



Napa County

Board Agenda Letter

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Board of Supervisors

Agenda Date: 5/18/2021

File ID #: 21-275

TO: Board of Supervisors
FROM: David Morrison - Director, Planning, Building and Environmental Services
REPORT BY: Trevor Hawkes, Planner III - (707) 253-4388
SUBJECT: Mountain Peak Appeal - Remand from Superior Court

RECOMMENDATION

PUBLIC HEARING 2:00 PM - 1.5 Hours

MOUNTAIN PEAK WINERY / MOUNTAIN PEAK VINEYARDS, LLC - USE PERMIT NO. P13-00320-UP AND ROAD AND STREET STANDARDS EXCEPTION REQUEST

Reconsideration of the denial of the appeals filed by Kosta M. Arger, Cynthia Grupp, William Hocker, and Glenn Schreuder to a decision made by the Napa County Planning Commission (Planning Commission) on January 4, 2017, to approve the Mountain Peak Winery/Mountain Peak Vineyards, LLC Use Permit No. P13-00320-UP (the Mountain Peak Winery or the Project).

EXECUTIVE SUMMARY

The Napa County Superior Court has ordered the County to reconsider the Board's August 22, 2017, decision to deny the appeals regarding the Mountain Peak Winery Use Permit (the Project) in light of specific evidence relating to the Atlas Fire that occurred in October 2017. The Board previously denied the appeals of four neighbors who challenged the decision on numerous grounds. The court has identified additional evidence related to the Atlas Fire and evacuations on October 8 and 9, 2017, that the court deems relevant to the Board's findings that the Project will not adversely affect the public health, safety or welfare of the County. The Court has directed the County to reconsider the Project in light of the additional evidence, prior to the Court's determination of the writ petition challenging the County's approval of the Use Permit.

The Mountain Peak Winery allows: (1) construction of a new 100,000 gallon per year winery including an approximately 33,424 square foot cave, approximately 8,046 square foot tasting and office building, and approximately 6,412 square foot covered outdoor crush pad and work area; (2) demolition of the existing single family residence; (3) installation of 26 parking spaces; (4) construction of 2 new driveways and private access roads with ingress/egress from Soda Canyon Road; (5) installation of a High Treatment wastewater treatment system and community non-transient potable water supply sourced from on-site private wells including two 100,000 gallon water tanks for vineyard irrigation and one 20,000 gallon water tank for domestic supply; (6) disposal of all cave spoils on-site within existing vineyards; (7) 19 full time employees, 4 part-time employees and 4 seasonal harvest employees; (8) tours and tastings by prior appointment only for a maximum of 60 visitors per day and a maximum of 275 visitors per week; (9) a marketing plan of 2 annual events for a maximum of 75 visitors and 1 annual event for a maximum of 125 visitors; and (10) on premises consumption of wines produced on site in the tasting room

and outdoor terrace. The Project also includes a request for an exception to the Napa County Road and Street Standards (RSS) to increase the maximum slope on a portion of the commercial access road to the covered crush pad and cave portals from 16% to 19.6%. The Project is located on a 41.76-acre parcel on the northwest side of Soda Canyon Road, approximately 6.1 miles north of its intersection with Silverado Trail, 3265 Soda Canyon Road, Napa, CA, 94558; APN: 032-500-033.

The Public Hearing Notice published on May 7, 2021, contained an incorrect project description. A corrected Public Hearing Notice was sent to interested persons on May 10, 2021, and published in the Napa Valley Register on May 12, 2021.

The court's decision to remand the matter most directly implicates four specific Board findings addressing wildfire matters in the appeal, which the Board will reconsider here. The court strictly limited the new evidence to documents related to past wildfires in the Project area, the Atlas Fire and evacuations on October 8 and 9, 2017, and strictly redacted even that new evidence to specific sentences and paragraphs in each declaration. Issues not related to wildfire safety and evidence not previously included in the record or identified by the court in its ruling are not properly before the Board.

