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Agenda Date: 2/9/2016  
Agenda Placement: 9D  
Set Time: 9:10 AM  
Estimated Report Time: 45 Minutes

## 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:** John McDowell, Deputy Planning Director - 299-1354

**SUBJECT:** Discussion of Proposed Terms of a Development Agreement with Caymus Vineyards

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### **RECOMMENDATION**

Director of Planning, Building and Environmental Services and County Counsel request that the Board take public comment and provide direction to staff on the proposed terms of a proposed Development Agreement between the County and **Caymus Vineyards** (Applicant). The Development Agreement is being processed concurrently with the Applicant's pending request to modify the winery's use permit. The purpose of the Development Agreement would be to provide a mutually agreed upon framework that would be binding on both parties with regards to the Applicant's pre-Winery Definition Ordinance (WDO) status and rights, as well as the Applicant's obligations concerning affordable housing, traffic, fire, and other impacts. The subject winery is located at 8700 Conn Creek Road, Rutherford California on approximately 4.5 acres within a 69.5 acre parcel. The project site is located on the east side of Conn Creek Road approximately at the intersection with Rutherford Road, within the Agricultural Preserve Zoning District (APN: 030-200-066).

### **EXECUTIVE SUMMARY**

The Applicant has proposed certain material terms and conditions to be included in a Development Agreement which would be processed concurrently with its pending use permit modification to the existing Caymus Vineyards Winery. The Development Agreement, if approved, would guide development within the existing winery development area, complement efforts to bring the property into compliance with all applicable laws and regulations, define both the Applicant's status and rights as a pre-WDO winery, and commit the Applicant to remedy project impacts.

### **Procedural Requirements**

1. Open public comment
2. Staff report

3. Applicant presentation
4. Public comments
5. Close public comment
6. Board provides direction to staff on the material terms and conditions to be included in the Development Agreement

### **FISCAL IMPACT**

Is there a Fiscal Impact?                      No

### **ENVIRONMENTAL IMPACT**

**ENVIRONMENTAL DETERMINATION:** The proposed action to provide staff direction is not a project as defined by 14 California Code of Regulations 15378 (State California Environmental Quality Act (CEQA) Guidelines) and therefore CEQA is not applicable. The Development Agreement will be evaluated under CEQA prior to its being considered for final action.

### **BACKGROUND AND DISCUSSION**

#### **History**

The Applicant has been operating the Caymus Vineyards winery in Napa County since 1972. As such, the winery predates the County's enactment of a zoning ordinance in 1974, which required a use permit for all new wineries. In 1988, the Applicant applied for a use permit to legalize and expand their operations. Use Permit #U-438788 was granted by the Planning Commission in September of 1988, which authorized the production of up to 110,000 gallons of wine per year, retail sales, and public tasting and tours visitation (e.g., without a prior appointment)(the 1988 Use Permit). In 1991, the Applicant filed Use Permit Modification #91474, requesting to move the tasting room, conference center and office area into an existing semi-enclosed space at the end of the main storage building, convert the existing tasting room to office space, and delete the detached tasting room from the master plan that was approved under the 1988 Use Permit. In 2008, a Very Minor Use Permit Modification to the 1988 Use Permit was approved to install a packaged sewer treatment plant to be located within an existing building, and to allow for an optional hold and haul system.

In 2009, the Applicant was randomly selected to participate in the County's wine audit, which revealed that production levels had increased to nearly 65,000 gallons annually, well in excess of their permitted level of 110,000 gallons. The County issued a Notice of Violation, requiring that the Applicant either comply with the approved 1988 Use Permit or submit a Use Permit Modification to recognize the expanded production. Neither action was taken. Consequently, in 2010, the County issued a letter to the Applicant stating that the winery was out of compliance with the terms of their Use Permit. Correspondence from the Applicant stated that a Use Permit Modification would be filed within 90 days, with submittal on or before August 11, 2010. The application was not submitted. In 2011, as a part of the ongoing compliance effort, the County requested copies of the Applicant's Federal ATTB (Alcohol and Tobacco Tax and Trade Bureau) forms. The forms indicated that production levels had increased further to 1.2 million gallons annually. By 2012, annual production had increased to 1.3 million gallons. During this time, two additional issues arose. The first was a difference between the County and the Applicant with regards to the level of public tours and tasting room visitation that had been legally allowed under the 1988 Use Permit. The second was a dispute as to whether the winery had exceeded its pre-WDO (Winery Definition Ordinance) "development area" and therefore whether wine production in excess of 110,000 gallons per year was subject to the 75

percent local grape source requirement.

A Use Permit Modification was filed by the Applicant in July of 2012, to allow the existing winery to make improvements in two phases. After review of the application, the County determined that there were violations concerning the construction of buildings without permit and the re-use of existing structures without permit, as well as other unauthorized improvements.

