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Agenda Date: 3/17/2010

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: Chris Cahill, Planner - 707.253.4847
SUBJECT: Caldwell Winery Compliance Report

RECOMMENDATION

CALDWELL VINEYARDS WINERY COMPLIANCE REPORT - USE PERMIT 03318-UP & MINOR MODIFICATION P07-00039

CEQA Status: This status report is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

Request: As required by the conditions of approval for Use Permit 03318-UP, this is a status report regarding Building Code and Use Permit compliance on the Caldwell Vineyards Winery located at the southwestern end of Kreuzer lane approximately three-quarters of a mile from its intersection with Fourth Avenue within the Agricultural Watershed (AW) zoning district, 270 Kreuzer Lane, Napa, Calif. Assessor's Parcel Nos. 045-310-055 and 045-310-056.

Staff Recommendation: Direct staff to return to the Commission if this matter is not resolved by July 1st.

Staff Contact: Chris Cahill (chris.cahill@countyofnapa.org - 707.253.4847) or Dave Giudice (david.giudice@countyofnapa.org - 707.299.1347)

EXECUTIVE SUMMARY

In December 2004 the Planning Commission approved the Caldwell Vineyards Winery. Prior to that late 2004 use permit approval, the applicant had something of a history of compliance problems with the County and the use permit approval process itself was rather contentious. The Planning Commission heard the Caldwell Winery permit at its September 15, October 6, November 17, and December 1, 2004 hearings, before eventually approving it on December 15 of that year. At the conclusion of that final hearing, the Planning Commission voted 5 to 0 to approve the project subject to a requirement that the winery be subject to periodic compliance reports and that "use permit compliance be reviewed by the Planning Commission at a noticed public hearing one year following the

opening of the winery."

On December 1, 2005, Caldwell Vineyards Winery was issued a temporary certificate of occupancy (also known as a TCO) to allow initial harvest-time winery operations. That temporary certificate of occupancy was valid for 180 days from the date of issuance, meaning that it lapsed on or about June 1, 2006. Caldwell Winery never received a final certificate of occupancy and the temporary certificate wasn't extended. As a result, the winery has been occupying and operating from a facility without a right to such occupancy or to such operations for more than three years. In addition, tours and tastings are not allowed to commence until final occupancy has been granted (the formal "opening of the winery") and staff has reason to believe that tours and tastings have been occurring at the facility.

As part of an ongoing effort to close expired building permits, Code Enforcement staff filed a notice of violation against Caldwell Winery on January 9, 2009. In October 2009, Building staff physically inspected the Caldwell property and noted not only the unpermitted occupancy of the structure (a winery cave), but also a number of significant Building Code violations directly related to life-safety. The Department followed that inspection with a verbal order to immediately cease any tours and tastings activity and a written "notice and order" to abate Building Code violations was issued on November 12, 2009. On February 17, in the absence of an adequate response from the winery owner, Code Enforcement staff formally cited Caldwell Winery for violations of the Building Code. While enforcement concerns related to Caldwell Winery chiefly center on Building Code violations, to the extent that the winery is operating without a certificate of occupancy, it is also actively violating the terms of its use permit approval.

Staff has brought this item forward to inform the Planning Commission of ongoing code compliance and enforcement activities. No specific Commission action is requested at this time, though staff welcomes any input which the Commission may see fit to provide.

Proposed Action: Direct staff to bring Caldwell Winery back to the Commission if this matter is not resolved by July 1st.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: This status report 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

Project History:

September 17, 2003

The Building Official issues **building permit No. B03-01411**, allowing a fire alarm system within a cave.

September 15 through December 1, 2004

The Planning Commission holds four separate public hearings on the Caldwell Winery use permit application.

December 15, 2004

The Planning Commission approves **use permit No. 03318-UP**, creating a 25,000 gallon per year winery, located entirely within a cave, with a maximum of 40 tours and tastings visitors weekly and a 13-event marketing plan. The following special monitoring condition is adopted;

The applicant shall fund the Department (via a deposit of \$5,000 prior to the issuance of any further permits) to conduct periodic compliance audits during the first year of operation and for the Department to prepare a report for the Planning Commission as a result of those audits. The Use Permit compliance shall be reviewed by the Planning Commission at a noticed public hearing one year following the opening of the winery. The Planning Commission may extend the auditing program, at the applicant's expense, as needed if compliance deficiencies are noted. The Planning Commission may also use the data, if it is so warranted, to commence revocation hearings in accordance with section 18.124.120 of the County Code.

