



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 9/1/2020
Agenda Placement: 9D
Set Time: 10:15 AM PUBLIC HEARING
Estimated Report Time: 3.5 Hours

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: David Morrison - Director
Planning, Building and Environmental Services
REPORT BY: Donald Barrella, Planner III - 707-299-1338
SUBJECT: Anthem Winery Appeal Hearing

RECOMMENDATION

The hearing for this matter was originally scheduled for 9:25 AM but moved to no earlier than 10:15 AM due to other items on the Board's agenda. All parties were notified of the change. The item will be heard at 10:15 AM. Consideration and possible direction regarding appeals filed by Patricia Damery, c/o Kathy Felch (Appellant Damery), and George and Jeff Atlas and Paul Rowe, c/o Kevin Block (Appellant Atlas and Rowe), to a decision by the Planning Commission on February 5, 2020 to approve (5:0– AYES: Gallagher, Whitmer, Hansen, Mazotti, Cottrell) an application submitted by Anthem Winery and Vineyards, c/o Justin H. Arbuckle and Julie A. Arbuckle, Trustees of the Arbuckle Family Trust May 5, 2006 (Applicant) for approval of a Use Permit Major Modification (P14-00320-MOD) for an existing 30,000 gallon winery permit to allow the following: (a) the construction of a new 10,388 sq. ft. winery facility that includes a 1,508 sq. ft. tasting room, a 1,724 sq. ft. office, catering and conference room, and approximately 4,600 sq. ft. of outdoor marketing areas; (b) the development of 29,053 sq. ft. of caves including the on-site placement and storage of spoils; (c) an increase in on-site parking from two spaces to 22 spaces; (d) the development of winery support facilities (water tanks, septic system, and rainwater harvesting and winery process water recycling and reuse systems); (e) an increase in the number of employees from one part-time employee to seven full-time and five part-time employees; (f) a change in the winery's hours of operation from 9:00 AM to 5:00 PM Monday through Sunday to 8:00 AM to 8:00 PM Monday through Sunday (production hours) and 10:00 AM to 6:00 PM Monday through Sunday (visitation hours), and marketing events 11:00 AM to 10:00 PM Monday through Sunday; (g) a marketing plan that includes daily tours and tastings by appointment with a maximum of 170 visitors per week during the Summer/Fall Season (April 1 through November 15) and a maximum of 120 visitors per week during the Winter/Spring Season (November 16 through March 31), and 23 annual marketing events (20 30-person events, two 50-person events, and one 100-person event) resulting in a maximum of 7,623 annual visitors, and on-site consumption of wine produced on-site; and (h) the reconfiguration of an existing access driveway including the construction of a clear span bridge and approximately 650 feet of new driveway to provide adequate access to the winery (hereafter referred to as the Project). The Project also includes an Exception to the Napa County Road and Street Standards (RSS) for reduced commercial driveway widths and for road grades exceeding 18%, a viewshed request and an Agricultural Erosion Control Plan (ECPA) for the installation and maintenance of approximately 1.19 acres of new vineyard. The Project would be completed in three phases: Phase

I includes construction of the driveway, parking, septic system, production structures (Fermentation Buildings and Bottling Room), outdoor tasting area, and the cave water storage tanks; Phase II includes construction of the remainder of the caves; and Phase III includes construction of the tasting room and the office/catering/conference room building. The Project is located on an approximate 44.8 acre holding within the Agricultural Watershed (AW) zoning district that consists of two parcels: i) the "Winery Parcel" (3454 Redwood Road, APN 035-470-046), an approximate 27.23 acre parcel located on the east side of Redwood Road approximately 1.5 miles north of its intersection with Browns Valley Road; and ii) the "Access Parcel" (3123 Dry Creek Road, APN 035-460-038), an approximate 17.54 acre parcel located on the west side of Dry Creek Road approximately 1.7 miles north of its intersection with Redwood Road (or approximately 0.4 miles north of its intersection with Linda Vista Avenue). Access to the winery is proposed from Dry Creek Road.

