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Agenda Date: 6/2/2015
Agenda Placement: 9B
Set Time: 9:30 AM PUBLIC HEARING
Estimated Report Time: 1 Hour

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: David Morrison - Director
Planning, Building and Environmental Services
REPORT BY: John McDowell, Deputy Planning Director - 299-1354
SUBJECT: Melka Appeal filed by Ginny Simms & Eric Titus

RECOMMENDATION

Consideration and possible action regarding an appeal filed by Eric Titus – Lee E. Titus and Sons Vineyard (Titus Appeal) and an appeal filed by Ginny Simms (Simms Appeal) to a decision by the Planning Commission on March 4, 2015 to approve the Melka Winery application for a use permit (P14-00208-UP) and variance (P14-00209-VAR) 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 30 person marketing events annually; 7) one 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; 12) construction of seven parking spaces; and 13) five or fewer employees. A Variance was also approved 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).

ENVIRONMENTAL DETERMINATION: 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.

EXECUTIVE SUMMARY

The matter before the Board involves two separate appeals to a decision by the Planning Commission's (the Commission) decision on March 4, 2015 to approve an application submitted by Cherie and Phillippe Melka (Applicants) for a new 10,000 gallons per year winery with tours and tastings, the conversion of an existing barn to winery uses and a new winery building and related improvements. The Commission also approved a variance that would permit the existing residence to be converted into 1,516 square feet of cased good storage and 793 square feet of hospitality space and office and encroach 435 feet into the required 600 foot setback from Silverado Trail. The winery project and variance are hereafter referred to as the Melka Winery or Project. The 10.68 acre project site is located approximately 200 feet north of Deer Park Road and within the Agricultural Watershed (AW) Zoning District.

On March 13, 2015, and within the prescribed filing period, a Notice of Intent to Appeal was filed by Ginny Simms (Appellant Simms or Simms). On March 18, 2015, and within the prescribed period, a Notice of Intent to Appeal was filed by Eric Titus (Appellant Titus or Titus). On March 27, 2015, an Appeal Packet was timely submitted by Appellant Simms. On April 1, 2015, an Appeal Packet was timely submitted by Appellant Titus.

Although the two appeals raise different issues, Staff recommends that the Board consolidate the appeals. Consolidation would reduce repetition and provide for a more efficient hearing, thereby saving both time and costs. Consequently, a single Staff report has been provided to the Board, with a recommendation that the appeal hearing occur in two parts: Part A would consider the Titus Appeal; and Part B would consider the Simms Appeal.

PROCEDURAL REQUIREMENTS

1. Chair introduces item and requests Staff report presentation. Staff to present background common to each appeal. Because two appeals were filed, Staff prepared a consolidated staff report however the appeal hearing will occur in two parts with Part A encompassing the Titus Appeal and Part B covering the Simms Appeal.
2. At the beginning of the appeal hearing if an interested party requests that the record be augmented or that the matter be heard de novo, the Board must first decide whether "good cause" (a substantial reason) exists for such request. Any motion made by a member to allow additional evidence or hear all relevant evidence (de novo hearing) should identify the specific facts presented that support the required good cause finding. If no member makes such a motion, the request will be considered denied.
3. A. Chair opens public hearing for Parts A (Titus), invites Staff's presentation, testimony from Appellant Titus, followed by any other interested parties, and the Applicant. Titus shall have the final rebuttal.
B. Chair then opens the public hearing for Part B (Simms), invites Staff's presentation, testimony from Appellant Simms, followed by any other interested parties, and the Applicant. Simms shall have the final rebuttal.
4. After the Board has heard testimony and received evidence from Appellants Titus and Simms, the Applicant, Staff, and interested parties supporting each, Chair closes the public hearing.
5. A motion of intent is made and seconded to either deny or uphold the appeal for Part A and refer the matter to County Counsel's office for preparation of a Resolution of Findings and Decision on Appeal.
6. A motion of intent is made and seconded to either deny or uphold the appeal for Part B and refer the matter to County Counsel's office for preparation of a Resolution of Findings and Decision on Appeal.
7. Chair calls for the votes on the motions of intent to either deny or uphold the appeals and refer the matter to the County Counsel's office for preparation of a Resolution of Findings and Decision on Appeal.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: 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.

BACKGROUND AND DISCUSSION**CURRENT STATUS AND ACTIONS BEFORE THE BOARD:**

The matters before the Board are two appeals to the Commission's decision to approve a use permit establishing a new 10,000 gallon per year winery within approximately 6,359 square feet of buildings and outdoor work areas, accessory uses, on-site consumption of wines produced on-site, a marketing plan, tours and tastings by appointment only, and driveway improvement as further described above. The Commission also approved a variance to encroach into the required setback from Silverado Trail. The Melka Winery is located on a 10.68 acre parcel north of Deer Park Road within the AW zoning district (the Project Site). The Commission's hearing occurred on March 4, 2015.

After considering all written and verbal evidence presented, the Commission closed the public hearing and voted 4-1 to find the Project Categorically Exempt from CEQA and to approve Melka Winery Use Permit No. P14-00208 and Variance No. P14-00209 for the Melka Winery. Subsequent to the Commission's decision and within the prescribed period, both appeals were deemed complete.

