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Agenda Date: 5/10/2011
Agenda Placement: 9B
Set Time: 9:15 AM PUBLIC HEARING
Estimated Report Time: 1 Hour

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Hillary Gitelman - Director
Conservation, Development & Planning
REPORT BY: JESSICA JORDAN, SUPERVISING PLANNER - 299-1355
SUBJECT: Morlet Family Estate Winery Appeal

RECOMMENDATION

Consideration and possible action regarding an appeal filed by William Ballentine, Jr. to a decision by the Conservation, Development, and Planning Commission on March 2, 2011, to approve the Morlet Family Estate Winery Use Permit Major Modification No. P10-00375 and Mitigated Negative Declaration to modify the previously approved winery by: (1) removing the requirement to establish a new driveway access to State Route 29 (SR 29; or St. Helena Highway) and allowing all winery and construction traffic to utilize the existing driveway on the subject property's northern boundary; (2) retire the private residential use of the second story and loft space within the existing winery building and convert the space to winery offices and file storage; (3) recognize an 80 square foot area in front of the existing fireplace on the ground floor as a wine tasting and marketing area; (4) allow a new 1,413 square foot crush pad on the north side of the existing winery building during Phase I to be removed following Phase II; (5) recognize an existing 2,400 square foot pool deck area for some of the marketing events already approved and a 120 square foot existing restroom in the pool area as a winery visitor restroom; (6) allow for a Type II wine cave; (7) installation of a 120 square foot concrete pad and installation of water storage tanks for fire protection purposes on the hill to the south of the winery building; (8) acknowledge the proposed phasing for construction: Phase I to include winery building improvements, 1,413 square foot crush pad, water storage tank pad, winery storage in existing shed, and wastewater treatment system; Phase II to include Type II cave excavation and construction, 1,750 square foot crush pad, and removal of the 1,413 crush pad on the north side of the winery building; (9) allow hold-and-haul capability for the first two years of harvest. The winery project is located on a 10.14 acre parcel on the west side of St. Helena Highway North, north of its intersection with Deer Park Road, within the AW (Agricultural Watershed) zoning district. (Assessor's Parcel No. 022-200-031) 2825 St. Helena Highway North, St. Helena.

ENVIRONMENTAL DETERMINATION: Mitigated Negative Declaration prepared. According to the Mitigated Negative Declaration, if a mitigation measure is not included, the proposed project would have potentially significant environmental impacts to Biological Resources. The project site is not included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.

EXECUTIVE SUMMARY**EXECUTIVE SUMMARY**

On March 2, 2011, after considering all written and verbal evidence presented, the Planning Commission closed the public hearing and voted 4:0:1 to adopt the Mitigated Negative Declaration and approve an application submitted by Mr. and Mrs. Luc Morlet (hereafter "Applicants") for the Morlet Family Estate Winery Use Permit Major Modification (P10-00375). The project consists of modifications to a previously approved Use Permit that provide for alterations to existing spaces internal to the winery building itself, recognizing use of existing outdoor areas for winery uses, providing for new improvements such as installation of water storage tanks to support the winery operations, establish phasing of development, and removal of a previous condition of approval requiring installation of a new access road across the winery property to St. Helena Highway. The Planning Commission properly considered the project analysis provided in the staff report as well as all points raised in the appeal. As such, staff contends that the Planning Commission's action to approve the Use Permit Major Modification was properly undertaken.

On March 14, 2011, subsequent to the Planning Commission's final decision, and within the prescribed period, an appeal was filed by William Ballentine, Jr. (hereafter "Appellant").

PROCEDURAL REQUIREMENTS

1. Chair announces the agenda item.
2. Staff presentation: Will the Board hear the item on the record or hear the item de novo.
3. Questions by the Board.
4. Public testimony concerning whether to hear the item de novo.
5. Member makes a motion concerning hearing format.
6. Different member seconds the motion.
7. Board discussion and debate on the motion.
8. Chair calls vote on motion.
8. Staff Presentation: Basis of the Appeal.
9. Questions by the Board.
10. Chair opens public hearing.
11. Testimony from appellant and appellant's representatives.
12. Testimony from applicant and applicant's representatives.
13. All other public testimony.
14. (Optional) Closing responses from appellant.
15. (Optional) Closing responses from applicant.
16. Chair closes public hearing.
17. Board discussion and questions.
18. Member makes motion of intent (tentative motion).
19. Different member seconds the motion.
20. Board discussion and debate on the motion.
21. Chair calls vote on motion.
22. Item remanded to County Counsel to prepare required findings.
23. Clerk of the Board sets tentative hearing date for final Board action.

FISCAL IMPACT

Is there a Fiscal Impact?

