



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 9/16/2015

Agenda Placement: 10A

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission
FROM: Charlene Gallina for David Morrison - Director
Planning, Building and Environmental Services
REPORT BY: Linda St. Claire, Planner III Code Enforcement Officer - 707.299.1348
SUBJECT: 2014 Winery Production Review

RECOMMENDATION

2014 WINERY PRODUCTION COMPLIANCE REVIEW

CEQA Status: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

Request: Presentation, discussion and direction to staff regarding the outcome of a confidential review of wine production and visitation at wineries selected randomly by the Planning Commission in 2014.

Staff Recommendation: Review and comment on the results of the 2014 winery use permit monitoring program/compliance review.

Staff Contact: Linda St. Claire, 299-1348; Linda.StClaire@countyofnapa.org

EXECUTIVE SUMMARY

Proposed Action:

That the Commission:

1) Receive the compliance review results and direct staff to work with wineries to achieve compliance if their wine production, visitation, or grape sourcing exceed amounts specified in their use permit.

Discussion:

The 2014 compliance review analyzed eighteen (18) Napa County wineries selected at random for the purpose of verifying compliance with their use permits. Twenty wineries, and five alternates, were selected by blind draw at the Planning Commission's regular meeting of July 6, 2014. Staff contacted each winery immediately and informed them that they were chosen to participate in the audit. A number of wineries were either closed, for sale, or located in city limits with eighteen wineries remaining to participate. Letters were later sent to the eighteen wineries (see Attachment A - Request for Data) requesting the 2014 Tax Trade Bureau (TTB) production reports (used to analyze production levels by applying the formula developed for this purpose), the 2014 State of California Department of Food and Agriculture (CDFA) Grape Crush and Purchase Inquiry report, visitation numbers, and custom crush clientele. Staff also reviewed the same information for the eight wineries who failed the 2013 audit.

Staff continued to use the self reporting questionnaire for each winery to enter their visitation numbers for 2014 (tours & tastings and marketing events). Staff also visited each winery, and noted the types of wine related products for sale in wineries. See the Background section below for an analysis of the findings.

Following the presentation and discussion of the 2014 review (i.e. discussion of the findings and the steps required to bring the wineries who have failed into compliance with their use permits), staff requests that the Commission direct staff to review the wineries who have not met compliance for 2014, in 2015.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and, therefore, CEQA is not applicable.

BACKGROUND AND DISCUSSION

Wine Production Review Background:

The Department initiated an annual "spot" compliance review of winery production in 2005. At that time, a formula was developed with the assistance of local industry representatives to clarify the code definition of a winery's yearly total production capacity. The formula is consistent with the Winery Definition Ordinance references specific to winery production and production capacity and is captured in the following statement and attached diagram (see Attachment B - Winery Production Process):

1. "A winery's total annual production equals either: (1) the sum of all wine created through fermentation in a given year, plus the net total of all fermented bulk wine received and shipped in the same year, including all bottled wine received on the premises during the same year; or (2) the amount of wine bottled on the premises in the same given year, whichever is greater. This statement is quantified on the flow chart by the following annual production equation: $A + (B - C)$ or D whichever is greater. The chart further qualifies that: If $B - C$ is a negative number, total production is equal to either A or D , whichever is greater. This qualifying statement was added to the established formula during the 2008 review. It was needed to correct the circumstance where certain wineries showed the annual total of bulk wine gallons shipped (bulk wine out) was greater than the bulk wine gallons received (bulk wine in)."

Planning staff derives production volumes from a form that all wineries submit to the Department of the Treasury - Alcohol Tobacco Tax and Trade Bureau (TTB). This form is known as, *Form TTB F 5120.17, Report of Wine Premises Operations*, and identifies the amount of wine fermented, the amount of bulk or bottled wine received and shipped, and the amount of wine bottled on a monthly basis. Wineries with lower production levels are allowed to report to the Bureau on a quarterly basis (when not greater than 60,000 gallons per year) or yearly basis (when not greater than 20,000 gallons per year). Larger wineries report monthly (see Attachment C - TTB form).

The Planning Commission begins the production review by randomly selecting twenty wineries by blind draw. Prior to 2009, staff reviewed six wineries from the original twenty selected in order to expedite the review process. Since 2009, the Planning Commission has requested that all twenty wineries be reviewed. They also asked that the TTB forms for a one year period (instead of a three year period) be requested to expedite the review process.

In 2010, the Planning Commission requested staff review tours and tastings log books and marketing events for all wineries drawn in the compliance review to determine how the information was kept and whether or not they were in compliance with use permit conditions of approval regarding visitation. Each winery was asked to provide documentation showing their tours and tastings and their marketing events. Documentation was provided via mail, email or fax and arrived typically in a word table format. In subsequent years, a questionnaire was created allowing self reporting from the wineries (see Attachment D - Visitation Questionnaire). Staff was also asked to visit tasting rooms to view retail items for sale to ensure they met the definition the in WDO for "winery related items".

