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Agenda Date: 9/3/2008

Agenda Placement: 9B

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission
FROM: John McDowell for Hillary Gitelman - Director
Conservation, Development & Planning
REPORT BY: Trish Hornisher, PLANNER III - 299-1349
SUBJECT: Alpha Omega Winery Modification

RECOMMENDATION

ALPHA OMEGA WINERY, LLC. / ALPHA OMEGA WINERY – VARIANCE AND USE PERMIT MAJOR MODIFICATION REQUEST #P08-00047 AND #P07-00869-MOD

CEQA Status: Subsequent Mitigated Negative Declaration Prepared. According to the proposed Subsequent Mitigated Negative Declaration, the proposed project would have, if mitigation measures are not included, a potentially significant environmental impact in the following area: transportation/traffic. This project site is not on any of the lists of hazardous waste sites enumerated under Government code section 65962.5

Request: Approval of a Variance: to allow a new production/barrel building to encroach a max. of 74 ft. into the required 300 foot setback from centerline of Mee Lane and a corner of the new covered porch addition on the existing winery building to encroach 127 ft. into the required 600 foot setback from centerline of St. Hwy. 29 and a Use Permit Modification: to modify Use Permits: #U-118081, #U-538485, & #95037-MOD in 2 phases: Phase A: (1) establish the size of the pre-Winery Definition Ordinance public tasting room; (2)(a) Public Tours and Tasting Visitors: recognize Public Tours and Tasting visitors without prior appoint. at a max. of 900 visitors/wk; (2)(b) By Appointment Tours and Tasting Visitors: establish Tours and Tasting by Appt. Only Visitors and combine them with Marketing event visitors for max. of 450 visitors/wk. The total combined Public, By Appt. & Marketing visitors not to exceed a max. of 1,350 visits/wk; (3) increase employees to 19 f/t and 6 p/t with an additional 15 p/t, seasonal workers during Harvest; (4) establish a Marketing Plan to include: 7 events/mo. with a max. of 50 people/event, 10 annual events with a max. of 100 people/event, and 6 annual events with a max. 200 people/per event (2 for the Napa Valley Wine Auction). Events to be catered by off-site food service; (5) authorize the use of the covered patio and garden areas by visitors; (6) add a 2nd work shift during Harvest only; (7) increase parking to 63 auto & 2 bus spaces; and, (8) convert the existing wastewater pond to a dual domestic and process wastewater system. Phase B: (1) construct a new approx. 9,273 sq. ft. production/barrel building adjacent to the existing 6,298 sq. ft. winery structure totaling approx. 15,571 sq. ft.; (2) increase production from 50,000 gal. to 144,000 gal. The project is located on a 10.79 ac. parcel on the southeast side of Mee Lane approx. 760 ft. northeast of its intersection with St. Highway 29 & approx. 2 mi. south of the City of St. Helena. (Assessor's Parcel #: 030-080-046) 1155 Mee Lane, St. Helena.

EXECUTIVE SUMMARY

Staff Recommendation: Adopt the Subsequent Mitigated Negative Declaration, and approve Variance & Use Permit Modification as conditioned.

Staff Contact: Patricia Hornisher 299-1349

Proposed Action:

1. That the Planning Commission adopts the Subsequent Mitigated Negative Declaration, and Mitigation Monitoring Program for the Alpha Omega Winery Major Modification, based on findings 1-6 of Exhibit A (attached);
2. That the Planning Commission approves Variance #P08-00047 based on findings 7-10 of Exhibit A; and
3. That the Planning Commission approves Use Permit Major Modification P07-00869-MOD based on findings 11-15 of Exhibit A and subject to the attached Conditions of Approval (Exhibit B).

Discussion: This proposal requests a modification to a winery use permit originally approved in July of 1985 for San Mateo Ranch, Inc. The 1985 entitlement allowed for a 6,000 square foot, 50,000 gallon per year facility with visitation open to the public without prior appointment and with no outdoor social activities, dining, music or festivals allowed. In 1995, approval was obtained for an interior mezzanine/lab addition and in 2003, for custom production. Neither application, however, requested increases to square footage, production, visitation or marketing.

The current proposal first seeks approval of a Variance to the required setbacks for wineries located on a public road (Mee Lane) as well as a State highway (St. Hwy 29). The proposal also requests a use permit modification to increase production from 50,000 to 144,000 gallons per year, double the facility size with a new barrel storage building and expand the existing wastewater system to a dual domestic and process wastewater system. In addition, approval for Tours and Tasting visitation and marketing events is requested to: (1) recognize the pre-Winery Definition Ordinance (WDO) Public Tours and Tasting visitation (without prior appointment) from 70 visitors per week (as stated and approved in the initial winery use permit) to a maximum of 900 visitors per week; and, (2) establish an additional "By Appointment Only" Tours and Tasting combined with Marketing event visitation for a maximum of 450 visitors per week. The total combined public, private and marketing event visitors request is not to exceed a maximum of 1,350 visitors per week or 500 visitors on the busiest day. Increases in parking from 10 to 63 spaces and employees from three full-time and no part-time to 19 full-time and 6 part-time with an additional 15 part-time, seasonal workers during Harvest is also proposed.

The project will be developed in two phases: Phase A will allow for tours and tasting visitors, employee and parking increases, a marketing plan, and conversion to a dual domestic and process wastewater system. Phase B will allow for construction of the new barrel storage building, increases in production levels, expansion of the dual domestic and process wastewater system and relocation of the on-site well.