PROCEDURAL REQUIREMENT

1. Chair introduces item and requests disclosures from Board members.
2. Chair invites presentation from Staff.
3. Chair opens the public hearing and invites testimony from Appellants. Appellants have been allocated a maximum of 20 minutes for their presentation including rebuttal.
4. Chair invites public comment from any interested members of the public.
5. Chair invites the Applicant to make their presentation.
6. Chair invites Appellants to have final rebuttal (time permitting).
7. Chair closes the public hearing and brings the matter back to the Board for deliberation.
8. A motion of intent is made and seconded to affirm or reverse the decision of the Board on the appeals, or to remand the matter, in whole or in part, to the Planning Commission.
9. Chair refers the matter to County Counsel for preparation of a Resolution of Findings, to be completed within 60 days. Staff recommends that the Board direct the County Counsel's Office to return to the Board on July 13, 2021 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
Is it currently budgeted?	Choose an item.
Where is it budgeted?	Click or tap here to enter text.
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Click or tap here to enter text.
Is the general fund affected?	Choose an item.
Future fiscal impact:	Click or tap here to enter text.
Consequences if not approved:	Click or tap here to enter text.
County Strategic Plan pillar addressed:	Healthy, Safe, and Welcoming Place to Live, Work, and Visit
Additional Information:	Click or tap here to enter text.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The Board adopted a Negative Declaration for this Project, which has been certified. The Court's Order remanding the matter to the Board does not disturb or disrupt that Negative Declaration. Therefore, no further environmental review is necessary.

BACKGROUND AND DISCUSSION

Use Permit application P13-00320 (Mountain Peak Winery) was filed with the Napa County Planning, Building, and

Environmental Services Department on September 26, 2013. The request was for the construction of a new 100,000 gallon per year winery with visitation and a marketing program located on Soda Canyon Road, approximately 6.1 miles north from the intersection of Silverado Trail Road and Soda Canyon Road. The application also included an exception request to the Napa County Road and Street Standards (RSS). A Negative Declaration was drafted for consideration and adoption and on July 20, 2016, Mountain Peak Winery was brought before the Napa County Planning Commission for their initial public hearing. The hearing was continued and, ultimately, heard, on January 4, 2017. After considering the Staff report, Applicant's presentation, and all public comment, the Planning Commission voted to adopt the Negative Declaration, and approve the Project. Staff Report and agenda packet documents from the January 4, 2017, public hearing before the Planning Commission can be accessed at: <http://webapps/agendanet/Items/ItemView.aspx?ID=28589>.

Timely appeal packets were filed by four appellants. On May 23, 2017, the Board heard and considered evidence submitted from the Appellants, Applicant, Staff, and members of the public regarding the appeals. After considering all of the evidence presented, the Board closed the public hearing and adopted motions of intent to deny the consolidated appeals in full, and directed Staff to prepare an updated Conditions of Approval, as well as four resolutions of denial for the appeals. Staff Report and agenda packet documents from the May 23, 2017, public hearing before the Board of Supervisors can be accessed at: <http://webapps/agendanet/Items/ItemView.aspx?ID=29387>. The Board of Supervisors adopted four Resolutions of Findings of Fact and Decisions on Appeal at a special meeting of the Board on August 22, 2017. Staff Report and agenda packet documents from the August 22, 2017 Board of Supervisors meeting can be accessed at: <http://webapps/agendanet/Items/ItemView.aspx?ID=29482>

The Board's decision was challenged by a writ petition in the Napa County Superior Court filed on September 20, 2017. The Soda Canyon Group, a community organization consisting in part of the four appellants, challenged the approval on CEQA and non-CEQA grounds. After initiation of the litigation, and nearly two months after the Board's decision, the Atlas Fire burned thousands of acres in the area around Soda Canyon Road near the Mountain Peak Winery project parcel.

