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Agenda Date: 5/6/2015

Agenda Placement: 9B

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission

FROM: David Morrison - Director
Planning, Building and Environmental Services

REPORT BY: John McDowell, Deputy Planning Director - 299-1354

SUBJECT: The Caves at Soda Canyon Minor Modification P14-00288-MOD

RECOMMENDATION

CUSTOM CRUSH WINERY / NAPA CUSTOMER CRUSH LLC - USE PERMIT MINOR MODIFICATION (#P14-00288-MOD)

CEQA Status: Consideration and possible adoption of a Categorical Exemption pursuant to the California Environmental Quality Act (CEQA), Section 15301, Class 1, which exempts minor alterations to existing buildings; Section 15303, Class 3, which exempts construction and operation of small wineries; and Appendix B, Class 1 (modifications to existing use permits), of the Napa County's Local Procedures for Implementing the California Environmental Quality Act. The project site is not included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.

Request: Approval of a Use Permit Minor Modification to the existing Use Permit No. P08-00527 to: (a) Recognize an already constructed 4th portal concealed by existing vegetation to the valley floor; (b) Allow a 700 square foot tasting area outside of the 4th portal; (c) Allow 3-100 square foot outdoor tasting areas; (d) Allow for an access path traveling from the 4th portal tasting area to two tasting areas at the top of the hill; and (e) Allow for on premise consumption within the tasting area of the cave and all four outdoor tasting areas of wines produced on site in accordance with Business & Professions Code Sections 223396.5 (also known as the AB 2004 [Evans 2008] or the Picnic Bill). There are no proposed changes to the winery production level - 30,000 gallons per year, visitation (maximum 20 daily visitors; maximum 70 visitors per week); marketing plan: six (6) private wine and food events for wine trade personnel – maximum 20 guests; 10 private wine and food events – maximum 100 guests; 1 private harvest event-maximum 200 guests: 1 open house during the Napa Valley Wine Auction for wine auction ticket holders, or number of employees (maximum 3 FT and 1 PT). The 41.35 acre project parcel is located 1,300 feet west of Soda Canyon Road, east of Silverado Trail, approximately 4 miles north of the intersection of Silverado Trail and Soda Canyon Road within an AW (Agricultural Watershed) zoning district: at 2275 Soda Canyon Road, Napa, (APN: 039-640-012).

Staff Recommendation: Denial of amended Use Permit Modification request.

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Applicant Contact: Ryan Waugh, (707) 738-6446; ryan@thecavesatsodacanyon.com

CONTINUED FROM THE APRIL 1, 2015 REGULAR COMMISSION MEETING

EXECUTIVE SUMMARY

Proposed Actions :

That the Planning Commission:

1. Deny Use Permit Minor Modification (P14-00288) based on the project not meeting the required findings for grant of permit pursuant to County Code Section 18.124.070.

Discussion:

On April 1, 2015, the Planning Commission conducted a public hearing on the proposed use permit modification which requested recognition of an existing outdoor tasting areas previously developed without benefit of permit at the Napa Custom Crush Winery located at 2275 Soda Canyon Road. This facility is also known as The Caves at Soda Canyon. It is a recently completed 30,000 gallon per year winery developed within an approximately 17,800 sq. ft. cave near the top of the ridgeline separating Soda Canyon from Napa Valley. In the original approval all tasting facilities were to be located within the cave, however, the permittee modified the development during construction to add an approximately 700 sq. ft. outdoor visitation space at the western cave portal. In addition, a foot path was extended from the western portal to an existing graveled area on the ridgeline which has been used for outdoor visitation.

At the April 1, 2015 hearing, after testimony was presented by the applicant, staff and several interest parties, the Commission voted to continue the item to May 6, 2015 and expressed an intent to see a down scaled project and/or commitments from the applicant demonstrating ability to comply with the terms of the project use permit. On April 15, 2015, the applicant submitted a letter (attached) proposing revisions to the project which included eliminating the three outdoor tasting areas and adding posts and a chain to block access on the trail to the two ridgeline tasting areas in turn for keeping the tasting area at the fourth cave portal.

