



**COUNTY OF PLACER**  
**Community Development Resource Agency**

**PLANNING**

**TO:** Honorable Board of Supervisors

**FROM:** Michael J. Johnson, Planning Director

**DATE:** August 7, 2007

**SUBJECT:** **Third-Party Appeal – Pescatore Winery Minor Use Permit Modification (PMPM 2006 0909)**

**ACTION REQUESTED:**

The Board is being asked to consider a third-party appeal from Lawrence Graves, Mike Giles, and the Neighborhood Rescue Group Association of the decision of the Planning Commission to uphold an appeal of the Zoning Administrator's decision to approve a Modification of a Minor Use Permit (PMPM2006 0909) to permit wine tasting and wine sales by prior appointment for up to 15 vehicles per week and no more than 24 people at any one time. Staff recommends that the Board uphold the decision of the Planning Commission and deny the appeal.

**BACKGROUND:**

In March 2000, Minor Use Permit 2511 for the Pescatore Winery was approved for the construction of a 2,880 square-foot agricultural building that would be used for the making and storing of wine. Production is limited to 1,000 cases annually. A four-acre vineyard had been previously established on the property and is used as the primary source of grapes for winemaking, though grapes are permitted to be imported from off-site locations. The permit approval specified that wine tasting for the general public was prohibited (Conditions 1 and 20).

In the intervening years, the Wegners have vested the Minor Use Permit with the construction of the winemaking facilities and construction or certification of other required improvements. Since that time, the Wegners have hosted several public events on the property, including the Placer County Wine and Grape Association Wine Tour and the Farm and Barn Tour. On an ongoing basis, the Wegner's have advertised and conducted wine tasting "by appointment", which they believe was permitted with the original Minor Use Permit approval. It has been stated by several adjacent property owners that other events have occurred on the property on a semi-regular basis, including weddings with amplified outdoor music and similar recreational functions. At least two of those neighbors have filed written complaints to the State of California Department of Alcoholic Beverage Control, the Placer County Sheriff's Department, and the Placer County Code Enforcement Division.

**PROJECT DESCRIPTION:**

Requested Use Permit Modifications - By Appointment Wine Tasting and Off-Site Signage

The applicant is requesting approval to modify Minor Use Permit PMPM 20060909 to allow wine tasting and sales by appointment. Wine tasting is proposed to be conducted by prior appointment between the hours of 12:00 PM and 7:00 PM, without a restriction on days of the week. The proposal includes a limit of these activities to a maximum of 15 vehicles per week and a maximum of 24 guests at any one time. The applicant also proposes to erect an off-site sign for the winery that would advertise the availability of wine tasting, provide winery contact information, and to direct visitors to the winery entrance. The sign would be placed in the southwest corner of the Williams' property (APN 031-161-037), northeast of the intersection of Welcome Road and the Wegner's shared private road easement. The sign would not be illuminated and would be limited to a maximum sign area of six square feet.

**ZONING ADMINISTRATOR HEARING:**

The Zoning Administrator considered the Minor Use Permit Modification at the March 1, 2007 hearing. At that hearing, the Zoning Administrator considered reports from the Development Review Committee and received oral testimony from Dave Wegner, owner of Pescatore Winery, and from neighboring property owners Lawrence Graves, Mike Giles, Michelle Shaw and Dave Mackenroth, all of whom spoke in opposition to the proposed Minor Use Permit Modification, and from Kathy Hogginsmith, who spoke in favor of the winery. The Ophir - Newcastle Municipal Advisory Council wrote a letter with several recommendations, the most significant being that the Planning Department and the Zoning Administrator take no action until such time that a comprehensive set of guidelines for commercial wine tasting are established. Also received was an email correspondence from Chief Ebert of the Mid Placer Fire Authority, which specified minimum driveway standards for the proposed tasting room use. No other responses were received or recorded.

Those objecting to the Modification identified several areas of concern, many of which related to the past conduct of Pescatore Winery. They stated that modification of the Minor Use Permit would result in direct and indirect impacts to individual property owners and the neighborhood, and represented claims of several project inconsistencies with the rural character of the neighborhood (similar to the issues raised in this appeal).

