



STAFF REPORT

Date: July 11, 2017
To: Bryan Montgomery, City Manager
From: Joshua McMurray, Planning Manager

Approved and Forwarded to City Council:

J.M.S.
Bryan Montgomery, City Manager

SUBJECT: Duarte Estates Winery Conditional Use Permit (CUP 02-17) - Conditional Use Permit to establish a winery use on a site located at 1459 Kay Lane APN: 034-070-027

Summary

The applicant, Daniel Duarte, is requesting a Conditional Use Permit (CUP 02-17) for approval to establish a winery use. The production and storage of wine will take place in a new 1,500 square foot accessory structure (not part of this project). The project site is designated Agricultural Limited in the Oakley 2020 General Plan and zoned Limited Agriculture (AL). The project is located at 1459 Kay Lane. (APN: 034-070-027)

Staff recommends the City Council adopt the Resolution approving Conditional Use Permit (CUP 02-17) to establish a winery use on a site located at 1459 Kay Lane, APN 034-070-027, as conditioned.

General Plan/Zoning Compliance

In 2002 the site was designated "Agricultural Limited" in the Oakley 2020 General Plan. The "Agricultural Limited" designation allows for a wide range of agricultural uses. The project site was rezoned to the Limited Agriculture (AL) District in 2011 as part of the Citywide Residential Rezone project. The AL District is compatible with the "Agricultural Limited" General Plan Land Use designation. The proposed use is defined as a "Winery", which is allowed in the Limited Agriculture District with the approval of a Conditional Use Permit.

Project Description

The property is approximately 2.57-acres in size. The property is currently developed with a single family residence and detached garage/shop. Approximately two thirds of the property has an existing vineyard. The property is bordered by Brown Road to the west and Kay Lane to the North. The project site lies within the boundaries of the agricultural core area south of Laurel Road, East of Brown Road and North of Carpenter Road. The property is surrounded by mostly residential properties designated and zoned for agricultural uses with the exception of the property directly to the west of the project site, which is designated for agricultural uses but zoned R-40 (Single-Family Residential).

The project consists of the following entitlement:

Conditional Use Permit

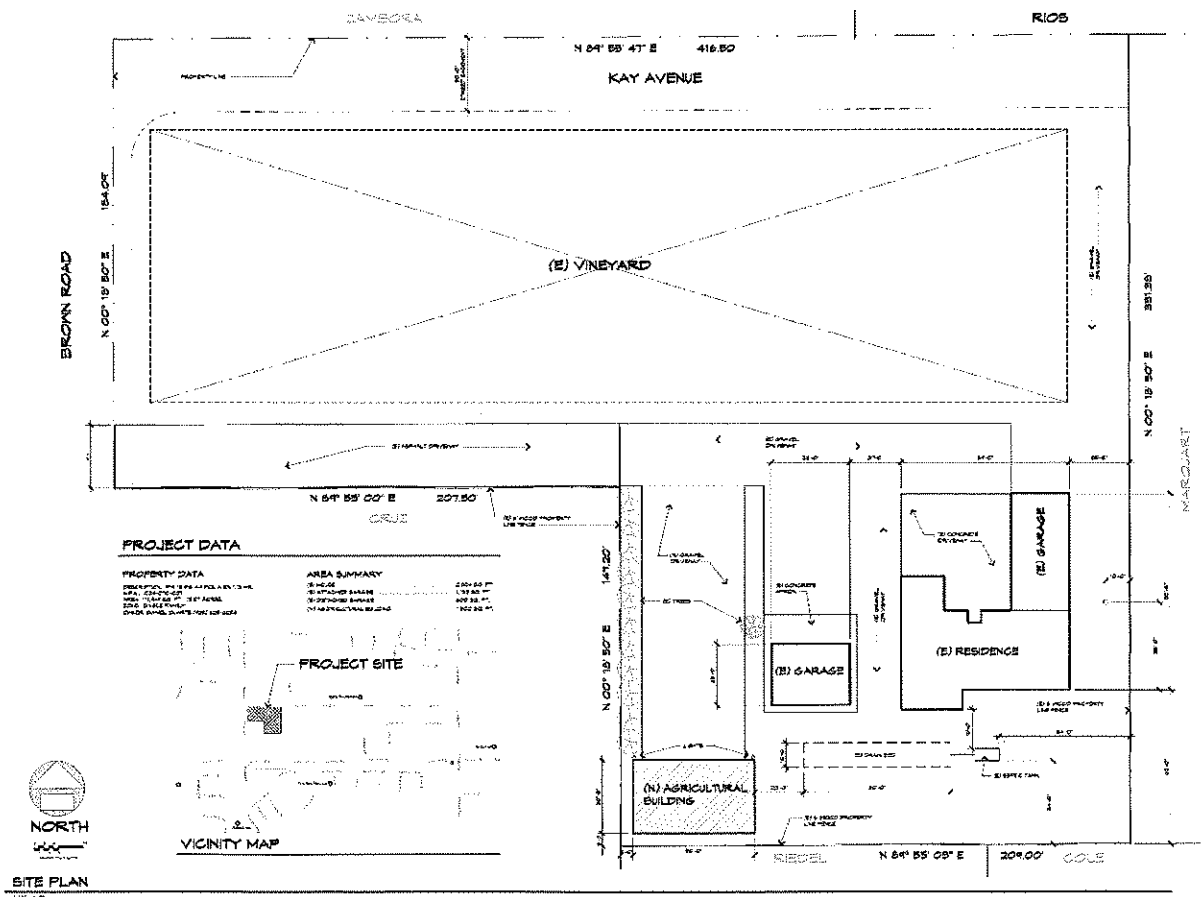
The proposed use is defined as a "Winery", which is allowed in the Limited Agriculture District with the approval of a Conditional Use Permit. The purpose of a Conditional Use Permit is to allow for uses that are not allowed by right, and to ensure, through conditions, that the proposed land use is compatible with the surrounding land uses in the neighborhood.