(CONTINUED FROM MAY 19, 2020. APPLICANT REQUESTED A CONTINUANCE TO NOVEMBER 10, 2020, AT 1:30 P.M. STAFF AND APPELLANTS SUPPORT THE REQUEST.)

ENVIRONMENTAL DETERMINATION: Consideration and possible adoption of a Mitigated Negative Declaration. According to the proposed Mitigated Negative Declaration, the proposed Project would not have any potentially significant environmental impacts after implementation of mitigation measures. Mitigation measures are proposed for the following area(s) Biological Resources, Geology and Soils, and Noise. The Project site is not included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.

EXECUTIVE SUMMARY

The matter before the Board involves two neighborhood appeals filed by Patricia Damery (3185 Dry Creek Road) and Paul Rowe and Jeffery Atlas (3109 Dry Creek Rd and 3173 Dry Creek Road, respectively) of the Planning Commission's unanimous decision on February 5, 2020, to approve an application submitted by Julie and Justin Arbuckle (Applicant) for approval of a Use Permit Major Modification (P14-00320-MOD) to the existing Anthem Winery to allow:

(a) the construction of a new 10,388 sq. ft. winery facility and related infrastructure including 29,053 sq. ft. of caves and water harvesting, recycling and storage systems; (b) wine tasting, retail sales, and marketing events and related infrastructure resulting in 7,623 annual visitors; (c) an increase in the hours of operation and employees; (d) improvement of approximately 2,000 feet of the existing driveway from Dry Creek Road, in addition to the construction of approximately 650 feet of new driveway including an approximate 60 foot long clear span bridge and associated exceptions to reduce commercial driveway width requirements and for road grades exceeding 18% under the RSS, and (e) an ECPA for the installation and maintenance of approximately 1.19 acres of new vineyard.

The original request also included a variance to allow construction of the proposed winery a minimum of 65 feet from the Applicant's own private access drive where a minimum 300-foot setback is required; however, as part of the Planning Commission's approval, the Applicant is instead required to record a lot line adjustment (LLA) approved by Napa County Public Works that places the winery on the same parcel as the access road onto Dry Creek Road. The parcel configuration shall be generally consistent with the draft parcel configuration (prepared by RSA+, dated February 4, 2020) presented by the permittee to the Planning Commission on February 5, 2020: included as **Attachment I**. The Commission's approval would ultimately place the Anthem Winery facility on the 3123 Dry Creek Road property (APN 035-460-038) after completion of the LLA, thus keeping the winery itself on the same parcel as the winery access.

The Anthem Winery was originally approved by the Planning Commission on December 18, 1996 for 30,000 gallons and including an approximate 1,600 square foot cut and cover/sub-surface barrel storage facility (or cave), a 240 sq. ft. fermentation tank pad, and two fermentation tanks. Other than infrequent wine trade visits with a

maximum of five persons per week, no public tours or tastings were allowed under this use permit. (# 96006-UP). It was later modified on December 19, 2001 to allow on-site crushing activities and a third fermentation tank. (#99033-MOD) Case good storage was approved by the Planning Director on May 2, 2012. (#P12-00084-VMM.)

The Project is located on an approximate 44.8 acre holding within the Agricultural Watershed (AW) zoning district that consists of two parcels: i) the "Winery Parcel" (3454 Redwood Road) an approximate 27.23 acre parcel located on the east side of Redwood Road; and ii) the "Access Parcel" (3123 Dry Creek Road,) an approximate 17.54 acre parcel located on the west side of Dry Creek.

Given the current emergencies, the Applicant has requested to continue the hearing to November 10, 2020. Appellants and Staff support the continuance.

