

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Planning and Building	(2) MEETING DATE 2/5/2013	(3) CONTACT/PHONE Matt Janssen, Division Manager/ 781-5104	
(4) SUBJECT Hearing to consider an appeal by Rick Quinn, Opolo Vineyards of the Planning Commission's approval of a Conditional Use Permit to allow a three phased expansion of an existing winery (Opolo Winery) located in the Agriculture land use category at 7110 Vineyard Drive west of the City of Paso Robles, in the Adelaida planning area. District 1.			
(5) RECOMMENDED ACTION Adopt and instruct the Chairperson to sign the resolution affirming the decision of the Planning Commission and approve Conditional Use Permit DRC 2004-00276 based on the findings listed in Exhibit A and conditions listed in Exhibit B.			
(6) FUNDING SOURCE(S) Appeal Fees/General Fund	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Presentation <input checked="" type="checkbox"/> Hearing (Time Est. 180 mins) <input type="checkbox"/> Board Business (Time Est. _____)			
(11) EXECUTED DOCUMENTS <input checked="" type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP N/A	(15) BUSINESS IMPACT STATEMENT? Yes	(16) AGENDA ITEM HISTORY <input checked="" type="checkbox"/> N/A Date _____	
(17) ADMINISTRATIVE OFFICE REVIEW Reviewed by Leslie Brown			
(18) SUPERVISOR DISTRICT(S) District 1 -			

County of San Luis Obispo



TO: Board of Supervisors

FROM: Planning and Building / Matt Janssen, Division Manager

DATE: 2/5/2013

SUBJECT: Hearing to consider an appeal by Rick Quinn, Opolo Vineyards of the Planning Commission's approval of a Conditional Use Permit to allow a three phased expansion of an existing winery (Opolo Winery) located in the Agriculture land use category at 7110 Vineyard Drive west of the City of Paso Robles, in the Adelaida planning area. District 1.

RECOMMENDATION

Adopt and instruct the Chairperson to sign the resolution affirming the decision of the Planning Commission and approve Conditional Use Permit DRC 2004-00276 based on the findings listed in Exhibit A and conditions listed in Exhibit B.

DISCUSSION

On March 29, 2012, the Planning Commission approved the Conditional Use Permit application for an expansion to an existing winery and a request to hold special events. The applicant Rick Quinn, Opolo Vineyards, appealed the Planning Commission's decision on April 11, 2012. The basis of the applicant's appeal are three separate conditions of approval relating to the use of the site for "wine industry events" and restrictions on amplified music. The appeal issues are discussed in detail below.

Appeal Issue 1 – Limit of 150 Attendees at Upper Phase II Site for All Events.

Condition 1. e. states the following:

All events including special, wine industry-wide, and unadvertised are limited to 150 attendees at the upper Phase II site.

The applicant/appellant contends that Condition 1.e. should be revised to exclude the limitations on wine industry-wide events and unadvertised events for the following four reasons.

1. The winery ordinance Section 22.30.070 D(2)i specifically exempts unadvertised and wine industry-wide events from the winery "Special Event" definition; they are not subject to regulations and therefore should not be restricted through the land use permit process.
2. Regulating industry-wide events is unfair to the applicant; it places their business at an economic/financial disadvantage and would create a financial hardship. Placing restrictions on industry-wide and unadvertised events on a single application is precedent setting; no other winery permit has had limitations placed on industry-wide and/or unadvertised events.
3. Through the 2001 wine ordinance update, the Board of Supervisors made a decision to specifically not regulate wine industry-wide events or unadvertised events. If there is now a concern about industry-wide events or unadvertised events in the rural area(s), then this concern should be addressed through the Land Use Ordinance Amendment process, not on a project by project basis.

4. No nexus between the 'project' and industry-wide events and unadvertised events. Industry-wide events and unadvertised events are allowed to occur on the site today and there is no relationship between the project proposal and the continued participation in the industry-wide events and unadvertised events.

Staff Response:

The existing winery structure is located approximately 1,500 feet from Vineyard Drive. The proposed project includes expansions to the existing winery during Phases I and III. Phase II includes a new 12,777 square foot building to be used for a new tasting room and additional barrel storage and a 4,656 square foot outdoor tasting patio area. Phase II also includes development of a 100 seat amphitheater. The Phase II location is on the upper site which is an existing graded pad approximately 200 feet in elevation higher than Vineyard Drive and approximately 1,300 feet from the existing winery.