Analysis

Land Use Compatibility

The existing land use designation on the subject site is Agricultural Limited (AL). The purpose of the AL designation is to accommodate light agriculture including vineyards, orchards, and row crops, animal husbandry and very low-density residential uses – reflections of the historic and continuing agrarian practices within Oakley.

The analysis of this application centers on the proposed "Winery" use and how it is compatible with the properties in the immediate vicinity. All properties that are immediately adjacent to the project site share the same General Plan land use designation of Agricultural Limited (AL) and are zoned Limited Agriculture (AL), with the exception of the property to the direct west which is zoned R-40 Single-Family Residential. The Limited Agriculture and R-40 Zone Districts allow for winery uses with the approval of a Conditional Use Permit.



The applicant is proposing to conduct all of the wine making in a new, detached accessory structure (not part of this application as it only requires a Building Permit). The operation is detailed out in the description of the use (Attachment 3). The use consist of a several tasks, with the primary ones being the crushing of the grapes, fermenting the grapes, barreling the wine for a minimum of 2 years and then bottling the wine. The applicant is only proposing to allow for the making of wine on site and does not want to open a tasting room on this property as it is also serves as his personal residence. In addition to the Conditional Use Permit the applicant is also going to the California Department of Alcohol Beverage Control (ABC) to obtain the proper license to make wine on the property.

The nature of the proposed use is one of low intensity. The vineyard on the property is actively producing grapes and is being farmed and maintained as such. The proposed use is something that was anticipated when the General Plan was adopted and the property is designated and zoned appropriately to allow for the activities proposed by the applicant. Staff has added Conditions of Approval in the attached resolution that require the applicant to obtain a valid ABC license and to comply with the City's Noise Ordinance.