On August 2, 2013, the County and the Applicant agreed to resolve the violations and ensure compliance through a Judgment. On August 5, 2013, the two parties stipulated and consented to the entry of the terms of the Final Judgment. As part of the Judgment, the Applicant was required to pay the County compensatory damages for alleged environmental and community impacts associated with past wine production levels in the amount of \$1 million, and agreed to a timeline of compliance. The \$1 million in damages has been paid by the Applicant. The Court-approved Judgment allowed the Applicant to continue production up to 1.8 million gallons annually and defined the existing "winery development area," as defined by County Code Section 18.104.210, at 98,000 square feet. Over the next two years, discussions between the Applicant and the County were ongoing to clearly define the extent of violations and the means of compliance, where otherwise unspecified in the Judgment.

On June 8, 2015, the County and the Applicant agreed to an Amendment to the Judgment, entered by the Napa County Superior Court, stipulating that the Use Permit Modification process would be completed by December 5, 2016. The Amended Judgment also allowed the unpermitted areas of Buildings B5, B6, B7, the tank farm area/tank pad area/tanks outside B4, and the parking area to be occupied under a Temporary Certificate of Occupancy (TCO) through December 5, 2016. The Applicant is authorized under the Amended Judgment to produce 1.8 million gallons of wine for calendar year 2016, after which time production is required to be reduced to 110,000 gallons for calendar year 2017.

In October 2015, the Applicant submitted a revised Use Permit Modification. The Applicant is currently requesting approval to: (1) demolish 6,695 square feet labeled as Buildings B2, B6, B7, B8 and B9; (2) install a fire suppression sprinkler system within an existing building and associated outdoor water storage tanks ; (3) remodel an existing building, reduce its size, and remodel the interior of an existing building; (4) remove concrete and structures within the creek setback and restore the creek bank; (5) improve an existing access road, relocate interior vehicle access roads, and construct new parking; (6) allow for on-site consumption and sale of wine to existing customers ; (7) allow food and wine pairing for existing visitors; (8) demolish the existing single-family dwelling and construct an 8,205 square foot agricultural greenhouse within the already developed area; (9) increase annual production from the permitted level of 110,000 by 550,000 gallons, for a total of 660,000 gallons in calendar year 2019; and; (10) upgrade the existing Lyve equipment process wastewater system. A comparison table showing the original submittal to the revised reduced project is attached.

On January 21, 2016, Caymus requested a second Amendment to the Judgment. The new amendment would extend the TCO to allow the production of 800,000 gallons in calendar year 2017, and then beginning proposed Phase One in 2018 with the production of 110,000 gallons of wine, and then increase annual production by 550,000 gallons, for a total of 660,00 gallons for calendar year 2019. Applicant has requested the one year extension so as to allow sufficient time for construction of their new case goods, storage, bottling and production facility in Cordelia and relocation of the 800,000 gallons of wine to Cordelia.

### **Development Agreement**

Development Agreements are authorized by state law (Govt. Code Section 65864 et seq.). The purpose of a Development Agreement in this case would be to provide the Applicant with a vested right to develop the project for a period of years in accordance with the applicable laws and entitlements in effect at the time of project approval. In exchange, the Applicant would agree to terms that would address the impacts of the project which could not have been otherwise required under applicable law. A summary of the material terms and conditions proposed by

the Applicant include the following:

- All production of wine over 110,000 gallons would be subject to the 75 percent rule established by County Code Section 18.104.250(c);
- Payment of current housing and other impact fees on illegal buildings (estimated \$56,000);
- Payment of future traffic impact fees on all development constructed without permits (estimated \$50,000);
- Payment of a contribution to the Rutherford Fire Department (\$50,000);
- Recognition of the winery's pre-WDO right to continue to sell wines from its tasting room without regard to the source of grapes or location of production, so long as such wines are produced by Caymus or Caymus affiliates;
- Production limitations of 1.8 million gallons in calendar year 2016; 800,000 gallons in calendar year 2017; and 110,000 gallons in calendar year 2018 (pending any subsequent amendment to Judgment pursuant to Stipulation in order to allow for the extension of the TCO and production of wine over 110,000 gallons for calendar year 2017); and
- Participation in the winery audit for three years, unless superseded by any new compliance program adopted by the County.

Staff is requesting direction on the above terms of the proposed Development Agreement. This action does not obligate the Board to approve the Development Agreement. Upon receipt of Board direction, staff will prepare a draft Development Agreement which will be processed concurrently with the pending Use Permit Modification for the winery. Both the Development Agreement and the Use Permit Modification will be considered by the Planning Commission, which will make its recommendation to the Board of Supervisors. It is expected that the Planning Commission would consider both proposals in March of 2016, with the Board of Supervisors making the decision in April. Prior notice to the public of the future hearings before the Planning Commission and the Board of Supervisors will be provided in advance of the meetings.

#### **SUPPORTING DOCUMENTS**

- A . Exhibit A - Maps of Property
- B . Exhibit B - Reduced Project Description (August 3, 2015)
- C . Exhibit C - Site Plan

CEO Recommendation: Approve

Reviewed By: Helene Franchi