PROCEDURAL REQUIREMENTS

1. Chair introduces item and invites disclosures from Board members. No timely requests were received to overturn the Chair's prior "good cause" ruling so it stands.
2. Staff Report presentation.
3. Chair opens the public hearing and invites testimony from Appellants Atlas/Rowe and their witnesses as previously disclosed on their witness lists and in the order noted on the witness lists attached as **Attachment B**.
4. Chair next invites testimony from Appellant Damery and their witnesses as previously disclosed on their witness lists and in the order noted on the witness lists attached as **Attachment B**.
5. Chair invites any other interested members of the public to testify regarding the Appeal.
6. Upon hearing all testimony from interested members of the public, Chair invites the Applicant and their witnesses, as previously disclosed on their witness list attached as **Attachment B**, to testify.
7. Chair then invites each Appellant to have final rebuttal.
8. Chair closes the public hearing.
9. A motion of intent is made and seconded to deny, uphold, and/or remand the Appeal.
10. Chair refers the matter to County Counsel's office for preparation of a Resolution of Findings and Decision on Appeal. Because of the number of grounds raised in the Appeal, good cause exists for County Counsel's office to have up to 90 days to prepare the Resolution of Findings and Decision on Appeal. Consequently, Staff recommends that the Board direct County Counsel's office to return to the Board on November 10, 2020 at 1:30 p.m. with the proposed Resolution for the Board's consideration and adoption.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?

No

County Strategic Plan pillar addressed: Effective and Open Government

ENVIRONMENTAL IMPACT

Consideration and possible adoption of a Mitigated Negative Declaration. According to the proposed Mitigated Negative Declaration, the proposed Project would not have any potentially significant environmental impacts after implementation of mitigation measures. Mitigation measures are proposed for the following area(s) Biological Resources, Geology and Soils, and Noise. The Project site is not included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.

BACKGROUND AND DISCUSSION

While many documents associated with the Project are directly attached to this Staff Report, all documents associated with the Anthem Winery including, but not limited to, the application materials, the Mitigated Negative Declaration (MND), Planning Commission Staff Reports, comments and correspondence, the transcripts of the Planning Commission meetings, and the Appeal packets can be accessed at:

<https://www.pbes.cloud/index.php/s/Xi5EZeYDNWcTjxe>

The matter involves two neighbors' appeals of the Planning Commission's approval of a Use Permit Major Modification (P14-00320-MOD) for an existing 30,000 gallon winery permit to allow: (a) the construction of a new 10,388 sq. ft. winery facility and related infrastructure including 29,053 sq. ft. of caves and water harvesting, recycling and storage systems; (b) wine tasting, retail sales, and marketing events and related infrastructure resulting in 7,623 annual visitors; (c) increases in the hours of operation and employees; (d) improvement of approximately 2,000 feet of the existing driveway from Dry Creek Road, in addition to the construction of approximately 650 feet of new driveway including an approximate 60 foot long clear span bridge and associated exceptions to reduce commercial driveway width requirements and for road grades exceeding 18% under the RSS (See **Attachment H**), and (e) an Agricultural Erosion Control Plan (ECPA) for the installation and maintenance of approximately 1.19 acres of new vineyard. (See **Attachment J**).

The Project generated controversy and was appealed due to emergency ingress and egress, fire and safety issues, increased groundwater water usage, environmental concerns including an asserted conflict with a tree preservation easement, and how the winery fits in the neighborhood and with other wineries in the vicinity.

Within one mile of the Project are the following wineries and their corresponding levels of production, visitation, and marketing:

Winery Name	Address	Production in gallons	Bldg. Size Sq. Ft.	Cave Size Sq. Ft.	Tours/ Tasting	Weekly & Annual Visitors	Marketing Events
Phoenix Vineyards	3175 Dry Creek Rd.	18,000	4,800*	3,800	Appt.	119 / 6,358	5
Frisinger Vineyards	2275 Dry Creek Rd.	20,000	1,008*	5,000	None	0 / 0	0
Hendry Ranch Winery	3104 Redwood Rd.	59,000	23,000	0	Appt.	20 / 1,100	2
Olney Family Winery	2253 Dry Creek Rd.	25,000	19,237	15,000	Appt.	70 / 4,360	12
Progeny Winery	1022 Mt. Veeder Rd.	50,000	18,303	0	Appt.	350 / 22,840	76
Anthem Winery (2/5/2020 PC appro)	3454 Dry Creek Rd.	30,000	10,388	29,053	Appt.	5 / 7,632	23

Anthem Winery (96006 entitled)	3454 Dry Creek Rd.	30,000	240 pad	1,600	Trade	5 / 260	0
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*Square footage increased since creation of original comparison chart.

