



Agenda Date: 10/23/2007
Agenda Placement: 8B
Set Time: 10:00 AM PUBLIC HEARING
Estimated Report Time: 1 Hour

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Gitelman, Hillary - Director
Conservation, Development & Planning
REPORT BY: Sean Trippi, Principal Planner , 253-4417
SUBJECT: Public Hearing - Frank Family Vineyards Appeal

RECOMMENDATION

Consideration and possible action regarding an appeal filed by Charles Meibeyer on behalf of his client, Richard Frank, of a decision by the Conservation, Development and Planning Commission on August 1, 2007, to approve Use Permit Modification P06-0102 to the Frank Family Vineyards winery to allow: (1) crush activities; (2) construction of a new crush pad, entry gate and two-story building; (3) demolition of the existing visitor/tasting building; (4) increased parking; (5) an increase in the number of employees; (6) an increase in the number of tours and tastings by appointment only; (7) revisions to the marketing activities; (8) installation of new site landscaping; (9) modification of the exiting sewage disposal system; and (10) revisions to certain prior conditions of approval. The winery has a production capacity of 564,500 gal/yr approved in 1997 and is located on a 5.15-acre site on the east side of Larkmead Lane, between Silverado Trail and State Highway 29, approximately 2,400 feet north of Highway 29 and approximately 100-200 feet south of the Napa River within an AP (Agricultural Preserve) zoning district. (Assessor's Parcel No. 020-290-007) 1091 Larkmead Lane, Calistoga, CA.

ENVIRONMENTAL DETERMINATION: Subsequent Mitigated Negative Declaration Prepared. According to the Subsequent Mitigated Negative Declaration, the proposed project would have, if mitigation measures are not included, potentially significant environmental impacts in the following area: Biological Resources. If the Board decides to deny the appeal, it would need to affirmatively readopt the Subsequent Mitigated Negative Declaration prior to approving the project. This project site is not on any of the lists of hazardous waste sites enumerated under Government code section 65962.5.

EXECUTIVE SUMMARY

The hearing before the Board is to consider an appeal filed by Charles Meibeyer, on behalf of project applicant Richard Frank ("Appellant") to the Planning Commission's decision to approve Use Permit Modification P06-0102 for the Frank Family Vineyards winery to allow: (1) crush activities; (2) construction of a new crush pad, entry gate and two-story building; (3) demolition of the existing visitor/tasting building; (4) increased parking; (5) an increase in the number of employees; (6) an increase in the number of tours and tastings by appointment only; (7) revisions to the marketing activities; (8) installation of new site landscaping; (9) modification of the existing sewage disposal system; and (10) revisions to certain prior conditions of approval (the "Project" or the "Winery").

The appeal contends that the Planning Commission imposed severe restrictions affecting pre-WDO (Winery Definition Ordinance) visitation levels, reduced pre-WDO visitor and by appointment visitor numbers, and reduced the number of marketing events. Further detail, together with staff's responses to these points is included in the Background/Discussion section, below. The Appellant has also submitted a revised marketing plan that he believes represents a compromise. The Appellant has not challenged the Commission's adoption of the Subsequent Mitigated Negative Declaration.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Subsequent Mitigated Negative Declaration Prepared. According to the Subsequent Mitigated Negative Declaration, the proposed project would have, if mitigation measures are not included, potentially significant environmental impacts in the following area: Biological Resources. If the Board decides to deny the appeal, it would need to readopt the Subsequent Mitigated Negative Declaration prior to approving the Project. This project site is not on any of the lists of hazardous waste sites enumerated under Government code section 65962.5

BACKGROUND AND DISCUSSION

On August 1, 2007, after considering all written and verbal evidence presented at the June 27 and July 28, 2007, hearings, the Planning Commission approved the Project and imposed conditions of approval addressing visitor numbers (both tours and tasting and marketing activities) at the winery. On August 14, 2007, subsequent to the Planning Commission's final decision, and within the prescribed 10-day period for appeal, an appeal was filed by attorney Charles Meibeyer on behalf of Richard Frank.

