



Agenda Date: 5/16/2006
Agenda Placement: 8B
Set Time: 10:30 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: Steven Lederer, Deputy Planning Director, 253-4417
SUBJECT: Abreu Appeal Hearing of Mondavis' Rocky Ridge Winery

RECOMMENDATION

Consideration and possible action regarding an appeal filed by attorney James Rose on behalf of Lucia Abreu Vineyard, Howell Mountain, LLC of a decision by the Conservation, Development and Planning Commission on December 7, 2005, to approve Marc and Janice Mondavi's Rocky Ridge Winery Use Permit Application No. 05-0056-UP to: (1) construct a new 35,000 gallon per year winery and associated improvements including a new, two story 17,130 sq. ft. winery production facility (crushing, fermentation, barrel aging and storage, bottling, case good storage, administrative offices and laboratory); a cave; outdoor crush and grape delivery pad; five employees; parking; tours and tasting by appointment; retail wine sales by appointment; a marketing plan; and an on-site wastewater system; and (2) allow an exception to the County's Conservation Regulations (Section 18.108.027 (B)) to allow retention of less than the minimum of 60% tree canopy and 40% brush/grass cover existing on the parcel as it was configured on June 16, 1993, on a 20.65 acre parcel on the north side of Las Posadas Road, approximately 1/2 miles west of its intersection with Cold Springs Road and located at 383 Las Posadas Road, Angwin, APN 024-300-065. The project is located within an Agricultural Watershed: Airport Compatibility Overlay (AW:AC) zoning district and is designated in the General Plan as Agriculture, Watershed and Open Space (AWOS).

ENVIRONMENTAL DETERMINATION: Mitigated Negative Declaration prepared. According to the Mitigated Negative Declaration, the proposed project may have, if mitigation measures are not included, potentially significant impacts in the following areas: noise and transportation.

(CONTINUED FROM MARCH 14 AND APRIL 18, 2006)

EXECUTIVE SUMMARY

The hearing before the Board is to consider an appeal filed by attorney James Rose on behalf of Lucia Abreu Vineyard, Howell Mountain LLC, to the Planning Commission's decision to approve the Rocky Ridge Winery Use Permit Application No. 05-0056-UP. The appeal is based on the contention that: (1) because the winery will be located within 300 feet of a private roadway, the Planning Commission should have required a variance from the County's 300 foot setback requirement in County Code section 18.104.230; (2) the Planning Commission erroneously determined that in order to trigger the 300 foot setback under Section 18.104.230 the used portion or tire marks of a roadway must physically touch the boundary line of the contiguous parcel which would of necessity

create a trespass; (3) appellant's private recorded easement which is contiguous to the boundary line but not necessarily touching it should be included within the definition of a contiguous roadway; (4) appellant's private roadway easement is contiguous to the winery property and therefore satisfies the definition of a contiguous roadway for purposes of imposing the 300 foot setback requirement under Section 18.104.230; (5) the Planning Commission previously determined that a private roadway easement falls within the meaning of a private road under Section 18.104.230 when the Commission required a variance for the Biale Winery Estate (Use Permit Application No. 03-088-UP); and (6) County staff have previously interpreted and applied Section 18.104.230 such that private easements are considered private roads for purposes of imposing the 300 foot setback.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Because the County does not recover the full cost of processing appeals, general fund impacts to the budgets of Conservation, Development & Planning and the Clerk of the Board occur during the processing of appeals.
Is it Mandatory or Discretionary?	Mandatory
Is the general fund affected?	Yes
Future fiscal impact:	None.
Consequences if not approved:	County Code allows for the appeal of Planning Commission decisions.
Additional Information:	

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Mitigated Negative Declaration prepared. According to the Mitigated Negative Declaration, the proposed project may have, if mitigation measures are not included, potentially significant environmental impacts in the following areas: noise and transportation. If the Board decides to deny the appeal, it would need to readopt the Mitigated Negative Declaration prior to approving the project.

BACKGROUND AND DISCUSSION

PROCEDURAL BACKGROUND: On December 7, 2005, the Planning Commission approved the Mondavis' application for the Rocky Ridge Winery Use Permit No. P05-0056-UP to allow a 35,000 gallon per year winery and related improvements and an exception to the County's Conservation Regulations. On December 21, 2005, subsequent to the Planning Commission's final decision and within the prescribed appeal period, an appeal was filed by attorney James Rose on behalf of Lucia Abreu Vineyard, Howell Mountain LLC.