No

ENVIRONMENTAL IMPACT

A Mitigated Negative Declaration was prepared and circulated for public review from January 28, 2011 through February 28, 2011. According to the Mitigated Negative Declaration, if a mitigation measure is not included, the proposed project would have potentially significant environmental impacts to Biological Resources. The project site is not included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.

Should the Board grant the appeal and deny the Use Permit Major modification, the action is exempt from the California Environmental Quality Act per CEQA Guidelines Section 15270 (Projects Which Are Disapproved), which establishes that CEQA does not apply to projects which a public agency rejects or disapproves. However, should the Board deny the appeal, the Board must adopt the Mitigated Negative Declaration and approve Use Permit Major Modification P10-00375. Lastly, should the Board grant a modified portion of the appeal and modified portion of the Planning Commission's approval of the project, the Board must also adopt the Mitigated Negative Declaration in support of the modified action.

BACKGROUND AND DISCUSSION

The matter before the Board is an appeal of the Planning Commission's decision to adopt a Mitigated Negative Declaration and approve a Major Modification to a previously approved, but not yet activated winery Use Permit located at 2825 St. Helena Highway North, to allow alterations to existing spaces internal to the winery building itself, recognize use of existing outdoor areas for winery uses, provide for new improvements such as installation of water storage tanks to support the winery operations, establish phasing of development, and remove a previous condition of approval requiring installation of a new access road across the winery property to St. Helena Highway.

County Code Section 2.88.090 provides for appeals of Planning Commission decisions and requires that the Board's appeal hearing be based on the documentary record, including transcripts of the Planning Commission's hearing, plus any evidence that could not have been presented at the hearing, unless the Board affirmatively permits any additional evidence based on good cause shown.

The Board's first order of business on the appeal is to consider whether any new evidence should be admitted as part of the appeal hearing. As of the writing of this report, no new evidence has been submitted for consideration in support of the appeal request. Secondly, the Board should consider the basis for the appeal together with staff's response, as presented below. Following the appeal hearing, the Board may affirm, reverse, or modify the decision by the Planning Commission. Should the Board wish to deny the appeal and approve the Project, the Board would need to first adopt the Mitigated Negative Declaration. Upon closure of the public hearing, the Board should take a tentative action (i.e. adopt a motion of intent) on the appeal and refer the matter to County Counsel's office for preparation of written findings. The Board has been provided with the entire administrative record.

STATED BASES FOR THE APPEAL AND STAFF RESPONSE: The following outlines the bases of the appeal as contained the Appellant's submittal. For convenience, staff has numbered each issue and provided a summary of the Appellant's grounds of appeal, but recommends the Board review the actual appeal submittal for more detail.

Appeal Ground No. 1: Appellant contends that the Use Permit P09-00127-VMM expired on its own terms and that the County has no authority to extend the existing the two-year limitation on Use Permits established in Section 18.124.080 of the Zoning Code.

Staff Response: The Planning Commission considered information regarding expiration of the originally issued use permit and time extension during the public hearing and determined that the original Use Permit remained valid via a one-year time extension issued through the Very Minor Modification process by the Director of

Conservation, Development, and Planning. To clarify, the original Use Permit P06-01453 was approved by the Board of Supervisors in July 2008, establishing an initial expiration date in August 2010. In April 2010, the Very Minor Modification P09-00127 was approved, allowing for a one-year extension of the original permit and establishing a new expiration date for the winery use permit in August 2011.

Napa County Code Section 18.124.080 expressly provides that the two-year limitation on Use Permits may be extended by the conditions of approval of the use permit. Staff commented at the public hearing on March 2, 2011, that the Planning Commission previously consented to the use of the Very Minor Modification process to grant one-year extensions to use permits, stemming from a staff presentation and discussion held during their regular meeting on April 1, 2009 in response to the changing economic climate occurring at that time. Staff also noted that the Appellant had made a similar assertion several months prior to the Commission's March hearing that Staff had responded to in writing declaring that the use permit had been extended. The Appellant has provided no additional evidence to support the claim that the permit expired or that the County acted in error by granting the one year time extension. The Planning Commission duly considered this testimony and found the Use Permit valid and the Major Modification request an approvable action.

Appeal Ground No. 2: Appellant contends that no notification was provided to any neighbors when the extension of the Use Permit was approved.

Staff Response: Pursuant to Section 18.124.130(C), Very Minor Modifications are classified as an administrative action, and as such do not trigger public noticing. Since April 2009, approximately 15 time extensions for wineries have been approved through the very minor modification process.

