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Agenda Date: 11/19/2008

Agenda Placement: 9B

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission
FROM: John McDowell for Gitelman, Hillary - Director
Conservation, Development & Planning
REPORT BY: Chris Cahill, Planner - 707.253.4847
SUBJECT: Vasser V-12 Winery Use Permit No. P07-00598-UP

RECOMMENDATION

BOB KLEIS / JAMES E. VASSER JR. / VASSER WINERY - USE PERMIT #P07-00598-UP

CEQA Status: Mitigated Negative Declaration Prepared. According to the proposed mitigated negative declaration, if mitigation measures are not included, the proposed project would have potentially significant environmental impacts in the following areas: Aesthetics and Biological Resources. The project site is not on any of the lists of hazardous waste sites enumerated under Government Code section 65962.5

Request: Approval of a Use Permit to establish a new 36,000 gallon per year winery with: 1) a 7,000 sq. ft. winery cave including production, storage, office, and tasting room facilities; 2) a 5,500 sq. ft. uncovered outdoor crush pad and loading area; 3) a winery/agricultural storage barn totaling 1,800 sq. ft. and including 900 sq. ft. of winery equipment storage; 4) two full-time and two part-time employees; 5) eleven parking spaces; 6) by-appointment tours and tastings with a maximum of 16 visitors per day and 36 per week; 7) a marketing plan with four 50-person max. marketing events and one 100-person max. wine auction event annually; 8) an exception to the Road and Street Standards to allow a new winery access road with widths between 14 and 18 ft. (18 ft. required); and 9) the construction of four turnouts on Chimney Rock Road. The project is located on a 42.4 acre parcel located on the west side of Soda Canyon Road, adjacent to its intersection with Chimney Rock Road, and within the AW (Agricultural Watershed) zoning district. APN: 039-630-011. 2001 Soda Canyon Road, Napa, CA 94559.

Staff Recommendation: Adopt the mitigated negative declaration and mitigation monitoring and reporting plan and approve the use permit as conditioned.

Staff Contact: Chris Cahill, 253.4847 or ccahill@co.napa.ca.us

EXECUTIVE SUMMARY**Proposed Action:**

1. That the Planning Commission adopt the Mitigated Negative Declaration and Mitigation Monitoring Program for the Vasser V-12 Winery, based on findings 1-5 of Exhibit A;
2. That the Planning Commission approve the requested Road and Street Standards Exception based on findings 11-13 of Exhibit A; and
3. That the Planning Commission approve Use Permit P07-00598 based on findings 6-10 of Exhibit A and subject to the recommended conditions of approval (Exhibit B).

Discussion:

The applicant requests Planning Commission approval of a new 36,000 gallon per year winery which would be located on a 42.4 acre hillside parcel located on the western slopes of Soda Canyon. The property is now developed with a residence located west of the Soda Canyon ridgeline (overlooking the Napa Valley) which was seriously damaged by an accidental structure fire this spring. The property also includes approximately seven and a half acres of vineyards. A further four acres of vineyard has been approved by the County but is yet to be planted.

The V-12 winery would be located mostly within a new 7,000 square foot wine cave, though a large crush pad/loading area and an equipment storage barn are also proposed. Due to the steepness of the property and the location of resources such as rock outcroppings near the base of the hill and wooded areas up slope, the applicant is requesting an exception from the County's Road and Street Standards to allow the new winery access road to narrow to 14 feet with turnouts. The Fire Marshall and the Department of Public Works have reviewed the Exception request and recommend approval.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT**ENVIRONMENTAL DETERMINATION:**

Mitigated Negative Declaration Prepared. According to the proposed mitigated negative declaration, if mitigation measures are not included, the proposed project would have potentially significant environmental impacts in the following areas: Aesthetics and Biological Resources. The project site is not on any of the lists of hazardous waste sites enumerated under Government Code section 65962.5

BACKGROUND AND DISCUSSION

Owner: Jimmy Vasser

Applicant: Bob Kleis

Representative (Engineer): Ken Deibert, R.E.B. Engineering

Zoning: AW (Agricultural Watershed)

General Plan Designation: AWOS (Agriculture, Watershed, & Open Space)

Filed: August 17, 2007 **Complete for CEQA Review:** August 14, 2008

Building Size: 1,800 square feet (900 square feet of which will be winery-associated)

Cave Size: 7,000 square feet, plus a 5,495 square foot uncovered crush pad/loading area

