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Agenda Date: 11/2/2011

Agenda Placement: 10A

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission
FROM: John McDowell for Hillary Gitelman - Director
Conservation, Development & Planning
REPORT BY: Kirsty Shelton, Planner - 707 253 4417
SUBJECT: Kelham Vineyards Winery/ One Year Status Report/ Use Permit P10-0177 UP

RECOMMENDATION

KELHAM VINEYARDS WINERY ONE YEAR STATUS REPORT / SUSANNA ROGERS KELHAM TR / KELHAM VINEYARDS - USE PERMIT MAJOR MODIFICATION P10-00177-MOD

CEQA Status: The proposed action is not a project as defined by 14 California Code of Regulation 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

Request: Use Permit compliance review for Kelham Vineyards Winery. Pursuant to the project's adopted conditions of approval, the Planning Commission required review of the winery operation for compliance 12 months after approval of Use Permit Major Modification P10-00177-MOD. The project site is located on a 10.9 acre parcel on the north side of Zinfandel Lane, approximately 0.75 miles of it's intersection with State Route 29 within an AP (Agricultural Preserve zoning district. (APN: 030-260-029) 360 Zinfandel Lane, St. Helena.

Staff Recommendation: Hear the staff report, take public testimony, and continue the use permit compliance status report to one year following conclusion of County Counsel's legal action.

Staff Contact: Kirsty Shelton, 299-1377 or Kirsty.shelton@countyofnapa.org

EXECUTIVE SUMMARY

Proposed Action:

That the Planning Commission:

1. Continue the Kelham Vineyards Winery compliance report until one year after the conclusion of County Counsel's legal action on code enforcement case number CE-00023.

Discussion:

The Kelham Vineyards Winery Use Permit Major Modification was filed in response to a County code enforcement action seeking to rectify a number of unauthorized activities at the existing winery. Winery related activities, including visitation by the public, were occurring within structures and in outdoor areas not approved for, or designed to accommodate such commercial activities posing a threat to the public health, safety and welfare. A code enforcement case commenced in February 2010. During the course of the summer and fall of 2010, the permittee worked with County staff to prepare the use permit modification heard by the Commission in October and November of 2010. At the conclusion of hearings, the Commission approved the use permit modification authorizing the majority of the proposed changes, but required the permittee to secure all necessary building/health permits and to obtain certificates to occupy. The Commission also required a one-year compliance review to evaluate the extent the permittee brought the project into compliance.

Over the course of the last year little progress was made by the permittee toward securing required building permits and implementing required improvements. In addition, it appears that the permittee has continued to conduct visitation and marketing events in unpermitted areas. Consequently, the code enforcement case has been remanded to County Counsel's office to pursue legal measures. As such, it is recommended that the Commission limit its involvement on this compliance report to receiving public testimony, and then continue this item until one year after County Counsel has completed their action.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

The Kelham Vineyards Winery Use Permit Major Modification P10-0177 was approved by the Planning Commission on November 17, 2010. This modification authorized tours and tasting within a renovated house and outside under a trellis, and increased visitation to additional 10 visitors per day for a maximum of 20 visitors per day and 140 per week. The approval also included a marketing plan for 6 events per year for 80 people per event. The modification was filed in response to a pending County code enforcement action due to the facility operating without a final certificate of occupancy and conducting visitation beyond the scope of the original project approval. Prior to the filing of the use permit modification, code enforcement staff had documented that the second floor of the existing barn/small winery was illegally converted to a residence, that the existing house was illegally converted to winery office and visitation space, and that a trellis had been built without permits. A code enforcement case (CE-00023) was opened on February 23, 2010 and remains pending. During the hearing process on the use permit modification, a neighbor's representative objected to the proposal expressing concerns that the County was simply rewarding the applicant with a project approval recognizing the previous unauthorized expansions/alterations. Concern was expressed that the facility would just continue to operate beyond visitation limits and without proper certificates of occupancy. The neighbor also requested planting of trees to provide visual and sound attenuation. At the conclusion of the hearing, the Commission approved the project with a condition requiring the project to return to the Planning Commission for a compliance review one year after opening.

Condition Compliance Summary -

1. Screening Trees - In response to neighbor concerns, condition of approval number 22 augmented to require the installation of six 15-gallon evergreen trees along the eastern property line. As of the writing of this report the trees have not been planted. The permittee has not complied with this condition.

