



Agenda Date: 2/5/2008
Agenda Placement: 8F
Set Time: 10:45 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: John McDowell, Deputy Director - 299-1354
SUBJECT: V. Sattui Winery Appeal

RECOMMENDATION

Consideration and possible action regarding an appeal filed by Lucio Perez to a decision by the Conservation, Development and Planning Commission on November 7, 2007 to approve a Major Modification (File No. P05-0184) to the V. Sattui Winery Use Permit to increase marketing activities, legalize certain existing activities and add parking facilities, located at the southeast corner of State Route 29 and White Lane within Commercial Limited (CL), Agricultural Watershed (AW), and Agricultural Preserve (AP) Zoning Districts. (Assessor's Parcel No. 030-020-029 & 030-260-035, 1111 White Lane, St. Helena).

ENVIRONMENTAL DETERMINATION: Subsequent Mitigated Negative Declaration Prepared. According to the Subsequent Negative Declaration, the proposed project would have, if mitigation measures are not included, potentially significant environmental impacts in the following areas: land use planning and transportation/traffic. If the Board decides to deny the appeal, it would need to affirmatively readopt the Subsequent Mitigated Negative Declaration prior to approving the project. The site is not on any of the lists of hazardous waste sites enumerated under Government Code Section 65962.5.

EXECUTIVE SUMMARY

The appellant, Mr. Lucio Perez, requests that the Board of Supervisors overturn the Planning Commission's November 7, 2007 approval of Major Modification (P05-0184) of the V. Sattui Winery Use Permit located at the southeast corner of State Highway 29 and White Lane. The Major Modification request consisted of essentially three components: 1) expansion of parking facilities and circulation improvements; 2) legalizing certain events and activities; and 3) expanding marketing events. At its November 7, 2007 meeting, the Planning Commission considered written and verbal testimony from staff, the project applicant, the appellant and members of the public. At the conclusion of the hearing, after careful consideration of the testimony presented, the Commission unanimously voted to approve the requested project, but reduced the number of requested marketing events and required improvement of the office and storage facilities at the rear of the site to meet zoning requirements.

Procedural Requirements:

1. Chair announces the agenda item.
2. Staff presentation: Question to the Board - hear item on the record, or hear item denovo.
3. Questions by the Board.
4. Public testimony concerning whether to hear the item denovo.
5. Member makes a motion concerning hearing format.
6. Different member seconds the motion.
7. Board discussion and debate on the motion.
8. Chair calls for the vote.
9. Staff report on appeal.
10. Chair opens public hearing:
 - A. Chair invites testimony from appellant and appellant's representatives.
 - B. Chair invites testimony from project applicant and applicant's representatives.
 - C. Chair invites testimony from any other interested parties.
 - D. (Optional) Chair invites appellant's rebuttal and project applicant's rebuttal.
 - E. Close public hearing.
11. Board discussion.
12. Member makes a Motion of Intent (tentative motion).
13. Different member seconds the motion.
14. Chair calls for the vote.
15. If roll call vote requested my member, Clerk calls the roll.
16. County Counsel and Clerk announce tentative date to return with findings supporting tentative action.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Subsequent Mitigated Negative Declaration Prepared. According to the Subsequent Negative Declaration, the proposed project would have, if mitigation measures are not included, potentially significant environmental impacts in the following areas: land use planning and transportation/traffic. If the Board decides to deny the appeal, it would need to affirmatively readopt the Subsequent Mitigated Negative Declaration prior to approving the project. The site is not on any of the lists of hazardous waste sites enumerated under Government Code Section 65962.5.

BACKGROUND AND DISCUSSION

On November 7, 2007, after considering all written and verbal evidence presented, the Planning Commission approved the Project and imposed conditions of approval addressing site improvements, legalization of existing activities, and new marketing events at the winery. On November 26, 2007, subsequent to the Planning Commission's final decision, and within the prescribed 10-day period for appeal, an appeal was filed by Mr. Lucio Perez.

CURRENT STATUS AND ACTIONS REQUESTED BY THE BOARD OF SUPERVISORS: The matter before the Board is

an appeal of the Planning Commission's approval of a Major Modification to an existing winery use permit. The appellant asserts that the Planning Commission's action was a prejudicial abuse of discretion and that the Project approval grants inappropriate land uses for lands designated as Agricultural Resource.

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 based on good cause shown. No new evidence has been presented or submitted since the Planning Commission's hearing on November 7, 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 closure 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 formal appeal dated November 24, 2007. For convenience, staff has numbered each issue and provided a summary, but recommends the Board review the actual appeal for details. Background materials from the Planning Commission's hearing are also attached, and the hearing transcripts are available.