CURRENT STATUS AND ACTIONS REQUESTED BY THE BOARD OF SUPERVISORS: The matter before the Board is an appeal of certain conditions of approval imposed by the Planning Commission affecting the number of visitors permitted at the winery. It also requests that the Board ensure either no limits are established for pre-WDO public tours and tasting wineries so long as the winery's tours and tasting facilities (e.g., tasting room, parking lot) are not expanded, or that a consistent process for determining peak visitation levels be established and applied.

County Code Section 2.88.090 provides for appeals of Planning Commission decisions and stipulates that the Board's appeal hearing be based on the documentary record, including transcripts of the Planning Commission's hearing, plus any evidence that could not have been presented at those hearings, unless the Board affirmatively permits any additional evidence. The Appellant has requested that the Board hear this matter de novo, however, no new evidence has been presented or submitted since the Planning Commission's hearing on August 1, 2007 other than the appeal itself.

At the outset of the appeal hearing, the Board should first consider whether any new evidence should be admitted as part of the appeal hearing. After a determination regarding acceptance of new evidence, the Board should consider the basis for the appeal together with staff's response, as presented below. Following the appeal hearing, the Board may affirm, reverse, or modify the decision by the Planning Commission. Should the Board

deny the appeal and approve the Project (as originally approved or as modified), the Board would also need to readopt the Subsequent Mitigated Negative Declaration. Upon close of the public hearing, the Board should take a tentative action (i.e. a motion of intent) on the appeal and refer the matter to County Counsel's office for preparation of written findings.

STATED BASIS FOR THE APPEAL AND STAFF RESPONSE: The following outlines the Basis of the Appeal as contained in the Appellant's submittal dated August 14, 2007. For convenience, staff has numbered each issue and provided a summary, but recommends the Board review the actual appeal for additional details. Background materials from the Planning Commission's multiple hearings are also attached, and hearing transcripts are available.

Appeal Ground 1: The Board should ensure either no limits are established for pre-WDO public tours and tasting wineries so long as the winery's tours and tasting facilities (e.g., tasting room, parking lot) are not expanded, or that a consistent process for determining peak visitation levels be established and applied.

Staff Response: The Planning Commission, the Planning Department, and the Appellant/Applicant all agree that the level of activity in place on the effective date of the WDO shall be allowed to continue. At issue in this appeal is how this level of activity should be determined. The Appellant/Applicant has suggested a methodology based on limited evidence, and disputes the Planning Commission's use of an alternate methodology. Unless a project-specific condition of approval set pre-WDO visitation levels, or adequate evidence to the contrary is provided by the applicant, the Planning Department typically recommends using information provided by the applicant as part of the use permit or use permit modification request to determine the number of visitors for wineries with pre-WDO public tours and tasting. In this case, the Planning Commission elected to follow this recommendation.

Appeal Ground 2: The Planning Commission imposed severe restrictions on the number of pre-WDO public tours and tasting allowed at the Winery.

Staff Response: The winery was established prior to adoption of County ordinances which required a use permit. The first use permit addressing winery operations on the site was approved in 1975 (#U-117576). No information was requested by the County at that time regarding the number of visitors to a winery.

In 1981 the Planning Commission approved Use Permit (#U-218081). This use permit application asked for the number of visitors anticipated per day and per week. The numbers provided were 100 per day and 700 per week. Neither the staff report nor the project specific conditions of approval addressed winery visitors which was consistent with pre-WDO departmental policy.