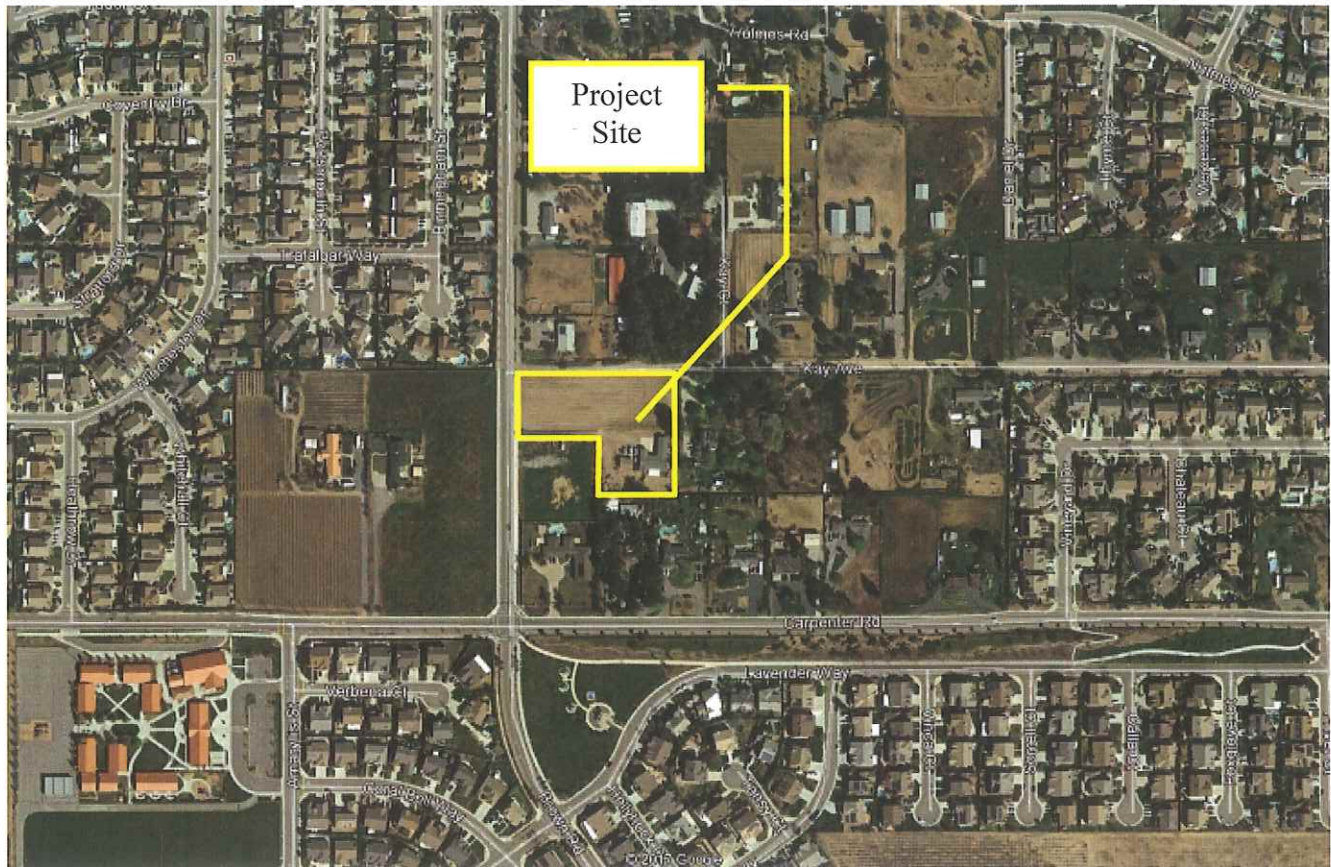
Recommendation

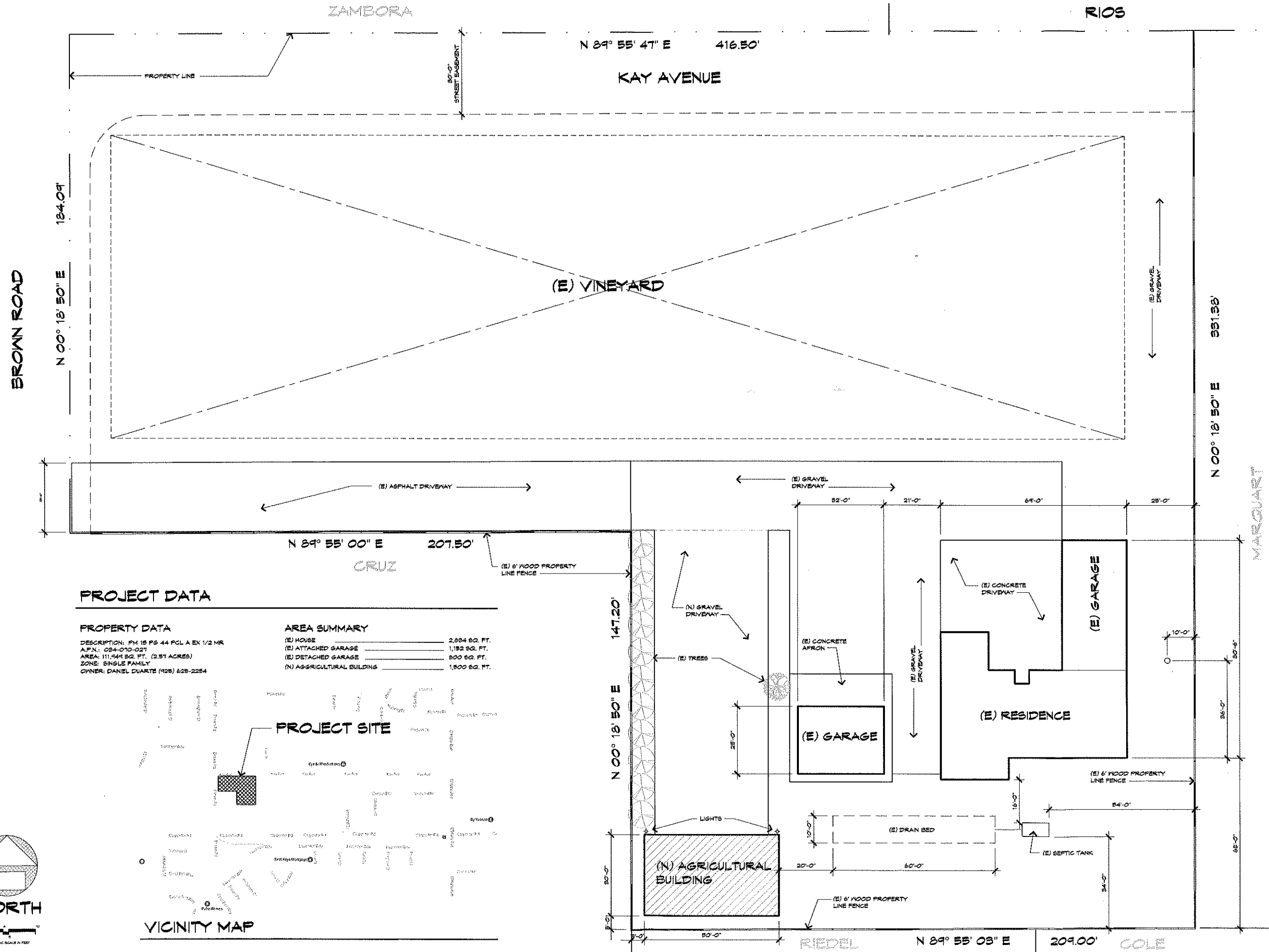
Staff recommends the City Council adopt the Resolution approving Conditional Use Permit (CUP 02-17) to establish a winery use on a site located at 1459 Kay Lane, APN 034-070-027, as conditioned.

Attachments

1. Vicinity Map
2. Project Plan Set