Staff believes the requested winery road setback Variance is appropriate and that the required findings of approval can be made. However, staff does not believe that the requested Public Tours and Tasting for the pre-WDO visitation (without prior appointment) is consistent with what appears to be the past winery use permit approval for this property. Neither County records of past business practice at this facility nor substantial evidence from the applicant has been provided to substantiate that pre-WDO visitation occurred at the levels now requested. The By Appointment Only Tours and Tasting post-WDO visitation and Marketing events request also appears to be inconsistent with past County approvals of similar sized production facilities. While the Traffic Study and recent project revisions to provide bussing for larger weekend events have decreased traffic trips, the overall request to allow 1,350 visitors per week does not appear to be consistent with either past County actions that have considered visitation in light of established past business practice or past actions of similar sized projects.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Subsequent Mitigated Negative Declaration Prepared and attached. According to the proposed Subsequent Mitigated Negative Declaration, the proposed project would have, if mitigation measures are not included, a potentially significant environmental impact in the following area: transportation/traffic. This project site is not on any of the lists of hazardous waste sites enumerated under Government code section 65962.5

BACKGROUND AND DISCUSSION

Owner: Alpha Omega Winery, LLC.

Applicant/Representative: Mr. Eric Sklar, Managing Member, LLC.

Zoning: AP Agricultural Preserve

General Plan Designation: Agricultural Resource

Filed: First submitted on December 4, 2007 and Revised on July 2, 2008 (to include phased project).

Declared Complete: July 4, 2008

Winery Size (Existing): 6,298 square feet

Winery Size (Proposed Total winery size): 15,571 square feet (approx. 9,273 square feet for new barrel storage building addition)

Production Capacity (Existing): 50,000 gallons per year

Production Capacity (Proposed): 144,000 gallons per year

Marketing (Previously Approved): Disputed with applicant - there is no condition addressing marketing in the current use permit, and no evidence that the County previously authorized marketing or social activities. The existing use permit # U-538485 Condition of Approval # 7 indicates: "No outside social activities including outside dining, live music, outdoor festivals, or other activities of a similar nature." The applicant believes that it was a matter of right as a result of this facility being approved prior to the adoption of the Winery Definition Ordinance.

Marketing (Existing): According to neighbor comments, Marketing events appear to have been ongoing for the last year

Marketing (Proposed): 7 events per month with a maximum of 50 persons per event, 10 events annually for a maximum of 100 persons per event; and 6 events annually for a maximum of 200 persons per event (2 of the 200 person events designated for Napa Valley Wine Auction-related events).

Visitation (Previously Approved): Public Tours and Tasting: Disputed with applicant - there is no condition on the level of visitation, but past approved application materials (#U-538586) indicate pre-WDO approved visitation at 10

visitors per day and 70 per week. No use permit modifications for increases to visitation have been approved. The original septic system was designed and sized to this visitation level. (Staff proposes the public Tours and Tasting number remain unchanged unless substantial evidence is submitted by the applicant to the contrary and provided a determination pursuant to Napa County Code section 18.132.050 (G.) is approved by the Zoning Administrator.)

Visitation (Existing): Public Tours and Tasting: The applicant submitted two documents with varying Tours and Tasting visitor counts. The current application indicates the number of public tours and tasting visitors is 325 on the busiest day and averages 925 visitors per week. However, the applicant's spreadsheet of actual visitor counts from July 2006 to May 2007 sent to the Traffic consultant, show an average of 490 visitors per week.

Visitation (Proposed): By Appointment Only Tours and Tasting: The applicant proposes combining the By Appointment Only and marketing visitors for a maximum of 200 visitors per day. The proposed total combined Public, By Appointment and Marketing event visitors is not to exceed a maximum of 1,350 visitors per week (500 visitors on the busiest day).

Number of employees (Previously Approved): 3 full-time employees; no part-time or seasonal workers. No use permit modifications for employee increases have been approved.

Number of employees (Existing): 17 full-time 4 part-time with 10 part-time seasonal workers during Harvest.

Number of employees (Proposed): 19 full-time and 6 part-time with an additional 15 part-time, seasonal workers during Harvest.

Hours of operation (Previously Approved): 7am to 7 pm; seven days a week.

Hours of operation (Existing): 7 am to 6:00 pm - staff; 10 am to 6:00 pm – visitors; seven days a week.

Hours of operation (Proposed): add a second work shift from 6 a.m. to 11 p.m. during Harvest season only.

Parking (Previously Approved): 10 off-street (7 customer, 3 employee).

Parking (Existing): 6 off-street (0 customer, 6 employee). (Approx. 17 unimproved parking spaces currently being used around wastewater pond.)

Parking (Proposed): 63 off-street spaces that include 2 ADA-accessible spaces (57 customer, 6 employee, plus two bus parking areas)

Adjacent Zoning / Land Use:

North AP – One 2.45-acre property immediately adjacent to the winery with a veterinary clinic and a residence located approximately 300 feet from the proposed winery addition. One 9.67 acre vineyard property further north and immediately across Mee Lane with a residence within 690 feet of the proposed winery addition. Three 1 to 1.5 acre residential properties abutting Mee Lane to the north that are 445, 720 and 820 feet respectively, from the proposed winery addition.

South AP- Two vineyard properties that are 4.56 and 9.16 acres in size, one with a residence that is 980 feet from the proposed winery addition

East AP – One 48-acre vineyard property with misc. sheds (a portion of the former San Mateo Ranch) wraps east and south east of the proposed winery addition and; further east, abutting the south side of Mee Lane, are 2 properties with residences one 1,150 feet and the other 1,360 feet from the proposed winery addition.

West AP - One 60.65 acre vineyard property with a winery (Provenance Vineyard) located across St. Highway 29 and approximately 1,140 feet from the proposed winery addition. Also across the highway are four 1 to 1.5 acre properties with agriculture and/or vineyard and each with residences located between 1,000 and 1,300 feet from the proposed winery addition.

