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Agenda Date: 8/15/2017
Agenda Placement: 9F
Set Time: 9:35 AM PUBLIC HEARING
Estimated Report Time: 2.5 Hours

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: David Morrison - Director
Planning, Building and Environmental Services
REPORT BY: Dana Ayers, Planner III - (707) 253-4388
SUBJECT: Raymond-Ticen Ranch Winery Appeal Hearing

RECOMMENDATION

Consideration and possible action regarding an appeal filed by Beckstoffer Vineyards, Frank Leeds, and Kelleen Sullivan to a decision made by the Napa County Planning Commission on March 15, 2017 to approve the **Raymond-Ticen Ranch Winery Use Permit Major Modification No. P15-00307-MOD** filed by Tom Blackwood.

The Raymond-Ticen Ranch Winery Project allows: 1) integration of the Ticen Ranch parcel, located at 1584 St. Helena Highway, into the Raymond Winery's operations, with conversion of the Ticen Ranch residence and barn into winery visitation and administration space; 2) extension of winery operating hours until 11:00 p.m. during harvest (August through November) and visitation hours until 6:30 p.m. year round; 3) allowance for on-site consumption of wine in specified areas on the properties; and 4) allowance for up to half of Raymond Winery's currently permitted, annual marketing events to be held outdoors. The request also includes modifications to the development of the Raymond Winery and Ticen Ranch parcels that include a new access driveway to the Raymond Winery from St. Helena Highway and across the Ticen Ranch parcel, as well as construction of a vineyard viewing platform, 61 new parking stalls between the two existing parcels; improvements to the existing sanitary wastewater treatment system, and installation of a new, 30,000-gallon water storage tank for fire suppression purposes. The project also increases the number of permitted employees from 26 to 90 (full-time, part-time and seasonal) to bring the operation into compliance and allows additional site modifications and conversions of building use that were completed without benefit of County permit approvals. No increase in visitation, marketing or production was requested. The properties are located at 849 Zinfandel Lane and 1584 St. Helena Highway St. Helena, California (Assessor's Parcel Nos. 030-270-013 and 030-270-012, respectively).

ENVIRONMENTAL DETERMINATION : Consideration and possible adoption of a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program. According to the Mitigated Negative Declaration, the proposed project would not have any potentially significant environmental impacts after implementation of mitigation measures related to potential impacts to Biological Resources and Tribal Cultural Resources. This proposed project site is not on any lists of hazardous waste sites enumerated under Government Code Section 65962.5.

(CONTINUED FROM JUNE 20, 2017)

EXECUTIVE SUMMARY

The matter before the Board involves a multi-neighbor (Beckstoffer Vineyards, Frank Leeds, and Kelleen Sullivan [together Appellants]) generated appeal of the Napa County Planning Commission's (Planning Commission) decision on March 15, 2017, to approve the Raymond-Ticen Ranch Winery Use Permit Major Modification No. P15-00307-MOD (the Raymond-Ticen Winery, Winery or the Project) application submitted by Tom Blackwood (Applicant) for a modification to Raymond Winery's use permit to add the adjacent Ticen Ranch parcel into the Raymond Winery operations and convert the residence and barn on the Ticen Ranch parcel into winery visitation and administrative uses; increase the Winery's hours of operation and allow some marketing events to be held outdoors; construct a new access road across the Ticen Ranch parcel; and install other winery-related infrastructure improvements. The Project also increases the number of permitted employees to bring the operation into compliance and permits site modifications and conversions of building use that are already in place but that were completed without benefit of County permit approvals. No increase in visitation, marketing or production was requested. The Raymond Winery is located on approximately 61 acres one mile south of St. Helena on the south side of Zinfandel Lane and the Ticen Ranch is located on approximately 25 acres 1.5 miles south of St. Helena on the east side of State Route 29.

Pursuant to the County's appeals ordinance (Napa County Code Chapter 2.88) a public hearing on the appeal must be scheduled not less than 15 days nor more than 90 calendar days from submittal of an appeal. To accommodate all parties' schedules, on June 20, 2017 the Chair opened and continued the hearing (with the consent of all parties) to August 15, 2017. No testimony was taken on June 20, 2017.