3. Applicant Project Description
4. Draft Resolution

Duarte Estates Winery
Conditional Use Permit (CUP 02-17)
APN: 034-070-027





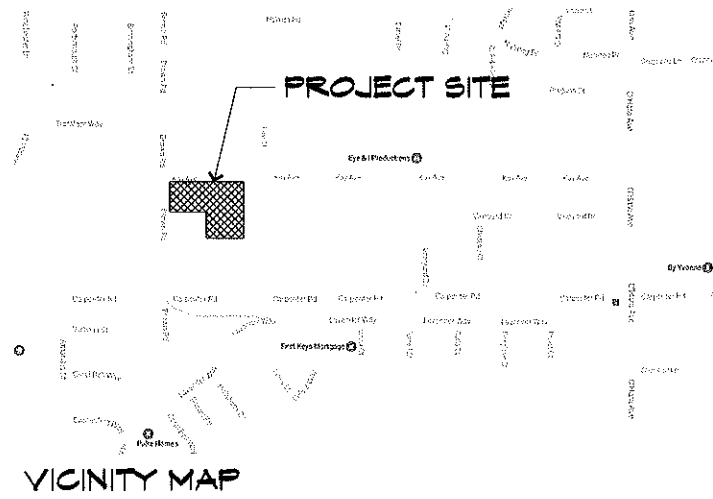
PROJECT DATA

PROPERTY DATA

DESCRIPTION: PM 15 PG 44 PCL A EX 1/2 MR
 A.P.N.: 084-010-027
 AREA: 111,944 SQ. FT. (2.57 ACRES)
 ZONE: SINGLE FAMILY
 OWNER: DANIEL DUARTE (428) 625-2254

