewed this application and has no comment.

### **SUPPORTING DOCUMENTS**

- A . Exhibit A - Findings
- B . Exhibit B - Proposed Conditions of Approval
- C . Department Comments
- D . Initial Study / Draft Mitigated Negative Declaration
- E . Traffic Study
- F . Biological Assessment
- G . Application Materials
- H . City of Calistoga Letter
- I . Comment Letters
- J . Graphics

Napa County Planning Commission: Approve

Reviewed By: John McDowell