Production Capacity: 36,000 gallons per year

Visitation: A maximum of 16 persons per day with no more than 36 persons per week

Marketing: Four 50-person marketing events and one 100-person wine auction event annually

Number of Employees: Two full-time and two part-time employees

Hours of Operation: 7:00 AM to 5:00 PM, seven days a week

Parking: 11 parking spaces, including one ADA-accessible space

Adjacent Zoning / Land Use:

North AW - Open Space/Rural Residential - including a 42 acre rural residential parcel (Vosti) and a 40 acre rural residential parcel (Boster);

South AW - Open Space/Rural Residential - including a 17 acre rural residential parcel (Cohn), a 22 acre rural residential parcel (Klenz), and a 6 acre rural residential and vineyard parcel (Hossfeld);

East AW - Open Space/Rural Residential - a 234 acre open space and rural residential parcel (Ehrenberger), divided by Sage Canyon Road and part of a larger approximately 850 acre holding which was formerly the Napa Soda Springs Resort; and

West AW - Open Space - a 40 acre undeveloped parcel (Wilson).

Property History & Evolution of this Application:

Prior to 1974

County building permit records indicate that the property housed a number of barns, as well as a hatchery building, and was apparently operating as a duck farm.

August 1992

The County issues a grading permit (**erosion control plan 92019-ECPS**) to the then-owner, Mr. Timothy Darrin, to allow the construction of a 2,500 square foot driveway to access a potential future 14,000 square foot residence. The driveway was only partially constructed and the proposed new residence was never built.

2001

Jimmy Vasser purchases the property.

January 2005

The Conservation Division approves **agricultural erosion control plan 02471-ECPA**, to allow the installation of approximately 12 acres of vineyard on the property.

July 2005

The Conservation Division approves **agricultural erosion control plan P05-0249**, to allow minor alterations to

approved **agricultural erosion control plan 02471-ECPA**.

July 2005-August 2007

The applicants install slightly more than 7.5 acres of the 12 acres of permitted vineyard. The two vineyard areas which are planted are labeled "Block 1" and "Block 4" on submitted plans and are located to the west of the ridgeline (near the existing residence) and on the parcel's lower slopes near Soda Creek.

August 2007

Jimmy Vasser and his brother-in-law Bob Kleis initially submit **use permit application P07-00598** for the Vasser V-12 Winery. This is the permit presently before the Commission.

October 2007

The Planning Division formally requests additional information from the applicants, including an updated biological survey. A thorough biological survey was undertaken in 2001 as part of the parcel's vineyard development review. While that survey had grown somewhat long in the tooth, planning staff initially believed it could be adequate if revised by the biologist to incorporate the details of the current project and any new site conditions based on a winter 2007 update survey.

January 2008

The applicants submit an updated biological resources report with revisions based on a November 1, 2007 survey by the consulting biologist.

March 2008

The existing main residence is damaged by a serious accidental fire.

April 2008

The Department of Fish and Game reviews the submittal and determines that the November site survey is inadequate. Fish and Game requests that a new spring plant survey be completed.

August 2008

The applicant submits a revised biological report based on a series of plant surveys completed in spring 2008. Planning staff schedules the use permit application for a hearing before the Commission.

Code Compliance History:

Based on a review of Planning and Building files, there do not appear to be any open code compliance issues on the property.

Discussion Points:

Environmental Review - Mitigated Negative Declaration

An Initial Study has been prepared for the project and is attached for the Commission's review. With the incorporation of mitigation measures addressing aesthetics and biological resources as discussed below, no significant environmental impacts have been identified.

Aesthetics

The new construction associated with the Vasser V-12 winery would include a cave and cave portal, a large cave spoils fill area below the proposed portal, a two story barn which would be partially used for winery storage, and the widening of the existing vineyard road to create a new driveway. All of the winery development is to be located to

the east of the minor ridgeline which divides Soda Canyon from the Napa Valley, meaning it will not be visible from Highway 29, the Silverado Trail, or any other designated Viewshed road. The cave portal, and particularly the fill area proposed below it may, however, be visible from certain vantage points along Soda Canyon Road.