Nearby Wineries (within an approximately 1/2 mile radius of the project site)

North - Franciscan Vineyards – 1178 Galleron Road

1,200,000 gallons/yr – Public Tours and Tasting – Established 1972 – 3,500 Visitors/wk – No Marketing
South – Grgich Hills Cellars – 1829 St. Helena Highway
250,000 gallons/yr – Public Tours and Tasting – Established 1977 – 1,000 Visitors/wk – No Marketing
East – None within 1/2 mile
West – Provenance Vineyards – 1695 St. Helena Highway
85,000 gallons/yr – Public Tours and Tasting – Established 1987 – 300 Visitors/wk – No Marketing
Also West - Rutherford Grove – 1673 St. Helena Highway
35,000 gallons/yr – Public Tours and Tasting – Established 1977 – 150 Visitors/wk – No Marketing

Property History:

May 1981

The Planning Commission approves the original winery use permit (# U-118081) under the name San Mateo Ranch Winery as a 50,000 gal/yr, 5,400 sq. ft. facility with a small 261 sq. ft tasting room located along the side of the main structure for public tours and tasting. A Negative Declaration was adopted and the Use Permit was approved with Conditions of Approval however, the use permit was never acted on.

July 1985

The project was revised and the Planning Commission approved the second San Mateo Ranch Winery under use permit (# U-538485) as a 50,000 gal/yr., 6,000 sq. ft facility. No tasting room was designated on the use permit plans in the Phase II expansion area. However, a 72 sq ft retail wine storage and dishwashing area was designated on the building plans in this area presumably to be utilized for wine tasting activities in this location. The previously adopted Negative Declaration was considered adequate with no substantial changes to the project, its circumstances or relevant new information, and a subsequent Negative Declaration was adopted with the new Use Permit and Conditions of Approval.

1986 - 2006

Michel Perret owns the winery from 1986 to 1995 and again from 2002-2006. Over the years the winery had various names: Domain de Napa, Esquisse and Quail Ridge Winery.

September 1995

The Planning Commission approved use permit modification #95037-UP to expand the winery with a 783 sq. ft. mezzanine in the southwest corner of the existing winery structure to be utilized as a lab and storage. The conditions of approval state no public access is allow to the mezzanine area. The use permit plans show a tasting area designated as a dashed line approximating 177 sq.ft. located in the Phase II expansion area.

July 2003

The Planning Commission approved Use Permit Modification # 03054-MOD to add up to 4 custom producers, for a maximum of 40% of the wineries existing 50,000 gallons/yr capacity. No other modifications were requested.

January 2006 The winery sold to Alpha Omega Winery, LLC.

December 2006

Building permit application B06-01918 was submitted for winery renovations requiring a modification to the existing use permit. B06-01918 was required to be revised pursuant to Planning use permit issues.

April 2007

Building permit application B07-00454 was submitted and issued in October 2007 to cover demolition and wine storage tank changes and minor renovations in specific plan areas.

May 2007

Applicant applied for a Certificate of Legal Non-Conformity (CLN) to determine per-WDO public tours and tasting use limitations. The hearing for the CLN before the Zoning Administrator was canceled at the applicant's request on July 25, 2007.

June 2007

Minor Modification #P07-00330 was administratively approved on June 12, 2007, by the Director of Conservation, Development & Planning for a new roof, roof over porch, siding adding cupolas, windows and exterior shielded lights. During review for this modification, it was discovered that a Quick permit for the covered porch had already been issued and that a portion of the porch did not meet the required setback from State Hwy 29.

December 2007

Revised Building permit application B06-01918 was submitted. Applicant was required to submit an application for a major modification to their use permit prior to issuance of the revised B06-01918. In addition, prior to issuance of the building permit, the applicant agreed the building plans would clearly show a completely unimproved tasting room area so that the plans would not conflict with the previously approved use permit documents but still comply with occupancy loads under the building code. The resubmittal of the building plans clearly showed the agreed upon language and unimproved tasting area.

December 2007

Application for major use permit modification received.

July 2008

Revised application for major use permit modification received to include phasing.

August 2008

Revised Building permit application B06-01918 was issued with Planning Department written specification on the Building plans that use of the Phase II expansion area, and accordingly its consistency with the original use permit regarding public vs. appointment only tours and tasting, was to be determined through approval of a use permit modification by the Planning Commission.

Code Compliance History

Based on a review of the Planning Division's files, there appear to be several code compliance issues with regard to this property. The issues are outlined below:

As described above under Background & Discussion, Public Tours and Tasting visitors, employee numbers, and parking spaces have increased since its purchase by Alpha Omega, LLC. beyond the original use permit approval. This is disputed by the applicant, and staff and the applicant have agreed that the dispute should be resolved through this use permit modification process.

Marketing events are believed by the applicant to be a pre-WDO entitlement and are currently taking place. No documentation has been submitted to the Planning Department indicating this use was previously established. This too is disputed and should be resolved through this use permit modification process.

Environmental Management notes the septic system was designed for visitor and employee usage consistent with those levels indicated in the the original the winery use permit. The septic system has been malfunctioning necessitating temporary hold and haul corrective measure pending approval of this modification to allow a new system to accommodate more intensive use.

Outdoor areas are being utilized by visitors and marketing participants. Picnic tables have been installed and are being utilized and an outdoor amplified sound system has been installed. These activities are explicitly disallowed under Condition of Approval #7 of the existing use permit #U-838485: "No outside social activities including outside dining, live music, outdoor festivals, or other activities of a similar nature."

The Department has received several neighbor complaints involving trucks obstructing traffic flow on Mee Lane due to an inability to maneuver into the winery driveway; busses idling for long periods of time at the winery entrance causing noise and noxious fumes and reports of high noise levels from outdoor amplified sound occurring during a recent permitted Temporary Event.