At the 2011 meeting, the Planning Commission also directed staff to review the use permits for each winery to determine which wineries were subject to the seventy-five percent (75%) rule, and request grape sourcing information from those wineries. All wineries in the State of California are required to submit grape sourcing information to the State of California's Department of Food & Agriculture (CDFA). Therefore, this information is readily available from the State's grape sourcing documents known as the Grape Crush Inquiry Worksheet, which wineries provide to the state as part of their normal operations (see Attachment E -Grape Crush Inquiry).

In Table Two of the California Department of Food & Agriculture's Grape Crush Report, the number of tons crushed by California processors by type, variety and reporting district where grown are reported. There are seventeen districts in the state and in 2014, the State of California crushed a total of 4,142,933.5 tons and Napa County crushed a total of 227,720.1 tons or approximately 34,158,015 gallons, a small increase in County production compared to last year.

2014 Review Results and Conclusions:

The following conclusions were derived based upon information submitted by each winery. The TTB and CDFA forms analyzed in the compliance review are not maintained as public records (See Attachment F - Results Table). Of the twenty-five wineries chosen (to include the five alternates) five wineries are not active and are not currently operating, and two are located in the City limits of Napa, Yountville, St. Helena, or Calistoga, with eighteen wineries remaining to participate.

Winery Compliance Results Table

Attachment F, 2014 Wine Compliance Results, includes information regarding the production, WDO status, winery size, actual production percentage of approved gallons per year, grape source compliance and custom crush. One column was added to the table this year (winery size) to show production as either a small (less than and equal to 30,000 gallons per year), medium (between 30,001 and 240,000 gallons per year), or large producer (over 240,001 gallons per year).

Staff was also directed to visit the wineries participating in the compliance review and observe the items for sale in

the tasting rooms to determine if the items met the general definition in Napa County Code Sections 18.16.030 & 18.20.030, which state that all products for sale at the winery must be wine related. Staff conducted a visual inspection and found products in all of the tasting rooms generally meet the Ordinance's "wine related" requirement.

Production

- | Fifteen of the eighteen wineries were found to be fully consistent with annual production levels specified in their use permits.
- | Three wineries (H, K & R) were found out of compliance for production. They will be included in a 2015 compliance review.
- | In addition to the eighteen wineries in the 2014 compliance review, staff reevaluated the three wineries from the 2013 compliance review that were found out of compliance for production. With this reevaluation, two of the wineries came into compliance for production after averaging two years of production records. The remaining winery, which had zero production in 2014, has provided TTB forms showing production for 2014 and they are now in compliance.

Visitation (Tours & Tastings and Marketing)

- | Eighteen wineries were found to be in compliance with their use permit conditions of approval for visitation (tours & tastings and marketing).
- | Eight are pre-WDO wineries (Winery Definition Ordinance) and of those, four of them are allowed to conduct public tours & tastings. One of the pre-WDO wineries has no set limits on the number of visitors for tours and tastings. The remaining ten wineries are allowed tours and tasting "By Appointment Only."
- | In addition to the eighteen wineries in the 2014 compliance review, staff re-evaluated the eight wineries from the 2013 compliance review that were found out of compliance with visitation. With this evaluation, seven of the eight wineries (D, G, J, N, O, P & T) cut back their visitation numbers. Four of the seven have applied for modifications to their use permits, with one successfully completing that process. The remaining winery (Q) has not yet decided if they will modify their use permit. However, this winery has indicated that they have returned to their approved visitation numbers, thus they are deemed compliant.

Grape Sourcing

- | There are eleven wineries in the 2014 compliance review which are subject to the 75% rule. There are four pre-WDO wineries with "appointment only" tours and tastings and seven post-WDO wineries which have conditions of approval in their use permits that indicate they must follow the 75% rule and also report annually to the Department.
- | Two wineries (K & R) did not meet their condition of approval for grape sourcing requirements. Both wineries will be required to participate in a 2015 compliance review.

Staff Recommendation:

As in previous years, staff will follow up with all wineries which exceed their production, and/or comply with the seventy-five percent rules. All wineries will be notified of the results by the end of September 2015. Those that failed will receive a Notice of Violation and will be required to participate in a 2015 compliance review. The Notice of Violation will clearly indicate the necessary actions to reach compliance and the consequences if they do not. The consequences, at the time of this printing, have yet to be determined. The current practice includes steps typical of any use permit violation; legal recourse and/or potential revocation of the use permit if compliance is not met.

At this time, staff recommends that the Planning Commission direct staff to review production and grape sourcing

of the wineries who were not compliant in the 2014 review in 2015, and hold off in selecting 25 wineries for the 2015 compliance review. In November 2015, the Board of Supervisors will meet again to decide on further enforcement actions regarding winery compliance. That decision will determine if we will conduct another compliance review of twenty wineries or if we will begin the process of a county-wide winery compliance program. If the Board directs staff to maintain the current compliance program, staff will return to draw twenty five numbers for the 2015 review.

SUPPORTING DOCUMENTS

- A . Attachment A - Request for Data
- B . Attachment B - Winery Production Process
- C . Attachment C - Tax & Trade Bureau Form
- D . Attachment D - Visitation Questionnaire
- E . Attachment E - Grape Crush Report example
- F . Attachment F - Winery Compliance Table

Napa County Planning Commission: Approve

Reviewed By: Charlene Gallina