After taking public testimony, the Zoning Administrator took action to approve the request to modify Minor Use Permit 2511, subject to the project Findings and Conditions of Approval submitted by the Development Review Committee (Exhibit 5), with minor amendments made to Conditions 1 and 15. Those amendments were to adjust the hours of operation and maximum number of customers allowed at any one time, and to revise the required driveway standards, respectively. Two conditions were added at the hearing (Conditions 9 and 10). Condition 9 specifies that the Minor Use Permit would apply only to the parcel on which the winery building is located should the Wegner's approved Minor Land Division be recorded, and includes citation of Zoning Ordinance Section 17.54.075, which permits the establishment of off-site parking should all five required parking spaces not be accommodated on the winery parcel. Condition 10 prohibits access to Chaparral Lane, which is located adjacent to the north property

boundary, except as required for emergency response vehicles. The existing access onto Chaparral Lane is utilized by Pacific Gas and Electric Company for the maintenance of power lines.

Lawrence Graves, Mike Giles individually, and Mike Giles on behalf of the Neighborhood Rescue Group Association filed an appeal of this decision on March 8, 2007 (see Exhibit 1).

**PLANNING COMMISSION HEARING:**

On May 10, 2007, the Planning Commission considered an appeal from Lawrence Graves, Mike Giles, and the Neighborhood Rescue Group Association of the Zoning Administrator's decision to approve modifications to Minor Use Permit 2511. The Planning Commission received testimony from Lawrence Graves, Mike Giles and James Jordan, who all spoke against modification of the Minor Use Permit. The Planning Commission also received testimony from Dave Wegner, the owner of Pescatore Winery.

After receiving testimony, the Planning Commission, on a unanimous vote (6:0 with Commissioner Brentnall absent), upheld the appeal and approved the proposed project with modifications to Condition 7 and the addition of Condition 27 regarding the need to show legal access to the property.

Lawrence Graves, Mike Giles, and the Neighborhood Rescue Group Association filed an appeal of the Planning Commission's action on May 21, 2007.

**DISCUSSION OF ISSUES:**

Following is a discussion of issues raised by the appellants in their appeal of the Planning Commission's approval of the Minor Use Permit Modification.

**Past Violations of the Minor Use Permit**

The appellants state that the Wegners have, on an ongoing basis, conducted wine tasting, wine tours, weddings and other public functions in violation of the approved Minor Use Permit for wine processing. A formal complaint alleging these violations of the approved Minor Use Permit was received by the County on October 18, 2005, and has been followed by other similar complaints. No written complaint was submitted to the County prior to that date.

Staff Response:

In March 2001, the Zoning Administrator approved a Minor Use Permit to allow for the construction and operation of a winemaking facility, which was subsequently constructed and received Building Permit final approval. Based upon complaints made to the County by the appellants, including submittal of documentary evidence such as web page advertisements, it appears that Pescatore Winery has operated, at times, in violation of the approved Minor Use Permit for a winery without a tasting room.

The applicant has petitioned the County to modify the Minor Use Permit to allow for the establishment of a small scale public wine tasting room. County review of this request found that the limited scope of activities and limited number of patrons that it would

serve is consistent with the rural neighborhood in which the use would be established. The Planning Commission, in granting approval of this request, set conditions for vesting the use and conditioned its limitations. Conditions of approval are included that require minor improvement of existing development features, such as the winery building, winery driveway, and winery parking area. All other conditions specify the operational limitations of the use or pertain to winery signage. This use would not be allowable until such time that the Wegners obtain all required permits and licenses, complete all required improvements, and receive County and fire agency approval of the improvements. The Planning Commission concluded the conditions of approval were sufficient to address the concerns raised by the appellants.

#### **Impacts from Traffic, Dust, Noise, and Water Runoff**

The appellants state that approval of the Minor Use Permit Modification will result in increased traffic in the neighborhood, increased dust from roads, increased noise, and that it will result in increased water runoff from the creation of additional impervious surfaces.

#### **Staff Response:**

The project would bring as many as 15 additional vehicles into the neighborhood each week, which would result in an incremental increase in traffic. The Planning Commission determined this limited increase in traffic would be less than significant. The Planning Commission further determined that the business activities of the tasting room would be consistent with the rural character of the neighborhood, and would be consistent with the type of activities that are appropriate in rural farm-zoned areas of the County.

The project would not result in appreciable amounts of increased dust in the neighborhood above and beyond what already exists in the project area. The shared private road easement that serves the winery driveway is paved to a width of 18 feet. The serving fire agency, Mid-Placer Fire Authority, required that the winery driveway be paved to a point past the final turn into the winery building. Only the parking area, which would be surfaced with aggregate base, would be unpaved.

The project may result in incremental increases in ambient noise levels resulting from passenger vehicles entering and exiting the winery property, and from the voices of winery patrons when they are outdoors. Those noise levels and types of noises would be consistent with the existing noise levels and noise types in the neighborhood and would not appreciably add to existing noise in the neighborhood. The nearest residential property boundary is located over 300 feet from the winery building, and the nearest residence is located over 600 feet away. The Planning Commission determined that sound levels generated by passenger vehicles entering and exiting the site, and sound levels from human voices outdoors are within the acceptable limits of the County Noise Ordinance.