Discussion Points:

1. History of this application

Mr. Eric Sklar (managing member of Alpha Omega Winery, LLC.) submitted a building permit in December of 2006 to make needed renovations to the newly purchased Quail Ridge Winery. Staff determined that the site plan, floor plan and elevations were substantially different than the previously approved use permit # U-538485 requiring a use permit modification to authorize the proposed changes. The renovations included increases to on-site parking, the addition of an outdoor patio and covered outdoor seating area, conversion of a tasting area to an enlarged tasting room, conversion of barrel storage to offices and a conference room, the relocation of an outdoor mechanical enclosure and a change in use of the mezzanine area from a wine lab and storage to storage only. Other exterior landscaping retaining walls, walkways and a bocce ball court were contemplated. The minor modification was submitted and approved on June 12, 2007.

During discussions with the applicant about the proposed changes, the issue of approved uses and structures authorized prior to the Winery Definition Ordinance (WDO) for permitted winery and winery-related uses became the focus of attention. This was directly related to the approved public visitation numbers, septic and wastewater capacity, traffic, noise and neighbor issues. In addition, the applicant expressed a desire to increase wine production, expand septic & wastewater, and add By Appointment Visitation & a Marketing event plan. An application for a major modification to the winery use permit for the proposed modifications was submitted in December 2007. The project was revised to include phasing and resubmitted in July of 2008. (This application is being processed.)

2. Winery Definition Ordinance Public vs. Private Visitation

Following established practice, the Department requested the applicant apply for a determination of permitted uses under Napa County code Section 18.132.050 (G.). This would establish both the approved size of the tasting room and the level of public visitation for the pre-WDO winery and settle the disparity between what the County believed the approvals allowed and what the applicant understood.

In a letter from applicant's attorney, dated July 27, 2007, Lester Hardy concluded that a determination under Section 18.132.050 (G.) was not required since the public tours and tasting room was approved prior to February 22, 1990 (passage of the WDO ordinance) and used prior to February 23, 1991 (expiration of the use permit) and that he had no doubt 5,000 gallons of wine had been made prior to December 31, 2001. Having met the three requirements under 18.104.255, the winery could be deemed legal and conforming. (See letter attached.)

The letter goes on to opine that the tasting room depicted on the submitted 2008 building plans (proposed to envelope half the Phase 2 building addition), was consistent with the WDO code provision for the AP zoning district. This provision authorizes previously approved uses or structures without a use permit provided no expansion of the uses or structures occurred prior to the effective date of the ordinance. [See Section 18.16.020

(I.)] Mr. Hardy argued that because the original use permit conditions of approval for tours and tastings state only that: "[t]ours and tastings to be limited to the Phase 2 building expansion area", subsequent changes in intensity of use of this public tasting room are irrelevant because, based on the non-specific nature of the condition, any change in intensity of use can be found consistent.

The Planning Department agrees with the applicant's attorney that a determination under section 18.132.050 (G.) may be unnecessary. Staff believes it is clear from the record that the use permit and subsequent interdepartmental approvals for building permits and conditions of approval were completed satisfactorily and therefore, the winery can be deemed legal and conforming under the three requirements of Section 18.104.255.

However, the Department does not agree that the proposed (and now completed) tasting room is consistent with the WDO provision 18.16.020 (I.) because the record appears to provide substantial evidence that the currently configured tasting room request is an expansion of the uses or structures previously approved prior to the effective date of the WDO. The following historical records are provided in support of this opinion:

Expansion of the Pre WDO Size of the public tasting room. (Previous Use Permits plans and witness letters attached.)

1. While the first use permit was never implemented, the use permit plans for #U-118081 show an approximately 261 sq.ft. tasting room attached to the winery production building.
2. Several years later, use permit #U-538485 was approved for two phases. Phase I allowed wine production to begin immediately in the north portion of the winery building once a certificate of occupancy was approved. Phase II allowed barrel storage and public tours and tasting in the south portion of the building. The mitigation measures stated Public tours and tasting could not commence until the satisfactory completion of the left turn lane on State Hwy. 29 and the conditions of approval stated tours and tasting were "limited to the Phase II expansion area". As sometimes occurred with older Phased projects, the use permit plans did not define the areas of the Phase II expansion very specifically rather they deferred this depiction to the building plan submittal. Microfiche records of the Building plans for Phase II show a retail sales room and dishwashing area of approximately 72 sq. ft. in the same location as use permit #U-118081.
3. When the use permit was modified in 1995, public access areas were again defined. The conditions of approval explicitly restricted public access of the mezzanine area and again labeled the "existing wine tasting area" as a dashed semicircle of approximately 177sq. ft. located in the same northwest corner of the Phase II expansion area.
4. In a recent letter to the Department commenting on the current project, Mr. and Mrs. Meehan, residents of Mee Lane, provide eye witness and personal testimony that since 1998, they visited Quail Ridge Winery (now Alpha Omega Winery) at least 4 to 5 times a year. They describe the tasting area as a narrow room in the same location as previously described. They also state, "This was the only room we tasted in and bought wine and most often we were the only visitors."
5. Mr. Lester Hardy, attorney for the current project, also provided the Department an affidavit dated May 30, 2007 in which he states that during the late 1980's he had business transactions at the winery and the same semicircular sized tasting area in the same location was utilized for wine tasting.
6. The former owner, Mr. Perret's, states in his affidavit, dated May 30, 2007, that the public tasting area occupied a "variable portion of space in the Phase II area" and that with the ebb and flow of barrel storage, it averaged 50% of the area.

Based on past history of the pre-WDO and post WDO records and eye witness accounts it is evident a tasting area

existed that was always located in the northwest corner of the Phase II expansion area. The size of the tasting area was most commonly described as an approximately 177 sq. ft. semicircular tasting area with a 72 sq. ft. dishwashing room. Since the tasting area had no walls, wine tasters may have utilized open areas of the barrel room behind the tasting area. Staff feels it is reasonable to allow a pre-WDO Public tasting area of 300 sq. ft.