CURRENT STATUS AND ACTIONS REQUESTED BY THE BOARD OF SUPERVISORS: The matter before the Board is an appeal of the Planning Commission's decision approving the Mondavis' application for the Rocky Ridge Winery Use Permit No. P05-0056-UP. County Code section 2.88.090 provides for appeals of Planning Commission decisions and indicates that the Board's appeal hearing shall be based on the documentary record, including a transcript of the Planning Commission hearing, plus any additional evidence that could not have been presented at that time, unless the Board affirmatively permits additional evidence. The Code further states that following the

appeal hearing, the Board may affirm, reverse, or modify the decision by the Planning Commission. Should the Board deny the appeal and approve the project, the Board would also need to readopt the Mitigated Negative Declaration.

The Board should first consider whether any new evidence should be admitted as part of the appeal hearing, and then should consider whether to adopt an intent to deny or approve the appeal, and refer the matter to County Counsel for preparation of formal findings accordingly.

STATED BASIS FOR THE APPEAL AND STAFF RESPONSE: The subject of the appeal is based on a single issue of interpretation of County Code Section 18.104.230 which is reproduced below (bold added by staff).

County Code Section Involved in the Appeal:

Section 18.104.230 Wineries located in open space areas - Setbacks.

A. The minimum setback for wineries shall be as follows:

1. Wineries, or structures containing accessory uses allowed by Sections 18.16.030 (G) and (H) and 18.20.030 (I) and (J), shall meet a six hundred foot setback from the centerline of any state highway, Silverado Trail, or any arterial county road. Underground portions of caves are not subject to the winery or yard setback requirements. Cave portals shall be required to meet the setback if the cave portal is visible from the applicable road. If the associated entry pad outside of the cave portal is used for winery functions (such as, but not limited to, placement of winery equipment, crushing, visitation, etc.), then the pad is also required to meet the winery setback requirements.

2. Wineries, or other structures containing accessory uses allowed by Section 18.16.030 (G) and (H) and 18.20.030 (I) and (J), **which are located on parcels contiguous to any other public road or private road(s) used by the public: three hundred feet from the centerline of the road.** For purposes of this section only, a private road is considered "used by the public" if it provides primary access to at least one parcel other than the parcel(s) on which the winery is located. Underground portions of caves are not subject to the winery or yard setback requirements. Cave portals shall be required to meet the setback if the portal is visible from the applicable road. If the associated entry pad outside of the cave portal is used for winery functions (such as, but not limited to, placement of winery equipment, crushing, visitation, etc.), then the pad is also required to meet the setback requirements.

Case Law and Legislative History: The term "contiguous" is not defined in the County's zoning regulations in Title 18 of the County Code. However an appellate case involving a lot line adjustment in the city of San Diego shed some light on how courts interpret "contiguous" as distinguished from adjacent. There, the Court of Appeal noted "[t]he usual, ordinary import of adjacent is that the position of thing relative to another is not distant or far off, nearby but not touching, relatively near and having nothing of the same kind intervening; adjacent is sometimes merely a synonym for near or close to. [citations] A thing is adjacent to another when it lies near or close to it, although it is not in actual contact therewith. [citations]" The Court emphasized the commonly understood meaning of "adjacent" as "near or close to, rather than adjoining, touching or contiguous." (*San Dieguito Partnership, LP v. City of San Diego* (1992) 7 Cal. App. 4th 748, 757.)

In addition, Merriam-Webster's Dictionary (2002 edition), defines "contiguous" as "being in actual contact: touching along a boundary or at a point." There is also recent legislative history regarding Section 18.104.230 which is instructive when interpreting the meaning and intent of that section.

In early 2003, the Planning Commission requested that staff draft an ordinance which removed the word "contiguous" from Section 18.104.230(A)(1) regarding the 600 foot setback from major roadways. The request was made following a hearing before the Commission where it was discovered that many wineries

along Highway 29 were not subject to the 600 foot setback requirement. This situation occurred because a narrow strip of current or historic railroad right-of-way separated these parcels from the Highway and therefore these parcels were not contiguous to Highway 29. As a result, at least one winery (Revana) was able to be built approximately 60 feet from Highway 29 because a sliver of railroad right of way prevented the winery parcel from being contiguous to Highway 29. When considering the ordinance amendment, the Commission also discussed "contiguous" as it related to the 300 setback requirement and intentionally left "contiguous" in Section 18.104.230 (A)(2) as it related to the 300 setback. The Commission opined that the 300 foot setback should be reserved for situations where the road was right up against (contiguous with) the winery property line. Ultimately, in August 2003, the Board adopted an ordinance codifying the Commission's request to delete the "contiguous" from the 600 foot setback but to leave it in for the 300 setback requirement.

The following outlines the basis of the appeal as contained in the appellant's submittal dated December 21, 2005. For convenience, staff has numbered each issue and provided a summary, but recommends that the Board review the appeal in its entirety for more details.

Appeal Ground 1: Because the winery will be located within 300 feet of a private road, the Planning Commission should have required that the applicant obtain a variance from the County's 300 setback requirement under Section 18.104.230 prior to approving the project.

