



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 5/11/2010
Agenda Placement: 9D
Set Time: 11:00 AM PUBLIC HEARING
Estimated Report Time: 1 Hour

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Hillary Gitelman - Director
Conservation, Development & Planning
REPORT BY: Hillary Gitelman, Director - 253-4805
SUBJECT: 2009-2010 Winery-Related Zoning Ordinance Amendments and Associated Interpretive Guidance, County-Initiated Zoning Code Text Amendment No. P10-00098-ORD

RECOMMENDATION

Director of Conservation, Development, and Planning requests the following actions in order to update and clarify existing regulations concerning winery marketing and other allowed winery-accessory uses:

1. Adoption of the project Negative Declaration based on findings 1 - 5 in Exhibit "A";
2. First and final reading and adoption of an ordinance amending Sections 18.08.370, 18.08.620, 18.16.030, and 18.20.030 of the Napa County Code as they relate to the marketing of wine, food and wine pairings conducted as part of tours and tastings, and retail sale of wine related products permitted at wineries in the Agricultural Preserve (AP) and Agricultural Watershed (AW) zoning districts; and
3. Adoption of a resolution establishing interpretive guidance related to winery activities within the AP and AW zoning districts

ENVIRONMENTAL DETERMINATION: Negative Declaration Prepared. According to the proposed Negative Declaration, the proposed project would have no potentially significant environmental impacts. The project is applicable to all parcels sized to allow wine production in the AP and AW zoning districts, a number of which are included on the lists of hazardous waste sites enumerated under Government Code Section 65962.5

EXECUTIVE SUMMARY

On March 2, 2010, the Napa County Board of Supervisors considered four separate proposals addressing winery-related sections of the County Code and those activities allowed at wineries under the definition of "marketing of wine" first adopted in 1990. At the close of their March meeting, the Board directed staff to prepare an ordinance for consideration by the Planning Commission and the Board that would adopt certain limited wording changes agreed upon by wine industry interest groups (called "Proposal 1"). The Board also directed staff to prepare a draft

resolution that would provide interpretive guidance regarding the definition of "marketing of wine" similar in some ways to the official "design manual," which provides interpretive guidance for the County's N.C.C. Chapter 18.106 Viewshed Protection Program (called "Proposal 2"). The Board elected not to proceed with a separate special event permit process (called "Proposal 3"), and asked staff to work with industry groups to pursue funding for implementation of more complex code changes related to winery tours and tastings (called "Proposal 4").

On April 21, 2010, the Planning Commission held a noticed public hearing on the draft ordinance, resolution, and CEQA negative declaration prepared by staff at the Board's direction. As discussed below, the Commission made changes to several of the items included in the draft resolution and ultimately voted (with Chair Phillips recusing herself) to recommend Board of Supervisors adoption of the negative declaration and ordinance (as presented) and the resolution (as amended). At today's public hearing, the Board is being asked to consider the Planning Commission's recommendation, take public testimony, and act on the proposed negative declaration, ordinance, and resolution. Planning staff recommends approval of all three documents as presented.

PROCEDURAL REQUIREMENTS

1. Staff report
2. Open public hearing and receive public comments
3. Close public hearing
4. Motion, second, discussion, and vote to adopt the project negative declaration (Exhibit G) based on Findings 1 through 5 of Exhibit A
5. Clerk reads the ordinance title
6. Motion, second, discussion, and vote to waive the balance of the reading of the ordinance
7. Motion, second, discussion, and vote to find the ordinance consistent with the County's General Plan based on Finding 6 of Exhibit A and to adopt the ordinance (Exhibit D)
8. Motion, second, discussion, and vote to approve the proposed interpretive guidance resolution (Exhibit F), finding that it would interpret and not conflict with provisions of the adopted ordinance

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

Negative Declaration Prepared. According to the proposed Negative Declaration, the proposed project would have no potentially significant environmental impacts. The project is applicable to all parcels sized to allow wine production in the AP and AW zoning districts, a number of which are included on the lists of hazardous waste sites enumerated under Government Code Section 65962.5

BACKGROUND AND DISCUSSION

The Winery Definition Ordinance (WDO) was adopted in 1990 and is codified in various sections scattered throughout the County's zoning code. For more than 20 years, the WDO has successfully limited commercial activities in Napa County's agricultural zoning districts by ensuring that wineries remain focused on the production of world-class wines. The WDO requires that tours, tastings, and the marketing of wine remain accessory and subordinate to a winery's primary (and primarily *agricultural*) function- winemaking.

Historically, discussions about changing the WDO have always elicited passionate public and industry response, and the current process has been no exception. The present iteration, which began in the fall of 2009 with a proposal to substantially expand the class of social and cultural events allowed at wineries, has evolved to the point where only modest changes are now proposed. As Commissioner Fiddaman said at the April 21 Planning Commission hearing, the project may have started out as an attempt to stimulate the local economy, but it has since morphed into an update of the County's nearly 20 year old definition of wine marketing to reflect changes in the industry since 1990.