Expansion of the Pre-WDO Intensity of Use (Visitation)

1. The applicant contends the original use permit was approved for Public tours and tasting visitation and there was never a limitation placed on the number of visitors allowed on a daily or weekly basis. The applicant also stated that marketing events took place at this site prior to the WDO. The applicant's current application states existing visitors average 132 per day and 925 per week.

2. The Department requested submittal of past records or affidavits to substantiate the visitor numbers and pre-WDO events. To date, the applicant has provided only a spreadsheet of daily counts from July 1, 2006 to May 6, 2007 approximating 70 visitors per day and 491 visitors per week. No documentation of pre-WDO visitor counts or events has been provided.

3. A letter from Mr. & Mrs. Meehan, current neighbors, indicates that from 1998 to at least 2003, they "often were the only visitors during their tasting visits."...."They seldom saw cars emerging from the winery – the same for winery delivery trucks." A second neighbor, Mr. Al Pepin, who lives across the lane, also attests in a recent letter dated August 14, 2008, "In the past we have stored barrels of wine at the winery. From repeated personal observations and visits to the winery we can attest to the fact that the pre-Alpha Omega winery was a quiet facility with little activity of any kind. It had an apparent production of less than 1,000 cases per annum and the appearance of no more than twenty-five to thirty tasting room visitors a day."

4. Aerial photos from 1993 to 2005 show only one to two visitor cars in front of the winery. While the photos are varied moments in time, they indicate that generally over the years, the site was visited at very low levels. (See WDO Discussion - attached aerials 2002 & 2005.)

5. The original 1985 Use Permit (pre-WDO) application indicated the number of visitors anticipated per day was 10 (70 visitors per week). The conditions of approval did not specifically limit the number of visitors to the site. This is consistent with the Departments standard practice and policy in handling visitation analysis prior to the WDO. The number given on the application form for anticipated number of visitors was the number used for the environmental analysis for septic, water, traffic, parking and other requirements.

6. The 1995 use permit modification for a mezzanine addition (post WDO) makes no allowances for increases in visitation. It appears staff reviewed visitation in some manner since one of the conditions of approval restricts public access to the proposed Mezzanine. Another condition states there will be no increase in annual production, or any other aspect of the winery's approved operation. And finally that all previous conditions of use permit #U-538485 would remain in effect. These seem to indicate no intensification of use was permitted.

Department practice has been to address any apparent increases of an operation when new requests for modifications are presented. It seems unlikely that if visitation had intensified, the 1995 modification would have ignored the increase since the original environmental document was mitigated for traffic and the septic system had no capacity available for expansion. In fact, the 1995 modification conditions of approval support the argument that no intensification occurred. Eye witness and other historic documents indicate visitation has remained at low levels up to winery's recent point of sale in 2006. No documents have been submitted by the applicant showing intensification of use prior to the WDO, and the burden of proof for determining pre-WDO visitation and marketing lies with the applicant. Based on the evidence at hand, staff believes the pre-WDO visitor numbers of 10 per day, 70 per week are valid and recommends that no increase in that level of pre-WDO visitation be recognized.

2. Requested Tours and Tasting Visitors and Marketing Events

As mentioned in the beginning Discussion, the overall request to allow 1,350 visitors per week does not appear to be consistent with either past County actions that have considered visitation in light of established past business practice or past actions of similar sized projects. Using the Napa County Winery Database as a baseline for comparison, Staff compared: (1) all pre-WDO wineries approved between 1985 & 1990; (2) 50,000 gallon approved wineries; and, (3) 144,000 gallon approved wineries with visitors greater than 500. (See spreadsheets attached.)

a. Pre-WDO Wineries Approved Between 1985 & 1990

The database shows that between 1985 and 1990, 75 wineries were approved. 12 of these were approved for yearly production levels of greater than 50,000 gallons. Out of these 75 wineries, only 15 were approved for public tours and tasting and only 3 have visitor numbers greater than 1,300 per week.

b. All 50,000 gallon approved wineries

The database shows only 1 winery out of 18 with an originally approved production level of 50,000 gallons has a visitor level greater than 600 per week. The average for this group of wineries is 216 visitors per week. The visitor average includes 14 wineries (4 of which are Public) ranging from 2 visitors to 600 visitors per week. Three wineries showing zero visitors and one winery showing a high visitor count due to commercial zoning were excluded from the averaging.

c. Greater than 50,000 gallons and Less than or Equal to 144,000 gallons approved wineries

According to the database, 45 wineries have been approved that are over 50,000 gallons per year and less than or equal to 144,000 gallons. Of these, only 12 have visitors numbers over 600 per week and only 4 are over 1,000 visitors per week. The four wineries over 1,000 visitors per week have no marketing events. Of all 45 wineries approved only 8 wineries have large events over 75 persons per year. Two of these wineries have 7 to 8 large events per year. The remainder range between 2 and 4 large events per year.

In conclusion, the database reports that only four wineries in the 144,000 gallon range were approved for over 1,000 visitors per week and only two of the wineries have large events of 75 persons or greater between 7 to 8 times per year. The Alpha Omega request for 1,350 visitors per week and 16 large events over 75 persons appears to be out of the normal range of previously approved projects of a similar size.

Staff recommends a maximum total of 500 Tours and Tasting visitors per week (70 Public with No Prior Appointment and 430 By Appointment Only) and a Marketing plan to include 12 events per month with a maximum of 25 persons per event, 6 events annually with a maximum of 50 persons per event, and 2 events annually with a maximum 200 people per event (1 event may be designated for the Napa Valley Wine Auction.)

