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Agenda Date: 3/4/2015  
Agenda Placement: 9A  
Continued From: 2/8/15

## Napa County Planning Commission Board Agenda Letter

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**TO:** Napa County Planning Commission

**FROM:** Charlene Gallina for David Morrison - Director  
Planning, Building and Environmental Services

**REPORT BY:** SHAVETA SHARMA, PLANNER III - 707-299-1358

**SUBJECT:** Melka Winery Use Permit (P14-00208-UP) and Variance (P14-00209-VAR)

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### **RECOMMENDATION**

#### **MELKA WINERY USE PERMIT (P14-00208-UP) & VARIANCE (P14-00209-VAR)**

**CEQA Status:** Consideration and possible adoption of a Categorical Exemption. Pursuant to the California Environmental Quality Act, Section 15301 [See Class 1 ("Existing Facilities")]; Section 15303 [See Class 3 ("New Construction or Conversion of Small Structures")]; and Section 15304 [See Class 4 ("Minor Alterations to Land")], which may be found in the guidelines for the implementation of the California Environmental Quality Act. The project site is not included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.

**Request:** Approval of a Use Permit to establish a new 10,000 gallons per year winery with 1) daily tours and tastings for five persons maximum per weekday and seven persons maximum per weekend and a maximum of 30 persons per week by appointment only; 2) conversion of an existing 2,309 square foot barn to winery uses; 3) construction of a new 2,675 square foot building with a 500 square foot open breezeway; 4) construction of an 875 square foot covered crush pad; 5) on premise consumption in the hospitality building of wines produced on site in accordance with Business and Professions Code Sections 23358, 23390 and 23396.5 (also known as AB 2004 (Evans Bill)); 6) two (2) 30 person marketing events annually; 7) one (1) 100 person auction event annually; 8) connection to an existing domestic wastewater treatment and disposal system 9) a hold and haul system for process wastewater; 10) a 20,000 gallon water storage tank and pump house; 11) an improved 20 foot driveway access in accordance with Napa County Road and Street Standards; and 12) construction of seven (7) parking spaces; and 13) five or fewer employees. A Variance is also requested to encroach 435 feet into the required 600 foot setback from Silverado Trail. The 10.68 acre project site is located approximately 200 feet north of Deer Park Road and within the Agricultural Watershed (AW) Zoning District at 2900 Silverado Trail, St. Helena (APN: 021-352-041).

**Staff Recommendation:** Take final action finding the project Categorically Exempt from CEQA and approving the requested Use Permit and Variance request as conditioned.

**Staff Contact:** Shaveta Sharma, Planner [shaveta.sharma@countyofnapa.org](mailto:shaveta.sharma@countyofnapa.org)

**Applicant Contact:** Cherie Melka (707) 695-7687

**CONTINUED FROM FEBRUARY 18, 2015 COMMISSION MEETING**

**EXECUTIVE SUMMARY**

**Proposed Actions:**

That the Planning Commission:

1. Find the project Categorical Exempt from CEQA based on Finding 1 of Exhibit A; and
2. Confirms its tentative approval of Variance Request (P14-00209) based on Findings 2-8 of Exhibit A, and subject to the recommended Revised Conditions of Approval (Exhibit B); and
3. Confirms its tentative approval of Use Permit (P14-00208), based on Findings 9-13 of Exhibit A, and subject to the recommended Revised Conditions of Approval (Exhibit B).

**Discussion:**

The Planning Commission originally heard this item on February 18, 2015 and after considering all verbal and written evidence presented, the Commission took tentative action to approve the project and directed staff to return with formal written responses to questions raised and responded to verbally at the February 18, 2015 hearing. This staff report and its attachments contain responses, corrections and clarification in response issues raised at the previous hearing. It is requested that the Commission finish conducting the public hearing by considering the new evidence, receiving testimony on the new evidence, and taking a final action on the project. The public hearing for the project remains open from the previous hearing.