The Project as approved would have an annual average visitation commensurate with other 30,000 gallon wineries of approximately 7,000 annual visitors and approximately 120 weekly visitors, but would have the second highest visitation rate of wineries within approximately one mile: the Progeny Winery located approximately 0.5 miles to the northwest has an annual visitation of 22,840 guests.

Code Compliance:

There are no active code violations at the Project site.

The subject winery was included in the 2016 Winery Audit and no violations or compliance issues were identified. (See February 5, 2020, and October 3, 2018 Planning Commission Staff Reports.)

On November 19, 2018 and May 2, 2019, site inspections were conducted by Planning Division Staff to confirm there were no winery violations occurring. These inspections did not identify any potential winery violations by the Applicant. (See February 5, 2020 Planning Commission Staff Report.)

On January 24, 2019, a complaint was received regarding the placement/replacement of a winery sign located on Redwood Road that was associated with the existing winery. Review by the Code Enforcement Division did not uncover any approvals for the sign in the records of Use Permit #96006 or that an encroachment permit was ever issued for the sign. Therefore, the sign was subsequently removed by the Applicant.

The vineyard located on the Winery Parcel was originally approved by the Planning Director on May 6, 1999 (ECPA #98301-ECPA). This ECPA was subsequently modified by the Planning Director on March 11, 2009 (#P08-00345-ECPA) to address compliance matters occurring as part of the installation. These modifications included augmentation of the location and design of erosion and runoff control features specified in #98301-ECPA (such as detention basins, check dams and diversions ditches, and subsurface drain lines), and adjusting the bounds of the approved vineyard blocks, resulting in an approximate 0.65 acre increase in vineyard development from approximately 6.8 gross acres (± 5.5 planted acres) to 7.5 gross acres (± 5.9 planted acres).

Public Process:

The Anthem Winery Use Permit Major Modification (P14-00320-MOD) was submitted on October 7, 2014. Resubmittal packages to the Application were submitted in response to requests for additional information on March 17, 2015; December 4, 2015; April 11, 2017; August 30, 2017; January 19, 2018; and June 27, 2018.

The Application was determined to be complete for continued processing on July 27, 2018.

The Application preceded the implementation of the courtesy "Notice of Pending Application" provisions (the New Project Submittal Courtesy Notice) presently specified in Section 12 of the Napa County Policy Manual.

On August 30, 2018, the Public Notice for the October 3, 2018 Planning Commission hearing and Notice of Intent to adopt a Mitigated Negative Declaration was mailed to all property owners within 1,000 feet of the subject property as well as any other persons who had requested notice. The County's requirements to notice all property owners within 1,000 feet exceeds the State mandate of noticing all owners within 300 feet. Notice was also provided to those persons on the general CEQA document notification list. The Notice was published in the Napa Register on

August 31, 2018.

Topics considered by the Planning Commission during the public hearing on October 3, 2018, included: site and emergency access (ingress/egress); overall intensity of the proposed production increase and visitation and marketing program; potential environmental impacts, fire hazards; existing site conditions and entitlements; groundwater availability and use including the proposed rainwater harvesting and process waste water recycling systems and their efficiencies; and private property easements related to access and trees.

Prior to the October 3, 2018 Staff Report being published, correspondence included 31 letters/emails expressing support for the Project and 14 letters/emails expressing concerns and opposition with the Project including letters from the Dry Creek Road Alliance (DCRA) and a petition signed by 21 residents. Subsequent correspondence received after publication of the report included 19 letter/emails of support, nine (9) letters/emails in opposition including letters from Vision 2050 and the Soda Canyon Road Organization, and comment letters from the California Department of Fish and Wildlife (CDFW) and California Department of Transportation (CalTrans). These comments are included as Attachments V, W and X of the October 3, 2018 Planning Commission Staff Report. (<https://www.pbes.cloud/index.php/s/Xi5EZeYDNWcTjxe>)

The letters in opposition generally echoed the concerns outlined above including site and emergency access (ingress/egress); overall intensity of the proposed production increase and visitation and marketing program; potential environmental impacts, fire hazards; existing site conditions and entitlements, groundwater availability and use; and private property easements related to access and trees. Some of the commenters submitted more than one comment letter.

