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Agenda Date: 11/26/2013
Agenda Placement: 9E
Set Time: 9:45 AM PUBLIC HEARING
Estimated Report Time: 1 Hour

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Steven Lederer - Director of Public Works
Public Works
REPORT BY: Rick Marshall, Deputy Director of Public Works - Engr - (707) 259-8381
SUBJECT: Nickel and Nickel LLA Appeal

RECOMMENDATION

Consideration and possible action regarding an appeal filed by Domain H. William H., LLC, Harlan Trust, H. Harlan William II Trust, and Harlan Estate Ranch Holdings ("Appellants"), to a decision by the County Surveyor on August 20, 2013, to tentatively approve Lot Line Adjustment Application No. W13-00156 filed by Nickel Vineyard Company, LLC and Nickel Land Company ("Applicants"), for property located on Oakville Grade (Assessor's Parcel Nos. 027-360-017 SFAP with 027-480-016 and 027-360-012).

ENVIRONMENTAL DETERMINATION: Approval of a Lot Line Adjustment is a ministerial action which is exempt from CEQA (14 CCR 15268; Napa County Local CEQA Guidelines, Appendix A; *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165).

(CONTINUED FROM NOVEMBER 12, 2013)

EXECUTIVE SUMMARY

On July 12, 2013, the Applicant submitted an application for a Lot Line Adjustment to the Department of Public Works. The application met all of the standards of approval contained in the Napa County Code relating to lot line adjustments. Accordingly, the County Surveyor granted tentative approval. The Appellants filed a timely appeal of the tentative approval. Staff from Public Works and County Counsel have reviewed the information provided in the appeal, and recommend denial of the appeal. This item was continued from November 12, 2013 at the request of the appellant and with the concurrence of staff.

PROCEDURAL REQUIREMENTS

1. Staff report.
2. The appeal is of an administrative decision which was not recorded electronically, nor was notice that the application was being considered published in the newspaper or provided to surrounding property owners,

Therefore a *de novo* hearing is required. Pursuant to Section 17.46.080(C) of the County Code, the scope of the appeal shall be limited to the Board's consideration as to whether the County Surveyor appropriately applied the factual standards contained in Section 17.46.040(C) of the County Code.

3. After the Board has heard the testimony and received evidence from the appellant, staff and interested parties, the Chair should close the public hearing.
4. A member of the Board makes, and a second member seconds a motion of intent to either deny or uphold the appeal and to refer the matter to the County Counsel's office for preparation of a Resolution of Findings and Decision on Appeal.
5. The Chair calls for a vote on the motion of intent to either deny or uphold the appeal and refers 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: Approval of a Lot Line Adjustment is a ministerial action which is exempt from CEQA (14 CCR 15268; Napa County Local CEQA Guidelines, Appendix A; *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165).

BACKGROUND AND DISCUSSION

On July 12, 2013, the Applicants submitted an application for a Lot Line Adjustment ("LLA") to the Department of Public Works. The application form and materials required to be submitted with it are included here as Attachments A through F.

The application met all of the standards of approval contained in the Napa County Code relating to lot line adjustments. Accordingly, the County Surveyor granted tentative approval on August 20, 2013. The tentative approval letter is included as Attachment G.

On September 17, 2013, the Appellants filed a timely appeal of the tentative approval. The appeal packet is included as Attachment H, and pertinent section of the Napa County Code are included as Attachment I. Following is a listing of each of the grounds for appeal, along with staff response:

1. The LLA application does not depict all easements. Easements conveyed by the Judgment are not reflected in the application. Napa County Code ("NCC") Section 17.46.030(B)(3)(f) states that the LLA application "shall" depict all easements.

Staff response: There are two points of response to this item:

- a. The Judgment being referred to in the Appellants' remarks is one which resulted from private, civil litigation between the Applicants and the Appellants. One aspect of the Judgment concerned an easement on the Applicants' property for access to a well owned by the Appellants. However, the parties chose not to file the Judgment for record in the office of the County Recorder and thus it is not included in the Preliminary Title Report for the subject property, which is required by County Code to be submitted with the application for a

lot line adjustment. Thus, this easement was not known to staff and thus not subject to being reviewed during the processing of this application.

- b. Napa County Code Section 17.46.080(C) states that the scope of an appeal "shall be limited to the board's consideration as to whether the county surveyor appropriately applied the factual standards contained in subsection (C) of Section 17.46.040." This section of the Napa County Code is a listing of the standards for tentative approval of an application once it has been submitted for processing. The reference in the Appellants' remarks here is to a different section of the code (Section 17.46.030(B)(3)(f)), which is contained in the listing of requirements for application completeness. As such, this "ground for appeal", is not, in fact, appealable, and therefore must be dismissed.

2. The Judgment represents a security interest that will encumber only a portion of a resulting parcel in violation of NCC Section 17.46.040(C)(11).

Staff response: Section 17.46.040(C)(11) states, "No recorded mortgage, deed of trust or other security interest will, after recordation of the deed(s) consummating the lot line adjustment, encumber only a portion of any of the resulting parcels, except where such encumbrance applies only to a lienholder's security interest in a leasehold exempt from the Subdivision Map Act pursuant to Sections 66412, 66412.1, 66412.2 and 66412.5 of the Government Code." As noted in Item #1 above, the Judgment is not filed for record in the office of the County Recorder and thus not included in the Preliminary Title Report. Thus it does not constitute a "recorded ... security interest" and is not subject to the approval standard of Section 17.46.040(C)(11).

3. The LLA may violate the Judgment.

Staff response: Nothing about the lot line adjustment process affects the status of the Judgment. If the parties to the litigation have concerns along these lines, they need to seek direct legal relief from the courts; this is not pertinent to the tentative approval of the proposed lot line adjustment.

Staff from Public Works and County Counsel have reviewed the information provided in the appeal, and recommend denial of the appeal.

This item was continued from November 12, 2013 at the request of the appellant and with the concurrence of staff.

SUPPORTING DOCUMENTS

- A . Application Attachment 1 Form Indemnification Consent Receipt
- B . Application Attachment 2 Map
- C . Application Attachment 3 Nickel Vineyard Co Title Report
- D . Application Attachment 4 Nickel Land Co Title Report
- E . Application Attachment 5 Creation and Vesting Deeds
- F . Application Attachment 6 Notification Packet
- G . Tentative Approval Letter
- H . Appeal Packet
- I . Code Sections 17.46.030 and 17.46.040

CEO Recommendation: Approve

Reviewed By: Molly Rattigan