Staff have reviewed the revised proposal and have concerns that these project revisions may fall short of Commission expectations. The graveled areas where the two ridgeline outdoor tasting are presently located and the trail to this area will remain in the revised proposal. Use of the chain to block visitors from accessing these areas provides little assurance that these areas would not be used unless routinely monitored by the County and/or neighbors. Therefore, staff is compelled to request that the proposed modification be denied. Alternatively, some level of modification could be approved subject to a performance period in which the permittee demonstrates that they are able to operate the project within the limits of the current use permit. In this alternative, the fourth portal and/or outdoor tasting areas would either removed or have some form of permanent substantial barrier installed to prevent use, and upon successfully demonstrating to the Planning Commission that the project has been operated in compliance with the original use permit, the barriers could be removed and the improvements reinstalled. Staff is not recommending this alternative due it is complexity and uncertain time constraints it would place on staff to implement and monitor. At this point, it seems much more straight forward that the unauthorized improvements are removed, or at least rendered inaccessible, and that the permittee apply for Commission approval to establish them a minimum of one year after the Commission's denial of this application. County Code Section 18.124.120.F states that applicants must wait a minimum of a year before

reapplying for a project that is substantially the same as one that has been denied.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

Denial of a project is statutorily exemption from the California Environmental Quality Act (CEQA) pursuant to Section 15270.

Approval of the project would qualify for a Categorical Exemption pursuant to the CEQA Section 15301, Class 1, which exempts minor alterations to existing buildings; Section 15303, Class 3, which exempts construction and operation of small wineries; and Appendix B, Class 1 (minor modifications to existing use permits), of the Napa County's Local Procedures for Implementing 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

Discussion

Possible Visitation Violations - During the April 1, 2015 hearing the applicant made representations that tastings/visitations at the hilltop and fourth portal tasting areas ceased in May of 2014 and that these areas have not been used from that time forward. County records indicate that Code Enforcement staff informed the applicant of the violations on August 4, 2014, at which point the applicant indicated these areas would not be used. Claims were made by neighbors at the April 1, 2015 hearing that tasting continue to occur in the areas. Staff has conducted cursory investigation into these claims and found several internet testimonials and pictures (attached) that appear to indicate tastings in the unauthorized areas have continued unabated, including unauthorized food pairings in violation of the Health Code standards, through at least December of 2014. Attached printed photographs from the web pages do not show the date of the photographs as shown on the web pages. To view dates visit the web site address listed at the bottom of the attachments. In evaluating the testimonials and photographs, staff considered the fact that tastings (without food) are presently allowed at the facility but only within the approved indoor tasting area. Many of the internet testimonials are not definitive whether the tasting occurred within approved locations or unauthorized locations. Therefore, those testimonials cannot be considered as evidence of a violation. However, several of the testimonials and pictures, clearly indicate that the hilltop area and/or fourth portal tastings areas were used after both May and August of 2014. It is also noted that several of the photographs included in these attachments are from a tasting that occurred in May of 2014 possibly before the purported cessation of tasting activities indicated by the applicant.

Fire Department Involvement on Fourth Portal - Planning Division staff have contacted Fire Department staff regarding their position on the fourth portal and trail from the portal to the ridgeline. The Fire Department plans examiner and inspector who conducted the inspections of the caves no longer works for the County in this capacity, but staff did discuss the project history with the other Fire Department plans examiner and inspector who was working on building permits when this project was reviewed and inspected. That inspector is now an employee of the Code Enforcement Division of the Planning, Building and Environmental Services Department. He indicated that at no point did the County direct the applicant to construct the fourth portal or to construct the access trail.

Although the Fire Department would have the ability to utilize these improvements in the event of emergency, these improvements were not necessary in order to comply with Fire Department standards. The Fire Department had cleared the original permit without the fourth portal and trail for issuance.

Use Permit Required Findings - To approve or deny a use permit, the Commission is required to address the findings listed in County Code Section 18.124.070. The findings are paraphrased as follows: A) the Commission has authority to grant the permit; B) the procedural requirements have been met; C) the permit will not adversely affect public health, safety or welfare; D) the use complies with all applicable codes, policies and the General Plan; E) (groundwater finding for Miliken Sacro Tulocay water deficient basin) not applicable to this project; F) there is sufficient groundwater to serve the use; and G) (uses connecting to public water supply) not applicable to this use permit.