**FISCAL IMPACT**

Is there a Fiscal Impact?                      No

**ENVIRONMENTAL IMPACT**

The project is Categorical Exempt, pursuant to the California Environmental Quality Act, Section 15301 [See Class 1 ("Existing Facilities")]; Section 15303 [See Class 3 ("New Construction or Conversion of Small Structures")]; and Section 15304 [See Class 4 ("Minor Alterations to Land")], which may be found in the guidelines for the implementation of the California Environmental Quality Act. The project site is not included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.

**BACKGROUND AND DISCUSSION**

At the February 18, 2015 hearing, the Commission requested response and clarification on the following issues

detailed below:

### 1. Accessory/Production Ratio

The application materials and staff report contained erroneous information on the project's accessory use to production area ratio. The Winery Definition Ordinance stipulates that the maximum amount of area dedicated to accessory uses (i.e. - visitation space, office) can be no greater than 40% of the size of the production areas (i.e. - fermentation space, crush pad, work areas, case and barrel storage, lab, etc.) of the winery. As indicated in the applicant's attached letter, including the project architect's detailed floor plans with calculation, the corrected amount of accessory space is slightly below 16% of the production space in compliance with County Code Section 18.104.200.

In accordance with 18.104.200, this calculation includes outdoor production areas, such as the covered crush pad and work area breezeway, but does not count the outdoor tasting area deck. Section 18.104.200, which is titled "Accessory structures related to winery in AP/AW districts - maximum square footage", expressly states that 'structures' used for accessory use must be counted toward the accessory/production ratio. As such, the County's long standing administrative practice for calculating the accessory/production ratio does not count accessory use areas that are located outside of structures, such as the deck in this case. Commissioners have recently expressed interest in including such outdoor spaces in the calculation. It is staff's opinion that inclusion of such spaces would require an amendment of the code section to expressly state that outdoor accessory use areas are included in the calculation. In this case however, if the outdoor deck was included, the project would remain well below the accessory to production ratio at approximately 20% accessory space to production area.

### 2. Employee Levels

Application materials and County administrative practices regarding number of employees resulted in a discrepancy that the Commission requested be addressed. The applicant has requested 1 full time and 1 part time employee, and the County's application form and standard conditions of approval classify such facilities with an employment level of "10 or fewer employees". The purpose behind being less specific on employee levels is in response to numerous inconsistencies found at existing small wineries where use permits enabled very small, finite employee levels, such as 1 full time and 1 part time employee, while not accounting for other persons regularly on premise and engaged in winery business, including but not limited to: the owners (who tend not to be considered as employees by most applicants); custom wine producers/alternating proprietors (if any - County does not set limits on such); and paid consultants/help like wine makers, gardeners, caterers, special event staff, business advisors, mobile bottlers, etc. Given the low level of visitation and marketing approved with this project, staff recommended that the project scope be changed to a winery of 5 or fewer employees. The attached proposed conditions of approval reflect that change.

### 3. Variance Applicability

The proposal involves two main winery structures. The first structure is an existing secondary unit which was originally constructed as a barn in 1985 and converted to residential use in 2006 under building permit B06-00183. The proposal is to convert this existing second unit to winery use. The second structure is a new 2,675 sq. ft. new building located adjacent to the existing and includes an unenclosed breezeway and covered crush pad resulting in a total roofed-in area of 4,200 square feet.

Pursuant to Winery Definition Ordinance Section 18.104.230.C, conversion of structures that existed prior to the adoption of the ordinance is allowed without a variance provided that the structure is not expanded as a result of grant of the winery, and on a finding that the project is environmentally beneficial (to a structure that otherwise meets the setback). In this case, Section 18.104.230.C does not apply because a new building will result in addition to the existing structure, and thus the existing structure and new winery building must meet a 600 foot

setback from the centerline of Silverado Trail unless a variance is granted.

