



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 7/18/2012

Agenda Placement: 10A

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission
FROM: Charlene Gallina for Gitelman, Hillary - Director
Conservation, Development & Planning
REPORT BY: LINDA STCLAIRE, PLANNER II - 707.299.1348
SUBJECT: 2011 Winery Production Review

RECOMMENDATION

2011 WINERY PRODUCTION AUDIT

Presentation, discussion and possible action regarding the outcome of a confidential review of wine production capacity and visitation at wineries selected randomly by the Planning Commission in 2011, followed by selection of 2012 audit participants.

Staff Recommendation: Review and comment on the results of the 2011 winery production monitoring program and select 2012 participants.

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EXECUTIVE SUMMARY

Proposed Actions:

That the Commission:

- 1) Receive the audit results and direct staff to work with wineries to achieve compliance if either their wine production or visitation exceed amounts specified in their use permit; and
- 2) Select new wineries for the 2012 review.

Discussion: The 2011 Wine Production Review analyzes annual wine production and visitation at twenty-one (21) Napa County wineries selected at random for the purpose of verifying compliance with their use permits. (Visitation includes both Tours & Tastings and Marketing Events). Twenty wineries were selected by blind draw at

the Planning Commission's regular meeting of July 20, 2011. One additional winery was carried over from the 2010 audit for a total of twenty-one wineries in the 2011 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-one wineries requesting the 2011 Tax Trade Bureau (TTB) production reports and visitation numbers. 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.

Staff created two self reporting questionnaire forms the wineries could use to enter their visitation totals (tours & tastings and marketing events) and grape sourcing. Staff also visited each winery, requested log sheets to analyze visitation and noted the types of wine related products for sale in wineries that had tasting rooms.

This is the second year that the audit has evaluated visitation. Compliance can only be ascertained if adequate records are being kept. This is the first year that the audit has evaluated grape sourcing and sale of wine related products. Grape sourcing was evaluated based on winery responses to a simple questionnaire and did not focus on pre-WDO wineries. In future years, compliance with the 75% rule can be ascertained by requesting winery CDFA (California Department of Food and Agriculture) forms and more attention can be focused on the pre-WDO wineries. The 2011 Audit resulted in six wineries out of compliance, three in production and three in visitation, although two of the wineries that are out of compliance for production, could be found in compliance with averaging of three to five years of data.

This item also provides an opportunity for staff to give a status report on the recent industry discussion regarding grape sourcing, the 75% rule and overall winery approvals.

Following the presentation and discussion of the 2011 review (i.e. discussion of the review findings and the steps required to bring the six wineries into compliance with their use permits), staff requests the Commission select twenty new wineries for the 2012 production review.

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 Planning 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 (see Attachment A - 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) (see Attachment B).

The Planning Commission begins the production review by randomly selecting twenty wineries by blind draw. Prior to 2009, in previous years, staff had reviewed six wineries from the original twenty selected in order to expedite the review process. Since 2009, the Planning Commission has selected twenty wineries by blind draw and requested that all twenty wineries be reviewed instead of a reduced number. 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. 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. Per Commission direction, a questionnaire was created allowing self reporting from the wineries (see Attachment D - Visitation Questionnaire).

At the 2011 meeting, the Planning Commission also requested staff review the use permits for each winery to determine which wineries were subject to the seventy-five percent (75%) rule, and requested grape sourcing information from those wineries. It should be noted that 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 but will require that the permittees provide the State's grape sourcing form known as the Grape Crush Inquiry Worksheet (California Department of Food & Agriculture). Wineries should be willing to provide this information for future audits, since they currently provide the grape crush inquiry worksheet to the State as a part of their normal operations. Therefore, it is not an additional burden to provide this form for the audit.