January 20, 2005 to August 12, 2005

The Building Official issues a number of building permits related to electrical, plumbing, and mechanical improvements within the winery cave.

August 12, 2005

Caldwell Winery requests a temporary certificate of occupancy to allow initial occupancy of the winery. Temporary certificates of occupancy are commonly issued by the Building Official to allow crush season winemaking operations to occur at newly constructed wineries before all of the improvements necessary for final occupancy have been completed.

December 1, 2005

On behalf of the Building Division, then-Assistant Planning Director Patrick Lynch issues Caldwell Winery a 180-day termed temporary certificate of occupancy. (Please see Attachment A)

June 1, 2006

The Lynch temporary certificate of occupancy lapses. As of this date, Caldwell Winery is operating without a required certificate of occupancy.

July 3, 2007

Planning staff administratively approves **use permit very minor modification No. P07-00039-VMM** on behalf of the Planning Director. The very minor modification allows the addition of approximately 1,468 square feet of office and restroom space within the winery cave. We believe that the improvements currently in-place at Caldwell Winery are largely consistent with the plans submitted as part of this approved very minor modification. However, Caldwell Winery never received building permits for these improvements, some of which appear to have been completed.

January 9, 2009

It comes to the attention of the Building Division that permits issued to Caldwell Winery between 2003 and 2005 have become null and void and that the property has no valid certificate of occupancy. A notice of violation is issued ordering Caldwell Winery to correct the situation. (Please see Attachment B)

October 26, 2009

Building Division staff inspect the property and, "observe several code violations related to life-safety within the winery cave." (Please see photos at Attachment E)

November 12, 2009

Code Enforcement Supervisor Dave Giudice issues a notice and order confirming previous verbal direction that all

wine tasting/ tours/ winery marketing activity and any associated public access to the winery must cease until a final certificate of occupancy is secured. The notice and order further directs that "portions of the cave that are occupied for crush and wine production must cease until all life safety violations are corrected." (Please see Attachment B)

February 17, 2010

Caldwell Winery is formally cited and fined for Building Code violations including, "(having) expired building permits and operation of a winery without a certificate of occupancy." (Please see Attachment C)

Staff Analysis:

As the timeline above makes clear, Caldwell Winery has been out of compliance with the Building Code since June of 2006. A number of the violations on the site are technical (though still significant), relating to an inability or unwillingness to obtain required certificates of occupancy before actually beginning operations at the winery. Other violations, including exposed wiring, inadequate plumbing, and missing and/or inappropriate exiting signage, pose significant and immediate threats to the safety of employees of and visitors to the winery. These issues are within the purview of the Chief Building Official and Building Division investigation and code compliance efforts are ongoing.

While they provide key context for this report, Building Code violations are not, in and of themselves, subject to the jurisdiction of Planning Division staff or of the Planning Commission. However, the operation of Caldwell Winery without required certificates of occupancy is a violation of the terms of its use permit approval, and that violation is very much within the realm of this Commission. In addition, Planning staff is deeply troubled by evidence collected by the Enforcement Team that tours and tastings activity has continued at the Caldwell Winery despite verbal and written direction that it cease immediately (please see Attachments B and D) and that the "Caldwell Vineyard Guest House" has been offered as a short-term vacation rental (please see Attachment D.)

As noted above, the Department's Code Enforcement staff has already cited Caldwell Winery for illegal activities, and we expect that their ongoing attention and efforts will quickly bring the winery into compliance with both the Building and Zoning Codes. If voluntary code compliance is not achieved within the very near future the Commission can expect to see additional formal citations issued (with penalty fees ramping up to \$1,000 per day). In addition, we recommend that Caldwell Winery be brought back before the Commission for potential use permit revocation proceedings if the matter is not fully resolved by July 1 of this year.

SUPPORTING DOCUMENTS

- A . December 1, 2005 Temporary Certificate of Occupancy
- B . January and November 2009 Violation Notices
- C . February 17, 2010 Citation (and posting photo)
- D . Illegal Visitation
- E . October 27, 2009 Building Division Inspection

Napa County Planning Commission: Approve

Reviewed By: John McDowell