Special events - *These are defined as any event where there is the possibility that 50 or more people will attend: concerts, weddings, advertised events (including fund raising but not industry-wide events), and advertised winemaker dinners open to the general public. Does not include normal patronage of the tasting room or non-advertised events. A Conditional Use Permit is required for more than 6 events or for any event proposed for more than 80 people in attendance.*

The applicant is requesting to hold a total of 25 special events per year. The request includes 20 events for up to 150 attendees and 5 events per year with up to 250 attendees. The applicant's project description and request included a limitation of special events with up to 250 attendees at the existing winery (Phase I) location with special events located at the upper winery location (Phase II) to be limited to 150 attendees. Special events may include winemaker dinners, food and wine seminars, art shows, and weddings. The majority of the events are proposed to be held indoors in the Phase II building. Prior to the Phase II construction, special events are proposed to be held at the existing tasting room indoors, on terraces outside the existing winery building or within a tent located on a lawn area at the upper Phase II site.

Wine industry-wide events - *The winery ordinance allows wineries to participate in activities that are not considered "special events". These may include activities with less than 50 attendees and wine industry sponsored events which occur three or four times per year. The existing winery currently does and is planning to continue to participate in wine industry-wide events including the Zinfandel Festival, the Paso Robles Wine Festival and the Harvest Festival. The other events may include winemaker dinners, and club functions. The Opolo Winery Club currently has a over 5,000 members.*

Fire safety - *As is the typical process, CAL FIRE met with the applicant's agent on-site to evaluate the project for potential safety issues. CAL FIRE expressed concerns over the potential number of attendees at the upper site due to response time, high fire hazard, steep terrain, and lack of secondary access. The project proposes to extend an existing agricultural road along the northern property line to create a second access off of Vineyard Drive. However, the secondary access stops at the lower Phase I location. The upper Phase II will not have secondary access. The applicant agreed to limit special events to 150 attendees at the upper site but is appealing the limit of 150 attendees during wine industry-wide and unadvertised events. The current wine-club membership is over 5,000, so club functions would most likely far exceed 150 attendees.*

Conclusion - *The Conditional Use Permit process is a discretionary land use permit by which the project is evaluated for compliance with the applicable ordinance standards as well as the site's ability to accommodate the project and maintain health and safety. Through the discretionary review process, the site is evaluated to determine if it can accommodate the proposed use. CAL FIRE raised safety concerns with the number of attendees at the upper site. The Planning Commission, using their discretion, conditioned the project to limit all events including the industry-wide and unadvertised events to 150 attendees at the upper site but no limit was placed on the industry-wide or unadvertised events at the lower site.*

Every land use permit decision is based on a case-by-case analysis so no decision is precedent setting. No economic burden was placed on the applicant; industry-wide events and unadvertised events are not limited at the lower site.

There have not been any requests to amend the current winery ordinance. The case-by-case process by which an applicant can revise any aspect of their project to address any concerns raised by CAL FIRE, Public Works, Health Department or neighbor concerns seems to be working well. Currently, the winery holds industry-wide events at the upper site on lawn area or inside a large tent. The number of attendees is limited to the lawn area. The proposed project includes a 12,777 square foot tasting and barrel storage building, a 4,656 square foot outdoor tasting patio and an 100 seat amphitheater. Based on the size of the proposed project, there is a potential for a major increase in the number of attendees during industry-wide and unadvertised events; therefore a nexus for the limitation does exist.

Appeal Issue 2 – Amplified Music Limited to Between 10 a.m. and 5 p.m.

Condition 1. i. allows the following:

Outdoor amplified music between the hours of 10:00 am and 5:00 pm.

Condition 64. states the following:

On-going condition of approval (valid for the life of the project), outdoor amplified music and sound levels shall be limited to an average 70 dBA and shall not exceed 90 dBA at the position seven feet in front of the speakers. Amplified music or sound shall cease at 5 p.m.

- a. During events that include outdoor amplified music, the owners shall monitor and record noise levels, on an hourly basis, with a sound level meter at the property lines to ensure that the noise levels do not exceed 65 dB and those prescribed in the County Land Use Ordinance.
- b. During events that include outdoor amplified music, sound equipment shall be affixed with a sound level meter that does not allow the music levels at the noise source to exceed 90 db.
- c. Amplified music and sound is limited to a maximum 65 dB at all property lines.