Response: The Planning Commission concluded that since the private road on Appellant's property was not contiguous to (did not touch) the Mondavi winery parcel, the 300 foot setback under Section 18.104.230 did not apply and therefore a variance from the setback requirement was not required.

Appeal Ground No. 2: The Planning Commission erroneously determined that it in order to trigger the 300 foot setback under Section 18.104.230 the used portion or tire marks of a roadway must physically touch the boundary line of the contiguous parcel which would of necessity create a trespass.

Response: The Planning Commission interpreted "contiguous" to mean that some portion of the edge of the private road must touch the winery parcel property line. The Commission did not discuss or otherwise conclude that the used portion or tire marks of a roadway must physically touch the boundary line. The Planning Commission reviewed a plot plan submitted in connection with Appellant's winery (Abreu Howell Mountain Vineyards) which shows a thin strip of land between the area identified as the private road and the Abreu/Mondavi property line. (Please see attachment 3 for reference.) Appellant's representative testified that the road touches the Mondavi property line. However the Commission heard testimony from the Mondavis' representatives stating that the road did not touch. The Commission also reviewed photographs of the two properties which show a row of olive trees on the Appellant's property planted between the edge of the private roadway pavement and the Mondavi property line. (The applicant will provide additional copies of these photographs for the Board) Based on the evidence presented, the Commission concluded that Appellant's private road is not contiguous because it does not touch the Mondavi winery parcel property line at any point.

Appeal Ground No. 3: Appellant's private recorded easement which is contiguous to the boundary line but not necessarily touching it should be included within the definition of a contiguous roadway.

Response: The Commission disagreed with Appellant and based on the plain meaning of "public or private road" in Section 18.104.230 interpreted it to mean an actual road not a private recorded easement. Notwithstanding whether a private recorded easement falls within the meaning of a "public or private road" under Section 18.104.230, that Section also requires that the road be contiguous to the winery parcel which the Commission interpreted as touching it at some portion. Since the private road on Appellant's property does not touch the Mondavi winery parcel line at any point, the Commission concluded that the road was not contiguous.

This interpretation was consistent with the Commission's action on at least two other recent projects, the Cliff Lede

Winery and Ehlers Estate Winery. The Cliff Lede Winery is located on Yountville Cross Road, off of which comes an existing private road that was located contiguous to the winery parcel. The applicant proposed, and the Commission agreed, that a lot line adjustment be performed by the applicant to move the winery parcel line approximately 20 feet to the east away from the private road, thus rendering the road no longer contiguous to the winery parcel and therefore not subject to the 300 foot setback. The location of any easement on the parcel was not considered germane to the discussion. Another example is Ehlers Estate Winery on Ehlers Lane which involved a neighbor's road located contiguous to the winery parcel. There, the applicant (with the neighbor's agreement) moved the neighbor's road approximately 10 feet to the south so that it was no longer contiguous to the winery parcel and therefore not subject to the 300 foot setback.

In both the cases (once by moving the parcel line, in the other by actually moving the road) the action proposed by the applicants and agreed to by the Commission resulted in separating the parcel line from the roadway by a small but definite strip of land, thus eliminating the need for a variance from the 300 foot setback requirement.

Appeal Ground No. 4: Appellant's private recorded easement is contiguous to the winery property and therefore satisfies the definition of a contiguous roadway for purposes of imposing the 300 foot setback requirement under Section 18.104.230.

Response: Please see response to Appeal Ground No. 1.

Appeal Ground No. 5: The Planning Commission previously determined that a private roadway easement falls within the meaning of a private road under Section 18.104.230 when the Commission required a variance for the Biale Winery Estate (Use Permit Application No. 03-088-UP).

Response: The Biale Winery variance was approved in 2001 before the amendment to Section 18.104.230 and Commission discussion on "contiguous" took place. Additionally, in reviewing the Biale Winery staff report, mention is made in several places of an existing, contiguous neighbor road to the south of the winery parcel. No mention of an easement is made. [Staff note: The Biale Use Permit expired due to lack of action by the permittee, and was resubmitted and approved again in 2003. Since variances do not have expiration dates, the original 2001 variance remained in place and no action on the variance proposal was taken in 2003 as stated by the appellant's attorney].

Appeal Ground No. 6: County staff have previously interpreted and applied Section 18.104.230 such that private easements are considered private roads for purposes of imposing the 300 setback.

Response: Please see response to Appeal Ground No. 3.

SUPPORTING DOCUMENTS

- A . Appeal
- B . Staff Report
- C . Abreu Howell Mountain Vineyards Site Plan
- D . Aerial Photos and Parcel Map

CEO Recommendation: Approve

Reviewed By: Andrew Carey