On October 15, 2018, in connection with its opening brief, the Petitioner filed a Motion to Augment the Administrative Record, asking the Court to consider seven declarations and exhibits relating to the 2017 Atlas Fire. The additional evidence included select photographs, video, maps, incident reports, and personal accounts from residents and property owners on Soda Canyon Road. The Petitioner requested that the matter be remanded to the Board for consideration of this additional evidence. The County and the Applicant opposed the motion, arguing that the additional evidence did not exist at the time the decision was made and, therefore, could not form the basis of the Board's decision. On June 2, 2019, the Court granted the motion and remanded the matter to the Board for reconsideration in light of the evidence of "truly new and emergent facts." The Court identified specific pages, paragraphs, and lines, from the declarations that met the Court's standard of relevance, and ordered the Petitioner to redact the declarations and exhibits that did not meet that standard. The Board now must reconsider its decision to deny the appeals and approve the Project in light of these specific facts.

The seven declarations consist of the following:

- A Declaration of Anthony G. Arger in support of Petitioner's Motion to augment the administrative record;
- A Declaration of Amber Manfree in support of Motion to augment the administrative record;
- A Declaration of Cynthia Grupp in support of Petitioner's Motion to augment the administrative record;
- A Declaration of David Hallett in support of Petitioner's Motion to augment the administrative record;
- A Declaration of Linda Savoie in support of Petitioner's Motion to augment the administrative record;
- A Declaration of Glenn Schreuder in support of Petitioner's Motion to augment the administrative record; and
- A Declaration of Shelle Wolfe in support of Petitioner's Motion to augment the administrative record.

Five of the seven declarations (Attachment X, Cynthia Grupp; Attachment X, David Hallett; Attachment X, Linda Savoie; Attachment X, Glenn Schreuder; and Attachment X, Shelle Wolfe) recount experiences of property owners who reside within proximity to the proposed Mountain Peak Winery project site, including their personal accounts of escaping the Atlas Fire on October 8 and 9, 2017. The declaration of Amber Manfree (Attachment X) offers information behind the creation of several maps with data concerning the Soda Canyon area, the Atlas Fire, and other historical fires, which are attachments in the subsequent declaration. The declaration of Anthony G. Arger (Attachment X) provides information related to multiple exhibits included in the declaration; photographs of the Soda Canyon Road taken both pre- and post-Atlas Fire; the maps created by Amber Manfree; the Atlas Damage Inspection Report; and a Calfire incident fact sheet pertaining to the Atlas Fire.

Staff conducted a thorough review of the additional evidence, including analysis by the Engineering Division of PBES, Public Works, and the Fire Marshal's Office. In consultation with the Napa County Fire Marshal's Office, the PBES Engineering Division re-reviewed the use permit application materials for conformance with both existing regulations as well as the draft 2021 State minimum Fire Safe Regulation (FSR) promulgated by the Board of Forestry. The PBES Engineering Division found

that the Project continues to meet the minimum design criteria for wildfire protection standards towards emergency ingress and egress, and that Soda Canyon Road is not required to be evaluated under the draft FSR as a two-lane collector but would still meet the minimum standards for existing roads under the draft FSR. Public Works determined that no further conditions of approval are required, agreed with the analysis performed by the PBES Engineering Division, and noted that hundreds of trees have been removed from the side of Soda Canyon Road and surrounding areas since the Atlas Fire, which reduces the potential for trees to fall on the road and block evacuation during an emergency. The Fire Marshal's Office reviewed the submittal package and approves the Project as conditioned.

The Board's Resolution of Findings of Fact and Decisions on Appeal, adopted on August 22, 2017, contained the Board's factual conclusions relating to 42 separate grounds of appeal. After reviewing the new evidence, staff identified four factual findings in the Board's Resolution that are potentially impacted by the new evidence. Staff provides the following updated analysis of those findings:

Appeal Ground No. 7: Appellant contends that the Planning Commission failed to properly consider the Project's effect on the health, safety, and welfare of the County in light of Incident Reports from the California Department of Forestry and Fire Protection (CalFire) demonstrating that there have been 107 incidents between January 2007 and April 2015 on Soda Canyon Road.