The applicant has agreed to and signed the Project Revision Statement and Mitigation Measures further restricting any Saturday afternoon Marketing Events between Memorial Day and Labor Day weekend as follows: Saturday Afternoon Marketing Events: Any marketing event scheduled on Saturday afternoon shall end no later than 2:00 PM. Alternatively, any marketing event shall start before 12:30 PM and end after 5:30 PM; Attendees at all large (150+) marketing events shall be required to arrive by bus or shuttle, for any marketing events on Friday, Saturday and Sunday afternoons between Memorial Day weekend and Labor Day weekend which either begin or end between 12:30 PM. and 5:00 PM. Caltrans has requested the winery provide details of the bus/shuttle route including pick-up and drop-off locations in reference to State Highway 29.

In addition, staff recommends regulating marketing events under the Winery Definition Ordinance unless

otherwise approved as previously existing. The neighbors request inclusion of a condition of approval disallowing all Temporary Events and Political Fund raiser events unless a written agreement for the specific event is obtained from a majority of the Mee Lane residents prior to the event. Staff attempted to address this request via Condition of Approval #2.

3. Winery Road Setback Variance

The current winery major modification application requires a Variance to Napa County Code Section 18.104.230 (A) (1.& 2.) from the required 300 foot setback from the centerline of a public road and the 600 foot setback from the centerline of a State Highway for winery structures. Only a 165 linear foot portion of the winery's L-shaped, ten acre parcel fronts Mee Lane. Since this small portion of the parcel is contiguous with the public road, a Variance to the 300 foot setback is necessary to approve the winery addition as submitted. Because the winery is located in the Floodplain, it is beneficial for new construction be placed on areas with the highest elevation. The parcel slopes slightly north to south therefore, relocating the new building further south would put it in a lower elevation making it more vulnerable to flood hazard. Situating the new building further south would also necessitate removal and relocation of the leach field and wastewater pond and consequently require the removal of more vineyard acreage.

Additionally, a portion of the northwest corner of the porch of the existing winery was built closer to the centerline of the State Highway than the nearest point of the existing winery structure. Therefore that portion of the porch is subject to a Variance to the required 600 foot setback to State Highways. The porch improvement was previously approved with a minor modification without the required variance. In order to achieve proper adherence to the requirements of the Napa County Code, the portion of the porch that extends into the setback is also being included as part of the variance findings.

Staff believes a Variance is warranted due to the existing conditions and environmental constraints of the property and recommends the required variance finding be made.

4. Phasing

As described above, the applicant is requesting project phasing such that: Phase A will allow for increases to both Public and By Appointment tours and tasting visitors, employees, parking, addition of a marketing plan, and conversion to a dual domestic and process wastewater system; Phase B will allow for construction of the new barrel storage building, increases in production levels, expansion of the dual domestic and process wastewater system and relocation of the on-site well.

Staff has concerns about the timing of the approvals in Phase A as they relate to Phase B. Specifically, Phase A is "front loaded" with all the requests for increases of visitors, employees, parking, marketing and conversion to a domestic and process wastewater system capable of handling the increased visitors and 50,000 gallon winery wastewater occurring in Phase A. These are the very entitlements that heavily impact the natural resources of the site and surrounding neighborhood. While the improvements to the domestic and process waste are currently needed for public health and safety reasons and the increases to visitation and marketing ensure the financial viability of a winery, there are no assurances that the Phase B construction and production will be successfully brought to fruition. This would leave a relatively small winery operation with an entitlement for a high level of visitation, marketing, traffic and potential noise.

Staff recommends Phase A include: approval by Commission of the pre-WDO Public visitation and tasting room; recognition of the existing number of employees and parking and conversion of the domestic and process wastewater system to appropriately handle the approved levels for domestic and process waste. Phase B include: increase production to 144,000 gallons/yr; construction of the new barrel storage building, increase employees and parking as needed to accomodate the approved production, vistation and marketing; commence the approved

By Appointment and marketing events upon approval of a Final Certificate of Occupancy for the new barrel storage building and satisfactory completion of all other County department conditions and requirements.

5. Septic and Wastewater System

Environmental Management notes the wastewater system was designed for a production level of 50,000 gallons per year and the septic system for employee and visitor usage of 70 per week as proposed in the original the winery use permit # U-538485. The septic system has been malfunctioning necessitating temporary corrective measures. Currently, the winery is on a temporary pump system with portable restrooms approved by Environmental Management. The planned conversion to a dual domestic and process wastewater system will be adequate to meet the existing needs for septic and wastewater for Phase A. The applicant plans an expanded dual and process wastewater system to accommodate more intensive approved use in Phase B. Treated water from the system will be used for ground level drip irrigation of the on-site vineyards. The expanded system will be located out of the 35 foot stream setback as required by the Conservation Regulations.

6. Production Increase

Alpha Omega Winery requests an increase from its current level of 50,000 to 144,000 gallons per year in Phase B of the project. Since the parcel is approximately 10.8 acres with 8 acres devoted to vineyard, most of the grapes for production will be trucked in from outside locations with 75% of the increase (or 70,500 gallons) subject to the County Grape Source requirements. A new barrel storage building totaling 9,273 square feet will be constructed to accommodate the increase storage needs with offices for previously approved custom producers, and employee break room, restroom and production equipment storage.

7. Grape Sourcing

Because the new barrel building, dual domestic and process wastewater system, increased parking and other improvements will expand the existing winery beyond its existing winery development area, Napa County Code section 18.104.250(C) applies and states: C. All existing wineries which expand beyond their winery development area shall be subject to the following additional limitations: 1. At least seventy-five percent of the grapes used to make that portion of the winery's still wine which is produced as a result of the expansion shall be grown within the county of Napa. 2. At least seventy-five percent of the grapes used to make the still wine used to make the sparkling wine that is produced as a result of the expansion shall be grown within the county of Napa. (Ord. 947 §17, 1990) Therefore, because the development area is being increased due to this request, 94,000 gallons of the production increase will be subject to the 75% rule or a total of 70,500 gallons. The original 50,000 gallons per year production level was established prior to the WDO and is not subject to 75% rule. The applicant has agreed to comply with the 75% rule for the proposed production increase.