During the October 3, 2018 deliberations, the Commission requested clarification on: i) the Project's WAA conclusions regarding well interference and connectivity of aquifers in the Project vicinity; ii) the adequacy of the proposed access and exceptions to the RSS; and iii) the visitation and marketing numbers in relation to marketing and visitation numbers for 30,000 gallon wineries. The Commission also requested additional information on the viewshed component, the ECPA and process, and the County's role relative to a private tree easement with an adjacent property. At the conclusion of this hearing the Commission continued the item to December 5, 2018, to allow Staff and the Applicant sufficient time to review comments and prepare and provide additional requested information.

At the December 5, 2018 Commission hearing, no additional information or responses were presented because the Applicant was considering modifications to the Project. Therefore, Staff requested and the Commission granted a continuance to the January 16, 2019 Commission meeting.

On January 16, 2019, at Staff's request, the Commission dropped the matter from the agenda so that it could be continued and re-noticed to a future hearing date. This was done so that Staff could assess the Applicant's re-submittal package submitted on January 11, 2019. The Applicant's Project revisions included the following: a) a reduction in visitation to a maximum of 224 visitors per week from 256 visitors per week, and a reduction in marketing events from 36 annual events to 31 annual events, resulting in a reduction of 2,324 annual visitors from 15,532 visitors to 13,208 visitors; b) a 1,350 sq. ft. reduction in landscaping from 36,070 sq. ft. to 34,720 sq. ft.; and c) ending all winery events by 10:00 PM rather than 12:00 AM.

The item was rescheduled to the February 5, 2020 Planning Commission meeting and on January 24, 2020, the Public Notice for the February 5, 2020 Planning Commission hearing and Notice of Intent to adopt a Mitigated Negative Declaration was mailed to all property owners within 1,000 feet of the subject property as well as any other persons who had requested notice. The Notice was published in the Napa Register on January 24, 2020.

During the public hearing on February 5, 2020, the Commission again considered groundwater, rainwater, and recycled/reuse water availability and use; site access including the RSS exception request and adequacy of

emergency ingress and egress; general land use concerns as a result of proposed visitation, marketing and production; private property easements related to access and trees; winery cave sizes; and the definition of a stream and setbacks.

When the February 5th Staff Report was posted, 10 written comments had been received expressing concerns and opposition to the Project. (Attachment J, February 5, 2020 Staff Report.) After posting of the agenda/report, three letters/emails expressing support for the Project were received and 15 letters/email expressing concerns and opposition to the Project were received. These comments are included as Attachment L and M of the February 5, 2020 Planning Commission Staff Report. This set of correspondence included a letter from the Sierra Club and a report by Mike Podlech (Aquatic Ecologist) regarding definitional streams and corresponding setbacks, as well as additional correspondence expressing concerns and opposition to the Project received from following residents (and/or their agents) and organizations: Paul Rowe, Jeff Atlas, Walt and Bernadette Brooks, Patricia Damery and Donald Harms, Steve and Elizabeth Molds, and the DCRA.

(<https://www.pbes.cloud/index.php/s/Xi5EZeYDNWcTjxe>).

Public notices of this appeal hearing were mailed and provided to all parties who received notice of the Planning Commission hearing on February 5, 2020. The notice ran in the Napa Register on May 7, 2020. On May 19, 2020, the public hearing was opened and continued to September 1, 2020 to accommodate all parties' schedules. No public testimony related to the merits of the Project and Appeal occurred on May 19, 2020, however, the Board did hear Appellant Damery's arguments that Supervisor Gregory should not participate in the hearing due to an alleged conflict of interest.

