



A Tradition of Stewardship  
A Commitment to Service

Agenda Date: 12/20/2016  
Agenda Placement: 9J  
Set Time: 11:00 AM PUBLIC HEARING  
Estimated Report Time: 30 minutes  
Continued From: November 8, 2016

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors

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

**REPORT BY:** Brian Bordona, Supervising Planner - (707) 259-5935

**SUBJECT:** Kongsgaard Wine Erosion Control Plan Appeal

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### **RECOMMENDATION**

Consideration and possible action regarding an appeal filed by the Living Rivers Council c/o the Law Offices of Thomas N. Lippe, APC to a decision by the Planning Director to approve **Kongsgaard Wine LLC's Vineyard Erosion Control Plan Application No. P14-00069-ECPA** to allow for the vegetation removal and earthmoving activities associated with the development and operation of approximately gross 20.08 acres of new vineyard ( $\pm 14.7$  net vine acres). The project is located within the AW (Agricultural Watershed) Zoning District, 4377 Atlas Peak Road, Napa, CA, Assessor Parcel Number 032-540-042-000.

**ENVIRONMENTAL DETERMINATION:** Consideration and possible readoption of a Mitigated Negative Declaration. According to the Mitigated Negative Declaration, the proposed project would have, if mitigation measures are not included, potentially significant environmental impacts in the following areas: Biological Resources and Land Use and Planning. This project site is not on any of the lists of hazardous waste sites enumerated under Government Code section 65962.5.

**(CONTINUED FROM JUNE 7, SEPTEMBER 13, OCTOBER 4 AND NOVEMBER 8, 2016)**

### **EXECUTIVE SUMMARY**

This matter involves an appeal filed by Living Rivers Council (Appellant or LRC) of the Planning Director's decision on February 11, 2016 to approve Erosion Control Plan Application No. P14-00069-ECPA to allow for vegetation removal and earthmoving activities associated with the development and operation of approximately 20.08 acres of new vineyard ( $\pm 14.7$  net vine acres) (the Project). The Project was also appealed by Jim Wilson and Daniel Mufson however because their appeal packet did not contain all of the information required by the County's appeals ordinance, the Clerk of the Board deemed that appeal withdrawn (e.g., rejected).

Since June, the applicant and Appellant have requested several continuances of the appeal hearing so that the parties could explore settlement options. The parties ultimately reached an agreement which involves revisions to

the Project by reducing the Project acreage from 14.7 to 11.3 net vineyard acres. Minor changes to the Conditions of Approval (COA) were also agreed to, primarily pertaining to oak woodland planting and groundwater use. Staff has reviewed the changes agreed upon by the parties, found them consistent with applicable County regulations and supports approval of the revised Project.

Because the parties have reached a compromise which is supported by Staff, Staff envisions that the hearing will be brief. Neither the Appellant nor the applicant are expected to testify and Staff intends to only provide a brief summary before requesting that the Chairman invite public comment and take action. Since the appeal has been resolved via settlement, the Board may deny the appeal, and approve the revised ECP and revised COA by simple motion. The Board would need to readopt the Mitigated Negative Declaration before approving the revised Project. The matter does not need to be referred to County Counsel's office for preparation of a resolution of findings.

If the Board desires to take an action other than approving the revised ECP and conditions as provided in the settlement agreement, Staff would recommend that the matter be continued so that the parties can determine how such action would impact the settlement agreement.

#### PROCEDURAL REQUIREMENTS

1. Chair introduces item and invites Staff report.
2. Chair opens public hearing, invites testimony from interested parties.
3. After the Board has heard testimony, Chairman closes the public hearing.
4. Chairman calls for the vote on the motion to readopt the Mitigated Negative Declaration, deny the appeal and approve the revised ECP and revised COA.

#### **FISCAL IMPACT**

Is there a Fiscal Impact?                      No

#### **ENVIRONMENTAL IMPACT**

ENVIRONMENTAL DETERMINATION: Consideration and possible readoption of a Mitigated Negative Declaration (State Clearinghouse No. 2015032054). According to the Mitigated Negative Declaration, the proposed project would have, if mitigation measures are not included, potentially significant environmental impacts in the following areas: Biological Resources and Land Use and Planning. This project site is not on any of the lists of hazardous waste sites enumerated under Government Code section 65962.5.

#### **BACKGROUND AND DISCUSSION**

This matter involves an appeal filed by LRC of the Planning Director's decision to approve Erosion Control Plan Application No. P14-00069-ECPA to allow for vegetation removal and earthmoving activities associated with the development and operation of approximately 20.08 acres of new vineyard ( $\pm$ 14.7 net vine acres). Since June, the applicant and Appellant have requested that the appeal hearing be continued so that the parties could explore settlement options. The parties ultimately reached an agreement which involves revisions to the Project. (See Attachment A.) Minor changes to the Conditions of Approval (COA) were also agreed to, primarily pertaining to oak woodland planting and groundwater use. Specifically, the Project was revised to avoid additional oak trees acreage, and reduce the Project size from 14.7 net acres to 11.3 net vine acres. The total number of acres for the

gross area of disturbance was reduced from 20.8 to 16.7 acres. The COA were revised to account for the reduced groundwater use numbers commensurate with the reduced Project acreage. Language requiring the planting (and long-term maintenance) of 425 oak trees protection was also added to the COA. Complete details of the revised COA are provided in Attachment B in track/strike-out format for simple identification of language changes and additions. A clean version of the COA are provided in Attachment C. Staff has reviewed the changes agreed upon by the parties, found them consistent with applicable County regulations and supports approval of the revised Project and revised COA.

Because the parties have reached a compromise which is supported by Staff, Staff envisions that the hearing will be brief. Neither the Appellant nor the applicant are expected to testify and Staff intends to only provide a brief summary before requesting that the Chairman invite public comment and take action. Since the appeal has been resolved via settlement, the Board may deny the appeal, approve the revised ECP and revised COA by simple motion. The Board would need to readopt the Mitigated Negative Declaration before approving the revised Project. The matter does not need to be referred to County Counsel's office for preparation of a resolution of findings.

If the Board desires to take an action other than approving the revised ECP and revised COA as provided in the settlement agreement, Staff would recommend that the matter be continued so that the parties can determine how such action would impact the settlement agreement.

#### **SUPPORTING DOCUMENTS**

- A . Settlement Agreement
- B . Tracked Revised Conditions of Approval
- C . Final Revised Conditions of Approval

CEO Recommendation: Approve

Reviewed By: Helene Franchi