PROCEDURAL REQUIREMENTS

1. Chair introduces item and invites Staff Report presentation.
2. Chair opens the public hearing and invites testimony from Appellants and their witnesses as previously disclosed on their witness list and in the order noted on the witness list attached as Attachment C.
3. Chair invites any other interested members of the public to testify regarding the appeal.
4. Upon hearing all testimony from interested members of the public, the Chair invites the Applicant and their witnesses as previously disclosed on their witness list attached as Attachment C to testify.
5. Chair then invites Appellants to have final rebuttal.
6. Chair closes the public hearing and invites disclosures from Board members.
7. A motion of intent is made and seconded to deny, uphold, and/or remand the appeal.
8. Chair refers the matter to County Counsel's office for preparation of a Resolution of Findings and Decision on Appeal. Because of the number of grounds raised in the appeal, good cause exists for County Counsel's office to have up to 90 days to prepare the Resolution of Findings and Decision on Appeal. Consequently, Staff recommends that the Board direct County Counsel's office to return to the Board on October 10, 2017 at 9:30 a.m. with the proposed Resolution for the Board's consideration and adoption. That date is acceptable to Appellants, Applicant and Staff.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Consideration and possible adoption of a Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Program (MMRP). According to the MND, the proposed Project would not have any potentially significant environmental impacts after implementation of mitigation measures related to potential impacts to Biological Resources and Tribal Cultural Resources. This proposed Project site is not on any lists of hazardous waste sites enumerated under Government Code Section 65962.5.

BACKGROUND AND DISCUSSION

All documents associated with the Raymond-Ticen Ranch Winery including, but not limited to, the application materials, Mitigated Negative Declaration (MND), Planning Commission Staff Reports, comments and correspondence, transcripts of the Planning Commission meetings, the appeal and the supplemental materials submitted by Appellants and Applicant can be accessed at:
<http://www.countyofnapa.org/Pages/DepartmentContent.aspx?id=4294984715>.

This matter involves an appeal of the Planning Commission's approval of certain operational changes to the Raymond Winery that would allow, upon merger of the two parcels, the adjacent Ticen Ranch parcel to be part of the Raymond Winery. A residence and barn on the Ticen Ranch parcel would be converted into winery visitation and administrative space, and a new access road and parking would be constructed on the Ticen Ranch parcel. The Project also increases the Winery's hours of operation; allows some marketing events to be held outdoors; and authorizes other infrastructure improvements such as additions to Winery Building A, water storage tanks and wastewater system upgrades. The Project increases the number of total employees. There are currently 90 staff employed at the facility, which exceeds the 26 employees allowed under existing Use Permit approvals. The Project also includes site modifications and conversions of building use including conversion of previously permitted agricultural and residential space to accessory winery use, and construction of miscellaneous structures such as a vineyard viewing platform and pet dog comfort station. The converted structures and constructed improvements are already in place but were completed without benefit of County permit approvals. There is no increase in visitation, marketing or production levels.

The Project generated controversy primarily because it would distribute permitted winery visitation, as well as vehicle trips associated with that visitation, between two distinct areas and two different access points to the Winery: one on the existing Raymond Vineyard parcel and the other on the Ticen Ranch parcel. To ensure that the Ticen Ranch parcel is not operated as a stand-alone tasting room, the Planning Commission imposed a condition of approval that prohibits expansion of the accessory uses on the Ticen Ranch parcel prior to merger of the two properties into one parcel. Controversy also stemmed from the Planning Commission's approval and legitimization of unpermitted uses, structures, and an increase in employees. This reflects a concern that after-the-fact approvals undermine the public process and CEQA impact analysis, as well as incentivize violators.

There are eight other existing wineries (Kelham Vineyards, Delectus Winery Tasting Room, Fleury Estate Winery, Sullivan Vineyards, Whitehall Lane Winery, Franciscan Estate, Corison Winery, and Del Dotto Estate Winery) and one approved but not yet built winery (Wheeler Farms Winery) located within a half-mile of the Raymond Winery, with locations along State Route 29, Zinfandel Lane and Galleron Road.

