



A Tradition of Stewardship
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Agenda Date: 2/20/2013

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Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission
FROM: Hillary Gitelman - Director
Planning, Building and Environmental Services
REPORT BY: Hillary Gitelman, Director - 253-4805
SUBJECT: Winery Definition Ordinance & 75% Rule Update

RECOMMENDATION

75% RULE (WINERY DEFINITION ORDINANCE) INFORMATIONAL ITEM

CEQA Status: Not applicable; no action is requested.

Staff Recommendation: Receive an informational presentation about winery production in Napa County and the grape source requirement that applies to (a) wineries approved in agricultural areas since adoption of the Winery Definition Ordinance (WDO) in 1990 and (b) increases in production at pre-WDO wineries where the winery development area is expanded. The Commission may accept public comments, engage in discussion, and provide direction to staff as desired. No action is requested.

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EXECUTIVE SUMMARY

Since the Winery Definition Ordinance (WDO) was adopted in early 1990, new wineries and certain increases in production at preexisting wineries have been subject to the "75% rule," which requires that 75% of the fruit used to make wine is sourced in Napa County.

In the first half of 2012, the Planning Commission reviewed requests by two existing wineries for use permit modifications to allow substantial, additional wine production subject to the 75% rule at their facilities. During the Commission's review, two "big picture" questions were raised that were not specific to the individual applications being reviewed:

1. What are the policy implications if the County has approved enough wineries subject to the 75% rule that

- the wineries (at maximum production) could use up all of the fruit that is grown in Napa County?
2. When pre-WDO wineries expand and are subject to the 75% rule for their new production, how must they demonstrate compliance?

On July 9, 2012, Planning staff requested input from industry groups to inform a further discussion of these two questions. This agenda item is intended to summarize input received and staff's understanding of the issues involved. While no specific action is requested, the Commission could provide direction to staff if it believes further outreach or actions are appropriate. Please see the Background section below for more information.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Not applicable; no action is requested.

BACKGROUND AND DISCUSSION

The Winery Definition Ordinance (WDO) was adopted by the Board of Supervisors and became effective in early 1990. The ordinance, which was the subject of an Environmental Impact Report (EIR) and extensive deliberations by the County Planning Commission, is attached, and was codified throughout the zoning code. Those sections have been modified only slightly since 1990 and there have been no changes to the WDO's basic tenets about grape sourcing and the grandfathering of pre-WDO wineries.

Specifically, all wineries approved in agricultural areas since adoption of the WDO are subject to a grape source requirement referred to as the 75% Rule. The rule requires the winery to ensure that at least 75% of the fruit used every year is sourced in Napa County. Wineries in the incorporated cities/town and County industrial areas are not subject to the grape source requirement (unless the incorporated jurisdiction has its own 75% Rule).

Also, pre-WDO wineries are not subject to the 75% Rule, except that production increases at pre-WDO wineries are subject to the 75% Rule if the winery has expanded or proposes to expand the "winery development area" (a term which is defined in the WDO). Planning staff uses aerial photographs, permit records, site visits, and other available evidence to determine when expansions have occurred.

The County's General Plan was amended concurrent with the WDO's adoption (attached), and was updated in 2008 to include a revised definition of agriculture and a policy summarizing the WDO as follows:

- *"Agriculture" is defined as the raising of crops, trees, and livestock; the production and processing of agricultural products; and related marketing, sales and other accessory uses. Agriculture also includes farm management businesses and farm worker housing. (Policy AG/LU-2)*
- *The 1990 Winery Definition Ordinance recognized certain pre-existing wineries and winery uses as well as new wineries. For wineries approved after the effective date of that ordinance, agricultural processing includes tours and tastings by appointment only, retail sales of wine produced by or for the winery partially or totally from Napa County grapes, retail sale of wine-related items, activities for the education and development of consumers and members of the wine trade with respect to wine produced by or at the*

winery, and limited non-commercial food service. The later activity may include wine-food pairings. All tours and tastings, retail sales, marketing activities, and non-commercial food service must be accessory to the principal use of the facility as an agricultural processing facility. Nothing in this policy shall alter the definition of "agriculture" set forth in Policy AG/LU-2. (Policy AG/LU-13)

As illustrated by the attached graphs, the grape harvest in Napa County fluctuates over time and has increased between 25 and 50 percent since 1990. The number of permitted wineries and the total permitted wine production areas has also increased: the number of wineries in agriculturally zoned areas has increased from 212 to 404 (190%), and permitted wine production in those areas has increased from 26 million gallons to 62 million gallons (238%). These dramatic increases are tempered by the fact that there are some permitted but unbuilt wineries, not all existing wineries produce the maximum amount permitted by their use permit, and not all wine is made exclusively with Napa County fruit, since pre-WDO wine production (26 million gallons) is not subject to grape source requirements and some percentage of post-WDO wine production is also not subject to those requirements (i.e. 25% of wine produced at wineries approved since 1990, plus some of the increases in wine produced at pre-WDO wineries do not need to use Napa fruit). The data provided must also be considered in light of the (unknown) amount of Napa County fruit shipped out of county over time.