Conflict of Interest (Supervisor Gregory):

As part of Appellant Damery's Appeal packet, Kathy Felch (counsel for Appellant Damery) submitted a preliminary claim of "common law" bias asserting that Supervisor Gregory's past involvement and financial interest in RSA+ (the Applicant's Engineering Firm) would result in bias favoring the Applicant. The Office of County Counsel reviewed the claim and opined in writing to Appellant Damery's counsel that that Supervisor Gregory is nearly three years removed from when he severed his financial interests in RSA+ and therefore Government Code Section 84308(c) is not triggered, and that none of Supervisor Gregory's statements or actions to date rise to meet the high bar of an "unacceptable probability of actual bias."

Appellant Damery's representative, Kathy Felch, addressed the Board at the May 19th, 2020 continuance hearing to voice objection to Supervisor Gregory's participation and that Supervisor Gregory made prior statements in favor of the Project and spoke publicly before becoming a Supervisor that he would recuse himself from all RSA+ projects.

County Counsel responded at the hearing that there is a high bar for establishing bias and reconfirmed that Supervisor Gregory has no financial interest in RSA+ and divested his interests in the firm and recused himself from RSA+ projects for the one-year period required by law. Any alleged statements made about the Project did not meet the bar for establishing bias. Therefore, Supervisor Gregory indicated the bias issue had been adequately addressed and moved to continue the hearing to September 1, 2020.

The public comment period on this Appeal will have run for 117 days by the time the hearing is held on September 1, 2020.

Findings:

When reviewing the proposed Project, the Planning Commission based its decision on a series of Findings, as required under both Napa County Code (NCC) and State law. The Board of Supervisors must also consider all of the same Findings in reaching its decision. To uphold the Planning Commission's approval of the Project and denial of the Appeal, the Board must determine that the Project is consistent with each of the following Findings.

Alternatively, to deny the Project and grant the Appeal, the Board must determine that the Project is not consistent with at least one (or more) of the Findings or the County General Plan.

CEQA:

1. The Board of Supervisors has read and considered the Mitigated Negative Declaration prior to taking action on said Mitigated Negative Declaration and the proposed Project.
2. The Mitigated Negative Declaration is based on independent judgment exercised by the Board of Supervisors.
3. The Mitigated Negative Declaration was prepared and considered in accordance with the requirements of the California Environmental Quality Act (CEQA).
4. There is no substantial evidence in the record as a whole that the Project as mitigated will have a significant effect on the environment.
5. There is no evidence in the record as a whole that the proposed Project will have a potential adverse effect on wildlife resources or habitat upon which the wildlife depends.
6. The site of this proposed Project is not on any of the lists of hazardous waste sites enumerated under Government Code Section 65962.5 and is not within the boundaries of any airport land use plan.

Use Permit:

1. The Board of Supervisors has the power to issue a Use Permit under the Zoning Regulations in effect as applied to the property.
2. The procedural requirements for a Use Permit set forth in Chapter 18.124 of the County Code (zoning regulations) have been met.
3. The grant of the Use Permit, as conditioned, will not adversely affect the public health, safety or welfare of Napa County.
4. The proposed use complies with applicable provisions of the County Code and is consistent with the policies and standards of the Napa County General Plan and any applicable specific plan.
5. The proposed use would not require a new water system or improvement causing significant adverse effects, either individually or cumulatively, on the affected groundwater basin in Napa County, unless that use would satisfy any of the other criteria specified for approval or waiver of a groundwater permit under Sections 13.15.070 or 13.15.080 of the County Code.

Exception to Conservation Regulations:

1. Roads, driveways, buildings and other man-made structures have been designed to complement the natural landform and to avoid excessive grading.
2. Primary and accessory structures employ architectural and design elements which in total serve to reduce the amount of grading and earthmoving activity required for the Project including the following elements: a) multiple-floor levels which follow existing, natural slopes; b) foundation types such as poles, piles, or stepping levels which minimize cut and fill and the need for retaining walls; c) fence lines, walls, and other features which blend with the existing terrain rather than strike off at an angle against it.
3. The Project minimizes removal of existing vegetation, incorporates existing vegetation into the final design plan, and replacement vegetation of appropriate size, quality and quantity is included to mitigate adverse environmental effects.
4. Disturbance to streams and watercourses shall be minimized, and the encroachment, if any, is the minimum necessary to implement the Project.