Code Compliance:

The County has records of pending and closed code enforcement matters related to the Raymond Vineyard parcel and current winery operators. These matters are summarized as follows:

- | 2008 - 2010: Unpermitted conversion of residential pool house to winery accessory (office) space. A Notice of Violation was sent March 3, 2008. Unpermitted conversion of winery space to winery accessory (office) space. A Stop Work Order was issued on March 30, 2010. A Very Minor Modification No. P10-00093 was

approved administratively on July 29, 2010, which allowed interior modifications to include 8,129 square feet of office improvement and required removal of office space from the residential pool house. Case Status: Closed.

- I 2010: A 10-foot long by 10-foot wide vineyard viewing platform was constructed in the vineyard east of the Winery building without building permits. Notice of Violation sent to winery on October 12, 2010. Code Enforcement case opened on January 12, 2012. Staff later confirmed that the structure was removed. Case Status: Closed. .
- I 2011: Unauthorized interior improvements to convert offices and private tasting rooms, including the members-only "Red Room," the private by-appointment "Gold Room," the "Saddle Room," "Educational Room," and the "Library." Unauthorized exterior improvements established an outdoor visitation area by the residential swimming pool and pool house, and construction of several outbuildings in the "Theater of Nature." Use Permit Major Modification Application P11-00156 was filed in response to this violation but was later withdrawn in February 2015. Notice of Violation sent to winery on March 13, 2015. The current major modification request was also filed in an effort to address the violations. Case Status: Open.

The current use permit major modification request was filed as a corrective measure to the remaining, outstanding code and permit violations on the Raymond Vineyard parcel. These violations include unpermitted conversion of offices and production areas in Building A and the residential pool house to private tasting rooms; unpermitted construction of several small outbuildings proximate to the biodynamic garden on the west side of Building A, as well as placement of an outdoor, self-contained demonstration kitchen near the existing single-family residence on the east side of Building A; and unpermitted exterior improvements facilitating the establishment of an outdoor visitation area, also on the east side of Building A. The Project also addresses matters of noncompliance between the Winery's existing and entitled numbers of employees and employee parking stalls.

Public Process:

The Raymond Winery filed a use permit major modification application (No. P11-00156) on May 13, 2011. That request included modifications to the Winery's visitation and marketing programs and was also submitted to remedy the outstanding code violation related to conversion of accessory space described above. After several continued public hearings on that request, the Applicant withdrew the application on February 20, 2015.

The Raymond Winery later submitted a new, revised use permit major modification application on September 15, 2015. The revised application No. P15-00307, is the request currently under consideration and the subject of this appeal. Resubmittal applications were provided on February 16, 2016; November 8, 2016; and March 7, 2017. The application was determined to be complete on December 8, 2016.

On October 15, 2015, Planning Staff mailed a courtesy notice of the submission of the Use Permit Modification Application No. P15-00307 to all owners of property located within 1,000 feet of the Raymond Winery and Ticen Ranch project sites, consistent with County Policy Manual Part 1, Section 12.

The MND was released for public review on December 16, 2016, for a 30-day public comment period ending on January 17, 2017. In addition, on December 16, 2016, copies of the notice of public hearing and intent to adopt a MND for the January 18, 2017 Planning Commission hearing were posted in the office of the County Clerk; published in the Napa Valley Register; and mailed to owners of property within 1,000 feet of the subject parcels and other interested parties who had previously requested such notice about the Project. (It should be noted that the County's requirement to notice all owners of property within 1,000 feet of the Project site far exceeds the State mandate of noticing all owners of property on adjacent parcels or within 300 feet). Notice was also provided to those persons on the general CEQA document notification list.

On January 18, 2017, the Planning Commission approved an extension of the public comment period in response to a request from an interested party. With the Commission-approved extension, County Staff accepted written

comments on the MND for a total of 39 days, until January 23, 2017. In response to comments received, Staff made minor clarifications to the MND to correct parking counts and amplify some of the analysis. None of the revisions resulted in new or more significant impacts that would require recirculating the document. The original MND and the revised MND are hereafter referred together as the Revised MND.