Appeal Ground 1: In the approval of the V. Sattui Winery Use Permit (P05-0184) the County Planning Commission showed a prejudicial abuse of discretion and allowed uses which are inappropriate on certain parcels in accordance with the land use designations in the County's General Plan of the respective parcels involved with this Use Permit..... The design of the entry and exit are utilizing an Ag designated parcel in the General Plan for the purpose of supporting a separate General Plan designated Commercial parcel.... The new parking is on the Ag designated parcel and designated as "Winery Visitor Overflow." The expansion of the septic system is on the Ag designated parcel for the purposes of accommodating the increase in visitation to the Commercial designated parcel..... The Ag designated parcel is being utilized for the support of a Commercial designated parcel....

Staff Response: The appellant asserts that the Planning Commission's approval has allowed expansion of a commercial use onto agriculturally designated land. This topic was discussed in detail at the Commission hearing. The Commission's approval was based on a finding that this project did not represent expansion of a commercial use onto agricultural land, but instead allowed expansion of a pre-Winery Definition Ordinance winery in a manner consistent with the Winery Definition Ordinance and the General Plan. The Commission's action was supported by evidence in the staff report and confirmed by County Counsel as legally appropriate. To be compliant with Measure J, the County cannot approve the expansion of a commercial use onto agriculturally designated land, so the staff, County Counsel and the Commission were quite deliberate to ensure that the action was consistent with voter mandate.

The V. Sattui Winery has a lengthy and complex zoning and use permit history, which is detailed in the Planning Commission staff report for November 7, 2007. The staff report notes that approvals from 1970's and 1980's established an integral winery/deli/cheese shop use permit that spanned commercial and agricultural zoning. Wine production was authorized to occur on the agriculturally zoned property and the winery's wine tasting and retail sales, with deli food service were approved to occur on the commercially zoned property. The original parking lot for the entire facility was located on both commercial and agriculturally zoned property. No limitations on the level of public visitation were set within the deli and tasting room. The County has also previously approved

parking lot expansion solely on the agriculturally-zoned property but serving the entire winery/deli Project. This ultimately proved to be a very successful business model, but its success in the 1980's was a factor in the County's 1990 action to establish a strict definition of allowable activities at wineries.

The appellant states that new parking is for visitors and employees of the commercially designated portion of the site and states that there are no provisions or requirements that the overflow parking be used only by winery visitors and employees. This argument appears to be based on an assumption that the deli/tasting room is a separate use from that of the winery. The Commission did not agree with this argument, and based its approval on the following factors. First, the use permit previously established that there was no limit on the number of visitors to the winery tasting room/deli. Second, the current proposal involved no changes to the operational characteristics of the tasting room/deli. Third, the current proposal sought to legalize certain existing marketing activities and expand other marketing activities which all occur on the agriculturally-zoned portion of the project. Lastly, the new parking facilities, circulation improvements, and septic system are proposed to address the impacts from the expanded marketing activities and not to facilitate any expansion of the deli/tasting room.

Certainly, the appellant's points are well taken, and the Commission clearly shared some of the concerns raised. If the winery was being established today, or for that matter at any point after 1990, it would not be possible for it to be an integral use permit spanning two zoning districts. All winery functions, including accessory uses (i.e. tasting, tours, retail sales) are not allowed on Commercial Limited zoning, and likewise deli/cheese shop (and any other types of retail uses) are not allowed on agriculturally zoned property. These zoning restrictions would also apply to features such as parking and septic systems. However, the fact that a development like V. Sattui Winery is not possible today under current zoning does not disallow expansion of the existing facility. The Winery Definition Ordinance has specific allowances for the expansion of pre-Winery Definition Ordinance wineries where all existing, legally established uses can continue unimpeded and all expansions are obligated to comply with the stricter limitations of the Winery Definition Ordinance. No evidence submitted by the appellant demonstrates that the Commission allowed expansion of uses currently not allowed by zoning, nor was any evidence submitted to demonstrate that expanded activities will not comply with current, stricter Winery Definition Ordinance standards.

Appeal Ground 2: The County Planning Commission's approval of this Use Permit inappropriately ignored requirements outlined in the Winery Definition Ordinance as well as other County regulations for changes in uses for existing permitted buildings and structures as well as setback requirements for expanded or new buildings and structures.

Staff Response: The Planning Commission's approval included conditions designed to rectify existing structural violations at the winery. A house on the back of the property has been used as winery offices for many years. In addition, winery storage has been conducted adjacent to the house. The Commission required that the office and storage be brought into compliance with current regulations.

The appellant states that the approval does not consider the requirements of the ordinance and gives a blanket approval, but does not explain in detail how the approval fails to comply with the ordinance. It appears that the appellant believes the office and storage area are subject to the 300 ft. private road setback. As noted in the staff report, and discussed at the Commission meeting, the 300 ft. setback does not apply because the Winery Definition Ordinance allows winery uses to be established within buildings that legally existed prior to 1990. The subject house existed well before 1990, and the storage and office trailers are required to be removed.