The project would result in paving approximately 550 feet of the winery driveway to a width of 12 feet, as required by the serving fire agency. This would result in the creation of approximately 6,600 square feet of impervious surface to provide safe access for emergency response vehicles and personnel. This amount of paving represents less

than one percent of the overall property and would not result in a significant increase in storm water runoff.

**Unsafe Access to a Public Roadway**

The appellants contend that the existing encroachment onto Ridge Road is unsafe because of inadequate vehicle sight distance caused by an embankment to the west. The appellants also contend that use of this encroachment by winery patrons would result in a hazardous condition because the encroachment is used as a school bus stop, and because the encroachment includes access to Welcome Road to the east and a residential driveway to the north. Lastly, the appellants contend that the encroachment is not developed to a commercial standard, but should be for this use.

Staff Response:

The encroachment onto Ridge Road is paved to a width of 35 feet. Encroachment sight distance was field-verified by staff from the Engineering and Surveying Department and the Department of Public Works on March 1, 2007. The encroachment was evaluated in accordance with County Standard Plate R-17 (Major) for a 30-mile per hour design speed roadway, which is the design speed of Ridge Road. Minimum required sight distance in either direction is 330 feet, which the encroachment significantly exceeds. The Planning Commission concurred with staff that the encroachment meets the minimum sight distance requirement, and that additional improvements to the encroachment are not warranted with this Minor Use Permit Modification request.

**Inconsistency with the Rural Character of the Neighborhood**

The appellants contend that the establishment of a wine tasting room at the Pescatore Winery would be inconsistent with the rural character of their neighborhood and that it would infringe on the rights of neighbors to maintain the peaceable enjoyment of their property.

Staff Response:

The proposed project is to operate a wine tasting room where services would be available by prior appointment between the hours of 12:00 PM and 7:00 PM with no more than 24 guests at any one time and no more than 15 vehicles per week. The project would not result in appreciable amounts of increased traffic in the neighborhood, nor would it result in land use activities that have the potential to result in a disturbance to adjacent neighbors.

Placer County Zoning Ordinance regulations permit the establishment of certain types of compatible business activities in residential areas and in agriculturally zoned areas. General Plan policies specifically promote on-site marketing activities for agricultural products in agricultural zone districts, which is also reflected in the statement of purpose and intent of Farm zoning, as listed in the Zoning Ordinance. The Planning Commission determined that the proposed operation of a small scale wine tasting room would be consistent with the rural character of the neighborhood in which it would be located, and would not infringe on the rights of individual property owners to maintain the peaceable enjoyment of their property.

### **Winery Patrons Are a Nuisance to Adjacent Property Owners**

The appellants contend that winery guests are a nuisance to adjacent property owners who are visited by lost winery guests inquiring as to the whereabouts of the winery. Lawrence and Dorothy Graves, who live on the same shared private road easement with the Wegners, have made complaints that they are visited by lost winery guests on a regular basis.

#### Staff Response:

The Wegners have requested approval of an off-site agricultural sign as part of their modification request. The sign is proposed to be placed on the Williams' property in a location that is approximately 75 feet northeast of the intersection of Ridge Road and the private road encroachment. The sign would be limited to a maximum sign area of six square feet, and a maximum overall height of six feet. The sign would not be illuminated and sign copy would be limited to winery name and logo, phone number with verbiage indicating that tasting is available by appointment, and directional indicators pointing to the winery location.

In reviewing this modification request, the Planning Commission recognized that the location of the winery driveway is not clear, and could result in a nuisance to neighbors if lost winery guests mistakenly end up at the wrong property. Therefore, the Planning Commission conditioned the implementation of a directory sign program to ensure that the winery driveway would be properly signed. A second sign would be placed at the Wegner's residential driveway to ensure that if guests still managed to miss the winery entrance, they would be directed to turn around in the Wegner driveway rather than proceeding to the Graves' property. The Planning Commission concluded that appropriately signing the location of the winery, signing the winery driveway, and placing an additional sign to direct guests to turn around in the Wegner's driveway would alleviate this problem.

### **Finding for Exemption from the California Environmental Quality Act**

The appellants contend that the County has not made an adequate evaluation of potential environmental impacts that may occur as a result of the improvements that will have to be made to the property to support the proposed use, nor impacts that may occur as a result of the use.