Proposed Ordinance

The proposed ordinance would amend four sections of the zoning ordinance pertaining to wineries approved after the effective date of the WDO in 1990 in a manner agreed upon by the four principal wine industry groups. The amendments would clarify the definition of "marketing of wine," would amend the definition of "tours and tastings" to explicitly permit food-wine pairing, and would amend two other sections to permit retail sale of "wine related items." In staff's view, none of the proposed changes would alter the fundamentals of the original WDO, which provided for a 75% grape source rule, tours and tastings by appointment only, and required marketing activities to be incidental and subordinate to wine production.

The Planning Commission held a noticed public hearing and discussed the proposed ordinance at their April 21, 2010 meeting. Written and oral comments provided by the public included widely differing views: from those who believed that weddings and similar events should be allowed at wineries, to those who found the ordinance overly restrictive of (what they believed to be) legitimate winery marketing, to those who feared that it would open the door to the widespread commercialization of Napa County's agricultural lands. Opinion amongst the various groups representing the wine industry was much more unified, with the Farm Bureau, Grapegrowers, Vintners, and Winegrowers all supporting the draft ordinance as written. The Planning Commission voted 3-1 (Chair Phillips recused herself) to recommend Board of Supervisors approval with no changes to the text of the ordinance.

Proposed Resolution

The proposed resolution would enact statements of policy that are intended as interpretive guidance for applicants, members of staff, and owners and operators of wineries approved since adoption of the WDO in 1990. The resolution articulates a number of examples and statements intended to foster a common understanding of (a) the types of events that are permitted and not permitted under the definition of "marketing of wine" (b) concerns about converting existing structures into wineries if those structures are brand new; (c) the relationship between marketing, location, and production volumes; (d) annual "spot" audits; and (e) temporary certificates of occupancy. If adopted, the proposed resolution would provide interpretive guidance and would not change the substance of the existing zoning ordinance or the draft ordinance under review here. The resolution would remain effective until repealed or modified by a subsequent resolution.

The Planning Commission also discussed and took public comment on the proposed resolution at their April 21, 2010 meeting. Several sections of the proposed resolution were fairly controversial, with disagreement centering on the examples of allowed and not-allowed marketing events enumerated under item "I." (*Events Permitted as part of "Marketing of Wine"*) and on the nexus between winery production and the intensity of permitted winery marketing activities proposed at item "IV." (*Marketing Programs Appropriate to Production Volumes*). In the end, industry groups and Planning Commission opinion coalesced around the following changes: 1.) examples of allowed business events at item "I." were modified in part, 2.) a note was added clarifying that the list of cultural, social, and business marketing event examples included in item "I." was not intended to be complete or exhaustive, and 3.) item "IV.", which associated the size of marketing programs to production volumes was deleted in favor of a more general nexus between wine production, winery location, and winery marketing at item "III." With these changes, along with a minor non-substantive change proposed by the Planning Director at page two of the resolution, the Planning Commission voted 4-0 to recommend Board adoption of the draft resolution.

CEQA Compliance (Proposed Negative Declaration)

An initial study has been prepared and a negative declaration is proposed for adoption in accordance with the California Environmental Quality Act (CEQA). Because the proposed ordinance and resolution would not substantively modify fundamental principles of the original WDO, and would neither encourage nor discourage additional wineries or additional activities at wineries, the initial study finds they would not have a significant effect on the environment. The Planning Commission discussed and took public comment on the proposed negative declaration at their April 21, 2010 meeting and voted to recommend its adoption to the Board of Supervisors.

A Note on Process

Chapter 18.136 of the Napa County Code outlines the process by which amendments to the Zoning Code are reviewed and ultimately acted on. Consistent with that chapter, the Planning Commission has conducted a public hearing on the draft ordinance and has forwarded a recommendation of approval to the Board of Supervisors. At this point, the Board may either adopt or deny the ordinance as recommended by the Planning Commission. Should you instead decide to amend the proposed ordinance, it may be necessary (depending on the nature of the amendments) to refer the matter back to the Planning Commission for their review prior to your final action. The proposed resolution can be amended at the Board's discretion --changes to it would not necessarily require referral back to the Planning Commission.

Finally, there have been a number of comments about code enforcement throughout the planning process associated with the proposed ordinance. While the enforcement issue is touched upon in the proposed resolution, a more thorough discussion of winery-related enforcement issues is planned for May 18, 2010, when the Board and the Planning Commission will meet in joint session for their annual review of the Conservation Development and Planning Department's code enforcement program.

SUPPORTING DOCUMENTS

- A . Exhibit A - Findings
- B . Exhibit B - Notification of Planning Commission Recommendation
- C . Exhibit C - Proposed Ordinance, Changes Tracked
- D . Exhibit D - Proposed Ordinance, Clean
- E . Exhibit E - Proposed Resolution, CDPC Recommended Changes Tracked
- F . Exhibit F - Proposed Resolution, Clean
- G . Exhibit G - Initial Study and Negative Declaration
- H . Exhibit H - Public Comments Presented to CDPC on April 21, 2010

CEO Recommendation: Approve

Reviewed By: Helene Franchi