



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

(1) DEPARTMENT Planning and Building		(2) MEETING DATE 1/14/2020		(3) CONTACT/PHONE Eric Hughes, Planner / (805) 781-1591 Xzandrea Fowler, Environmental Coordinator / (805) 781-5028	
(4) SUBJECT Submittal of a resolution to approve a request by the applicant and landowner, Nouel Riel Cellars, Inc., to vacate, set aside, and rescind: 1) approval of Environmental Determination (ED18-061) for a CEQA Exemption and 2) approval of Minor Use Permit DRC2018-00018 (APPL2019-00005) for an indoor cannabis cultivation operation located at 7755 Airport Road in the Salinas River Sub-Area of the North County Planning Area. District 1.					
(5) RECOMMENDED ACTION It is recommended the Board adopt the resolution approving the request by the applicant and landowner, Nouel Riel Cellars, Inc., to vacate, set aside, and rescind: 1) Approval of Environmental Determination (ED18-061); and, 2) Approval of Minor Use Permit DRC2018-00018 (APPL2019-00005).					
(6) FUNDING SOURCE(S) Department of Planning and Building Budget		(7) CURRENT YEAR FINANCIAL IMPACT \$0.00		(8) ANNUAL FINANCIAL IMPACT \$0.00	
(9) BUDGETED? Yes					
(10) AGENDA PLACEMENT <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Presentation <input type="checkbox"/> Hearing (Time Est. _____) <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? N/A		(16) AGENDA ITEM HISTORY <input checked="" type="checkbox"/> N/A Date <u>8/13/19</u>	
(17) ADMINISTRATIVE OFFICE REVIEW Zachary A. Lute					
(18) SUPERVISOR DISTRICT(S) District 1					

COUNTY OF SAN LUIS OBISPO



TO: Board of Supervisors

FROM: Planning and Building / Eric Hughes, Planner

VIA: Trevor Keith, Planning and Building Director

DATE: January 14, 2020

SUBJECT: Submittal of a resolution to approve a request by the applicant and landowner, Nouel Riel Cellars, Inc., to vacate, set aside, and rescind: 1) approval of Environmental Determination (ED18-061) for a CEQA Exemption and 2) approval of Minor Use Permit DRC2018-00018 (APPL2019-00005) for an indoor cannabis cultivation operation located at 7755 Airport Road in the Salinas River Sub-Area of the North County Planning Area. District 1.

RECOMMENDATION

It is recommended the Board adopt the resolution approving the request by the applicant and landowner, Nouel Riel Cellars, Inc., to vacate, set aside, and rescind:

- 1) Approval of Environmental Determination (ED18-061); and,
- 2) Approval of Minor Use Permit DRC2018-00018 (APPL2019-00005).

DISCUSSION

On January 18, 2019, the Planning Department Hearing Officer ("Hearing Officer") considered and approved Environmental Determination (ED18-061) ("Environmental Determination") and Minor Use Permit (DRC2018-00018) ("MUP") for a proposed indoor cannabis cultivation operation on a portion of a 41 acre site located at 7755 Airport Road, about three miles southeast of the community of San Miguel (sometimes referred to as the "project"). On February 1, 2019, Richard and Diane Mathews, John Crossland, Julie Candee, Joe Plummer, and Lee and Lorraine Steele ("appellants") filed an appeal of the Hearing Officer's approval of the MUP.

The Board of Supervisors ("Board") conducted a public hearing for the appeal on August 13, 2019. After considering public testimony, the issues raised by the appellants, and responses prepared by staff, the Board took action to deny the appeal and approve the Environmental Determination and MUP pursuant to Resolution No. 2019-237.

Since that approval, a lawsuit was filed against the County and the applicant and landowner Nouel Riel Cellars, Inc. as real party in interest by Save Rural SLO, an unincorporated association, and Stephanie Shakofsky ("Petitioners") within the allowed time frames challenging the approval of the Environmental Determination and MUP. Subsequently, the applicant and landowner formally requested the Board rescind its approval, stating that the project is no longer economically viable due to the loss of the previously intended lessee of the site, and the inability to secure a future lessee due, in part, to the current economic uncertainty in California's legal cannabis market (Attachment 2).

At this time, staff is recommending the Board adopt the resolution to vacate, set aside and rescind the approval of the Environmental Determination and Minor Use Permit for Nouel Riel Cellars, Inc (Attachment 1). The resolution would preserve the defense and indemnity obligations contained in Resolution No. 2019-237, Condition of Approval No. 71, as expressly acknowledged in the applicant's request. By rescinding the underlying project approval and Environmental Determination, the claims in the pending lawsuit become moot and should be dismissed. The reason for the ongoing indemnity requirement is to protect the County if the Petitioners claim a right to attorney's fees under the California private attorney general doctrine.

Environmental Review

This activity is not a project subject to CEQA. The activity will not cause a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

OTHER AGENCY INVOLVEMENT/IMPACT

County Counsel reviewed the request and provided input to staff on the processing of the request including preparation and approval of the resolution as to form and legal effect.

FINANCIAL CONSIDERATIONS

Staff time for preparation of the staff report and rescinding documents is paid through the Planning and Building Department budget.

There are no significant anticipated financial impacts to the County budget that will result from rescinding the Environmental Determination and the MUP. The ongoing indemnity requirement protects the County if the Petitioners claim a right to attorney's fees.

RESULTS

Adoption of the attached resolution (Attachment 1) will vacate, set aside and rescind the approval of the Environmental Determination and approval of Minor Use Permit as requested by Nouel Riel Cellars, Inc, while preserving the defense and indemnity obligation. This is consistent with the County's goal to promote a well-governed community.

ATTACHMENTS

- Attachment 1 – Resolution to Vacate, Set Aside and Rescind the Approval of DRC2018-00018
- Attachment 2 – Letter from Attorney on Behalf of Nouel Riel for Application Rescission