AREA SUMMARY

(E) HOUSE 2,884 SQ. FT.
 (E) ATTACHED GARAGE 1,152 SQ. FT.
 (E) DETACHED GARAGE 800 SQ. FT.
 (N) AGRICULTURAL BUILDING 1,800 SQ. FT.



MD DESIGN
 210 Mt. Cypress Road #2
 Oakley, California
 94561
 (428) 216-1041
 Mark Devine Designer

Proposed Agricultural Building For:
Duarte Residence
 1459 Kay Avenue, Oakley, California

drawing
SITE PLAN

drawn
 MD
 checked
 MD
 date
 MAY 2017
 scale
 1/16" = 1'-0"
 job no.
 2017000
 sheet

A1
 of 1 sheets

NORTH
 GRAPHIC SCALE IN FEET

SITE PLAN
 1/16" = 1'-0"

Joshua McMurray

From: Yvonne Duarte <dayfenceco@gmail.com>
Sent: Wednesday, May 17, 2017 3:14 PM
To: Joshua McMurray
Subject: Winery use

Hi Josh, this is Dan Duarte.

The use will consist of:

1. picking the grapes
2. sorting the grapes
3. crushing the grapes
4. fermenting the grapes
5. pressing off the must
6. barreling the wine for 2 years.
7. bottling the wine.
8. Storing the wine in a cool location that is bonded with ABC.
9. Selling of the wine hopefully at a retail location in Oakley, CA.

If you want me to go into more detail, feel free to call me. If you need photos, I do have pictures of me making wine. I have been doing this my whole adult life.

Dan Duarte
Duarte Construction
925-383-2978

RESOLUTION NO. XX-17

**A RESOLUTION OF THE CITY OF OAKLEY CITY COUNCIL MAKING FINDINGS
AND APPROVING THE CONDITIONAL USE PERMIT (CUP 02-17) TO ESTABLISH A
WINERY USE ON A SITE LOCATED AT 1459 KAY LANE
APN 034-070-027**

WHEREAS, on May 17, 2017, Daniel Duarte (“Applicant”), submitted an application for a Conditional Use Permit (CUP 02-17) to establish a winery use on a site located at 1459 Kay Lane. APN: 034-070-027 (“Project”); and

WHEREAS, on June 27, 2017, the project application was deemed complete per Government Code section 65920 et. seq; and

WHEREAS, the project is designated as *Agricultural Limited* in the Oakley 2020 General Plan, and zoned Limited Agriculture (AL) District; and

WHEREAS, on June 30, 2017, the Notice of Public Hearing for the project was posted at Oakley City Hall located at 3231 Main Street, outside the gym at Delta Vista Middle School located at 4901 Frank Hengel Way, outside the library at Freedom High School located at 1050 Neroly Road, and at the project site. The notice was also mailed out to all owners of property within a 500-foot radius of the subject property’s boundaries, to outside agencies, and to parties requesting such notice; and

WHEREAS, the project is exempt from further environmental analysis under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15332, “Class 32 – In-Fill Development Projects”; and

WHEREAS, on July 11, 2017, the City Council opened the public hearing at which it received a report from City Staff, oral and written testimony from the public and applicant, and deliberated on the project. At the conclusion of its deliberations, the City Council took a vote and adopted this resolution to approve the project, as conditioned, and

WHEREAS, if any term, provision, or portion of these Findings or the application of these Findings to a particular situation is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of these Findings, or their application to other actions related to the Project, shall continue in full force and effect unless amended or modified by the City; and