5. The Project does not adversely impact threatened or endangered plant or animal habitats as designated by state or federal agencies with jurisdiction as identified on the County's environmental sensitivity maps.

Exception to Road and Street Standards:

1. The exception will preserve unique features of the natural environment that include, but are not limited to, steep slopes, heritage oak trees, or other trees of at least 6" dbh (diameter at breast height) and are found by the Board to be of significant importance, but do not include manmade environmental features such as vineyards, rock walls, ornamental or decorative landscaping, fences or the like.
2. The exception will provide the same overall practical effect as the Standards do in providing defensible space, and does not adversely affect the life, safety, and welfare of the public or persons coming to the property.

Appeal:

On March 5, 2020, Patricia Damery c/o Kathy Felch and George and Jeff Atlas and Paul Rowe c/o Kevin Block (Appellants) timely filed appeal packets (the Appeals) to the Planning Commission's decision to approve the Anthem Winery Project. (See **Attachment A**). Pursuant to the County's appeals ordinance (NCC Chapter 2.88) a public hearing on an appeal must be scheduled not less than 15 days nor more than 90 calendar days from submittal of an appeal. To accommodate the timing specified in NCC Chapter 2.88 and all parties' schedules, the Appeal hearing was opened on May 19, 2020 and continued to September 1, 2020.

Pre-Hearing Conference:

To clarify the County's procedural requirements and expectations regarding land use appeals, the County Counsel's office has initiated a voluntary program of holding pre-hearing conferences with the parties and the Chair of the Board to discuss estimates on presentation lengths, scope of evidence, and testimony to be presented, together with witness lists. Any witness not appearing on a witness list at the pre-hearing conference is treated as an ordinary member of the public and allotted the usual three minutes of speaking time.

A pre-hearing conference was held on May 7, 2020 with Appellants and their counsel, Applicant's representative and counsel, Chair Dillon and a Deputy County Counsel. At that time, Appellants and Applicant agreed to provide a list of their respective witnesses along with the subject matter of testimony and time estimates in advance of the hearing. The Chair informed the Appellants and the Applicant that each Appellant is allocated a maximum of 45 minutes for each of their presentations, allocated at their discretion, and Applicant receiving 90 minutes total for their presentation. A summary of the witness information by name, subject matter of testimony, and time estimates that was provided by Appellants and the Applicant is provided in **Attachment B**.

Appellants and Applicant also agreed to provide the Chair in advance of the hearing with any requests for "good cause" to either supplement the record with new information and/or requests to have the Appeal heard de novo (e.g., a fresh hearing). As part of the Appeal packet, Appellant Damery requested that "good cause" be found for a de novo hearing and to augment the record with "findings" from various State agencies. Applicant timely submitted an opposition to the requests. A copy of Appellants' request and Applicant's opposition is attached as **Attachment C** and can also be viewed online at: <https://www.pbes.cloud/index.php/s/Xi5EZeYDNWcTjxe>

The Chair denied both requests on July 10, 2020, but allowed Appellant Damery an extension to July 31 to submit specific information that was unavailable prior to the deadline for submitting the "good cause" information. No additional information was received from Appellant Damery by the extended deadline. A copy of the Determination of Good Cause decision issued by the Chair is attached as **Attachment D**. Pursuant to NCC Section 2.88.090 (B), the Chair's decision is final unless one of the parties requests that a majority of the Board overrule the decision.

No timely request to overrule the Chair's decision was received by Staff.