#### Staff Response:

The Planning Commission concluded that the proposed modifications to this Minor Use Permit would not result in significant adverse impacts to health, safety, property, sensitive resources, or persons residing in the area of the proposed use. The applicant's requested modifications would require minor improvement of existing features, which include the existing winery building, driveway and parking area, the improvement of a hammerhead turnaround that will involve minimal grading, and the placement of a 2,500 gallon water storage tank. Project improvements and project operation would result in a negligible expansion of existing improvements and uses, and are within the scope of findings for categorical exemption from the California Environmental Quality Act.

**Lack of Factual Basis**

The appellants contend that the project representation made to the Zoning Administrator is not grounded in fact, and that the conclusions reached by staff and the Zoning Administrator are poor.

**Staff Response:**

The Planning Commission did not concur with this assertion by the appellants.

**CONCLUSION:**

The Planning Commission concluded that if operated within the limitations described above, wine tasting by appointment would be consistent with the rural residential character of the surrounding neighborhood and that wine tasting would not unduly disrupt, inconvenience, or jeopardize the safety or peace of adjacent property owners. The Planning Commission concluded that the placement of a directory sign program will help to ensure that winery guests are provided with adequate direction so that their visits do not unnecessarily disrupt adjacent property owners.

**RECOMMENDATION:**

Based on the analysis described above, staff recommends that the Board of Supervisors uphold the action of the Planning Commission and deny the appeal, subject to the following Findings:

**FINDINGS:****CEQA:**

The Board finds that this project is categorically exempt from review under CEQA pursuant to Section 15301, Existing Facilities (Class 1) and Section 15303, New construction or conversion of small structures (Class 3) of the CEQA Guidelines (ERO Sections 18.36.030 and 18.36.050) because the conversion of the upper floor of the winery building to a wine tasting room will result in a negligible expansion of the use and because the improvements required to vest the use will not result in significant adverse impacts to the environment.

**MINOR USE PERMIT MODIFICATION:**

1. The proposed modification to allow for wine tasting and wine sales by appointment and for the placement of an off-site winery sign is consistent with all applicable provisions of the Placer County Code, Chapter 17, and any applicable provisions of other chapters of this code.
2. The proposed modification to allow for wine tasting and wine sales by appointment and for the placement of an off-site winery sign is consistent with applicable policies and requirements of the Placer County General Plan.
3. The establishment, maintenance or operation of the wine tasting and wine sales facilities will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort and general welfare of people residing or working in the neighborhood of the proposed use, nor will it be detrimental or injurious to property or improvements in the neighborhood or to the general welfare of the

County because no substantial increase in traffic is anticipated, nor outdoor events authorized.

4. The proposed modification to allow for wine tasting and wine sales by appointment and for the placement of an off-site winery sign will be consistent with the character of the immediate neighborhood and will not be contrary to its orderly development.
5. The proposed modification to allow for wine tasting and wine sales by appointment and for the placement of an off-site winery sign will not generate a volume of traffic beyond the design capacity of all roads providing access to the project.
6. The proposed modification to allow for wine tasting and wine sales by appointment and for the placement of an off-site winery sign will not have an adverse effect on adjacent or surrounding property owners because the limitations imposed on the operation of the facility will ensure that the peaceful character of the neighborhood is not disrupted.

Respectfully submitted,



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MICHAEL J. JOHNSON, AICP  
Director of Planning

Attached to this report for the Board's information/consideration are:

**EXHIBITS:**

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| Exhibit 1: | Letter of Appeal, dated May 21, 2007  |
| Exhibit 2: | Vicinity Map  |
| Exhibit 3: | Site Plan   |
| Exhibit 4: | Aerial  |
| Exhibit 5: | Approved Conditions of Approval for PMPM 20060909   |
| Exhibit 6: | Correspondence from surrounding property owners, the County Agricultural Commissioner, and the Ophir - Newcastle Municipal Advisory Council |
| Exhibit 7: | Letter from the Mid Placer Fire Authority dated April 5, 2007   |
| Exhibit 8: | Letter from the Mid Placer Fire Authority dated April 17, 2007  |
| Exhibit 9: | Parcel Map Number 73943   |

cc: Lawrence Graves - Appellant  
Mike Giles - Appellant  
Neighborhood Rescue Group Association - Appellant  
Dave Wegner - Applicant

Copies Sent by Planning:

Sharon Boswell - Engineering and Surveying Department

Laura Mattson - Environmental Health Services

Christa Darlington - County Counsel

Michael Johnson - Planning Director

George Rosasco - Supervising Senior Planner

Subject/chrono files

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