In the event the Commission wishes to approve the project, either as proposed or modified, the proposed findings attached to the original staff report provide rational supporting project approval. At the Commission's discretion, these findings could be augmented to reflect the Commission's specific direction and rational for supporting the project. In the event the Commission does not support approval of the project, attached is a basic framework of potential rational supporting project denial. Public health, safety and welfare would be the focus of findings for denial of this permit. Other findings, such as the procedural findings and groundwater availability finding can be met.

Decision Making Options:

As noted in the Executive Summary Section above, Staff is recommending denial of the project as described below in Option 3. Decision making options including the following:

Option 1 – Approve Applicant's Revised Proposal

This option would result in the elimination of the outdoor tasting area at the east entrance to the winery, as well as, the two gravel tasting areas on the ridgeline, and would retain the fourth cave portal and tasting area at this portal. No changes in previously approved visitation and marketing levels would occur. The applicant has committed to the placement of posts and chain on the trail to the ridgeline tasting areas as a measure to prevent visitors from accessing these areas. Staff believe these project revisions fall short of Commission expectation expressed at the April 1, 2015 hearing, and therefore, do not support the proposal. Retaining the graveled areas where tastings were occurring and the trail to those areas appears open for abuse if not actively monitored.

Action Required – To approve project as proposed, Commission would follow the action items listed in the Executive Summary of the April 1, 2015 staff report and specify conditions to be amended at time motion is made.

Option 2 – Performance Option

This option would involve setting a period of time in which the permittee would operate the business in conformance with the currently approved use permit. During this period of time the fourth portal and the ridgeline tasting areas and trail would be removed or have some form of permanent barrier installed to prevent use. At the conclusion of the period prescribed by the Commission, which could be one to two years or as otherwise determined, the proposal would return to the Commission for approval of the portal and outdoor tasting areas. The options is complex in that discretion exercised in 2015 to approve the portal and tasting areas would be reevaluated again at the conclusion of the performance period before final approval is granted. This provides a high degree of uncertainty to all interested parties, including the Commission, and therefore, it is not recommended.

Action Required – To implement this action would require continuance of the item to the next regular Commission date to allow staff time to prepare findings and conditions of approval.

Option 3 – Deny Proposed Modification

Staff is recommending this option because it appears to provide the clearest path to compliance on the project. Denial would require the permittee to remove the improvements at the fourth portal such that the design is consistent with the ventilation shaft as shown on building permit plans. The trail to the ridgeline and the small shade structure would be removed as well but the gravel area, which existed prior approval of the original winery use permit could remain. Consistent with County Code, the applicant could apply in the future to establish the fourth portal and/or ridgeline tastings areas at their own discretion after waiting a minimum of one year from the date of project denial.

Action Required – Commission would take tentative motion to deny project and remand the matter to staff for preparation of required finding to return to the Commission on specified date based on the language contained in the Executive Summary of this staff report.

Option 4 - Use Permit Revocation

Pursuant to County Code Section 18.124.120, the Planning Commission has the authority to revoke, suspend or modify an existing use permit entitlement if after conducting a multi-step noticed public hearing process to expressly consider such actions, the Commission finds one or more of the following findings (paraphrased) applies: Approval was obtained by fraud or misrepresentation; violation of conditions; use being conducted contrary to terms of the permit; use is detrimental to public health, safety or welfare; use constitutes a public nuisance; and/or use has ceased for a period of five years or longer. Generally, this process is only pursued on the most egregious cases where permittee repeatedly demonstrates an inability to comply leaving the local agency with no other reasonable course of action to compel compliance. Staff is not recommending that this action be pursued at this time. The applicant expressed an intent to comply with the code and followed the use permit modification process to request approval of previously unauthorized improvements.

Action Required - Separate from action on the proposed use permit modification, the majority of the Commission by minute order would direct staff and County Counsel to begin processing.

SUPPORTING DOCUMENTS

- A . Applicant Project Revision Letter April 2015
- B . Potential Finding for Denial
- C . Previous Staff Report - April 1, 2015
- D . Correspondence After April 1, 2015 Hearing
- E . Trip Advisor Internet Postings
- F . Trip Advisor Internet Photographs
- G . Yelp Internet Postings

Napa County Planning Commission: Approve

Reviewed By: Charlene Gallina