Staff Response:

In its denial of the Seventh Ground of Appeal the Board found that the CalFire Incident Report, which spans approximately 10 years, shows 181 total incidents, ranging from medical responses and residential fires to false alarms and traffic collisions. The Board determined that the Planning Commission duly considered this evidence and appropriately concluded that the construction and operation of a new winery would not substantially change the fire protection or emergency response setting. The Project was designed and conditioned to comply with fire standards for winery developments, including provisions for emergency vehicle access and high fire hazard construction type. (See Updated Condition of Approval (COA) 4.18(d).) The Project may actually nominally improve fire safety by providing 80,000 gallons of tanked water on-site and available for fire suppression on-site, fire hydrants and an area within the ventilated caves to shelter in place.

In Staff's opinion, the new evidence presented to the Board does not demonstrate that the Board made an error when it denied the Seventh Ground of Appeal and approved the Project. Two of the declarations, from Linda Savoie and Glenn Schreuder, provide accounts of residents finding shelter from the Atlas Fire in the vineyards of Stagecoach and Antica Wineries, suggesting that the Board was correct when it concluded that the Project would not substantially change the fire protection or emergency response setting. This finding is further supported by the maps contained in Exhibit five (5) of Anthony Arger's declaration, which clearly show that the extent of fire damage from the 2017 Atlas Fire was significantly reduced around the areas of the Foss and Stagecoach valleys, which are dense with vineyard development. The Project site also contains substantial areas of reduced fire hazard because most of the property is now planted in vineyard.

Two of the declarations provide accounts of the inability of evacuees to utilize Soda Canyon during the evacuation of the 2017 Atlas Fire. Cynthia Grupp's declaration provides an account of a downed tree that prevented vehicle travel on Soda Canyon. Once the obstacle was removed, evacuation was able to continue down Soda Canyon Road, and firefighting vehicles proceed up the road. This obstacle in the roadway happened despite the existence of the Project and the Project contains no features that would exacerbate the potential for more trees to fall and create roadway obstacles. As noted in the Public Works Department's memo on this matter, subsequent to the 2017 Atlas Fire hundreds of trees have been removed from Soda Canyon Road and the surrounding area, significantly reducing the potential for this type of hazard to happen again.

One declaration, from Linda Savoie, provides an account of vehicle congestion on Soda Canyon Road adjacent to the planned location of the access driveway for the Project. Based upon the information provided in the declaration, it is suggested that the congestion was due to two parties of vehicles (vehicles with evacuees heading south towards lower Soda Canyon Road and vehicles with evacuees heading north from lower Soda Canyon) converging at the same location and stopping to discuss the best course of evacuation for both groups. The addition of the Project, with its minimal number of visitors, would not have substantially impacted the evacuation, as the congestion at that location did not appear to be a result of the lack of capacity of the road.

For these reasons Staff concludes that the Board correctly denied Appellant's Seventh Ground of Appeal recommends that the Board uphold its denial of the appeals and approval of the Project.

Appeal Ground No. 8: Appellant contends that the Planning Commission failed to properly consider the Project's effect on the health, safety, and welfare of the county in light of maps produced from CalFire data demonstrating that nearly the entire upper portion of Soda Canyon Road, including the Project site, is located in a "Very High Hazard Severity Zone".

Staff Response:

In its denial of the Eighth Ground of Appeal the Board found that virtually all hillside areas of Napa County, which make up the vast majority of land area countywide, are located in areas designated High or Very High Fire Hazard Severity Zones by CalFire. Throughout Napa County, these fire hazard areas apply to thousands of residences and dozens of wineries. New residences and business are not prohibited in these zones but rather subject to significantly more rigorous fire safety standards, including fire resistive construction standards, mandatory automatic fire sprinklers, dedicated on-site emergency water supplies, and specific fire access road design standards. The Project is designed to meet these standards and has been recommended for approval by the County Fire Marshal, who is a contracted subject matter expert from CalFire. The additional evidence does not change the Fire Marshal's analysis of the Project, which, as conditioned, meets these fire safety requirements. The Project site also contains substantial areas of reduced fire hazard because most of the property is now planted in vineyard, as are several hundred acres in the immediate vicinity. The Project would not significantly increase fire risk and meets the regulatory requirements for a winery in the County.