2. Visitation - During the hearing process on October 20th, the applicant disclosed that the actual number of tours and tasting visitors were higher on the weekend than the requested 20 people per day (original approval was 10 visitors/day). The Commission continued the item so that the applicant could modify their project scope and directed Staff to analyze the revised project statement. It was found that the expanded visitation would have triggered substantial upgrades to the well and the septic systems, and consequently the applicant chose not to increase visitation and return to a maximum of 20 visitor per day. Since the Commission action, the applicant has not completed the building permit process. Consequently, Staff has not requested submittal of the permittee's visitation log book in order to conduct an audit of tasting appointments per day. Visitation records will be requested from County Counsel as part of the pending action.

3. Food Service - During the modification hearing process, the applicant withdrew their original request for food and wine pairings because it would have required a "low-risk food handling" permit from the Department of Environmental Management triggering installing of a food handling area (kitchen) and upgrades to the septic system. Consequently, the approved project does not allow food and wine pairings. Staff reviewed the website and it appears that the permittee is continuing to offer food with tastings in violation of the use permit and Health Code laws.

4. Commercial Structure Occupancy - The conditions of use permit approval require final occupancy of all structures prior to their use by the public. There has been no final occupancy granted as of the date of this staff report on any structures as noted in the section below. This is a violation of the use permit and does serve as a ground for revocation or suspension of the use permit. At present, given the pending measures being taken by County Counsel's office, it is requested that the Commission not consider initiation of revocation proceedings at this time. Permit revocation or suspension may be requested by County Counsel at a later date dependent upon the outcome of current enforcement measures being taken.

Building Permit Compliance Summary:

All building permits have been referred to the County Counsel's office for further action and require no action from the Planning Commission, this summary is for informational purposes only.

The referral to the County Counsel's office follows County protocol and was based on the lack of activity or progress (no inspections) by the permittee over the course of the last year. A courtesy letter was provided on May 20, 2011 from the Code Enforcement officer informing the applicant of the situation. Given the continued lack of progress to comply, a subsequent demand letter was issued on October 10, 2011 (enclosed) from County Counsel stating that the building permits must be remedied by October 24, 2011 or a civil action suit would be filed. The letter also required all public activity to cease until legal occupancy is secured. The permittee has met with County Counsel recently, and expressed an intent to resolve pending violations.

B00-00961 - Building permit submitted in 2000 for a reflecting pond/fire protection storage, no inspections were made, building permit expired, reissued in 2010, and expired again early this year.

B01-00444 - Building permit submitted in 2001 for the construction of a fermentation building, it is currently pending final inspections. Permit expired in 2008 and was reissued in 2010 and expired again early this year.

B99-00597 - Original building permit for a storage warehouse was submitted in 1999. It expired and then was reissued in 2010, there was no activity so it expired early this year. It is currently expired and further pending final inspections.

B09-00353 - Submitted a building permit for the trellis (as built) in 2009, pulled the permit March of 2011. This application is open and is currently pending a final inspection.

B10-00683 - Submitted a building permit in June of 2010 to convert the existing residence to allow for the use of tours and tasting and winery related office work. The ADA bathroom has been constructed with two inspections performed, however it is currently pending a final inspection.

B10-01010 - Submitted a building permit in September 2010, pulled the permit in March 2011 to demolish the illegal dwelling on the second floor of the barn/existing winery. This application currently requires inspections.

Conclusion-

Given that this matter has been referred to County Counsel for further action, the Commission's role on monitoring compliance should be suspended until County Counsel completes their actions. In the event the permittee is unable or unwilling to bring the facility into compliance, County Counsel may request that the Commission initiate revocation or suspension of the use permit. It is however hoped that the permittee will now diligently pursue compliance. Therefore, it is recommended that the Commission limit proceedings at this meeting to taking any public testimony, and then continue this compliance review to a future uncertain date to occur one year after completion of the County Counsel's enforcement action.

SUPPORTING DOCUMENTS

- A . October 10, 2011 letter from County Counsel
- B . Use Permit approval letter and Conditions of Approval

Napa County Planning Commission: Approve

Reviewed By: John McDowell