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Agenda Date: 2/27/2018
Agenda Placement: 9D
Set Time: 9:30 AM PUBLIC HEARING
Estimated Report Time: 30 Minutes
Continued From: 8/1/2017

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: David Morrison - Director
Planning, Building and Environmental Services
REPORT BY: David Morrison, Director, Planning, Building & Environmental Servi - (707) 253-4805
SUBJECT: Napa Custom Crush LLC/The Caves at Soda Canyon Appeal Hearing

RECOMMENDATION

Consideration and possible action regarding an appeal filed by Steven Stull to a decision made by the Napa County Planning Commission (Planning Commission) on April 19, 2017 to approve the **Napa Custom Crush LLC / The Caves at Soda Canyon Use Permit Major Modification No. P16-00106** filed by Ryan Waugh.

The Planning Commission's approval of Napa Custom Crush LLC/The Caves at Soda Canyon allows the following: (1) an increase in annual production from 30,000 to 60,000 gallons; (2) construction of an approximately 2,400 square foot cover over an existing outdoor paved area; (3) use of an existing private patio terrace (no construction) for daily tastings, marketing activities, and on-site consumption; (4) removal of internal cave wall to open access from the fourth portal to the patio terrace (wall installed under B15-01427 according to action by the Planning Commission); (5) conversion of approximately 400 square feet of approved cave area to a kitchen (for the storage of refrigerated food and plating of food prepared off site by caterers); (6) a change in the hours of operation for production activities from the existing hours of 8:00 a.m. – 6:00 p.m. to proposed hours of 7:00 a.m. – 6:00 p.m.; (7) on-premises consumption of wine in the tasting room and on the areas in front of portal 2, the patio terrace, and the two outdoor areas in accordance with Business and Professions Code Sections 23358, 23390 and 23396.5; and (8) installation of a wastewater system and discontinued use of hold and haul. The project also includes an exception to the Napa County Road and Street Standards for improvements to the existing road. The project is within the Agriculture, Watershed and Open Space General Plan land use designation and within the Agricultural Watershed zoning district located on a 41.35 acre site approximately 2,200 feet west of Soda Canyon Road; approximately 4.0 miles north of the Silverado Trail/Soda Canyon Road intersection at 2275 Soda Canyon Road, Napa, California, APN 039-640-013.

ENVIRONMENTAL DETERMINATION: Consideration and possible adoption of an Addendum to the previously adopted 2006 Subsequent Mitigated Negative Declaration prepared for the Napa Custom Crush/Waugh Winery. Pursuant to CEQA Guidelines Section 15164 an addendum to an adopted mitigated negative declaration may be prepared if only minor technical changes or additions are necessary or if none of the conditions contained in Section 15162 calling for preparation of a subsequent negative declaration have occurred. This project site is not

on any lists of hazardous waste sites enumerated under Government Code Section 65962.5.
(CONTINUED FROM AUGUST 1, AUGUST 29, DECEMBER 5, 2017 AND JANUARY 23, 2018)

EXECUTIVE SUMMARY

The matter before the Board involves a neighbor appeal of the Planning Commission's decision on April 19, 2017, to approve an application submitted by Ryan Waugh (Applicant) for a major modification to the existing winery use permit to allow an increase in production from 30,000 to 60,000 gallons, construction of a cover over an existing outdoor area, use of the patio terrace and two outdoor areas on the ridgeline for tastings and marketing activities, removal of an internal cave wall to open access to a patio terrace, a change in the production hours of operation, installation of a wastewater system, and related improvements at Napa Custom Crush LLC/The Caves at Soda Canyon Winery (the Project, Caves Winery or Winery) located west of Soda Canyon Road, approximately four miles north of its intersection with the Silverado Trail.