The Planning Commission conducted two public hearings on the proposed Project on February 1 and March 15, 2017. Topics considered by the Planning Commission during the public hearings included: traffic impacts, stormwater runoff, noise, General Plan and zoning consistency, farmland impacts, feasibility of septic system improvements, alignment of the proposed new driveway at State Route 29, and the status of Raymond Winery's code and permit violations. After closing the public hearing on March 15, 2017, the Planning Commission approved the Project, subject to conditions.

At the March 15, 2017, public hearing, the Planning Commission received 41 documents (other than those received from the Applicant and their representatives), in the form of letters, emails, a Powerpoint presentation, a petition, and analyses from various subject matter experts that were submitted to Staff prior to and during the public comment period on the Project. Two letters from Caltrans contained comments on the Revised MND. The Appellants or their representatives together submitted 12 written comments of opposition to the Project, including one Powerpoint presentation that was made to the Planning Commission at the February 1, 2017 public hearing. The remaining 26 letters were from various interested parties expressing support of or opposition to the proposed Project, and the final document was a petition of opposition to the Project that was signed by 25 individuals (including two of the Appellants).

Several of the letters included a large number of attachments or exhibits, resulting in an overall total of 341 pages of documents from interested parties. This correspondence can be reviewed online at:
<http://www.countyofnapa.org/Pages/DepartmentContent.aspx?id=4294984715>.

Planning Commission Action:

On January 18, 2017, the Planning Commission opened the public hearing on the Project, with testimony limited to a request by the Applicant to continue the public hearing to February 1, 2017. At that meeting, the Planning Commission also considered a written request from the law firm Shute, Mihaly & Weinberger on behalf of Beckstoffer Vineyards, to extend the comment period on the MND for an additional 30 days from the date of posting that document on the County website (which occurred on December 23, 2016). After considering both requests, the Planning Commission moved to continue the hearing to February 1, 2017, and to extend the public comment period on the MND through January 23, 2017.

On February 1, 2017, the Planning Commission held a hearing on the merits of the proposed Project. Based on the extensive public comments and documents received shortly before finalization of the Planning Commission agenda, Staff recommended that the Planning Commission hear from the Applicant and interested parties and then continue the hearing to a future date to provide Staff and the Applicant an opportunity to review and respond to materials and comments received. At that hearing, the Applicant also presented a potential re-alignment of the planned access driveway from State Route 29 onto the Ticen Ranch parcel. This alternate alignment was proposed in response to concerns raised by the Leeds (owners of property on the opposite side of State Route 29 in the vicinity of Ticen Ranch) about potential vehicle movement conflicts resulting from alignment of the Ticen Ranch driveway opposite the private road just south of Whitehall Lane. After hearing all testimony, the Planning Commission continued the hearing to March 15, 2017.

On March 15, 2017, the Planning Commission held a continued public hearing and after considering additional public testimony, closed the public hearing, deliberated, and voted (3:2 – AYES: Basayne, Gill, Scott; NOES: Cottrell, Gallagher) to approve a major modification to the use permit for Raymond Winery.

Findings:

When reviewing the proposed Project the Planning Commission based its decision on a series of Findings as required under both County Code and State law. The Board of Supervisors must also consider all of the same Findings in reaching their decision. In order to support the Appeal, the Board must determine that the Project is not consistent with at least one (or more) of the Findings. To approve the Project, the Board must determine that the Project is consistent with each of the following Findings:

California Environmental Quality Act (CEQA):

1. The Board of Supervisors has read and considered the Mitigated Negative Declaration prior to taking action on said Mitigated Negative Declaration and the proposed project.
2. The Mitigated Negative Declaration is based on independent judgment exercised by the Board of Supervisors.
3. The Mitigated Negative Declaration was prepared and considered in accordance with the requirements of the CEQA.
4. There is no substantial evidence in the record as a whole, that the project will have a significant effect on the environment after implementation of mitigation measures.
5. There is no evidence, in considering the record as a whole that the proposed project will have a potential adverse effect on wildlife resources or habitat upon which the wildlife depends.
6. The site of this proposed project is not on any of the lists of hazardous waste sites enumerated under Government Code Section 65962.5 and is not within the boundaries of any airport land use plan.