County Code Section 2.88.090 provides for appeals of Planning Commission decisions and stipulates that the Board's appeal hearing be based on the documentary record, including transcripts of the Commission's hearing, plus any evidence that could not have been presented at those hearings, unless the Board affirmatively permits any additional evidence based on good cause shown. Since the hearing, new evidence was submitted by Eric Titus concerning the need for a left turn lane for the Project, along with an additional letter from Ginny Simms on May 12, 2015. In response to the additional information, Applicant's representatives submitted additional responses on May 19 addressing both the Titus and Simms correspondence. Additionally, in an effort to clarify the Department of Public Works' understanding of the left turn lane issue, Deputy Director Rick Marshall submitted a memo on May 14.

At the outset of the hearing, the Board should first consider whether any new evidence should be admitted as part of the appeal hearing. After a determination regarding acceptance of new evidence, the Board should consider the basis for the appeals together with Staff's responses, as presented below. Following the appeal hearing, the Board may affirm, reverse, or modify the decision by the Planning Commission. Should the Board deny one or more of the appeals and approve the Project (as originally approved or as modified), the Board would also need to readopt the Categorical Exemptions. Upon closure of the public hearing, the Board should take a tentative action (i.e., a motion of intent) on both appeals and refer the matter to County

Counsel's office for preparation of written findings.

STATED BASIS FOR THE APPEAL AND STAFF RESPONSE:

The following outlines the Basis of the Appeal as contained in the appeals submitted separately by Titus and Simms. For convenience, Staff has numbered each issue and provided a summary, but recommends the Board review each of the actual appeals for details. Background materials and staff reports from the Planning Commission's hearings are attached, and the transcripts have been provided to the Board.

PART A: TITUS APPEAL.

The following outlines the basis of the appeal as contained in the Titus Appeal dated April 1, 2015.

Titus Appeal Ground No. 1: Appellant Titus contends that the Melka Winery should contribute to the construction of a left turn lane from Silverado Trail into the project property.

Staff Response: Staff agrees that a left turn lane should be required, but does not agree that it is the County's role to require a cost sharing agreement between Appellant Titus and Applicant Melka.

Left turn lane warrants are set forth in Section 17 of the Napa County Road and Street Standards. Left turn lanes are required on discretionary projects based on public road average daily trips (ADT) and the project driveway ADT of the proposed use. Private Road or Driveway ADT is the total average daily traffic utilizing the facility. In this case, the traffic analysis presented to the Planning Commission prepared by the Applicant's professional traffic engineer estimated that the Project would generate 10 ADT for the winery use, and indicated that ADT on Silverado Trail was 6,783 under existing conditions. Based on the left turn lane graph (page 21 of the Road and Street Standards), a Project driveway generating 22 ADT or greater would require the installation of a left turn lane or equivalent improvements. Because the Applicant's professional traffic engineer prepared a traffic report which estimated ADTs below the 22 threshold, Staff did not recommend to the Commission that a left turn lane improvement be required as a condition of approval.

However, subsequent to the Commission's decision and after consideration of both the Appellant's points and new evidence presented by the Applicant in response to the appeal, Staff concurs with Appellant Titus that existing trips from the existing residence and second unit were inappropriately not counted in total trips to the Project driveway. Staff agrees with Titus' contention that the Applicant should contribute to the construction of a left turn lane from Silverado Trail into both properties. In lieu of that, some alteration of the configuration of existing and proposed land uses would need to be implemented to reduce project driveway trips below the threshold for left turn lane improvements. Additional information submitted by the Deputy Director of Public Works on May 14, 2015 indicates that a left-turn lane should be required as a result of the Winery being added to the existing approved land uses. Deputy Director Marshall finds that the professional traffic engineer failed to account for ADTs generated by the two residences which are each given a value of 10 ADT, bringing total driveway ADTs to 30. Deputy Director Marshall finds that, "The combination of 6,783 ADT on Silverado Trail, and 30+ ADT using the project access driveway, would plot "above the curve" on the graph included in the Road & Street Standards, and thus a left-turn lane is warranted."

Based on past permits and assessor records, the existing land uses (excluding the proposed conversion of the barn/second unit to winery use) include a single family residence and adjacent guest cottage, plus a secondary dwelling which was constructed in the 1940s located down the hill from the main residence. These residential uses generate 20 ADT, consisting of 10 ADT for the residence and guest cottage, and 10 ADT for the second unit. The Applicant's most recent submittal in response to the appeal updates the

information they provided to the Commission and describes the 1940's era second unit as no longer containing a kitchen and being used solely as an accessory use to the residence. The Applicant asserts that as a result, the second unit should be included within the 10 ADT generation rate for the primary single family residence. The 1940's second unit may currently be used in this manner, but to date, no permit has been filed to convert the second unit to an accessory building without a kitchen. In the event the Applicant converts the structure to an accessory use in the future, trip generation at that time would be reduced by 10 ADT. Under this hypothetical scenario it should be noted, however, that the property would retain the right to develop a second unit. Reducing trips by 10 ADT by eliminating the second unit could bring the Project driveway below the threshold for a left turn lane, but the Project driveway would exceed the threshold if the Applicant exercised their ministerial property right to re-establish a second unit on the property at a later date.