Pursuant to the County's appeals ordinance (Napa County Code Chapter 2.88) a public hearing on the appeal must be scheduled not less than fifteen days nor more than ninety calendar days from submittal of an appeal. To accommodate all parties' schedules, on August 1, 2017 the Chair opened and continued the hearing (with the consent of all parties) to August 29, 2017. No testimony was taken on August 1st. On August 29, 2017, the Board continued the hearing to December 5, 2017, at Applicant's and staff's request so that Applicant could submit additional information regarding the generator. Appellant supported the continuance. No testimony was taken on August 29th. Subsequent to the August 29th continuance, Applicant and Appellant met in an effort to explore resolution of the appeal. To allow sufficient time for meaningful settlement discussions, all parties requested the hearing on December 5th be continued to January 23, 2018. On January 23rd, at the request of all parties, the hearing was continued to February 27th so that the settlement terms could be finalized and to the extent under the County's jurisdiction, incorporated into Modified Conditions of Approval.

Over the last several months, the parties and their respective counsel, former Chair Ramos and a representative from County Counsel's office met in an effort to explore mutually agreeable ways to address Appellant's concerns and resolve the appeal. Ultimately the parties reached a compromise which resulted in several changes to the Winery's operations, a deadline for installation of a permanent power source and use of the generator as only back up/secondary power, a phased increase in the Winery's production levels, installation of additional screening, and limitations on use of the outdoor patio terrace and ridgeline area.

PROCEDURAL REQUIREMENT

1. Chair introduces item and requests Staff report.
2. Chair opens the public hearing, requests testimony from Appellant, Applicant and any other interested parties.
3. Chair closes the public hearing.
4. Motion by a Board Member, and seconded by another Board Member to affirm, reverse or modify the decision being appealed.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

Consideration and possible adoption of an Addendum to the previously adopted 2006 Subsequent Mitigated Negative Declaration prepared for the Napa Custom Crush/Waugh Winery. Pursuant to CEQA Guidelines Section 15164 an addendum to an adopted mitigated negative declaration may be prepared if only minor technical changes or additions are necessary or if none of the conditions contained in Section 15162 calling for preparation of a subsequent negative declaration have occurred. This Project site is not on any lists of hazardous waste sites enumerated under Government Code Section 65962.5.

BACKGROUND AND DISCUSSION

All documents associated with the Caves Winery including, but not limited to, the application materials, CEQA Addendum, Subsequent Mitigated Negative Declaration, Planning Commission Staff report, comments and correspondence, final Conditions of Approval, transcripts of the Planning Commission meeting, the appeal packet and the supplemental materials submitted by Appellant and Applicant can be accessed at: <https://www.countyofnapa.org/783/Appeal-The-Caves-at-Soda-Canyon-Winery>.

This matter involves a neighbor appeal of the Planning Commission's approval to allow an increase in the Caves Winery's production from 30,000 to 60,000 gallons, construction of a cover over an existing outdoor area, use of an outdoor patio and terrace for tastings and marketing activities, removal of an internal cave wall to open access to a patio terrace, a change in production hours, and related improvements at an existing winery located on Soda Canyon Road.

On May 15, 2017, a timely appeal packet was filed by Steven Stull (Appellant) to the Planning Commission's decision to approve the Project. Pursuant to the County's appeals ordinance (Napa County Code Chapter 2.88) a public hearing on the appeal must be scheduled not less than fifteen days nor more than ninety calendar days from submittal of an appeal. To accommodate all parties' schedules, on August 1, 2017 the Chair opened and continued the hearing (with the consent of all parties) to August 29, 2017. No testimony was taken on August 1st. On August 29, 2017, the Board continued the hearing to December 5, 2017, at Applicant's and staff's request so that Applicant could submit additional information regarding the generator. Appellant supported the continuance. No testimony was taken on August 29th. Subsequent to the August 29th continuance, Applicant and Appellant met in an effort to explore resolution of the appeal. To allow sufficient time for meaningful settlement discussions, all parties requested the hearing on December 5th be continued to January 23, 2018. On January 23rd, at the request of all parties, the hearing was continued to February 27th to finalize the terms of the settlement, and to the under the County's jurisdiction, incorporate the settlement terms into enforceable Modified Conditions of Approval.

The Project generated controversy primarily because of the prior code enforcement violations associated with the Caves Winery, use of a portable generator as a permanent power source and the resulting noise and visual impacts, potential greenhouse gas emissions, and the fact that the Winery is a custom crush facility and there are no vineyards on site. Additionally, the public expressed concerns regarding the Winery's location on Soda Canyon Road and brought forward many of the same comments previously presented at the Mountain Peak Winery hearings, including cumulative traffic generation, accessibility, and safety. Mountain Peak winery is located approximately 3 miles past the Caves Winery.