The use permit approval process involves a considerable amount of time and expense to applicants. The purpose behind setting an expiration date is largely a measure to ensure that the lead agency maintains the ability to control overall land use issues. In the event substantive changes occur to General Plan and Zoning requirements, expiration dates allow the lead agency to abate unactivated or vested use permits. Granting of time extensions, as endorsed by the Planning Commission in April 2009, is consistent with the County's long term policies to promote agricultural as the highest and best use of the land. Rules governing the establishment of wineries through the use permit modification process have not substantively changed in over 20 years, nor is it expected that any major change will occur within the coming year. Therefore, it is unclear what purpose would be served by either not extending use permit approvals, or by requiring a more cumbersome time extension process.

As indicated in the Staff Response of Appeal Ground No. 1 above, the Planning Commission duly considered the information provided within the staff report and during the public hearing and found the original Use Permit to remain valid and able to be modified.

Appeal Ground No. 3: Appellant asserts that every neighbor is against the proposed winery using the north entrance driveway.

Staff Response: The appellant made this same assertion during the Planning Commission hearing on March 2nd. The Appellant has provided no evidence to support this assertion. Several years prior during the original Morris Ghost Winery Use Permit hearing, there was a great deal of neighborhood controversy. At the time, most of the residents north of the subject property attended the hearings and voiced concerns. During the recent Planning Commission on the Morlet's modification, a comparatively small amount of testimony was provided by neighbors and consisted of the Appellant and Appellant's representative, one other neighbor, a letter of concern from another adjoining neighbor, and two letters of full support from nearby winery owners. Since the Planning Commission's action, no further correspondence from neighbors has been received. In addition, no neighbors have are a party to this this appeal. Staff believe the Planning Commission fully and properly considered all neighbor testimony, both in support and against the proposal, prior to taking their action.

Appeal Ground No. 4: Appellant indicates the biggest concern with the Project is the health and safety aspects of the project and highway access. Appellant further contends that the intersection of State Highway 29 and Deer Park Road is a high-fatality intersection.

Staff Response: The Appellant has provided no credible evidence to support this claim. The Appellant provided solely anecdotal testimony during the public hearing. The Planning Commission considered traffic accident data during the public hearing, which indicated five accidents had occurred in this location over the last five years, none of which included any fatality. The Applicant's traffic engineer gave expert testimony during the public hearing consisting of an overview of the analyses completed for both the original Use Permit and the proposed modification to traffic circulation of the project. The Applicant's traffic engineer indicated the modification to rely upon the existing, shared access drive on the north side of the Morlet property was actually safer than a new, additional access point in this area. Staff informed the Planning Commission that the County's traffic engineer had also evaluated the project, expressed preference for the use of the existing driveway, and found the configuration consistent with County standards. The Planning Commission considered all evidence and concluded that the new proposal to rely upon the existing, shared access drive was superior to the original approval.

Appeal Ground No. 5: Appellant contends the Project was deemed a Minor Modification and that the changes included in the Project were a larger percentage change than allowed as a Minor Modification by the Code.

Staff Response: The project was originally proposed as a Minor Modification however, following analysis and addition of some components to the project, staff changed the request to a Major Modification and appropriately referred the matter to the Planning Commission. The Planning Commission rightfully considered and acted upon all of the proposed changes to the winery as part of a Major Modification, not a Minor Modification.

Appeal Ground No. 6: Appellant requests clarification of any earthquake retrofitting requirements to be placed on the proposed winery.

Staff Response: The Planning Commission received information during the public hearing indicating that the Building Code currently only requires mandatory retrofitting for hospitals. As the proposed Project is not a hospital, no such mandatory requirement would apply or could be enforced by the County. The Project is required to meet all applicable standards of the Uniform Building Code. Any retrofitting that the applicant voluntarily includes in construction must be completed in accordance with historic standards that will not discernably alter the appearance of the building.

Appeal Ground No. 7: The Appellant contends that there is no legal access from the current shared road along the northern parcel boundary to the hill where the proposed water tanks are going to be located. The applicant further contends that the original winery design proposed water tanks on the south side of the building.

Staff Response: This point was raised at the Planning Commission's hearing and the Planning Commission considered all evidence presented on the topic. The Appellant has provided no new evidence since the March 2nd public hearing that modifies what was presented at the PC. The Planning Commission considered the limits of the shared driveway and access it provides to the Morlet Winery parcel to the extent appropriate. The Planning Commission appropriately applied conditions of approval that required winery access be achieved through use of the existing shared driveway at a width meeting County standards. Staff informed the Planning Commission that determining legality of the Applicant's use of the access drive is a private, civil matter and that the County's issuance of a Use Permit has no bearing on whether or not the property owner is abiding by the terms of the shared easement. It is the owner's sole responsibility to insuring that legal access is in place prior to opening the winery. The Appellant has provided no further evidence to support the assertion that legal access does not exist. On-site water tanks were not included in the project's original Use Permit approval.