2011 Review Results and Conclusions:

Staff was directed to gather information to determine compliance on production, visitation, and grape sourcing. Staff also conducted site visits to assess whether retail sales were limited to "wine related items." Production compliance was determined by review of the TTB forms and visitation was determined by reviewing visitation logs for each winery. Grape sourcing (to determine if wineries are complying with Napa County's 75% rule) was determined through a self reporting questionnaire (see Attachment E). Future grape sourcing determination can also be made by requesting copies of the information submitted for the State of California Department of Food and Agriculture's Grape Crush Report (see Attachment F).

Based upon TTB information and log book information submitted by the wineries' representatives, and as shown on the attached 2011 Wine Production Compliance Summary Sheet (Attachment G or H), the following conclusions were derived for the 2011 audit. It should be noted that the names of all wineries selected for review are kept confidential, and the TTB forms used in the audit are not maintained as public records.

PRODUCTION

- Three out of the twenty-one wineries were found to be out of compliance in regards to approved production levels based on one year's worth of data, although two of these may be in compliance if three to five years of data is averaged.
- Four of the remaining eighteen wineries did not produce for the year.
- Fourteen were found to be fully consistent with annual production levels specified in their use permits.

Based on these results, the three non-compliant wineries (Wineries L, M & N) will be asked to provide additional two years of production data (via TTB forms) to allow for averaging as a means to demonstrate compliance. If they are still found to be out of compliance, they will be required to modify their use permits.

VISITATION

- Three wineries (C, H & Q) were found to be out of compliance for Tours and Tastings.
- Of the eleven wineries allowed marketing, all were found to be compliant.
- All of the wineries maintained adequate records.
- Thirteen of the twenty-one wineries are pre-WDO (Winery Definition Ordinance) and five are allowed to conduct public tours and tastings.
- Seven wineries are allowed tours and tasting "By Appointment Only" and the remaining nine do not have tours and tastings.
- One additional winery, Winery "R", that was excused from the 2010 audit was included in the 2011 audit. They were found to be in compliance.

Based upon these results, the three non-compliant wineries (Wineries C, H, & Q) 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.

GRAPE SOURCING

- There were eight wineries in the 2011 audit which were subject to the 75% rule.
- Two of them are pre-WDO wineries who obtained modifications to their use permits after the WDO was established. These modifications included changes to the winery development area. According to the WDO, a change to the development area is necessary before the rule applies and any increases in production will be subject to the 75% rule.
- Eight wineries received a self-reporting questionnaire and seven wineries responded. Each reported their grape source as 100% Napa grapes.
- One winery did not respond to the request.

2010 AUDIT

- Two wineries from the previous audit in 2010 were re-evaluated due to non-compliance in last year's audit.
- One winery presented additional TTB forms which, when averaged, were found to be in compliance.
- The remaining winery was unable to reach compliance through averaging and has indicated they would

modify their permit. A Use Permit modification application has been submitted to modify the production.

Interestingly, this blind draw included five wineries with Small Winery Exemption permits. These exemptions were issued in the latter half of the 1980s and the wineries are small with production typically under 20,000 gallons per year. No tours or public tasting or marketing are generally allowed at these facilities.

Staff was also directed to visit all of 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-one wineries, only twelve currently have tasting rooms. Staff conducted a visual inspection of these wineries and found products in the tasting rooms generally meet the Ordinance's definition of "wine related".

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 as to whether or not to obtain Grape Crush Reports for future audits and wineries that are required to follow the WDO's 75% rule.

Staff recommends one final action, that the Planning Commission conduct a blind draw of twenty wineries for the 2012 review. As a reminder, the names of all wineries selected for review are kept confidential, and the TTB forms used in the audit are not maintained as public records.

SUPPORTING DOCUMENTS

- A . Winery Production Process Flow Chart
- B . Department of the Treasury Alcohol Tobacco Tax and Trade Bureau (TTB)
- C . Request Letter to Wineries
- D . Visitation Questionnaire
- E . Grape Source Questionnaire
- F . California Department of Food and Agriculture Grape Sourcing Worksheet
- G . 2011 Wine Production Compliance Summary Table 8x11
- H . 2011 Wine Production Compliance Summary Table 11x17

Napa County Planning Commission: Approve

Reviewed By: Charlene Gallina