The Applicant's latest response materials, submitted on May 19, also speak to the issue of employee count at the Winery. Employment levels remain a source of disagreement between Staff and the Applicant, although it is reported otherwise by the Applicant's traffic engineer. As indicated in the Commission hearing transcripts, Staff have found that overly specific accounting of employee levels is generally problematic on small wineries as it tends to under report the actual amount of traffic that will occur. It is very uncommon that a winery will operate with 1 full-time and 1 part-time employee. This level of employment does not account for the variety of work practices that occur at wineries that generate traffic, such as leasing space to custom producers and/or alternating proprietors, consulting with mobile bottlers, gardeners, caterers, event staff, etc. Often a source of disagreement is whether the owner(s) of a facility are considered in the total of employees or considered separately. Given this, several years ago, the Staff began evaluating small winery employment levels as facilities with 10 or fewer employees and assigning trips accordingly. Also, consistent with current practices, the Applicant is free to assign any portion of their approved capacity to a custom producer or alternating proprietor. Thus, Staff believe it would be more appropriate to evaluate project trip generation under the 5 full-time employee level.

The Titus property is located on the west side of Silverado Trail, generally opposite the Melka property located on the east side of Silverado Trail. Given prevailing traffic movements where the majority of vehicles entering and exiting the driveways to both Titus and Melka will come and go to the south, the Traffic Division and County Roads Superintendent found that appropriate access could be provided to both sites with striping changes and minor additional widening augmenting the previously approved Titus project left turn lane. This would satisfy the requirement of the Public Works Department for the Applicant to provide a left turn lane.

Titus Appeal Ground No. 2: In assessing the total traffic generated by the Project, the Planning Commission did not properly account for those aspects of the Project that the staff report stated was reasonably foreseeable under CEQA. In particular, Titus claims that Melka Winery would exceed the County's required threshold to install a left turn lane based on the amount of visitation and employees plus the reasonably foreseeable traffic.

Staff Response: Staff agrees that the Project would exceed the minimum threshold for requiring a left turn lane.

As discussed in Appeal Ground No. 1, the County's threshold to require installation of a left turn lane onto Silverado Trail for the Project driveway would be approximately 30 ADT based on existing volumes on Silverado Trail and 22 ADT or greater based on projected future Silverado Trail volumes. Although traffic generation from the Melka property is minimal in comparison to the carrying capacity of Silverado Trail and

the surrounding public road network, and thus does not constitute a potentially significant increase in traffic volumes, the Melka property is above the County threshold requirement for installation of left turn lane improvements. Titus' contention that ADT at the Melka driveway was under projected is correct because the applicant's traffic analysis failed to account for the existing trips generated from the residence/guest cottage and second unit. Although the actual use of second units and main residences varies from property to property, typical daily traffic from each residential unit (as based on the Institute of Traffic Engineers manual) is 10 ADT per unit. The two units have a combined ADT of 20 and the winery will have an ADT of approximately 10. As such, the proposed Project plus existing conditions triggers the requirement for left turn lane improvements.

In addition to the warrant for a left turn lane based on ADTs, Deputy Director Marshall's letter states:

The Road & Street Standards also include this provision: "If traffic conditions or turning movements pose a considerable threat to public life and safety, as recognized by the Director of Public Works, a left-turn lane shall be installed." Staff from Public Works have viewed this location in the field and determined that the turning movements associated with this proposed development would present safety issues due to the road curvature, and thus would warrant the improvement based on this criteria as well.

The conditions of approval have been revised to include the Public Works Department's requirement for a left-turn lane.

Titus Appeal Ground No. 3: Titus contends that the Melka Winery should be responsible for one-third of the potential daily trips generated and Titus Winery would be responsible for two-thirds and that both parties should contribute equitably to the cost of the left turn lane.

Staff Response: Staff does not agree that the County should allocate costs between the two private parties. Both Appellant Titus and Applicant Melka would be required to construct left turn lanes. How those costs are allocated to provide the shared left turn lane improvements should be worked out between the two private parties.

PART B: SIMMS APPEAL.

The following outlines the basis of the appeal as contained in the Simms Appeal dated March 27, 2015 together with her additional letter submitted on May 12, 2015.

Simms Appeal Ground No. 1: Simms contends that the description of the building as a conforming structure (barn) was misleading and prejudicial as it was non-conforming. There was also no discussion of the consequences. In her May 12 letter, Simms claims that Staff always referred to the structure as a barn and that "only midway through the second meeting did they discuss it as a house."

Staff Response: Staff does not agree. Information regarding the status of the building was provided comprehensively and in a timely manner for consideration by the Commission in making their decision.