At the pre-hearing conference, Appellants further agreed to provide any supplemental information, not to exceed ten pages, and Applicant agreed to a limit of 20 pages for any additional information. Mr. Block, representing Atlas and Rowe, timely submitted a document as did Applicant's counsel. No additional information was received from Appellant Damery. The supplemental information provided by Appellants is attached as

Attachment E and as **Attachment F** from Applicant. The information is also available for review online at:

<https://www.pbes.cloud/index.php/s/Xi5EZeYDNWcTjxe>

On August 13, 2020, Applicant's counsel, Rob Anglin, sent a letter to the Chair advising that one of Appellant Damery's listed witnesses (Jeanne Chinn) neither verbally addressed the Planning Commission nor submitted written comments, that no party had submitted a timely request to overrule the Chair's good cause determination dated July 10, 2020, and that the Board's review of the Appeals would be based entirely on the record before the Planning Commission. Applicant's counsel further advised that Applicant's witnesses would confine their remarks to the documentary record (i.e. submitted documents and transcribed proceedings) before the Planning Commission and that, to the extent that Appellant Damery's listed witnesses (or other witnesses) intended to verbally provide new evidence to augment the documentary record, Applicant would object to such testimony as contrary to the Chair's good cause determination and Napa County Code §2.88.090. Applicant's letter is attached as **Attachment G**.

Staff have reviewed Mr. Anglin's letter and confirm that no new evidence was submitted or accepted by the Chair.

Appeal Hearing Public Comments:

Public notice of this Appeal hearing was mailed and provided to all parties who received notice of the Planning Commission hearing on February 5, 2020. The notices were mailed and ran in the Napa Register on May 7, 2020.

The public comment period on the Appeals will have run for 117 days by the time the hearing is held on September 1, 2020.

All correspondence received by the Board as of August 21, 2020 is included as part of the correspondence in Attachment G to this report. It is also available at: <https://www.pbes.cloud/index.php/s/Xi5EZeYDNWcTjxe>

GROUND OF APPEAL:

Due to document length and graphics, please see Attachment A for Staff's responses to the 24 grounds of appeal raised by Appellants.

Board Considerations and Staff Recommendation:

The following options are provided for the Board's consideration regarding possible action on the appeal:

- Deny one or both appeals in their entirety and uphold the Planning Commission's approval of the Anthem Winery and related approvals;
- Deny one or both appeals in their entirety but modify the scope of the proposed Project and/or the recommended Conditions of Approval;
- Uphold one or more grounds of the appeals and reverse the Planning Commission's decision, thereby denying the Anthem Winery Use Permit and related actions; or
- Remand the matter to the Planning Commission with direction.

In Staff's opinion, none of the information provided in the Appeals and/or other public comments received to date

substantively changes or requires modification of the decision reached by the Planning Commission regarding this matter. As a result, Staff recommends that the Board deny both appeals in their entirety and uphold the Planning Commission's approval of the Project subject to the recommended Conditions of Approval.

However, Staff advises the Board that (as indicated in the October 2018 and February 2020 Planning Commission Staff Reports) while in Staff's opinion there is adequate documentation in the administrative record to support approval of the proposed Project, given the local context of the winery site, site constraints, water supply, the extent the site would need to be manipulated to provide adequate access and accommodate an expanded winery and visitation levels, and the requests and exceptions necessary to accommodate the expanded winery, this site may not be appropriate for a winery of the requested size and visitation level. The Board has the ability to consider upholding the appeals and upholding either of the appeals would not result in the reduction or elimination of substantial property rights, in that there is currently economic benefit afforded to the Winery Parcel because of its existing vineyard, winery and residential development. Upholding all or portions of either appeal would not impact Applicant's current entitlement.

SUPPORTING DOCUMENTS

- A . Attachment A - Appeal Packets
- B . Attachment B - Witness Lists
- C . Attachment C - Appellant's Good Cause Request and Applicant's Opposition
- D . Attachment D - Chair Good Cause Determination
- E . Attachment E - Appellants' Supplemental Information
- F . Attachment F - Applicant's Supplemental Information
- G . Attachment G - Correspondence
- H . Attachment H - 2017 Road and Street Standards 9-26-17
- I . Attachment I - Draft Parcel Configuration
- J . Attachment J - Conditions of Approval
- K . Attachment K - RSS Exception Request
- L . Attachment L - Road Exception Evaluation Memo
- M . Attachment M - Initial Study MND
- N . Attachment N - Graphics

CEO Recommendation: Approve

Reviewed By: Helene Franchi