Appeal Ground No. 8: The Appellant asserts that all of the drainage water runs onto the appellant's property and

that more usage will create additional problems.

Staff Response: The Appellant asserted this point during the Planning Commission hearing, but no evidence supporting this claim was offered at that time. No further evidence has been provided since that time. At the hearing, the Planning Commission heard testimony from the Applicant's representative indicating that the Applicant's engineer had designed the drainage system in accordance with the County standards. Furthermore, the Planning Commission appropriately applied conditions of approval requiring the project to comply with all County standards related to drainage.

Appeal Ground No. 9: The Appellant desires the project to move forward in a single construction phase as opposed to the phasing being proposed by the Project applicant. The Appellant is concerned that phased construction will result in a tasting room only instead of a fully producing winery.

Staff Response: The Planning Commission considered this concern during the public hearing on March 2, 2011. As required by County standards, active winery production must occur on-site prior to any tasting activities occurring. The Appellant has provided no evidence that a tasting room only will be developed at the site. The Planning Commission considered and approved the Applicant's request for construction phasing of the project. As currently proposed, the Applicant will house wine production within the existing winery building, relying upon the 1,413 square foot crush pad immediately adjacent to the building, both of which are Phase I improvements, insuring a tasting room is not the only item developed on the property. Completion of the project would occur in Phase II, further providing production facilities on the property. The Board may approve an alternative to the proposed construction phasing should they so desire. The Planning Commission considered the information provided during the public hearing and determine the proposed phasing was supportable, consistent with the required standards for wine production applied throughout the County, and approved the proposed phasing as is.

Appeal Ground No. 10: The Appellant contends that the proposed crush pad will be located on the shared roadway, hindering the neighbor's access to the road with forklift and delivery truck activity. The Appellant desires the crush pad to remain on the south side as proposed in the original use permit. The Appellant further contends that the new proposed location is 60 feet from the Appellant's home and is larger than the footprint of the Project's stone winery building.

Staff Response: The Planning Commission considered the setback of the proposed crush pad during the public hearing on March 2, 2011. As indicated in the Planning Commission staff report, the crush pad is set back 28 feet from the private drive. The Appellant has provided no evidence that forklift and delivery truck activity will occur within the shared roadway. There are no Code standards that limit the square footage of the crush pad in relation to the winery building.

Appeal Ground No. 11: The Appellant asserts that the neighbors would prefer no signage on the highway because it will bring unnecessary traffic into the neighborhood.

Staff Response: The Planning Commission considered signage issues during the public hearing on March 2, 2011 and requested inclusion of on-site signs to direct winery visitors away from the residence on the Morlet's properties. No other signage was proposed. Any future signage would be subject to the County's regulations. The Appellant provided no evidence to support this assertion. Also, see Staff Response to Appeal Ground No. 3 regarding the Appellant's representation of the neighbors. As a discretionary permit, the Planning Commission, for cause, had the authority to restrict signage beyond what is enabled under County zoning during the public hearing. However, based on the evidence in the record as a whole, the Planning Commission did not believe that further restriction of signage was warranted. County regulations, by design, are in keeping with Napa's agricultural setting and do not typically allow vast amounts of signage. Furthermore, signage must obviously identify that tours and tastings are conducted by appointment only. The Planning Commission felt that the County's existing sign regulations would not result in discernable, unnecessary traffic into the neighborhood and as such, did not

impose any conditions restricting signage upon the Use Permit.

Appeal Ground No. 12: The Appellant questions the method of enforcement of compliance with the Napa County rules for utilizing 75% Napa County grapes for crushing and bottling activities at the proposed winery.

Staff Response: The Planning Commission considered the grape source issue during the public hearing on March 2, 2011 and included a condition of approval to the Use Permit Major Modification requiring compliance with the 75% grape source standard. The Planning Commission indicated that the County's standard Code Enforcement process would be adequate to enforce such a condition of approval. The Applicant's representative provided testimony that all conditions of approval would be complied with and there is no reason to suspect otherwise. In the event there was such reason, any Applicant would typically be provided with the opportunity to prove they will remain in compliance with the conditions. The Appellant's suspicion of the Applicant's likelihood of compliance is not evidence nor a valid reason to deny the Use Permit Major Modification.

SUPPORTING DOCUMENTS

- A . Ballentine Appeal
- B . CDPC March 2, 2011 Staff Report
- C . Exhibit A - Findings
- D . Exhibit B - Conditions of Approval
- E . Agency Comments
- F . Environmental Documents
- G . Application Materials
- H . Correspondence
- I . Letters of Support
- J . Graphics
- K . Additional Items Submitted on March 2, 2011

CEO Recommendation: Approve

Reviewed By: Molly Rattigan