WHEREAS, these Findings are based upon the City’s General Plan, the City’s Zoning Ordinance, and the information submitted to the City Council at its July 11, 2017 meeting, both written and oral, including oral information provided by the applicant, as

reflected in the minutes of such meetings, together with the documents contained in the file for the project (hereinafter the "Record"); and

NOW, THEREFORE, BE IT RESOLVED THAT, on the basis of the above findings of fact and the entire Record, the City Council makes the following additional findings in support of the approvals:

A. Regarding the application requesting approval of a Conditional Use Permit (CUP 02-17) to establish a winery on a site located at 1459 Kay Lane. APN: 034-070-027:

1. The site for the proposed use is adequate in size and shape to accommodate the use in a manner complementary with the land and uses in the area in that the site is approximately 2.57-acres and the General Limited Agriculture (AL) Zoning District allows for the proposed use with the approval of a Conditional Use Permit.; and
2. The site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use in that the site is accessible by public rights-of-way such as Brown Road, which is designed to handle project generated traffic; and
3. The proposed use will be arranged, designed, constructed, operated, and maintained so as to be compatible with the intended character of the area and will not change the essential character of the area that is intended by the General Plan and the applicable zoning ordinances in that the proposed use is permitted in the Limited Agriculture (AL) Zoning District with the approval of a Conditional Use Permit.; and
4. The proposed use provides for continued growth and orderly development of the community and is consistent with the various elements and objectives of the General Plan in that it provides an ancillary use to the agricultural property. The use and site are a result of Oakley's zoning that allows for agricultural lots that can accommodate this type of use; and
5. That the proposed use, including any conditions attached thereto, will be established in compliance with the applicable provisions of the California Environmental Quality Act; and

B. The project complies with Measure J Growth Management requirements.

BE IT FURTHER RESOLVED THAT, on the basis of the above Findings and the Record, the City Council approves of the Applicant's request for **Conditional Use Permit (CUP 02-17)**, subject to the following Conditions of Approval:

Conditions of Approval

Applicant shall comply with the requirements of the Oakley Municipal Code. Any exceptions must be stipulated in these Conditions of Approval. Conditions of Approval are based on the application received by the Planning Division dated **May 17, 2017**, as well as additional information acquired since that time and made part of the project file.

THE FOLLOWING CONDITIONS OF APPROVAL SHALL BE SATISFIED PRIOR TO ESTABLISHING THE USE UNLESS OTHERWISE NOTED:

Planning Division Conditions

General:

1. This **Conditional Use Permit (CUP 02-17)** is approved, as shown on the plans, date stamped by the Planning Division on **May 17, 2017**, and as modified by the following conditions of approval, subject to final review and approval by the Community Development Director.
2. This approval for **Conditional Use Permit (CUP 02-17)** shall be effectuated within a period of one (3) years from the effective date of this resolution by establishing the use and if not effectuated shall expire on **July 11, 2020**. Prior to said expiration date, the applicant may apply for an extension of time pursuant to the provisions of the Zoning Code.
3. All conditions of approval shall be satisfied by the owner/developer. All costs associated with compliance with the conditions shall be at the owner/developer's expense.
4. Noise generating construction activities, including such things as power generators, shall be limited to the hours of 7:30 a.m. to 5:30 p.m. Monday through Friday, and shall be prohibited on City, State and Federal Holidays. The restrictions on allowed working days and times may be modified on prior written approval by the Community Development Director.
5. The applicant shall defend, indemnify, and hold harmless the city or any of its boards, commissions, agents, officers, and employees from any claim, action or proceeding against the city, its boards, commissions, agents, officers, or employees to attack, set aside, void, or annul, the approval of the project. The city shall promptly notify the applicant of any such claim, action or proceeding. The city shall have the option of coordinating the defense. Nothing contained in this condition shall prohibit the city from participating in a defense of any claim, action, or proceeding if the city bears its own attorney's fees and costs, and the city defends the action in good faith.

6. The applicant shall obtain and provide the City a copy of the California Department of Alcohol Beverage Control (ABC) license prior to establishing the winery use.
7. All noise generated by the use (including but not limited to the swim meets, tennis tournaments, outdoor movie nights, and other similar events) shall comply with the noise standards of Table 9-1 of the Noise Element within the Oakley 2020 General Plan.
8. A tasting room is not permitted with this approval. If the applicant would like to add a tasting room to the winery use, an amendment to this Conditional Use Permit will be required.

