



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 7/17/2013

Agenda Placement: 10A

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission
FROM: Charlene Gallina for Hillary Gitelman - Director
Planning, Building and Environmental Services
REPORT BY: LINDA STCLAIRE, PLANNER III - 707.299.1348
SUBJECT: 2012 Winery Production Review

RECOMMENDATION

2012 WINERY PRODUCTION AUDIT

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 2012, followed by selection of 2013 audit participants.

Staff Recommendation: Review and comment on the results of the 2012 winery use permit monitoring program and select 2013 participants.

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

EXECUTIVE SUMMARY

Proposed Actions:

That the Commission:

- 1) Receive the audit 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; and
- 2) Select new participants for the 2013 review, expanding the scope of the audit to include twenty use permits, not twenty winery use permits.

Discussion: The 2012 Audit analyzes twenty(20) Napa County wineries selected at random for the purpose of verifying compliance with their use permits. Those wineries were selected by blind draw at the Planning

Commission's regular meeting of July 18, 2012. The first winery in the draw was placed back in the draw for the 2013 audit after another winery owner requested participation in the audit. Staff contacted each winery immediately and informed them that they were chosen to participate in the audit. Letters were later sent to the twenty wineries requesting the 2012 Tax Trade Bureau (TTB) production reports, visitation numbers, custom crush clientele, and by request of the stakeholders, a statement of the number employees with Food Handler permits. These documents were used to analyze production levels by applying the formula developed for this purpose. The Commission also directed staff to determine if the seventy-five percent (75%) rule was being followed and this was determined by requesting and analyzing each winery's State of California Department of Food and Agriculture (CDFA) Grape Crush and Purchase Inquiry report.

Staff created a self reporting questionnaire that the wineries could use to enter data regarding their visitation (tours & tastings and marketing events). Staff also visited each winery that had a tasting room, requested log sheets to analyze visitation and noted the types of wine related products for sale in wineries. See the Background section below for an analysis of the Audit findings.

Following the presentation and discussion of the 2012 review (i.e. discussion of the review findings and the steps required to bring the eleven wineries into compliance with their use permits), staff requests the Commission select twenty new use permits for the 2013 production review.

The Commission has directed staff to expand the audit in 2013 to include all approved use permits, instead of focusing only on winery use permits. At this time a complete database of all use permits does not exist and therefore, all use permits processed electronically (approved since 2003) have been included in this year's draw. Future draws will continue to include more use permits, until the department completes the scanning process to digitize all permits, which will allow for the creation of a database of all use permits. Like the winery database, each use permit will be assigned a number, thus continuing the practice of maintaining anonymity.

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" audit 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 Flow Chart):

- "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).

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. (The Commission noted that staff would have the option of averaging for an additional two years if necessary to confirm compliance.)

In 2010, the Planning Commission requested staff review tours and tastings log books and marketing events for all wineries drawn in the audit 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. Therefore, this information is readily available from the State's grape sourcing form known as the Grape Crush Inquiry Worksheet (California Department of Food & Agriculture), which wineries provide to the state as part of their normal operations (see Attachment E).

Staff was also asked by industry representatives to gather data on the number of food handlers permits at each winery. The permits are required by the State of California for any business that serves food. Many wineries are offering food pairings with their wine and the numbers indicate that those wineries allowed to serve food are taking advantage of the courses offered for the food handler licence and ensuring that their employees are certified. Four wineries which are allowed to serve food have reported their employees have been certified as food handlers, a total of 55 people.

2012 Review Results and Conclusions:

The following conclusions were derived based upon information submitted by each winery. It should be noted that the names of all wineries selected for review are kept confidential. The TTB and CDFA forms analyzed in the audit are not maintained as public records.

PRODUCTION

- Sixteen wineries were found to be fully consistent with annual production levels specified in their use permits.
- One winery (T) was found in compliance for production after averaging of three years of data. We are waiting for additional TTB forms in order to analyze the production from Winery M. The remaining two wineries out of compliance for production (L & O) have currently, or will soon, submit applications for modification to their use permits (see Attachment F). Generally, the wineries that are out of compliance are small wineries (less than 20,000 gallons per year).
- Two columns were added this year which highlight the permitted production and the actual production of each winery. Actual production was 43% of the permitted production.
- In addition to the twenty wineries in the 2012 audit, staff re-evaluated three wineries from the 2011 audit that were found out of compliance. With this re-evaluation, two wineries were found compliant after averaging three years of production records. The remaining winery had inadvertently given us records for two operations. Once we determined this error, the winery was found compliant.

VISITATION

- Seven wineries were found to be out of compliance for visitation. Four wineries were found to be out of compliance for Tours and Tastings, one winery was found to be out of compliance for Marketing, and two wineries were found to be out of compliance for both Tours & Tastings and Marketing (see Attachment G).
- All of the wineries maintained adequate records.
- Four of the twenty wineries are pre-WDO (Winery Definition Ordinance) and those four are allowed to conduct public tours & tastings.
- Fifteen wineries are allowed tours and tasting "By Appointment Only." Four are Pre-WDO wineries. The remaining winery does not have authorization to conduct tours and tastings.
- Three non-compliant wineries from the 2011 audit agreed to reduce their visitation numbers. They were reviewed during the 2012 audit and found compliant.

Some of the non-compliance issues are small. For example, Winery F held only one marketing event and Winery C's tours and tastings were only over by 15 visitors.

Based upon the audit results, the seven non-compliant wineries (C, F, H, L, M, Q & T) will be asked to reduce their visitation or modify their use permits. Averaging is not an option due to the potential impacts of traffic, as well as, impacts upon septic systems that have been sized to approved visitation numbers.

Staff was also directed to visit the wineries participating in the audit 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. Of the twenty wineries, only fourteen currently have tasting rooms. Staff conducted a visual inspection and found products in the tasting rooms generally meet the Ordinance's "wine related" requirement.

GRAPE SOURCING

- There were sixteen wineries in the 2012 audit which were subject to the 75% rule.
- All of the wineries submitted their Grape Crush Inquiry Worksheet. Each was evaluated and found compliant.

Staff Recommendation:

At this time, staff is recommending that the Commission discuss the audit results, provide direction regarding wineries that are out of compliance and provide direction regarding the addition of non-winery use permits to the annual audit.

Staff recommends one final action, that the Planning Commission conduct a blind draw of twenty use permits (plus 5 alternates) for the 2013 review. As a reminder, the names of all entities selected for review are kept confidential, and the TTB forms and Grape Sourcing forms used in the audit are not maintained as public records.

SUPPORTING DOCUMENTS

- A . Exhibit A Request Letter
- B . Exhibit B Winery Production Process
- C . Exhibit C Sample TTB Form
- D . Exhibit D Visitation Questionnaire
- E . Exhibit E Sample Grape Crush Inquiry
- F . Exhibit F Production Results
- G . Exhibit G Visitation Results

Napa County Planning Commission: Approve

Reviewed By: John McDowell