8. Floodplain

The subject parcel falls within FEMA Flood Zone A 3, 100 year floodplain with a base elevation of 155.6 feet above mean sea level. The applicant is required to obtain a floodplain management permit from the Public Works Department and demonstrate that all new construction is above or floodproofed to the base flood elevation. The applicant will be responsible for completing an Elevation Certificate for the completed structures inside a flood hazard area prior to occupancy as well as satisfactory completion of all State and County requirements with regard to the proposed project within the floodplain.

9. New Barrel Storage Building Size

The new Barrel Storage Building is proposed to be approximately 9273 square feet of useable space. It is designed in a U-shaped configuration having a 1,537 square foot covered crush pad located in the center of

building. The new structure will be constructed within 20 feet of the existing winery building. The two structures will be connected with a 20 foot wide covered outdoor bottling area. Grape staging and mobile bottling will take place in this area. The area will also be used for a supplemental bus parking area. The currently proposed building, including the mix of production space to accessory office space is consistent with required Napa County Code production/accessory ratios and well within the size previously approved for winery projects of a similar capacity.

10. Architectural Changes

The proposed architecture of the building complex appears in keeping with County aesthetic goals. The winery is located at the center of the property, and although the mass of the buildings will effectively more than double, the scale and size of the complex is considered by Staff to be compatible with County standards and the surrounding area.

11. Traffic

The applicant has submitted a traffic impact report (*Traffic Impact Report Alpha- Omega Winery Expansion Napa County, Mark D Crane, P. E., January 25, 2008*) which analyzes existing and proposed traffic conditions.

The traffic report concludes the proposed project would be expected to produce three potentially significant impacts that can be reduced to a less than significant level, if project changes are implemented. The potentially significant impacts cited are: (1) Average size marketing events ending at 2:30 on a Saturday afternoon would increase traffic volumes on Mee Lane to a level resulting in unacceptable delays for drivers turning from Mee Lane onto St. Highway 29; (2) Project traffic may further degrade existing poor pavement conditions along Mee Lane; (3) Sight lines for drivers exiting Alpha-Omega Winery driveway to Mee Lane are obstructed due to the winery sign located east of the driveway connection.

The traffic report recommends the following mitigation measures to the project that would reduce the above impacts to a less than significant level: (1) Saturday afternoon Special Events: Any special event on Saturday afternoon should end preferably by 1:30 PM and no later than 2:00 PM. Alternatively, events could start before 12:30 PM and end after 5:30 PM. In addition to this mitigation measure, per Mr. Crane's memo dated July 18, 2008, the applicant has voluntarily agreed to a condition of approval requiring the attendees of the larger (150+) events to arrive by bus or coach for events occurring during peak business hours on Friday, Saturday or Sunday afternoon during tourist season. (Napa County Public Works however, suggests a mitigation measure should also be required for the larger 150+ weekend marketing events so that Caltrans comments are addressed); (2) Mee Lane Pavement Degradation: The County and project applicant should document the current physical condition of Mee Lane between S.R.29 and the Alpha Omega Winery entrance. The applicant should then be responsible to provide a fair share contribution towards any repair to this section of roadway observed to be more significant than that occurring to the east of the Winery entrance; (3) Mee Lane/Alpha Omega Winery Entrance: The project applicant should move signing just to the east of the Winery entrance to improve sight lines for drivers turning left from the Alpha Omega Winery driveway to Mee Lane.

It should be noted that recommendation #1 above incorporates several comments received by Caltrans regarding the traffic increases to Saturday afternoon peak trips and the length of the left turn deceleration lane at the St. Highway 29/Mee Lane intersection. It also attempts to incorporate neighbor concerns regarding the traffic impacts associated with the requested visitation and marketing events. Due to these concerns the project was revised to incorporate bussing of attendees for larger (+150) events for not only Saturday but also Friday and Sunday during tourist season at peak business hours and limit any Saturday marketing event to off-peak times for any time of the year.

In addition, based on Caltrans' comments received on August 19th, 2008, staff has added the following language to the Conditions of Approval for Saturday 150+ events: The winery shall provide details of the bus/shuttle route

including pick-up and drop-off locations in reference to State Highway 29 to the Napa County Planning Department and the State Department of Transportation (Caltrans) District Branch Chief on a yearly basis or immediately upon any change of planned locations. The Project Revision Statement and Mitigation Monitoring and Reporting Program has been signed by the applicant for the above described traffic mitigations. (See the attached detailed Mitigation Monitoring and Reporting Program.)

The applicant has also agreed to widen the winery driveway access to Mee Lane to a 50' radius to facilitate ingress and egress of large vehicle traffic such as busses, delivery trucks and fire apparatus. The widening of the driveway to the 50' radius has been incorporated into the Conditions of Approval from the County Public Works Department.

The close of the public comment period is September 3rd, 2008 for any other agency comment. As of August 18th, 2008, negotiations with the project manager and the Mee Lane and surrounding neighbors are still in progress. They have sent the County numerous letters of concern regarding this issue.

12. Parking

63 parking spaces plus two bus spaces are planned. The Department has reviewed the plan and the narrative provided by the applicant. Staff has determined that with inclusion of the mitigation measure to provide bussing of attendees of the large (150+) marketing events on the busiest day and limit any Saturday marketing event to off-peak, adequate parking is available.

13. Outdoor seating areas

The applicant has requested authorization of the use of the outdoor covered patio and garden areas by visitors and marketing event attendees. Condition 7 of Use Permit #U-538485 currently limits outdoor activities as follows: No outside social activities including outdoor dining, live music, outdoor festivals, or other activities of a similar nature. Staff recommends that to be consistent with Condition of Approval # 7, only approved tours and tasting of wine can occur in the outdoor covered patio and garden areas and that the other activities as stated above, unless explicitly changed by Commission approval, cannot be allowed in any of the outdoor areas of the winery property.