Use Permit:

1. The Board of Supervisors has the power to issue a Use Permit under the Zoning Regulations in effect as applied to the property.
2. The procedural requirements for a Use Permit set forth in Chapter 18.124 of the County Code (zoning regulations) have been met.
3. The grant of the Use Permit, as conditioned, will not adversely affect the public health, safety or welfare of Napa County.
4. The proposed use complies with applicable provisions of the County Code and is consistent with the policies and standards of the Napa County General Plan and any applicable specific plan.
5. The proposed use would not require a new water system or improvement causing significant adverse effects, either individually or cumulatively, on the affected groundwater basin in Napa County, unless that use would satisfy any of the other criteria specified for approval or waiver of a groundwater permit under Sections 13.15.070 or 13.15.080 of the County Code.

Appeal:

On April 11, 2017, a timely appeal packet was filed by Appellant Beckstoffer Vineyards, Appellant Frank Leeds, and Appellant Kelleen Sullivan (together Appellants) to the Planning Commission's decision to approve the Project. (Please see Attachment B.) The appeal can be reviewed online at:

<http://www.countyofnapa.org/Pages/DepartmentContent.aspx?id=4294984715>. Pursuant to the County's appeals ordinance (Napa County Code Chapter 2.88) a public hearing on the appeal must be scheduled not less than 15 days nor more than 90 calendar days from submittal of an appeal. To accommodate all parties' schedules, on June 20, 2017, the Chair opened and continued the hearing (with the consent of all parties) to August 15, 2017. No testimony was taken on June 20, 2017.

Pre-Hearing Conference:

In an effort to clarify the County's procedural requirements and expectations regarding land use appeals, the County Counsel's office has initiated a voluntary program whereby a pre-hearing conference is held with the parties (applicant and appellants) and the Chair of the Board to discuss estimates on presentation lengths, scope of evidence, and testimony to be presented, together with witness lists. Any witness not appearing on a witness list will be treated as an ordinary member of the public and allotted the usual three minutes of speaking time.

A pre-hearing conference was held on May 24, 2017, with Appellants' counsel, Applicant's counsel and representative, Chair Ramos and members of the County Counsel's office. At that time, Appellants and Applicant agreed to provide a list of their respective witnesses along with the subject matter of testimony and time estimates. The Chair informed the parties that the Appellants are allocated a maximum of 45 minutes for their presentation including rebuttal to be allocated at Appellants' discretion; and that the Applicant has a maximum of 45 minutes for its presentation. A summary of the witness information by name, subject matter of testimony and time estimates that was provided by Appellants and the Applicant is attached as Attachment C.

Appellants and Applicant also agreed to provide the Chair with any requests for "good cause" to either supplement the record with new information and/or to have the appeal heard de novo (e.g., a fresh hearing). On June 2, 2017, Appellants submitted a "good cause" request that the Board hear the Project de novo and exercise its independent judgment. A copy of Appellants' request is attached as Attachment C.

Pursuant to the County's appeals ordinance (County Code Section 2.88.090 (A)), in hearing the appeal, the Board must exercise its independent judgment in determining whether the decision appealed was correct. While the Board will consider and review the record that was before the Planning Commission, in conducting its review of the Project, the Board independently takes a "fresh look" at the facts and renders a decision based on its independent judgment. The Board is not bound by and does not give deference to the Planning Commission's decision. Since all parties are in agreement on this matter and since it is consistent with the conduct and procedures set forth in the County's appeals ordinance, there was no need for the Chair to issue a good cause determination. Likewise since neither party submitted a timely good cause request to augment the Planning Commission record with new evidence, no new evidence will be allowed or considered by the Board in connection with the appeal.

At the pre-hearing conference, all parties further agreed to provide by July 14, 2017 any supplemental information not to exceed three pages for Appellants and not to exceed 10 pages from Applicant that the parties wished to have considered by the Board. Included as Attachment E is the supplemental information that was provided by the Applicant. No supplemental information was provided by Appellants.