Public Works and Engineering Condition

9. Convey to the City, by offer of dedication, the right of way for Brown Road for the planned future half width of 30-feet along the project frontage.
10. Collect and convey all stormwater entering and/or originating on this property, without diversion and within an adequate storm drainage facility, to an adequate natural watercourse having definable bed and banks, or to an existing adequate public storm drainage facility that conveys the storm waters to an adequate natural watercourse consistent with the plans for Drainage Area 30A and Drainage Area 130 as prepared by the Contra Costa County Flood Control and Water Conservation District.
11. Prevent storm drainage from draining across the sidewalk(s) and driveway(s) in a concentrated manner.
12. The applicant shall be responsible for paying the County Recorder's fee for the Notice of Exemption as well as the State Department of Fish and Game's filing fee.
13. Applicant shall annex the property to the City of Oakley Community Facilities District No. 2015-2 which provides a funding mechanism to mitigate the Development's fiscal impact associated with the City's regional, community and neighborhood parks, public area landscaping, street lights and storm water facilities. The Applicant shall apply for annexation and provide all information and documents required by the City of its agents in processing the annexation. All costs of annexation shall be paid by Applicant.
14. Participate in the provision of funding to maintain police services by voting to approve a special tax for the parcels created by this subdivision approval. The tax shall be the per parcel annual amount (with appropriate future cost of living adjustment) as established at the time of voting by the City Council. The election to provide for the tax shall be completed prior to certificate of occupancy. Should the building be occupied prior to the City receiving the first disbursement from the

tax bill, the project proponent shall be responsible for paying the pro-rata share for the remainder of the tax year prior to certificate of occupancy.

15. Applicant shall comply with the drainage fee requirements for Drainage Area 30A and DA 130 as adopted by the County Board of Supervisors. The applicant shall pay the fee in effect at the time of building permit issuance. Certain improvements required by the Conditions of Approval for this development or the Code may be eligible for credit or reimbursement against the drainage area fee. The developer should contact the City Engineer to personally determine the extent of any credit or reimbursement for which they might be eligible. Any credit or reimbursements shall be determined prior to certificate of occupancy or as approved by the Flood Control District.
16. Participate in the City's South Oakley Infrastructure Master Plan both by cooperating with the City's consultant team in the design and implementation of specific infrastructure projects and by providing this project's fair share contribution to the costs of preparing the study. The fair share contribution shall be paid in accordance with Resolution 52-03.

ADVISORY NOTES

PLEASE NOTE ADVISORY NOTES ARE ATTACHED TO THE CONDITIONS OF APPROVAL BUT ARE NOT A PART OF THE CONDITIONS OF APPROVAL. ADVISORY NOTES ARE PROVIDED FOR THE PURPOSE OF INFORMING THE APPLICANT OF ADDITIONAL ORDINANCE REQUIREMENTS THAT MUST BE MET IN ORDER TO PROCEED WITH DEVELOPMENT.

- A. The applicant/owner should be aware of the expiration dates and renewing requirements prior to requesting building or grading permits.
- B. The project will require a grading permit pursuant to the Ordinance Code.
- C. Comply with the requirements of the Ironhouse Sanitary District.
- D. Comply with the requirements of the East Contra Costa Fire Protection District.
- E. Comply with the requirements of the Diablo Water District.
- F. Comply with the requirements of the Building Inspection Department. Building permits are required prior to the construction of most structures.
- G. This project may be subject to the requirements of the Department of Fish and Game. It is the applicant's responsibility to notify the Department of Fish and Game, PO Box 47, Yountville, California 94599, of any proposed construction within this development that may affect any fish and wildlife resources, per the Fish and Game Code.

H. This project may be subject to the requirements of the Army Corps of Engineers. It is the applicant's responsibility to notify the appropriate district of the Corps of Engineers to determine if a permit is required, and if it can be obtained.

PASSED AND ADOPTED by the City Council of the City of Oakley at a meeting held on the 11th of July, 2017 by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

APPROVED:

Sue Higgins, Mayor

Date

ATTEST:

Libby Vreonis, City Clerk

Date