Staff supports the applicant's request for a variance. The proposed location of the new building is within a previously disturbed portion of the site. Alternate locations outside the 600 foot setback from Silverado Trail would require further grading, as well as construction on slopes over 30%, removal of native vegetation and trees, and additional impervious surfaces in the form of access roads. The location of the buildings would have the least environmental impact on the property. The slope of the property ranges from zero to 30% and the proposed location has a slope of two percent. The predominate portion of the developable site is located within the required 600 foot setback from Silverado Trail.

Additionally, as required by State and local statute, the granting of this variance would not confer a special privilege as the subject parcel contains a unique combination of existing development and regulatory constraints, namely slope and environmental constraints due to tree coverage. There is nothing included in the variance proposal that would result in a measurable impact on the public health, safety, or welfare of the County of Napa. Construction of the new winery would be subject to County Codes and regulations including but not limited to California building codes, fire department requirements, and water and wastewater requirements. The granting of the variance to the winery road setback will not adversely affect the health or safety of persons residing or working in the neighborhood of the property. The proposed winery structures would be located in a clustered development with existing buildings. There have been no adverse impacts to public health, safety or welfare from the existing pre-1990 buildings. Various County departments have reviewed the Project and commented regarding water, waste water disposal, access, building permits, and fire protection. Conditions are recommended which will incorporate these comments into the project to assure protection of public health and safety.

4. Cave Within Residence

Concerns were raised at the hearing that an existing cave on-site would be used in conjunction with the winery. The applicant provided testimony that the cave is incorporated into the existing residence, which is located approximately 300 ft. from the proposed new winery structure and 370 feet from the existing structure proposed to be converted, and that the cave is used as their private entertainment room. The cave is approximately 914 square feet and was constructed in concert with the residence shortly after the applicant's purchased the property in 2011. At the time the residence was constructed, a deed restriction was placed on the cave (and property) stipulating that the cave cannot be used for anything other than residential use. The applicant is proposing no changes to this condition.

5. Corrected Comparison Winery Table

Below is a corrected version of the table comparing the proposed marketing and tours and tasting visitation for the winery to other wineries with annual production of 10,000 gallons per year. The table included in the prior staff report listed an incorrect building size. The proposed visitation program falls into the middle of the spectrum with regards to the number of "by appointments tours and tastings" for public wineries, as well as on the low end for events among its peer group of wineries with approved production of 10,000 gallons per year. The table also provides a comparison of winery building floor area. The project's 4,894 square feet is within the middle range of winery floor area with wineries ranging in size from 800 square feet to 15,202 square feet.

Winery Name	Location	Production	Visitors (Avg/Week)	Building Size	Marketing Events	Employees
BY APPT ARNS WINERY	HILLSIDE 160 acres	10,000	0	800	0	2
BEHRENS		10,000	0	2000	0	1

FAMILY WINERY	HILLSIDE 19.96 acres					
BOESCHEN WINERY	VALLEY FLOOR 18.47 acres	10,000	16	6,360	4	3
BRAND NAPA VALLEY	HILLSIDE 42.26 acres	10,000	108	11,453	19	10 OR FEWER
DANA ESTATES	VALLEY FLOOR 23.7 acres	10,000	6	8,046	0	4
DIAMOND CREEK VINEYARDS	HILLSIDE 69.86 acres	10,000	2	7,722	0	2
DIAMOND MOUNTAIN WINERY	HILLSIDE 54.69 acres	10,000	10	2,948	14	4
FOLEY JOHNSON WINERY	VALLEY FLOOR 13.4 acres	10,000	25	7,000	0	4
FUTO WINERY	HILLSIDE 40 acres	10,000	10	15,202	5	3
JAMES COLE WINERY	HILLSIDE 10.67 acres	10,000	72	3,333	5	4
MELKA WINERY	HILLSIDE 10.68 acres	<b>10,000</b>	<b>30</b>	<b><u>4,894</u></b>	<b>3</b>	<b><u>5 OR FEWER</u></b>

Please note that the original (current) Winery Database captures "building size" as opposed to, or in addition to, "winery development area" and "winery coverage area" which are defined terms in the Winery Definition Ordinance. County staff are working on a comprehensive update to the winery database to more broadly capture the overall attributes for previously approved projects. In comparing proposed wineries to those listed in the the current Winery Database, consideration should be given to the fact that "building size" would include some elements of a winery such as outdoor work areas, unenclosed crush pads, total amounts of impervious surfaces, etc.