A use permit modification application was submitted in 1995 and approved in 1997 (95661-MOD) after adoption of the WDO. The application forms in use at that time asked for the existing and proposed anticipated number of visitors on the busiest day and the average per week. The application listed 100 visitors anticipated on the busiest day and 175 average per week in the existing column with no changes in the proposed column. A variety of documents and reports submitted by the Appellant also referred to these numbers. However, based on inventory/sales receipts provided by the Appellant and public testimony during the hearings held in 1997 the Planning Commission's action included a condition of approval that allowed 300 visitors on Saturday and Sunday but did not mention weekdays. Staff believes, and the Commission concurred, that 100 visitors for public tours and tasting are allowed during weekdays as this number was given on both the 1981 and 1995 application forms, and further the information given on the forms is used to evaluate potential waste water use, groundwater use, traffic generation and parking requirements.

Additional information is provided in the August 1, 2007, Planning Commission staff report.

Appeal Ground 3: The Winery should be allowed 300 visitors per day for public tours and tasting based on

evidence presented at the August 1, 2007 Planning Commission hearing.

Staff Response: The Appellant submitted additional inventory sheets and sales receipts similar to those submitted in 1997. The Appellant estimated the number of visitors to the tasting room by dividing the day's sales by the cost of a bottle of champagne (about \$12.00 per bottle at the time). This methodology does not account for a group of four buying a single bottle, or an individual buying a case. In addition, the cash register tapes also include non-wine related purchases such as t-shirts, glasses, and postcards. Similar cash register tapes and inventory sheets were reviewed in 1997 and the conclusion was to allow 300 visitors on the weekend only.

Appeal Ground 4: The Planning Commission significantly reduced the requested number of visitors for tours and tasting allowed by prior appointment.

Staff Response: The Appellant originally requested up to 500 visitors a day to the winery. This included the total number of visitors for public tours and tasting, private tours and tasting, and marketing event invitees. Staff recommended a reduction to 300 visitors Monday through Thursday and 400 Friday through Sunday to address concerns raised by the neighbors and considering the level of intensity on the small five acre winery site. At the conclusion of the Planning Commission's hearings, based on the public testimony and a concern that the number of visitors was generous given the small size of the site, the Commission reduced the number of visitors to 250 Monday through Thursday and 350 Friday through Sunday.

Appeal Ground 5: The Planning Commission significantly reduced the proposed number of marketing events.

Staff Response: The Appellant originally requested 4 lunches or dinners per month with a maximum of 100 guests and 5 lunches or dinners per week with a maximum of 25 guests, and 2 wine auction events with a maximum of 250 guests. The previously approved marketing plan had 10 events per year with a maximum of 100 guests. The marketing invitees would be included on the total number of daily visitors allowed at the winery, except for the auction events. Based on the evidence presented, the Commission felt the number of marketing events was too high and reduced the marketing plan to: one (1) lunch or dinner per month with a maximum of 100 guests; two (2) lunches or dinners per week with a maximum of 25 guests; and, two (2) auction events with a maximum of 120 guests. A condition of approval was also imposed that allowed only one evening event per week. The Appellant provided a proposed marketing plan which appears to mirror the condition imposed by the Commission, however, there appears to be a typo for the small events (25 guests maximum) where the proposed plan indicates 2 per month as the compromise reached at the Commission hearing instead of 2 per week.

RECOMMENDATION: Staff recommends that the Board adopt a motion of intent to DENY the appeal, adopt the subsequent mitigated negative declaration, and uphold the Planning Commission's action based on the conclusions in the staff report and information presented in the public record. Further, the Board should continue the public hearing to a date determined by the Clerk of the Board to allow preparation of findings by County Counsel's office.

SUPPORTING DOCUMENTS

- A . Appeal Application
- B . Correspondence
- C . Final Conditions of Approval
- D . 4/18/2007 PC Memo & Correspondence
- E . 6/27/2007 PC Report & Correspondence

- F . 7/18/2007 PC Memo & Correspondence
- G . 8/1/2007 PC Memo & Correspondence
- H . 6/27/2007 PC Staff Report & Correspondence

CEO Recommendation: Approve

Reviewed By: Helene Franchi