The cave portal is proposed to be 12 to 15 feet tall and approximately 175 feet long, while the fill slope will occupy nearly 23,000 square feet of land area between the 280 and the 320 foot contours. While not technically subject to the Viewshed Protection Ordinance, planning staff's initial study indicated that these improvements had a potential to "degrade the existing visual character or quality of the site and its surroundings." We proposed mitigation measures, which the applicants have incorporated into their project through a signed project revision statement. The aesthetic mitigation measures include submission of a fill slope revegetation plan, including native plants and specimen sized trees, and a requirement that the cave portal be finished with stone, stone-look cladding, or an equivalent material which will blend with the hillside and soften the appearance of the portal wall when viewed from off-site.

Biological Resources

This application proposes the removal of nine trees greater than six inches in diameter at breast height (dbh) which were not approved for removal as part of the parcel's vineyard erosion control plan approval. The trees to be removed include live oaks, a valley oak, and a madrone. While there is no County-mapped oak woodland sensitive biotic area located on the subject property, **General Plan Policy CON-24** requires, in part, that the applicant "provide replacement of lost oak woodlands or preservation of like habitat at a 2:1 ratio when retention of existing vegetation is found to be infeasible" and the submitted biological study concludes that project impacts will include the, "loss of limited area for foraging for wildlife and *removal of oak woodlands*" (emphasis added).

Eight individual oak trees, widely spaced throughout the property, are proposed to be removed to allow the construction of the Vasser V-12 winery. Given both the scope of the project and its location on a wooded hillside, it would seem that the applicant has done well to limit removals to eight oaks. If a winery project is to be approved on this site, a certain level of tree removal is assumed and the preservation of the entirety of the oak woodlands on the parcel is likely not feasible. Because the submitted biological study concludes that the project will result in impacts, though admittedly limited, to existing oak woodlands, **General Plan Policy CON-24** requires tree replacement at a two to one ratio. The applicants have agreed to a mitigation measure requiring in-kind two to one replacement of all trees removed as a result of this project.

Winery Design and Location

In the past, the County has looked favorably on wineries located in caves, both because they are thought to be more environmentally friendly than wineries within buildings and because they minimize the visibility, noise, and other off-site impacts sometimes associated with above-ground facilities. Excepting 900 square feet of the proposed two story agricultural barn (which will be used for seasonal winery equipment storage), the entire winery facility, including all production, marketing, office, and other accessory uses will be located within a 7,000 square foot cave. At its nearest point, the cave portal would be more than 1,100 feet distant from and approximately 175 feet above Soda Canyon Road. Both the proposed cave portal and the barn would be at least 300 feet from Chimney Rock Road and all but invisible when viewed from there.

As discussed above under *Aesthetics*, and at somewhat greater length in the attached initial study, planning staff believes that with required fill slope revegetation and a careful selection of cave portal color and materials the proposed winery will blend effectively into the natural hillside above Soda Canyon. The decision to locate the winery in a cave and to locate that cave quite far away from Soda Canyon Road results in a facility which will not be visually prominent, even when viewed from the most unobstructed vantage points. In its relative inconspicuousness, staff believes that the proposed winery will convey "permanence and attractiveness" as required by **General Plan Policies AG/LU-10 and CC-2**.

Roadways and Gates

At the moment, the Vasser property is developed with a single family residence, located on the Napa Valley side of the ridgeline and accessed from Chimney Rock Road. Chimney Rock Road is a private gated drive which provides access to four other existing residences and a number of undeveloped parcels. At the request of the Fire Department and the Department of Public Works, the applicant has agreed to construct 4 pull-outs on his property along Chimney Rock Road. The pull-outs are designed to provide improved emergency vehicle access and a secondary emergency route to and from the proposed winery. Access to Chimney Rock Road would be controlled by a series of new and relocated gates designed to ensure that winery traffic only uses the (approximately) 180 feet of Chimney Rock Road between Soda Canyon Road and the existing Vasser vineyard road and does not have access to the full run of the private road.

Access to the winery itself, including primary emergency vehicle access, would branch off of Chimney Rock Road about 180 feet west of its intersection with Soda Canyon Road. The proposed winery driveway would then follow the alignment of an existing vineyard road up the ridge, past the proposed winery cave, and ultimately to a circular turnaround located next to the proposed winery/agricultural barn. An access-controlled fire lane would connect the turnaround to Chimney Rock, providing a secondary emergency route to and from the winery.