Two staff reports were prepared for the Project. An initial staff report was prepared and presented at the Commission's February 18, 2015 hearing which indicated that the Project buildings involved both conversion of an existing permitted barn/secondary living unit building to winery tasting and storage, and construction of a new winery building adjacent to the existing building. At the first hearing, the permitting history of the barn/secondary unit building was unclear, and as a result (in addition to other concerns) the Planning

Commission continued the item to March 4, 2015 to allow Staff to provide additional background on the permitting history of the barn/secondary living unit. A revised staff report was prepared and presented at the March 4, 2015 hearing that clarified that the barn structure was legally constructed in 1985, per County Assessor's records, and in 2006 (Building Permit #B06-00183) the second-story portion of the barn structure was legally converted into a second residential use by the previous owners. The March 4 staff report clearly indicates the residential conversion on page 3, Paragraph 3, "Variance Applicability". Therefore, the residential status of the barn was in evidence at both hearings and was a part of the Commission's consideration in making the decision.

A more detailed history of the circumstances surrounding the barn/second living unit are provided as follows:

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 whereby two second units were located on the same property. County Code Section 18.20.020 only permits one. Approval of lot line adjustments ("LLAs") are ministerial actions meaning that if a proposal meets all prescribed approval standards, the Department of Public Works is obligated to approve the LLA. No discretion is exercised during the ministerial review and approval of such LLA, unlike discretionary use permits.

Several years ago, the County updated its LLA Ordinance to reduce the potential claims that the County was exercising discretion. At the time, a lawsuit had been filed alleging that the County's LLA Ordinance was inconsistent with several elements of state law. The County prevailed in the lawsuit from Sierra Club, but in implementing the updated ordinance, a clause requiring zoning compliance for all LLA applications was inadvertently omitted from the new ordinance. As such, it was possible that LLA applications could result in the creation of new illegal zoning nonconformities. Subsequent to the Planning Commission action, the Board of Supervisors recently revised the Lot Line Adjustment Ordinance to prevent the creation of new non-conformities through that process.

Prior to submittal of the winery application and formal LLA application, Planning Division Staff advised Applicant during a field visit pre-Application meeting that the second unit nonconformity must be addressed during processing of subsequent applications. The Applicant committed to convert the structure from a second unit to the winery use to resolve the code inconsistency, and indicated that the unit would be converted to an allowed accessory use (without a kitchen) in the event that the winery use permit was not approved. In the interim period between recordation of the LLA and issuance of the CUP, the additional second unit has not been occupied as a residence which is consistent with County Code.

The Planning Commission was advised by Planner Sharma of the consequences and potential outcomes of their decision making options. At the March 4 hearing, Sharma advised that converting the second unit to a winery use would fix the nonconformance. (March 4 Transcript, p. 3, l. 19-23.) Resolution of the non-conforming second unit would occur whether the winery application was approved or not.

Lastly, the existence of the non-conforming second unit was not a factor in the Commission's decision to approve the winery use permit, because the Project remained subject to a variance approval whether the barn/second unit existed or not. County Code Section 18.104.230 (C) allows the conversion of existing structures, be it a barn or a second unit, when such structures are located within winery setbacks without grant of a variance but only if the winery is completely contained within that existing structure. Because this Project involved the new construction of an additional building, the Project as proposed was subject to a variance regardless of the existence of the barn/second unit. The fact that a LLA had occurred that had

resulted in two second units on the property was immaterial to the Planning Commission's decision to grant a winery use permit.

Simms Appeal Ground No. 2: Simms asserts that the Commission was misled about the conditional/discretionary nature of a winery use permit by statements made such as "wineries are permitted" or "wineries are absolutely necessary". Simms' May 12 letter states that the Commission was misled about the implications of requiring a use permit for wineries and the effect of illegal non-conforming uses on the permit process and alleges the public meetings were therefore inaccurate and became prejudicial.

Staff Response: Staff does not agree. Staff limited their comments regarding the discretionary nature of a winery use permit to reiterating existing County policy, in response to a question from the Commission. For a discussion of the non-conforming use, see the Response to Ground No. 1.

Wineries are permitted uses on agricultural lands. The Project is consistent with AW (Agricultural Watershed) zoning district regulations. A winery (as defined in Napa County Code §18.08.640) and uses in connection with a winery (see Napa County Code § 18.20.030) are permitted in an AW-zoned district subject to use permit approval.

Simms' concerns that the Commission was "misled" and that the public hearings were somehow prejudicial are not supported by any evidence in the record. In fact, prior to Mr. McDowell's response, at page 33, lines 18-22, Commissioner Pope indicates that he wants to really delve into the details of the issues and states, "I just had a couple of questions for Staff before we get into it. And this is going to be really, really remedial, but I want to kind of just burn this thing to the ground, so to speak, in terms of really going over the points." At page 36, lines 16-19 of the March 4 transcript, Mr. McDowell states "[w]e also seek to promote agricultural land uses. We've defined wineries as an agricultural land use and an absolute necessity, the processing facility is needed in order to turn grape juice into our product." The Winery Definition Ordinance states that wineries "...are activities that are not only necessary to retain agriculture as a major source of income and employment in Napa County, but will also ensure the continued agricultural viability of existing and future Napa Valley vineyards." In this context, Mr. McDowell is summarizing existing land use policies in his discussion with the Commission and responding to questions asked of him by Commissioner Pope.