6. Grape Sourcing

The subject property is currently planted in ±1.5 acres of vineyards. Assuming a relatively modest average annual yield of 3 tons per acre, and 150 gallons of wine per ton, the 1.5 acres would yield approximately 600 gallons. The remaining 9,400 gallons of wine would need to come from offsite, and based off the same assumptions, would require an additional 18.75 acres of grapes in order to comply with the 75% grape sourcing rule to produce the entire 10,000 gallon production requested. The applicant has submitted grape purchase agreement with several Napa Valley grape growers to ensure sufficient local grapes for their modest production. Melka Winery has an adequate source of grapes to comply with the 75% grape sourcing rule.

### 7. Lot Line Adjustment

In 2013 a Lot Line Adjustment (W13-00193) was submitted and approved administratively which increased the parcel size from 7.68 acres to 10.68 acres and resulted in a Zoning Code nonconformity wherein two secondary units were on the property when County Code only permits one. Approval of lot line adjustments are ministerial actions meaning that if a proposal meets all prescribed standards, the County is obligated to approve the project. No discretion is exercised on a ministerial permit (unlike discretionary use permits). Several years ago, the County updated its Lot Line Adjustment Ordinance to reduce potential for claims that the County was exercising discretion. At the time, a lawsuit had been filed alleging that the County's Lot Line Adjustment Ordinance was inconsistent with several elements of State Law. The County prevailed in the lawsuit, but in implementing the updated Lot Line Adjustment Ordinance, a clause requiring zoning compliance for all lot line adjustment applications was inadvertently omitted from the new ordinance. As such, it is now possible that lot line adjustment applications can result in the creation of illegal zoning nonconformities. In response to this issue, and in advance of any omnibus update to the Lot Line Adjustment Ordinance, County staff have worked with applicants on lot line adjustments to advise them on steps to take to avoid creating illegal nonconformities. In this case, the applicant was advised that the secondary unit nonconformity would be addressed with the winery use permit. At the time, the applicant committed to convert the structure from a secondary unit to another allowed use in the event that the winery use permit was not approved. The additional second unit has not been occupied as a residence in the interim period which is consistent with County Code. It should be noted however, that the County permits up to 12 farmworker housing units per property, so in the event that this structure is not used for winery purposes, it could be converted to a farmworker unit or units by right.

### 8. Viewshed

The proposed project is not subject to the County's Viewshed Ordinance. Although Silverado Trail is a Viewshed road, the Ordinance only applies to structures located in hillsides greater than 15% slope, and/or on or near major or minor ridgelines. This project is located at the toe of the slopes on slopes ranges from 1% to 10%. However, the project architect has included exhibits depicting the project's appearance from Viewshed roads. Wineries are subject to General Plan policy AG/LU-10, which mandates that wineries convey a "permanence and attractiveness" design fitting for Napa County's general high level of aesthetic quality. Staff believe the design is of high quality in keeping with this policy. In addition, the project includes landscaping with a variety of trees and shrubs on a berm that will both frame and soften the view of the building from the roadway.

The project also includes three alternative locations for a water storage tank to be located on the tree hillside above the existing main residence in lieu of constructing the storage tank adjacent to the winery (as shown on the site plan). In the event the applicant pursues this hillside alternative, a viewshed analysis will occur and the applicant would be required to ensure the existing vegetation is maintained around the water tank(s) and access road to predominantly screen the improvements from view.

## **SUPPORTING DOCUMENTS**

A . Exhibit A- Findings

- B . Exhibit B- Revised Conditions of Approval
- C . CEQA memo
- D . Previous Staff Report
- E . Public comments

Napa County Planning Commission: Approve

Reviewed By: Charlene Gallina