The appellant also argues that the winery tasting rooms, etc. should be considered under the Winery Definition Ordinance. The Planning Commission's action did appropriately apply all requirements of the Winery Definition Ordinance to all expanded uses and activities. As with the office and storage uses discussed above, no example is given how the Planning Commission's decision failed to comply with County requirements.

Appeal Ground 3: The County Planning Commission's approval to legalize any existing illegal activities/events and additional new events seems to be a prejudicial abuse of discretion on the part of the Planning Commission. The number of events, as well as the number of allowed attendees, approved by the County Planning Commission is excessive considering the recent decisions of the County involving other wineries and their requests for increased marketing events. The County in their decisions must distinguish more clearly the difference between true marketing events and the more "for profit" commercial activities approved.

Staff Response: The Winery Definition Ordinance provides a definition of allowed marketing events. In summary, marketing events allow the marketing of wines made at the winery to customers with pre-arranged appointments. Wineries can charge for these events to recoup the costs of the event, but can only profit from sales of the winery's wine and not from other activities. The Winery Definition Ordinance sets no limits on the number and size of marketing events other than to mandate that they are established by use permit. The Planning Commission, as the ordinance designated decision-maker, is given wide deference in determining the acceptable level of marketing events for any particular winery. The action by the Planning Commission was consistent with the ordinance, and the conditions of approval require the permittee to conduct marketing events in compliance with the ordinance.

The appellant appears to disagree with the Commission's action because the winery has a very large number of marketing events and has been out of compliance with past approvals. These factors were duly considered by the Planning Commission during the hearing and in their deliberations. Ultimately, the Commission reluctantly allowed legalization of several existing marketing activities along with some additional marketing events, but in doing so they gave a strong caution to the permittee to operate the business in accordance with the use permit's requirements. The Commission did not give the applicant all of the requested marketing events. The applicant apologized for past abuses and stated they were willing to operate within the bounds of this approval.

There is no evidence that the Commission prejudiciously abused its discretion. There is no requirement that marketing at one winery be commensurate with that of another winery. There is no limit on the number or size of marketing events that can be requested and approved via use permit. Lastly, the Planning Commission has a lengthy record of thoroughly contemplating the issues and merits associated with each winery's marketing plan, and has responsibly balanced the applicant's needs with site and neighborhood constraints in order to ensure that approved marketing is appropriate for the project.

Appeal Ground 4: The County Planning Department, and as a result the County Planning Commission, inappropriately instituted a (Subsequent) Mitigated Negative Declaration, which is inadequate given the scope of the increased uses and the increase in the number of events and visitation on the two parcels considered in this Use Permit Major Modification.

Staff Response: Attached is the Subsequent Mitigated Negative Declaration originally adopted by the Planning Commission. The appellant asserts that the mitigated negative declaration did not properly assess traffic impacts both from the project as well as the project's contribution to cumulative traffic impacts. In addition, the appellant feels that the environmental document was not thorough in addressing safety and environmental constraints such as septic.

The Subsequent Mitigated Negative Declaration includes a thorough analysis of all traffic and traffic safety impacts related to the project, both individually and when considered in a cumulative context. A traffic study was prepared by a licensed traffic engineer and was performed in accordance with accepted practices for thoroughness and methodology. The traffic study and Subsequent Mitigated Negative Declaration conclude that all impacts from the Project are either less-than-significant or can be mitigated to less-than-significant levels. In addition, the Subsequent Mitigated Negative Declaration was supported by a water feasibility study prepared by a qualified professional and reviewed and endorsed by County Environmental Management and the State Regional Water Quality Control Board; it found that the project would not result in significant impacts related to the septic system.

Therefore, the Planning Commission acted appropriately and consistent with both County's Local Procedures for Implementing CEQA and State CEQA Law in adopting the Subsequent Mitigated Negative Declaration.

The legal standard to challenge the validity of an adopted Subsequent Mitigated Negative Declaration is the "substantial evidence" test. It is responsibility of the entity challenging the document to provide substantial evidence to decision-makers that facts and conclusions contained in the Subsequent Mitigated Negative Declaration are incorrect, overstated, or in any other way flawed. Although several opinions were tendered as part of the public hearing process, and later in the appeal, no fact-based evidence was entered into the record to substantiate that the conclusions contained in the proposed Subsequent Negative Declaration were flawed. A difference of opinion does not constitute "substantial evidence." In fact, the testimony objecting to the project did not even meet the lower "fair argument" legal threshold that would have applied had the project required a basic negative declaration.

SUPPORTING DOCUMENTS

- A . Appeal Application
- B . Approval Letter & Final Adopted Conditions
- C . Staff Report including Department/Agency Conditions and Correspondence
- D . Draft Subsequent Mitigated Negative Declaration
- E . Miscellaneous Project Correspondence
- F . Project Application Submittal Package
- G . Project Graphics and Plans

CEO Recommendation: Approve

Reviewed By: Helene Franchi