Appeal Hearing Public Comments:

Public notice of this appeal hearing was posted and mailed on June 6, 2017, and provided to all parties who received notice of the Planning Commission hearings. On June 20, 2017, the Board opened the public hearing and continued the item to August 15, 2017, without taking testimony. As of July 28, 2017, eight comments have been received on the appeal from parties other than the Appellants, Applicant and their respective representatives, as follows:

- | James and Margaret Larkin (June 13, 2017), opposing the Project;
- | Valerie Peebles, supporting the Project;
- | Celeste and Robert White, supporting the Project;
- | Celeste White, supporting the Project;
- | James and Margaret Larkin (July 19, 2017), opposing the Project;
- | Bob Knebel, Rombauer Vineyards, supporting the Project;
- | Anthony Giaccio, Napa Valley Wine Train, supporting the Project;
- | Scott Goldie, Napa Valley Wine Train, supporting the Project;

- | Richard Walker, supporting the Project.

The public comment period on this matter will have run for 242 days by the hearing on August 15, 2017.

Stated Basis for Appeal:

For convenience, Staff has numbered each issue within Appellants' appeal, and provided a general summary of the ground of appeal followed by Staff's response. However, Staff recommends that the Board review the actual appeal. Other correspondence received as of the date of this Staff Report is attached as Attachment F.

Updated Conditions of Approval:

Subsequent to the Planning Commission's approval of the Project and while this appeal was pending, the Board adopted Updated Conditions of Approval (the Updated COA). Staff has incorporated the prior conditions of approval adopted by the Planning Commission into the new updated format and recommends that the Board adopt the Updated COA attached as Attachment G. The Updated COA do not substantively change those COA adopted by the Commission except with respect to the timing of the parcel merger. Staff is recommending that the condition regarding the timing of merger of the two parcels be slightly revised. (See COA No. 2.13) The condition adopted by the Planning Commission requires that the parcels be merged prior to issuance of a grading permit or establishment of any accessory uses on the Ticen Ranch parcel. Upon further reflection, Staff believes it would be more appropriate and make more sense in terms of timing to require the Applicant to apply for the merger within 10 days of applying for the building permits for the Ticen Ranch buildings, and to withhold final inspection of the buildings on Ticen Ranch until after completion of recordation of the map. This is because the Applicant would not want to merge the parcels until the building permits for the accessory uses have been approved and the County does not want to approve the accessory uses until it knows that the merger will be effectuated. Staff recommends that the Board direct staff to revise the condition accordingly. Because the conditions were reformatted, the Updated COA were provided to Applicant's counsel in advance of the appeal hearing. Applicant's counsel had no objection to the Updated COA. The conditions approved by the Planning Commission are attached as Attachment H for informational purposes only.

Board Considerations and Staff Recommendation :

The following options are provided for the Board's consideration regarding possible action on the appeal:

- | Deny the appeal in its entirety and uphold the Planning Commission's approval of the Raymond-Ticen Ranch Winery Use Permit Modification;
- | Deny the appeal in its entirety and modify the scope of the proposed Project and/or the recommended Conditions of Approval;
- | Uphold one or more grounds of the appeal and reverse the Planning Commission's decision, thereby denying the Use Permit Modification; or
- | Remand the matter to the Planning Commission with direction.

In Staff's opinion, none of the information provided in the appeal and/or other public comments received to date substantively challenges or requires modification of the decision reached by the Planning Commission regarding this matter. As a result, Staff recommends that the Board deny the appeal in its entirety and uphold the Planning Commission's approval of the Project subject to the Updated COA including the revised condition regarding the timing of merger.

SUPPORTING DOCUMENTS

- A . Attachment A - Grounds of Appeal and Staff Responses
- B . Attachment B - Appeal dated 4-11-17 with 1-23-17 and 3-14-17 letters attached
- C . Attachment C - Appellants' and Applicant's Witness Lists
- D . Attachment D - Appellants' Good Cause Request
- E . Attachment E - Applicant's Supplemental Information
- F . Attachment F - Public Corresp. Received After Appeal Filed
- G . Attachment G - Updated Conditions of Approval
- H . Attachment H - Conditions of Appr. Adopted by PI Comm (Informational)

CEO Recommendation: Approve

Reviewed By: Helene Franchi