



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 7/20/2011

Agenda Placement: 8A

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission
FROM: Melissa Gray for Hillary Gitelman - Director
Conservation, Development & Planning
REPORT BY: LINDA STCLAIRE, PLANNER II - 707.299.1348
SUBJECT: 2010 Winery Production Review

RECOMMENDATION

2010 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 2010, followed by selection of 2011 audit participants.

Staff Recommendation: Review and comment on the results of the 2010 winery production monitoring program and select 2011 participants.

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EXECUTIVE SUMMARY

Proposed Action:

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;
- 2) Select new wineries for the 2011 review.

Discussion: The 2010 Wine Production Review analyzes annual wine production and visitation at twenty Napa County wineries selected at random for the purpose of verifying compliance with their use permits. (Visitation includes both Tours & Tastings and Marketing Events.) The twenty wineries were selected by blind draw at the

Planning Commission's regular meeting of July 7, 2010. Staff then requested each winery's 2010 Tax Trade Bureau (TTB) production reports and used them to analyze production levels by applying the formula developed for this purpose (see attached diagram). Staff also requested log sheets from each winery to determine visitation (tours & tastings and marketing events). Since this is the first year that the audit has evaluated visitation, the primary goal was to ascertain if adequate records are being kept.

Out of the twenty wineries selected, two were found to be out of compliance in regards to approved production levels based on one year's worth of data. Of the other eighteen wineries, one requested and received a modification to their use permit to achieve compliance, seven were found to be wholly consistent with annual production levels specified in their use permits, five have not yet been constructed, and two have closed. One winery did not respond after three attempts by staff to contact the winery including by certified mail. All of the wineries maintained adequate records of tours and tastings, which is a use permit requirement, but records of marketing events (which is not an explicit requirement) were more mixed.

In addition to the twenty 2010 wineries reviewed, nine wineries found to be out-of-compliance in the 2009 winery audit were carried over for a re-review. Staff analyzed these wineries and found seven in compliance and the two remaining wineries have announced their intent to modify their use permits this year.

Following presentation and discussion of the 2010 review (i.e. discussion of the review findings and the steps required to bring all of the wineries into compliance with their use permits), staff requests the Commission select new wineries for the 2011 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 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 gpy) or yearly basis (when not greater than 20,000 gpy).

The Planning Commission begins the production review by randomly choosing twenty wineries by blind draw. In previous years, staff has reviewed six wineries from the original 20 selected in order to expedite the review process. Once selected, the Planning Department sends a written request to the winery owners to provide copies of their TTB forms for the year or years being reviewed. (See attached Request Letter)

At the public hearing on July 15, 2009, the Planning Commission selected 21 wineries by blind draw and requested that all 21 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 three to five years if necessary to confirm compliance.)

At the public hearing on July 7, 2010, the Planning Commission also requested staff to review tours and tastings log books and marketing events for all wineries drawn in the audit. 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.

2010 Production Review Results and Conclusions:

Based upon TTB information and log book information submitted by the wineries' representatives, and as shown on the attached 2010 Wine Production Compliance Summary Sheet, ten out of the twenty wineries are compliant while two are over their approved production limits and one has not responded to repeated requests for information. Five wineries have not yet been constructed and two have closed.

The two non-compliant wineries, (Wineries F & L), will be asked to provide additional years of production data (via TTB forms) to allow for averaging as a means to demonstrate compliance. If they are still found out of compliance, staff intends to issue notices of violation to these wineries and require a use permit modification. The remaining winery which has not responded to repeated attempts for information will be added to the 2011 audit.

In addition to the twenty 2010 wineries reviewed, staff carried over and reviewed none non-compliant wineries identified during the 2009 review. Seven are now in compliance and two have indicated their intention to modify their use permits this year. Staff will report on the status of these actions at the time of next year's review.

Final recommendation:

Staff recommends one final action, which is a blind draw of 20 more wineries for the 2011 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
- B . 2010 Wine Compliance Summary Sheet
- C . Request Letter

Napa County Planning Commission: Approve

Reviewed By: Melissa Gray