Nonetheless, the data illustrates the relevance of question number one in the Executive Summary: What are the policy implications if the County has approved enough wineries subject to the 75% rule that the wineries(at maximum production) could use up all of the fruit that is grown in Napa County? The complexities of the winery data also gave rise to question number two: When pre-WDO wineries expand and are subject to the 75% Rule for their new production, how must they demonstrate compliance?

Based on discussions with industry group representatives and other stakeholders, there is wide agreement about the importance of the WDO and the 75% Rule for the protection of Napa County agricultural lands. Also, the grandfathering of pre-WDO wineries as legal uses operating under a different set of rules was a fundamental component of the WDO. In light of this, there appears to be general industry agreement on some practical responses to the first question posed. Specifically:

1. Planning staff and industry groups appear to agree that the 75% Rule should not be applied in the Airport Industrial Area because the intent of the 75% Rule was to limit new development on agricultural lands unless the development is supportive of Napa County agriculture.
2. Planning staff and industry groups appear to agree that the standard conditions of approval applied to new wineries or production increases subject to the 75% Rule could be more explicit on the subject. For example, a condition could make it explicit that approval of winery production subject to the 75% rule is not a guarantee that the winery can produce the maximum amount permitted, since the 75% rule in combination with limited supplies of Napa County fruit may limit production volumes. (Another possible condition could make it explicit that compliance with the 75% rule is based on the amount of wine produced in a given year, not on the maximum permitted capacity so it's more clear that a winery permitted to make 100,000 gallons cannot make 25,000 gallons of wine with non-Napa fruit without making 75,000 gallons of wine with Napa fruit.)
3. Planning staff and industry groups appear to agree that the Planning Commission should use common sense ("believability") when reviewing use permit applications and use permit modification requests involving substantial amounts of new production subject to the 75% Rule. In these instances, a condition of approval should require proof of compliance with the 75% Rule as the production is phased-in over time. (i.e. the winery would demonstrate compliance during phase one before being permitted to proceed to phase two.)
4. Planning staff and industry groups also appear to agree that enforcement is crucial and that the County must be willing to hold revocation hearings if wineries subject to the 75% Rule violate the rule and refuse to bring their operations into compliance within a reasonable period of time. To identify potential violations, the Commission agreed to add compliance with the 75% rule to its annual "spot" audit of use permit

compliance.

There also appears to be general industry understanding/agreement that the County does not track the amount of Napa County fruit (if any) used when wine production is not subject to the 75% Rule, and that the ratio of Napa County fruit to non-Napa County fruit at pre-WDO wineries may change over time (for example, with changes of ownership, changes in business practices, and changes in the grape supply/market). This has led to some debate with regard to the second question posed above.

As discussed by the Planning Commission when it originally considered the WDO, a pre-WDO winery that has historically used Napa County fruit (although not required to do so) may apply that fruit to new production when it increases production in a manner that is subject to the 75% Rule. This potential was referred to as "source shifting" in 1989, and there is no way to know how much has occurred because the County does not monitor grape sourcing at pre-WDO wineries. In other words, pre-WDO wineries seeking expansion are required to comply with the 75% rule requirement prospectively – for the new production only – and the proposed expansion does not make the original production at pre-WDO wineries suddenly subject to grape source requirements.

Planning staff and County Counsel believe that changing the application of the grape source requirement so that it applies to pre-WDO production (at the time of an expansion or at any other time) would necessitate a change to the WDO and there does not appear to be industry support/agreement about such a change. Fortunately, there are relatively few instances when the Commission considers pre-WDO winery expansions subject to the 75% Rule that could benefit from "source shifting." Based on Planning Commission minutes, the County has approved 55 new wineries subject to the 75% rule in the last five years, with a total maximum production of 2.5 million gallons. In the same period, the County approved 22 modifications allowing expanded capacity, with a total maximum increase in production of about 4.5 million gallons. Of the approved production increases, 12 were at pre-WDO wineries in agricultural areas, with a combined increase in maximum production of 2.7 million gallons, of which 1.4 million was at the Mondavi Winery (P07-00435). Further research would be required to determine if the expanded capacity in all cases was subject to the 75% Rule (since some expansions may not have increased the "winery development area"), and when there was the potential for significant "source shifting." In some cases, the pre-WDO production was small and the approved increase was large, so even if "source shifting" had been employed, the expansion necessarily involved a substantial amount of "new" Napa County fruit.

Conclusion:

No action by the Commission is requested, however, if the Commission concurs with points two and three above, Planning staff would work with stakeholders to develop/refine standard condition language for future use by the Commission. No further action is required in response to points one and four or with regard to the issue of "source shifting." Based on input received, Planning staff is not recommending changes to the zoning code (WDO) at this time.

SUPPORTING DOCUMENTS

- A . Winery Definition Ordinance (1990)
- B . General Plan Amendments Adopted Concurrent with WDO
- C . Napa County Grape Harvest Totals Over Time
- D . Napa County Wineries and Wine Production Totals Over Time

Napa County Planning Commission: Approve

Reviewed By: John McDowell