There are four other existing wineries (White Rock, Relic, Antica, and Astrale e Terra Winery) and four approved but not yet built wineries (Grassi, Roy, V12, and Mountain Peak) located along Soda Canyon Road. For comparison and context, the other wineries have permitted production levels between 5,000 and 36,000 gallons annually, with the exceptions of Mountain Peak Winery at 100,000 gallons and Antica at 450,000 gallons. The Caves Winery proposed production increase from 30,000 gallons to 60,000 gallons is at the higher end for facilities along Soda Canyon Road.

Public Process:

The Caves Winery Use Permit Modification application was submitted on March 11, 2016. Resubmittal applications were provided on the following dates: August 3, 2016; October 11, 2016; and December 5, 2016. The application was determined to be complete on March 2, 2017.

On April 6, 2016, a New Project Submittal Courtesy Notice (dated April 5, 2016) was mailed to all property owners within 1,000 feet of the subject property and emailed to those persons on the general CEQA document notification list.

On April 7, 2017, the Public Notice for the Planning Commission hearing and Notice of Intent to adopt an Addendum to the previously approved Napa Custom Crush/Waugh Winery Subsequent 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. (It should be noted that the County's requirements to notice all property owners within 1,000 feet far 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 paper on April 8, 2017.

Code Compliance:

In April 2017, when the proposed Project was considered by the Planning Commission there were no open code enforcement complaints or matters involving the Caves Winery. Prior complaints about the generator noise had been investigated, a sound attenuating blanket was installed to muffle the noise, and necessary building permits had been obtained through the County Building Division. A summary of the prior code enforcement complaints and matters that predated the Planning Commission's consideration of the proposed Project is contained in the Agenda Report for the April 19, 2017, Meeting of the Planning Commission. (See Attachment C.)

Subsequent to the Commission's decision and while the appeal was pending, on May 18, 2017, the Applicant submitted a building permit for the removal of the fourth portal wall (B17-00628). The plans were reviewed by PBES staff and a comment letter was sent to the Applicant on June 30, 2017, informing the Applicant that because there was a pending appeal on the associated Use Permit Modification that authorized these improvements, the building permit could not be issued until the appeal was resolved. On August 11, 2017, Building Division staff conducted a site visit to gain clarification on some of the questions that were included in the building permit comment letter and to determine if existing construction had been conducted in accordance with the permitted plans. During the site inspection County staff became aware that two new generators had been installed after Phase 1 of the cave had received final approval from the Building Division in March 2014. That same day, the Building Division issued a correction notice directing the property owner to submit an application and plans to obtain the required permits for the two generators that were installed without required land use and building permits. At this time these corrections are still outstanding.

In addition, staff noted that the area of the wine caves that the Applicant designated as Phase 2 were still undeveloped, and that the work detailed in the approved building permits had not been completed. Staff also determined that there was not adequate separation/safety between the completed Phase 1 and unfinished Phase 2 portions of the caves. Staff reviewed the Final Certificate of Occupancy, issued in March 2014, and

discovered that it had erroneously included both Phase 1 and Phase 2 of the Caves Winery; however, the required improvements for the Phase 2 were never completed. On September 1, 2017, the PBES Director issued a Notice of Revocation and Correction of the Certificate of Occupancy for Building Permit No. B13-00372 which revoked the Certificate of Occupancy for Phase 2 of the winery cave. The Notice of Revocation also required removal of the temporary generator by March 21, 2018, and replacement with an approved permanent power supply, unless a request for an extension is submitted and approved by the Chief Building Official. The Chief building Official is willing to approve continued use of the generator that will serve as the temporary, primary power source until the permanent power source is installed and has passed final inspection by the Building Division. A revised Certificate of Occupancy for Phase 1 of the cave was issued on September 22, 2017.

The project site was in an area affected by the October 2017 Napa fires and the Winery suffered damage to a portion of the cave wall and one cave portal. Since the fire, the Applicant has been issued building permits for Fire Damage Debris and Ash Removal (B17-01801), repairs to the cave wall and portal (B18-00007), and replacement of two commercial water boilers within the cave (B18-00208).