The applicants have requested an exception from the County's Road and Street Standards to allow a narrowing of the winery driveway to 14 feet (one 10 foot wide travel lane with 2 foot shoulders) due to steep slopes, rock outcroppings, and stands of oak woodland now existing along the proposed alignment. To compensate for the reduced roadway width, seven turnouts are proposed along the 14 foot wide portions of the winery driveway. Both the Department of Public Works and the Fire Marshall recommend approval of the requested Road and Street Standards exception on the condition that additional turnouts (as shown in submitted plans) are constructed on Chimney Rock Road.

Based on the County's most recent traffic counts, and as analyzed in their attached comment memo, the Department of Public Works does not believe this project warrants construction of a left-hand turn lane on the relatively lightly traveled Soda Canyon Road. Visibility concerns associated with traffic heading south on Soda Canyon are partially addressed by the applicant's proposal to relocate the Chimney Rock Road gate some 200 feet back from the edge of Soda Canyon pavement, providing ample off-road storage of cars stopped and waiting on the operation of the automatic gate. Additionally, the Department of Public Works has conditioned their approval on the completion of a site distance evaluation and, if necessary, the clearing of underbrush to improve visibility at the Soda Canyon and Chimney Rock Road intersection.

Winery Production, On-Site Vineyard Development, and Traffic Loads

The Vasser property presently has seven and one half acres of vineyards and a further four acres have been approved for the property. Because portions of the proposed access road and the winery/agricultural storage barn are within approved vineyard areas, an amended agricultural erosion control plan must be submitted prior to any new vineyard planting. That amendment may ultimately modify the vineyard acreage allowed on the property, but in any case it is unlikely that this hillside property will ever produce enough grapes to supply the entirety of the 36,000 gallons of finished wine production requested here.

The Commission is likely well-aware of the variability in wine grape tonnage per acre, finished wine production per ton of grapes, and even the capacity of flatbed trucks. We pray forgiveness in advance, then, for estimating the potential wine production from existing on-site vineyards as perhaps 2,500-4,000 gallons per year (assuming approximately two to three tons per acre and 165 to 170 gallons of wine per ton of grapes). With 12 acres of vineyard eventually developed, estate wine production could potentially rise to 5,500 gallons per year.

At an allowed production of 36,000 gallons per year (and assuming 165 gallons of wine per ton of grapes), the above would result in an eventual onhaul of 185 tons of grapes annually. Assuming, for example, that grape deliveries are made in trucks averaging 15 tons per load, the result would be 12 additional truck trips per year. These 12 additional trips would be condensed into a two to three month harvest season, but they remain easily

subsumed into the average single daily truck trip to and from the facility estimated in the applicant's submitted materials and analyzed in the attached Department of Public Works memo and the draft mitigated negative declaration. The onhaul of grapes does not, in and of itself, appear to create a significant traffic impact.

Shallow Rock Area

This application initially proposed widening the winery driveway to 18 feet from its intersection with Chimney Rock Road to approximately station 4+00. From 4+00 to the emergency vehicle turnaround near the winery (station 32+00), the roadway was to be 14 feet wide with turnouts located every 300 feet. County Public Works, Fire, and Planning staff believe that width reductions beyond station 4+00 are warranted due to the steep slopes and oak woodlands on the upper portion of the parcel. During a recent visit to the site with Planning staff, Corinne Gray of the Department of Fish and Game pointed out an area of rock outcroppings near the proposed driveway, beginning at approximately station 2+00; Ms. Gray questioned why the County had not allowed a width reduction there, given our willingness to support reductions for all of the upslope portions of the driveway. Ms. Gray further pointed out that the area in question (shown most clearly at **Exhibit A** in the submitted plans as the "Shallow Rock Protection Zone"), was a landscape type endemic to the Soda Canyon area and worthy of restoration and some form of protection.

Following discussions with the Department of Public Works and the Fire Marshall, County staff agreed to support a Road and Street Standards exception beginning at station 2+00 if the applicant was, in turn, willing to record a deed restriction permanently protecting the rock outcropping area. With the applicants' agreement, staff has incorporated conditions requiring the restoration of the rock outcropping area and its permanent protection via a recorded deed restriction at item no. 5 in the draft conditions of approval.

Potential Residential Development

Because the applicant submitted a septic feasibility study which analyzed the septic capacity needed for a potential future 7-bedroom residence, staff considered the construction of that residence as a foreseeable future project when drafting the attached mitigated negative declaration. However, no new residence is included in this application and the applicant states that he does not plan on constructing a new residence on this property in the near future. Should a new residence be proposed at some later date, the existing residence will need either to be demolished or converted into an allowed residential second unit and, depending on its proposed location, the new residence may be subject to the County's Viewshed Ordinance.