Simms Appeal Ground No. 3: Simms claims that the structure was substantially modified within five to seven years which should have disqualified it from being converted to a winery. She reintroduces this argument in her May 12 letter stating the building permit was completed in November 2007 and signed off on in January 2008, but that the LLA was performed in 2013 which was about six years after completion.

Staff Response: Staff does not agree. The modification of the barn/second living unit was conducted legally and is not disqualified from being converted into a winery.

Board Resolution No. 2010-48 ("Resolution") discourages the conversion of existing structures constructed or modified within the past five to seven years for winery uses. The only structure being converted for winery use as part of the Project was last modified in 2006, nine years before its proposed winery use. Simms misinterprets Resolution 2010-048 by claiming the LLA was within six years from the completion of the building permit and that this somehow violated the temporal provisions of the Resolution. However, the timing of the completion of the LLA in relation to the conversion is irrelevant. The Resolution discourages the conversion of structures completed within the previous five to seven years from the date of a proposed winery use, not from the date of a proposed LLA. While the Resolution discourages conversion of recently constructed structures, it does not prohibit their conversion, regardless of their age. At the time of both the

LLA submittal and recordation of the LLA, no request to convert the structure to winery uses by the Applicant had been filed with any County department. Neither the letter nor spirit of the Resolution has been violated as nine years have elapsed from construction to winery conversion proposal.

Simms Appeal Ground No. 4: Simms asserts that the Melka Winery does not support the economic viability of agriculture as well as other use of land based on recently presented County data on winery capacity and grape harvests.

Staff Response: Staff does not agree. Both the General Plan and the County Code consider new wineries to be an important part of the agricultural economy, and the proposed project has demonstrated the capacity to meet the 75% source rule.

The Planning Commission considered and approved the project within the context of the current County General Plan and Zoning Ordinance which both provide for winery development as a necessary part of agriculture. General Plan Goal AG/LU-3 states that it is a goal of the County to support the economic viability of agriculture which expressly includes grape growing and winemaking. At 10,000 gallons in proposed production, this project is modest in size. The Planning Commission considered the proposed capacity in relation to the amount of grape tonnage and acreage required to support the proposed production and found it consistent with the goal, policies and requirements of the General Plan and Zoning Ordinance. Paragraph 6 of the March 4 staff report discusses grape sourcing and explains that the property is currently planted to approximately 1.5 acres of grapevines producing around three tons of fruit per acre. The report acknowledges that onsite fruit would produce about 600 gallons of wine with the rest of the 9,600 gallon allowance having to come from other sources of fruit. The report finds that Applicant had submitted grape purchase agreements with several grape growers sufficient to meet the 75% grape sourcing rule.

Simms Appeal Ground No. 5: Simms claims that verbal agreements vital to the conditions of the use permit have not been signed and included, such as well identification, monitored usage for the winery and other units, timing of corrected non-conforming use, and any needed corrections to work already performed. Simms reasserts these claims in the penultimate paragraph of her May 12 letter.

Staff Response: Staff is unclear what verbal agreements Appellant asserts are vital to the Conditions of Approval. The Planning Commission adopted and imposed Conditions of Approval on the Project which are binding on the Applicant, and require well monitoring and resolution of the non-conforming residence. Section 13(A) of Revised Exhibit B "Conditions of Approval" states that well monitoring may be required if the Director of PBES determines that water usage at the winery is affecting, or would potentially affect, groundwater supplies or nearby wells. Section 20 requires compliance with all applicable codes and requirements of all departments before the County Building Official will grant a Final Certificate of Occupancy, the granting of which authorizes all use permit activities to commence. There are no needed corrections to work already performed.

Simms Appeal Ground No. 6: Simms contends that granting the variance was a prejudicial abuse of discretion, as it was inconsistent with state law and the Napa County Code. Her May 12 letter indicates she will present further discussion of the purported problems with the variance approval at the June 2 hearing.

Staff Response: Staff does not agree. The variance was approved by the Commission in compliance with the County Code and in accordance with state law.

Napa County Code Section 18.128.060 contains seven required findings for granting of a variance which are consistent with State Planning and Zoning Law for granting variances. The findings address procedural requirements, public health, safety, welfare, and impacts on groundwater. These findings were made by the Commission with consideration to the existing development and physical constraints of the property. Planner Sharma indicated early in her presentation on February 18 that Staff did make the variance findings due to environmental constraints existing at the parcel. (Page 3, lines 25-28.) In referencing environmental constraints, Sharma is referring to the steep slope topographical features on the those portions of the parcel that exist outside the setback.

The Planning Commission's rationale for approving the variance was based on the special circumstances related to topographical features of the property. A winery could have been constructed on the eastern side of the property in compliance with the winery setback, but which would have resulted in substantial amounts of grading and tree removal. The Planning Commission found that the Project qualified for grant of a variance based on these physical constraints.