The applicant has installed an electronic sound system in the outdoor patio seating area. The current County standard conditions of approval explicitly state: "There shall be no amplified sound system or amplified music utilized outside of approved, enclosed winery buildings". The outdoor patio seating area wraps around the existing winery building. The seating area is open-air, being enclosed only on one side of the winery building. Staff recommends the installed patio sound system be removed and limit any installed sound system to the approved enclosed portion of the winery buildings per County standards. In addition to the standard Condition of Approval for noise, staff recommends the following additional conditions regarding noise be implemented to maintain noise at a low to moderate level:

There shall be no amplified sound system or amplified music utilized outside of approved, enclosed winery buildings, or outdoor covered patio areas or gardens. At no time shall any sound level exceed 60 decibels as measured from the property line including sounds emitted during any marketing event, temporary event and/or political event. Any non-amplified, acoustical music or sound shall be located under the covered patio area only and away from Mee Lane and only during normal hours of operation from 10 a.m. to 6 p.m.

14. Neighbors

The Department has received four letters (1 business, 2 winery owners and 1 neighbor) in positive support of the project as proposed. Their comments focus mainly on the aesthetic improvements Alpha Omega has made and plans to make to the property and that the project appears to be consistent with the agricultural character of the

valley and the General Plan. (See attached letters with favorable comments.) The Department has received six letters (from neighbors on Mee Lane and from those across St. Highway 29 above Provenance Winery) voicing adamant concerns about the project. The comments focus on the sudden and high level increase in visitation and marketing events which is described as greatly increasing traffic and noise levels and potential parking problems spilling onto Mee Lane. Also of concern is the magnitude of the production increase with respect to the size of the parcel and the minimal access for ingress and egress provided by Mee Lane. Other comments state the project is out of character with other wineries in the immediate area and generally for the Agricultural Preserve. (See attached letters with concerned comments.) The neighbors have met with the applicant on several occasions to request various project revisions and reductions as described above. Besides these concerns, negotiations have included a request for applicant to provide an alternate winery access either directly off St. Highway 29 or by obtaining an easement from the veterinary property located at the intersection of Mee Lane and St. Highway 29. The applicant has agreed to look in to the feasibility of these two options. Two of the neighbor letters include suggested conditions of approval. (See attached Alfred Pepin letter dated August 14, 2008 and Willis Blakewell letter dated August 2008.)

Consistency with Standards:

Zoning

The project is consistent with AP (Agricultural Preserve) 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 AP district with an approved use permit. This application complies with the Winery Definition Ordinance and where a variance to the requirements of the Zoning Code is requested, required findings can be made. Please see the attached draft resolution of approval for findings and conditions of approval.

Building Division Requirements

The Division recommends approval with standard conditions incorporated into the project per their attached memo dated 3/15/2008.

Fire Department Requirements The Department recommends approval with standard conditions incorporated into the project per their attached REVISED memo dated 7/5/2008.

Public Works Department Requirements

The Department recommends approval with standard conditions incorporated into the project per their attached REVISED memo dated 7/25/2008. (See also 7/25 memo additional conditions: New Driveway item # 3 requiring widening of the existing driveway connection with Mee Lane to facilitate ingress and egress of large fire, delivery and bus vehicles to a 50' radius.)

Caltrans Requirements

Per Caltrans letter dated July 22, 2008: "The project will increase the Saturday afternoon peak past the 95th percentile queue. The project needs to improve the deceleration lane length to current standards for the southbound (SB) left turn lane at the State Route (SR) 29/Mee Lane intersection." (Public Works suggested mitigation has been submitted to Caltrans. See item below. Caltrans comment pending as of August 18, 2008)

Public Works Department Additional Requirements

The Public Works Traffic Division recommends incorporation of a mitigation measure to bus or shuttle attendees of large (150+) events for Saturday afternoons during tourist season to sufficiently mitigate the potentially significant impact recognized by Caltrans. (See Public Works – Rick Marshall memo dated 7/28/2008.)

Environmental Management Department Requirements

The Department recommends approval with project specific conditions for an upgraded septic system and wastewater system as recommended for Phase A and Phase B of the project per memo dated 7/22/2008.

SUPPORTING DOCUMENTS

- A . Exhibit A - Findings Required for Approval of a Variance and Use Permit
- B . Exhibit B - Proposed Conditions of Approval
- C . Exhibit C - Project Revision Statement (July 29, 2008)
- D . Exhibit D - Mitigation Monitoring and Reporting Program
- E . WDO Discussion - Past Aerial Photos & Winery Spreadsheets
- F . Environmental Management Conditions Memo
- G . Fire Marshall's Conditions Memo
- H . Public Works Conditions Memo
- I . Public Works Transportation Division Comments Memo
- J . Caltrans Comment 1 Deceleration Lane w Consultant Response
- K . Caltrans Comment 2 Saturday Que w Consult & Pub Wks Response
- L . Caltrans Comment 3 Saturday Shuttle Bus Mitigation w Consult Response
- M . Building Division Conditions Memo
- N . Calif Highway Patrol & Sheriff's Comments
- O . Delta Engineering Letter Re: Wastewater Expansion
- P . Previous Staff Report and Cond of Apprvl U-118081
- Q . Previous Staff Report and Cond of Apprvl U-538485
- R . Previous Staff Report and Cond of Apprvl 95037-MOD
- S . Previous Staff Report and Cond of Apprvl P07-00330-MODMIN
- T . Subsequent Mitigated Negative Declaration/Initial Study
- U . Favorable Neighbor Comments
- V . Concerned Neighbor Comments
- W . Application Materials with 75% Grape Source Agreement
- X . Final Project Graphics

Napa County Planning Commission: Approve

Reviewed By: John McDowell