The applicant/appellant contends that Condition 1.i. and 64 should be revised to allow amplified music after 5 p.m. for the following reasons:

1. The winery ordinance includes a provision to allow outdoor amplified music to occur after 5pm provided that an acoustical analysis can demonstrate that noise decibel levels will not exceed 65dB at the property line. The standard relating to outdoor amplified sound can be waived or modified where the finding can be made by the Review Authority that the noise at the property line will not exceed 65dB.
2. The project application proposed outdoor amplified music between the hours of 10am and 10pm. Opolo Vineyards provided an acoustical analysis prepared by Dr. David Lord that analyzed 'outdoor' amplified music levels on the site and at the corresponding property lines. The results of this study proved that outdoor amplified music would not exceed 65dB at surrounding property lines and in fact, showed that noise levels at the property lines were well below 65 dB (49dB - 53dB at the nearest property line). The original staff recommendation supported amplified music between the hours of 10:00 am and 10:00 pm since it was demonstrated that the required findings could be made. Further, the applicant incorporated additional noise mitigation measures as part of the project proposal to ensure continued compliance with the 65 dB (and under) noise levels at the property line.

Staff Response: *The winery ordinance includes the following:*

Limitation on use. *Special events are limited to 40 days a year. Any special event proposing outdoor amplified music shall only be allowed from 10 a.m. to 5 p.m. No outside amplified sound shall occur before 10 a.m. or after 5 p.m. The standard relating to amplified music may only be waived or modified where a finding can be made by the Review Authority that the noise at the property line will not exceed 65dB.*

Conclusion - *The applicant did provide an acoustical analysis that concluded that noise from amplified sound would not exceed 65dB at the property lines. The Planning Commission, using their discretion following the public hearing and public testimony, did not support a modification of the noise standard and approved amplified sound only from 10 a.m. to 5 p.m. Amplified sound is one of the largest complaints the Department receives regarding events held in the rural areas. Amplified sound compliance is also very difficult to measure and enforce.*

OTHER AGENCY INVOLVEMENT/IMPACT

The project was referred to: Public Works, Environmental Health, Agricultural Commissioner, CAL FIRE, and the Air Pollution Control District. County Counsel reviewed and approved the Resolution as to form and content.

BUSINESS IMPACT STATEMENT

Either approval or denial of this appeal would still allow the construction of a 3 phased expansion to an existing winery and the expansion of special events. As a result, the winery expansion will benefit businesses in the Uniquely SLO County cluster identified in the San Luis Obispo County Clusters of Opportunity Economic Strategy (November 2010). Especially hotels and restaurants may benefit if additional tourists come to the region seeking wine tasting and entertainment experiences. Also, businesses in the Building Design and Construction cluster would benefit through design and construction opportunities.

FINANCIAL CONSIDERATIONS

The appellant has paid the appeal fee of \$850 to partially offset staff time required to prepare this staff report. The balance of funding comes from the general fund (total cost is approximately \$4,435).

RESULTS

Denial of the appeal would mean the application for Conditional Use Permit DRC2004-00276 would be conditionally approved and subject to the conditions approved by the Planning Commission on March 29, 2012.

Approval of the appeal would mean the application for Conditional Use Permit DRC2004-00276 would be conditionally approved and subject to the conditions as modified by your Board. There would be no attendee limit placed on wine-industry and unadvertised event when located at the upper site and outdoor amplified music would be allowed on the site after 5 p.m. until 10 p.m.

ATTACHMENTS

Attachment 1	Appeal Form and Appellant's Letter
Attachment 2	Board Resolution Affirming the Planning Commission's Decision
Attachment 3	Planning Commission Minutes from the March 29, 2012 Meeting
Attachment 4	Planning Commission Staff Report from March 29, 2012 Meeting – Part 1 of 2
Attachment 5	Planning Commission Staff Report from March 29, 2012 Meeting – Part 2 of 2
Attachment 6	Correspondence from March 29, 2012 Planning Commission Meeting – Part 1 of 4
Attachment 7	Correspondence from March 29, 2012 Planning Commission Meeting – Part 2 of 4
Attachment 8	Correspondence from March 29, 2012 Planning Commission Meeting – Part 3 of 4
Attachment 9	Correspondence from March 29, 2012 Planning Commission Meeting – Part 4 of 4