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. (See March 4 Staff Report, page 4.) Attorney Philippakis, representing Applicant, stated at the February 18 hearing that any winery development outside the setback "would be high up on the hillside, there would be a lot of grading on slopes between 15 and 30 percent slope and it would be highly visible..." (2/18 transcript page 23, lines 9-11.) The location of the buildings that were approved by the Planning Commission 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. Thus, the Commission found that the Project site contained special circumstances in the form of physical constraints justifying grant of a variance. To date, the Appellant has provided no factual basis to support a claim that the Planning Commission abused its discretion.

Additionally, Staff treated this variance request consistent with other requests Staff has processed. The Planning Commission in the past has approved variances for similar physical and topographical constraints faced by an Applicant. The Commission considers factors such as size of the structures, size of winery visitation, marketing and employment levels, degree of signage and visibility of the use from public roads when considering variance requests. In this case, the Project approval includes the preservation of trees in the vicinity of the new winery building and the installation of an earthen berm along the Silverado Trail property boundary, both of which reduce the visibility of the winery structures from public view along the road. The Planning Commission considered the alternate location that would have complied with setbacks and agreed with Staff's assertion that meeting the setback would have resulted in substantial grading, well beyond the what is needed for this approved Project, as well as removal of substantial amounts of native vegetation.

Simms Appeal Ground No. 7: Simms asserts that decisions were made during a previously approved lot line adjustment that pre-judged these issues and "needlessly complicated the Use Permit request, and which effectively set Staff's position on both the winery and the variance".

Staff Response: Staff does not agree. The lot line adjustment was not material to the consideration of the Use Permit application and was not a part of the Commission's decision.

The time in which to challenge the propriety of the LLA approval has long since passed. The LLA was submitted on August 27, 2013 and recorded on December 18, 2013. Any appeal of that approval, just as

with the current approval at issue here, must have been exercised within 10 days of the date of decision. The LLA was not appealed and is therefore final and not subject to challenge. The 2013 LLA (W13-00193) was submitted and approved ministerially and increased the parcel size from 7.68 acres to 10.68 acres and resulted in a Zoning Code nonconformity wherein two second units were on the property when County Code only permits one.

Approval of LLAs are ministerial actions meaning that if a proposal meets all prescribed approval standards, the Department of Public Works is obligated to approve the proposed adjustment. No discretion is exercised during the ministerial review and approval of such adjustments, unlike discretionary use permits.

Appellant has provided no factual basis to support her claim that the previous LLA approval obligated the Commission to approve the proposed winery as requested. The previous LLA did not complicate processing of the Use Permit request. In fact, the LLA made it possible for the current project to be considered. Approval of the LLA, however, did not place the Commission under any obligation to approve the application, nor did it create any pre-existing factors that would have led the Commission to favor the application. The Commission considered the parcel as it existed at the time of application and did not take into account hypothetical parcel configurations which may otherwise existed had the LLA not been approved. A ministerial approval of a LLA two years prior by an entirely different department in no way bound Staff or the Commission to approving the variance and winery requests.

Simms Appeal Ground No. 8: Simms claims that the timing of the release of important information was prejudicial, since it was withheld until after the Commission had voted.

Staff Response: Staff does not agree. All available information relating to this matter was provided to the Commission for its consideration prior to the decision.

Staff is not aware of any information that was provided to the Commission after conclusion of the hearing on this matter. The Melka Winery Use Permit was first heard by the Planning Commission on February 18, 2015. Concerns were raised by the public which resulted in the Planning Commission continuing the item until March 4, 2015, to provide Staff and the Applicant time to address concerns and provide requested information. A supplemental staff report with updated information was provided to the Commission in advance of the March 4, 2015 hearing. After two public hearings and testimony from the Applicant and the public the Planning Commission voted 4-1 to approve the project.

Simms Appeal Ground No. 9: Simms contends that “actions to hide and subvert the Code omission were unfair to all people of Napa County.”

Staff Response: Staff does not agree. All available information relating to this matter was provided to the Commission for its consideration prior to the decision.

Staff is unclear what code omissions are being referred to in this statement. The Planning Commission’s decision was based on and is supported by the administrative record put forth in the two public hearings. Planning Commissioners disclosed all ex-parte communications related to this matter during the public hearing.

Simms Appeal Ground No. 10: Simms asserts that the Applicant already constructed the winery access, prior to the issuance of the Conditional Use Permit, the variance, and a determination under CEQA, in violation of County regulations and State law.

Staff Response: Staff does not agree. Construction of the driveway was a separate permit approval process, related to construction of the residence, and was completed in compliance with all state and County requirements.

The realigned driveway was proposed and approved as part of a ministerial grading permit, ENG14-00001, issued in January 2014. The driveway was realigned as part of the Melka's residence development. After the LLA took place in December 2013, the current driveway alignment allowed for the safest access to and from the site. The driveway realignment came in for review and approval prior to the Use Permit submittal for the winery, which was filed in June 2014. Additionally, a driveway is not subject to any setbacks, so no variance was needed for its construction. This residential driveway was evaluated for potential to impact the environment as part of the building permit review for the residence and found to qualify for an exemption as the work associated with the permit met the local guidelines Categorical Exemption requirements under the provision for grading resulting in less than 2,000 cubic yards of cut and fill moved. Grading for this driveway had independent utility from the subsequently proposed Project. The driveway served a proposed residence, which the permittee moved forward with regardless of the winery permit now under consideration. In the event of denial of this winery permit, the driveway serving the residence is permitted, constructed and will remain. Likewise, the construction of the driveway to the residence in no way pre-disposed the Planning Commission to approve the proposed tie-in of the winery driveway to that existing residential driveway.