Neighbor Comments and Concerns

Neighboring property owners have voiced a number of concerns about this application. The Commission can review written neighbor comments, submitted as of the date of this report, at Attachment I. In broad strokes, we would categorize the concerns received on or prior to November 10 (the date of this writing) as being related to: 1.) biological resources; 2.) traffic safety; and 3.) Chimney Rock Road access control. With regard to biological resources, the applicant has completed a number of biological studies, all of which cleared the site for significant environmental impacts related to biology. The Department of Fish and Game has been involved in the review of the submitted biological studies from the outset and their biologist has personally inspected the property; Fish and Game has identified no significant environmental impacts related to the project. Ample setbacks, exceeding 45 feet from the top of bank of Soda Creek, should ensure there are no negative impacts on salmon runs, steelhead runs, or waters of the United States.

The Department of Public Works has conditioned their approval on the completion of a line of site analysis (prior to grading or building permit approval) and, if necessary, the clearing of underbrush north of the Soda Canyon-Chimney Rock intersection to improve site lines for cars pulling onto Soda Canyon from Chimney Rock Road. This, especially when combined with the very ample storage space provided by a gate set back 200 feet from Soda Canyon Road, should result in an intersection which is safe for all roadway users.

Property owners living off of Chimney Rock Road have raised concerns about winery traffic having access to their private road via the existing gate. These concerns are well stated by Mr. Tower Snow in his email of November 9, 2008 (titled "Objection to Vasser Winery Proposal" and attached at item I.) Staff has attempted to address the concerns of neighboring property owners through a condition of approval which requires the construction of new gates which limit winery visitor access both to Chimney Rock Road beyond the proposed winery entry drive and to the driveway of 2077 Soda Canyon Road (which is located on Chimney Rock Road directly across from the winery driveway). In practice, the condition would require that the applicants install a new automatic gate for Mr. Vosti at 2077 Soda Canyon and a separate automatic gate protecting the remainder of the Chimney Rock Road property owners just past the proposed winery driveway. No permit to construct the proposed winery would be approved until the new gates were actually in place.

As Mr. Snow states, however, automatic gates "stay open for safety reasons for a period of time after a car has driven through." Even the most vigilant gate system would occasionally allow a winery visitor mistaken or intentional access to the remainder of Chimney Rock Road. As a solution to this problem, it has been proposed that the applicants construct a new winery driveway entrance off of Soda Canyon Road somewhere south of the Chimney Rock Road intersection. Staff would point out that a new driveway would require a new bridge across Soda Creek and that the environmental impacts of a new bridge are almost certain to exceed those associated with the use of the existing culverted crossing at Chimney Rock Road. Such a change would also require permitting by the Department of Fish and Game, the Army Corps of Engineers, the Regional Water Quality Control Board, and potentially others.

Consistency with Standards:

Zoning

The project is consistent with AW (Agricultural Watershed) zoning district regulations. A winery (as defined in Napa County Code § 18.08.640) and uses in connection with a winery (see Napa County Code § Section 18.16.030) are permitted in the AW 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 March 15, 2008 memo (attached).

Fire Department Requirements

Two Fire Department memos dated January 23, 2008 and July 22, 2008 recommend approval of the requested winery use permit and the Road and Street Standards exception (respectively). Their conditions are more or less standard, though the Fire Marshall is requiring a "minimum of 10' of defensible space on each side of the roadway and the emergency access exit driveway." Please see their attached memos for details.

Public Works Department Requirements

The Public Works Department recommends approval with standard conditions. Please their September 29, 2008 memo (attached).

Environmental Management Department Requirements

The Department recommends approval with standard conditions. Please see their memo of October 3, 2007.

Sheriff's Department Requirements

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

SUPPORTING DOCUMENTS

- A . Exhibit A - Proposed Findings
- B . Exhibit B - Scope & Conditions of Approval
- C . Building Division Approval Memo
- D . Environmental Management Approval Memo
- E . Fire Marshall's Approval Memo
- F . Public Works Approval Memo
- G . Initial Study & Mitigated Negative Declaration
- H . Mitigation Monitoring Program & Project Revision Statement
- I . Neighbor Comments
- J . Application Materials
- K . Presentation Graphics

Napa County Planning Commission: Approve

Reviewed By: John McDowell