Staff has reviewed the newly introduced evidence and determined there is nothing to suggest that the Fire Marshall made an error in approving the Project as conditioned, which included a number of fire safety standards. In its original denial of this Ground of Appeal the Board noted that the Project site contained substantial areas of reduced fire hazard due to the density of adjacent planned and existing planted vineyards. As noted in Staff's analysis of the new evidence on the Seventh Ground of Appeal, Exhibit 5 of Anthony G. Arger's declaration and the personal accounts contained in Cynthia Grupp and Linda Savoie's declarations appear to suggest that the vineyards can act as fire hazard reduction during a wildfire.

For these reasons Staff concludes that the Board correctly denied Appellant's Eighth Ground of Appeal and recommends that the Board uphold its denial of the appeals and approval of the Project.

Appeal Ground No. 9: Appellant contends that the Planning Commission failed to properly consider the Project's effect on the health, safety, and welfare of the County in light of a "Pre-Attack Fire Plan" designed by CalFire for the Soda Canyon area, which warns of the extreme fire danger and likelihood that Soda Canyon Road will quickly become congested in the event of a fire.

Staff Response:

In its denial of the Ninth Ground of Appeal the Board found that this Project was thoroughly evaluated by the County Fire Marshal, who is a subject matter expert on wildland fire risk, response and pre-planning. The Project was reviewed for compliance with local and State fire standards and determined by the County Fire Marshal to comply with those standards. The subject property is predominantly planted in vineyards along with several hundred acres of vineyards on nearby and adjacent properties. Construction of the Mountain Peak Winery, especially the cave, would provide a safe haven for sheltering in place, as a last resort, in the event of wildfire conflagration and evacuation. Appellant Grupp testified that sheltering in place is one of the recommendations included on the "Pre-Attack Fire Plan" in the event of evacuation. For those reasons the Board concluded that the proposed Project would not interfere with planning or response to wildland fire, and the property and proposed winery would nominally improve wildland fire response.

The new evidence supports the Board's original Findings and Decisions on the Ninth Ground of Appeal. As noted in Staff's analysis of the new evidence on the Seventh and Eighth Grounds of Appeal, two of the declarations provide accounts of evacuees utilizing the vineyards of Stagecoach and Antica in order to shelter in place and await rescue from CalFire or CHP. Both accounts demonstrate that when evacuation down Soda Canyon Road was not an option, wineries and associated vineyards provided a safer location rather than areas of native vegetation. These accounts support the Board's prior findings on this ground of appeal, which acknowledged that construction of the winery would provide a safe haven for sheltering in place

during a wildfire.

More importantly, the new evidence does not provide substantial evidence that the Project is unsafe or fails to comply with regulations designed to protect the health, safety, and general welfare of the County. The Engineering Division concluded that the Project not only meets the requirements applicable at the time of Project approval, but also meets the proposed Fire Safe Regulations for development in the State Responsibility Area. Public Works again concluded that the capacity and condition of Soda Canyon Road are sufficient to accommodate the Project traffic and provide a safe means of evacuation in the event of a wildfire. The Fire Marshall recommended approval of the Project based on its compliance with applicable regulations. The new evidence did not identify any conditions of the Project, the Project Site, or Soda Canyon Road that undermine those conclusions. Instead, the declarations described harrowing personal experiences with a wildfire event that occurred regardless of the absence or presence of the Project. The declarations identified a tree that blocked the road, contributing to congestion until a pickup-truck driver and fire engine crew were able to break off enough branches to enable vehicles to pass. However, despite the possibility of such accidents, Soda Canyon Road has sufficient capacity for additional traffic and the addition of cars connected to the Project will only have a minimal effect on the capacity. The County cannot plan for every possible eventuality, but should rely on the regulations designed to ensure that projects are safe under most circumstances. Here, the Project meets all of the regulatory requirements relating to wildfires.