Simms Appeal Ground No. 11: According to Simms, the CEQA exemption led to serious environmental problems and it was a prejudicial abuse of discretion based on incorrect or no facts and the process/hearing was lacking in fairness and impartiality.

Staff Response: Staff does not agree. The CEQA determination for this project is allowed for under state law and is supported by the evidence.

The Melka Winery Project qualified for State Categorical Exemptions because it fell under numerous exemptions identified in the State guidelines for implementing CEQA. Specifically, Staff found the Project to be categorically exempt from the California Environmental Quality Act ("CEQA") under 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")].

Under Section 15300.2 of the California Environmental Quality Act, a Class 3 and a Class 4 exemption cannot be used if environmental sensitivities exist at the site or if there will be cumulative impacts. Applicant submitted an Archeological Study prepared by Tom Origer and Associates dated December 20, 2013 which concluded the proposed Project location was not likely to encounter or disturb any archeological specimens. In keeping with CEQA guidelines, if archeological remains are uncovered during construction, all work would be halted until a qualified archeologist could investigate the site. The Applicant also submitted a Cultural Resources Survey prepared by Tom Origer and Associates dated October 24, 2013 which concluded that the Project would not impact any cultural resources. There are no hazardous waste sites, nor historic resources identified on the site. Therefore, the site did not demonstrate any of the exceptions to the claimed exemptions upon which Staff relied in making their determination.

Therefore the exemptions are appropriate and this proposal meets the Categorical Exemptions listed above. The proposed visitation plan is minimal and does not create a cumulative traffic impact, as visitation is scheduled to conclude prior to the peak weekday hours of 4:00 pm and 6:00 pm. Additionally, the trips generated on the weekends would consist of less than five peak hour trips, which falls under the established

local criteria for a categorical exemption.

The standard of Review in assessing the Commission's categorical exemption findings is whether there is any substantial evidence in the record to support the Commission's determination. "If an agency has established that a project comes within a categorical exemption, the burden shifts to the party challenging the exemption to show that it falls into one of the exceptions. (*Fairbank v. City of Mill Valley* (1999) 75 Cal.App.4th 1243, 1259, 89 Cal.Rptr.2d 233.) We apply the substantial evidence test to an agency's factual determination that a project comes within the scope of a categorical exemption. (*Committee to Save the Hollywoodland Specific Plan v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1187, 74 Cal.Rptr.3d 665; *Fairbank, supra*, at p. 1251, 89 Cal.Rptr.2d 233.) *N. Coast Rivers Alliance v. Westlands Water Dist.*, 227 Cal. App. 4th 832, 851-52 (2014), review denied (Oct. 15, 2014)

Staff believes that there is substantial evidence in the record in the form of Staff's CEQA memo dated February 8, 2015 and attached to the Commission's March 4 Staff Report. The memo briefly describes each exemption claimed and then explains why the Project qualifies for each of the three claimed exemptions. No substantial evidence has been submitted to the Commission which shows that this modest proposal would result in potentially significant impacts to the environment.

Simms Appeal Ground No. 12: Simms claims that the Melka Winery was piecemealed because the full Project includes: the LLA, conversion of existing structures and construction of new winery facilities, construction the new winery access, construction of the driveway linking the residence to the winery access, the water main and associated water infrastructure, and the construction on a hillside of access to install and maintain the water tanks. Therefore, the CEQA categorical exemption analysis is inadequate and invalid.

Staff Response: Staff does not agree. Both the Use Permit and accompanying CEQA determination considered the entirety of the proposed actions.

The Project was not piecemealed. The term project refers to the activity for which approval is sought, not to each separate governmental approval that may be required for the activity to occur. The County as lead agency was required, and in fact did, describe the Project to encompass the entirety if the activity proposed for approval. Project descriptions should not include existing ongoing activities not proposed for approval even though they may be related to the activity that is proposed for approval. *El Dorado County Taxpayers for Quality Growth v. County of El Dorado* (2004) 122 CA 4th 1591.

The LLA is not subject to CEQA review, per the County's adopted policies. Per Section 17.46.020, the LLA shall be considered as part of the cumulative analysis for CEQA if it is processed concurrently with a use permit application. As previously discussed, the LLA was applied for on August 27, 2013 and recorded on December 18, 2013, prior to the use permit application which was received by PBES on June 16, 2014. It therefore remained a ministerial process not subject to CEQA. It was not reasonably foreseeable *at the time of receipt* of the LLA application that a winery use permit would be applied for almost a year later. However, there were no official deadlines for gaining conformance nor was there only a single method (a winery use) which would satisfy requirements. Because of these factors, Staff has determined that the Project was not piecemealed.