Planning Commission Action:

On April 19, 2017, the Planning Commission held a noticed public hearing on the merits of the proposed Project. The Commission received written comments and approximately a dozen people testified at the hearing. Many of the concerns raised regarding the poor and unsafe condition of Soda Canyon Road, the fire danger and remoteness of the Caves Winery's location were also expressed by neighbors at the hearings on the Mountain Peak Winery. The Caves Winery is located approximately 3 miles from the Mountain Peak Winery which was approved by the Commission on January 4, 2017, and then appealed to the Board. The Board denied the appeal and upheld the Commission's approval of the Mountain Peak Winery in August 2017. However, unlike Mountain Peak Winery, the Caves Winery is an existing winery with a modest existing marketing and visitation program (20 visitors per day and 18 marketing events per year). **No changes are proposed to the number of visitors or marketing events.** Because no increase in visitation or marketing was proposed, the increased traffic associated with the Winery's production increase from 30,000 to 60,000 gallons per year was considered nominal by the County's Traffic Engineer.

The Commission also heard concerns about the Caves Winery's use of a portable generator as its permanent power source and the noise, visual and greenhouse gas impacts resulting from the generator, and the lack of any vineyard on site. While Commissioners expressed concern about the use of a generator as permanent power source, they also acknowledged that the Applicant and nearest neighbor (Appellant) were unable to reach agreement regarding the terms of an easement to accommodate permanent power to the Caves Winery. The neighbor (Appellant) desired undergrounding of the poles which the Applicant asserted was cost prohibitive. The Commission was also informed that there are no County policies or regulations requiring connection to PG&E as a permanent power source or prohibiting use of a generator as a permanent power source.

By a 3:1 vote (AYES: Scott, Basayne and Hansen; NO: Gallagher; ABSENT - Cottrell) the Commission approved the Caves Winery use permit modification and imposed conditions of approval requiring that the Applicant obtain a permit from the Bay Area Air Quality Management District for use of the stationary generator and to keep that permit in effect until such time that the generator is no longer in use as a permanent power supply for the Caves Winery; and to maintain the sound attenuating blanket on the generator. On May 15, 2017, a timely appeal was filed by Appellant.

The Compromise Reached by the Parties:

Over the last several months, the parties and their respective counsel, former Chair Ramos, and a representative from County Counsel's office met in an effort to explore mutually agreeable ways to address Appellant's concerns and resolve the appeal. Ultimately the parties reached a compromise and have a private settlement agreement

which, among other matters, results in several changes to the Caves Winery's operations, a deadline for installation of a permanent power source, use of the generator only as a back up/secondary power source, a phased increase in the Caves Winery's production levels subject to satisfactory completion of the requirements of the prior phase, installation of additional trees to screen views of the back up/secondary generator, and limitations on use of the outdoor patio/terrace and ridgeline area. The terms within the County's jurisdiction to enforce have been incorporated into conditions of approval on the Winery's use permit.

The County is not a party to the private settlement agreement between Appellant and Applicant; however, Staff supports the compromise because it addresses the majority of the concerns raised by the public and Appellant before the Planning Commission. It results in definitive timelines for removal of the generator as the permanent power source and a reduction in annual wine production as a penalty for failure to do so in a timely manner. It also staggers the production increase over time which financially motivates the Applicant to timely and fully attain compliance. Specifically, increased wine production, use of the existing outdoor patio terrace for visitation and marketing events, and use of the ridgeline for marketing events will occur in three phases subject to completion and verification by the Building Division of each prior phase as described below. Because the Winery is already approved for Phase 1 and Phase 2 construction of various improvements, to avoid confusion the staggered phases resulting from the compromise are referred to as Phases A, B and C:

- I Phase A: Complete engineered plans for permanent power either via PG&E lines (or other utility) or a solar energy system must be delivered to the County prior to wine production being authorized to increase to a maximum of 40,000 gallons per year. The owners of the Caves Winery are negotiating with another neighbor to obtain an easement for PG&E lines to the Winery. Because this neighbor is closer, the cost of installation and perhaps undergrounding is more economical. If the easement negotiations prove unsuccessful, the Caves Winery will proceed with underground installation of PG&E lines from a more remote source, or with installation of a solar energy system. The Applicant has already completed preliminary solar feasibility studies.
- I Phase B: A contract for the installation and delivery of permanent power either through PG&E or a third-party solar energy provider must be signed and verification provided to the County. The Caves Winery must also plant six cork oak trees from 38-inch diameter pots in a manner to screen views of the portable back-up generator and other mechanical equipment prior to the County issuing any building permits associated with removal of the cave portal door and other improvements and prior to wine production being allowed to increase to a maximum of 50,000 gallons per year. Under Phase B, the Caves Winery may also hold three of its existing approved marketing events per year on the ridgeline subject to 30-days prior notice to the contiguous neighbors. One of the marketing events must be a "small marketing event" (no more than 20 people) as set forth in the Caves Winery's existing use permit.
- I Phase C: Permanent power either via PG&E or solar must be installed, operational, and approved by the Building Division by July 31, 2019, and all generators except the backup generator must be removed by July 31, 2019, and prior to wine production being allowed to increase to a maximum of 60,000 gallons per year. If the Caves Winery fails to comply by this deadline, wine production shall be reduced and revert back to a maximum of 40,000 gallons per year beginning with the next crush and harvest season and thereafter until such time as permanent power is operational and until any non-back up/secondary generators have been removed. Once these conditions have been satisfied, the Caves Winery may increase production to 60,000 gallons per year. If permanent power is not installed due to matters beyond the Applicant's control, such as delays caused by PG&E or "force majeure" events, the Chief Building Official may extend the deadline so long as the Applicant continues to diligently use best efforts.

Modified Conditions of Approval:

To the extent consistent with County regulations and within the County's jurisdiction to enforce, Staff has incorporated the terms of the compromise described above into the attached redlined Modified Conditions of

Approval (COA). (See Attachment A.) The three tier phasing is set forth in Modified COA No. 4.20 (c); and timing and use of the outdoor patio and limited marketing events on the ridgeline is contained in Modified COA Nos. 1.2, 4.2 and 4.3. Installation of the cork trees is set forth in COA No. 6.15 (c). To address the outstanding issues referenced above under "Code Compliance" related to the plans and permits required for use of the generator until permanent power has been installed and to address the safety separation needed between Phase 1 and Phase 2 of the caves, staff has included new COA Nos. 6.15 (d)-(f) establishing deadlines for submittal of the required plans. Finally, the Modified COA also recognize the use of a temporary tasting area in Phase 1 of the cave until such time as Phase 2 is complete. (See Modified COA Nos. 1.2 and 6.15 (f).)

The Modified COA have been shared with and reviewed by Appellant and Applicant and both parties are in support. Applicant and Appellant are preparing a joint letter mutually requesting that the Board adopt the Modified COA however because of agenda deadlines, that letter was not received as of the date this report was finalized and posted. The joint letter will be provided to the Board as soon as it is received.

Board Considerations and Staff Recommendation:

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

- 1) Adopt the Addendum to the previously adopted 2006 Subsequent Negative Declaration prepared for the Caves Winery, uphold the Planning Commission's approval of Use Permit Modification P16-00106 and based on the Appellant's and Applicant's compromise, adopt the clean version of the Modified Conditions of Approval attached as Attachment B;
- 2) Grant one or more grounds of the appeal, overturn the Planning Commission's approval of Use Permit Modification P16-00106, and deny Use Permit Modification P16-00106; or
- 3) Remand the matter to the Planning Commission with direction.

Staff recommends and supports the first option. The Modified COA reflect an agreed upon compromise between the parties for changes to the Caves Winery's operations and also address the majority of the concerns that were raised by the community, as well as bring the Caves Winery into full compliance with County Codes.

SUPPORTING DOCUMENTS

- A . Redlined Modified Conditions of Approval
- B . Modified Conditions of Approval (Clean)
- C . Planning Commission Agenda Report, April 19, 2017

CEO Recommendation: Approve

Reviewed By: Helene Franchi