For these reasons Staff concludes that the Board correctly denied Appellant's Ninth Ground of Appeal and recommends that the Board uphold its denial of the appeals and approval of the Project.

Appeal Ground No. 10: Appellant contends that the Planning Commission failed to properly consider the Project's effect on the health, safety, and welfare of the County in light of testimony from the chief of the Soda Canyon Volunteer Fire Department and a former volunteer of the Department describing the inherent dangers of Soda Canyon Road from a fire safety perspective. They testified that approval of the Project would increase risk of fire and significantly impacts rescue efforts.

Staff Responses:

In its denial of the Tenth Ground of Appeal the Board found that the Commission heard and considered testimony from Appellant and neighbors that wildland fires are caused by human activities such as tossed cigarette butts and arson. None of the testimony or incident reports attributed the wildland fires specifically to winery construction, operation, or visitation at a winery. No credible evidence established that the addition of another winery along Soda Canyon Road would significantly increase the risk of fire or significantly hinder rescue efforts.

Soda Canyon Road is a fairly typical hillside public road, and the accident history on the road is primarily the result of unsafe driving as opposed to hazardous driving conditions. Traffic volumes on Soda Canyon Road are very low. In the event of a fire that results in mass evacuations from this area, the road has sufficient capacity and roadway width to accommodate all outgoing traffic while allowing incoming fire response units. In addition, most of Foss Valley in the vicinity of the Project site is now planted in vineyard, which significantly reduces the extent of wildland fire that can occur in the vicinity. During the Atlas Peak Fire in 1981, most of the areas that are now planted in vineyards were undeveloped wildlands, which provided a combustible fuel source.

Five of the seven declarations provide personal accounts of residents' experience during evacuation of the Soda Canyon area during the 2017 Atlas Fire. Staff has reviewed this evidence and, as previously noted, does not conclude that it presents substantial evidence that the addition of Mountain Peak Winery would significantly increase fire risk or hinder rescue efforts. Two of the declarations provide accounts of vehicle congestion during the evacuation, but the accounts do not suggest that the congestion was due to Soda Canyon Road lacking capacity, but rather to an obstacle in the roadway that forced evacuees to pause in the roadway until the obstacle was cleared. Two of the declarations provide accounts of evacuees finding shelter in vineyards, suggesting the Board was correct when it found that vineyard-dense areas could reduce the extent of damage from wildfire. Maps contained in Exhibit 5 of Anthony Arger's declaration support this conclusion as well.

For these reasons Staff concludes that the Board correctly denied the Appellant's Tenth Ground of Appeal and recommends that the Board uphold its denial of the appeals and approval of the Project.

Board Considerations and Staff Recommendations:

Based on Staff's review of the new evidence, none of the new information provided in the seven declarations substantially challenges or requires modification of the decision reached by the Planning Commission on January 4, 2017, and upheld by the Board on August 22, 2017. The County's Engineering Division, County Fire Marshall, and Department of Public Works have all reviewed the new information, and reviewed the proposed project in relation to current standards of project approval, and all support the prior project approvals that were issued. As a result, Staff recommends that the Board affirm its decision and deny the appeals.

For the Board's convenience, the following options are provided for the Board's consideration regarding possible action on this matter:

- Deny all remaining grounds of appeal and affirm its decision to uphold the Planning Commission's approval of the Mountain Peak Winery, as recommended by Staff;
- Reverse its decision and uphold one or more of the grounds of appeal and modify the scope of the Project and/or the recommended Conditions of Approval;
- Reverse its decision and uphold one or more grounds of appeal and reverse the Planning Commission's decision, thereby denying the Use Permit and related actions; or
- Reverse its decision and remand the matter to the Planning Commission with direction.

CEO Recommendation: Approve