Simms Appeal Ground No. 13: Simms contends that the categorical exemptions claimed are not available because there is no evidence to indicate that modifications to the existing structure will be limited to the exterior or that they will be minor as required by section 15303. Section 15304 applies only in cases

“which do not involve the removal of healthy, mature, scenic trees except for forestry and agricultural purposes.” Last year the Applicant removed at least 15 mature trees to create the access road linking the winery road to the house.

Staff Response: Staff does not agree. The CEQA determination for this project is allowed for under state law and is supported by the evidence.

The Use Permit and plans on file show no proposed modification to the exterior of the existing barn/residence. The first floor will be used for storage and cased goods, and the second story as a tasting room, office, and restrooms. The Applicants removed approximately an acre of existing walnut orchard, which were dying at the time of their removal, on the property near the proposed winery buildings.

Removal of trees for the proposed winery building would fall under the agriculture use exception as the Napa County Code identifies wineries as agricultural use.

Simms Appeal Ground No. 14: Simms asserts that the CEQA analysis failed to address the negative environmental impacts of the variance. A variance is discretionary and subject to environmental review. No categorical or other exemption is claimed for the variance. It is not possible to claim the site is preferred environmentally, unless one compares the negative and positive benefits.

Staff Response: Staff does not agree. The CEQA process was fully and faithfully complied with by the Commission in making their decision.

The Planning Commission's adoption of the Categorical Exemptions clearly applied to the Project as a whole which includes both the use permit and variance. The Commission did not consider the winery application separately from the variance. The staff reports and supporting attachments provided to the Commission, including Staff's CEQA analysis memo, address the Project as a whole inclusive of the variance.

The findings for the granting of the variance analyzed the improvements necessary to construct a structure outside of the 600' setback. These impacts included 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, as they would occur on previously disturbed areas. The slope of the property ranges from zero to 30% and the proposed location has a slope of two percent.

Simms Appeal Ground No. 15: Simms contends that the Melka Winery is claimed to be categorically exempt from environmental analysis under CEQA and the County seeks to justify granting a variance to both convert the existing site and locate the winery processing facility within the required setback by arguing that it is the preferred environmental alternative. The County has entirely ignored the very process intended to assess the environmental impact of various alternatives, which is CEQA.

Staff Response: Staff does not agree. The CEQA process was fully and faithfully complied with by the Commission in making their decision.

CEQA requires public agencies to disclose and evaluate the potential environmental impacts associated with any discretionary action the agency takes that has a potential to result in a physical change to the environment. This Project was found to be Categorical Exempt because it fell under numerous exemptions

identified in the State guidelines for implementing CEQA. Specifically, the Planning Commission found the Project to be categorically exempt from the California Environmental Quality Act ("CEQA") under 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")]. CEQA does not require analysis of project alternatives in order to adopt a Categorical Exemption, as it appears is suggested by Appellant.

Simms Appeal Ground No. 16: Simms asserts that the claim of preferred environmental alternative is unsupported as no other sites have been identified for comparative analysis and is erroneous. She states that the conclusion that every other site would require more trees to be taken out is patently erroneous. It is not clear that there would have to be more impervious surfaces if any other site were chosen, given the planned roads included in the Project. This also challenges the claim that less native vegetation will be disturbed.

Staff Response: Staff does not agree. Analysis of the subject property provides a reasonable basis to conclude that the proposed location would result in fewer environmental impacts than a site located outside the 600-foot setback.

In assessing the suitability of the variance request, Staff analyzed the properties of the site as a whole. The slope layer on the County's GIS system identifies all portions of the site outside the 600 foot boundary of having a slope greater than 30%. The aerial photograph of the site also shows dense native vegetation on any portion of the site outside the required setback. As any buildings that complied with the 600 foot setback would be farther than the existing and proposed buildings, it is reasonably foreseeable that they would require more grading, more impervious surfaces, and more vegetation removal than the proposed location.

Simms Appeal Ground No. 17: Simms contends that there is no evidence supporting the claim that the site of the new building was previously disturbed.

Staff Response: Staff does not agree. There is substantial evidence indicating prior development at the site of the proposed new building.

The project site was visited by Staff on several occasions during processing of the application in advance of the hearings. In their disclosures, several Commissioners indicated that they had either visited the site or were familiar with the site. The site where the new building is proposed contains private drive improvements, a former garden area, and old fruit trees. The County Geographic Information System (GIS) includes aerial photographs dating back to 1993 which show evidence of past activity. A shed existed at the proposed location, and a well had been drilled nearby. All these improvements suggest human disturbance of the site.

SUPPORTING DOCUMENTS

- A . Titus Appeal
- B . Simms Appeal
- C . February 18, 2015 Planning Commission Transcripts
- D . March 4, 2015 Planning Commission Transcripts
- E . February 18, 2015 Planning Commission Report
- F . March 4, 2015 Planning Commission Report

- G . Melka Winery Approval Letter
- H . Proposed Revised Condiitons of Approval
- I . Public Works Memo
- J . Correspondence from Applicant
- K . Public Correspondence
- L . Graphics

CEO Recommendation: Approve

Reviewed By: Molly Rattigan