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Agenda Date: 7/7/2010  
Agenda Placement: 10A

## Napa County Planning Commission Board Agenda Letter

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**TO:** Napa County Planning Commission  
**FROM:** Melissa Gray for Hillary Gitelman - Director  
Conservation, Development & Planning  
**REPORT BY:** Trish Hornisher, PLANNER III - 299-1349  
**SUBJECT:** 2009 Winery Production Review

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### **RECOMMENDATION**

#### **2009 WINERY PRODUCTION AUDIT**

Presentation, discussion and possible action regarding the outcome of a confidential review of wine production capacity at wineries selected anonymously by the Planning Commission in 2009, followed by selection of 2010 audit participants. Direct staff to review the selected 2010 wineries for compliance with their approved allowances for visitation and marketing as well as production.

**Staff Recommendation:** Review and comment on the results of the 2009 winery production monitoring program and select 2010 participants. Direct staff to formulate a program to monitor approved visitation for Tours & Tasting and Marketing Events.

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### **EXECUTIVE SUMMARY**

#### **Proposed Action:**

That the Commission:

- 1) Direct staff to address identified use permit violations;
- 2) Select new wineries for the 2010 review which will consider visitation and marketing as well as production.

**Discussion:** The 2009 Wine Production Review analyzes the annual wine production levels of twenty-one Napa County wineries for the purpose of verifying production compliance with their use permits. The twenty-

one wineries were selected by blind draw at the Planning Commission's regular meeting of July 16, 2009. Staff then requested each winery's 2008 Tax Trade Bureau production reports and used them to analyze production levels by applying the formula developed for this purpose (see attached diagram). Out of the twenty-one wineries selected, five were found to be out of compliance. Of the sixteen remaining wineries, twelve were consistent with the annual production limitations specified in their use permits and four were found to have no production occurring at the sites. One of these last four did not respond after three attempts by staff to contact the winery including by certified mail.

In addition to the twenty-one 2009 wineries reviewed, the single out-of-compliance winery from the 2008 winery audit was carried over for a re-review. Staff analyzed this winery's 2009 TTB production reports and found it was still over its production capacity for that year by 3 times the permitted amount.

Following presentation and discussion of the 2009 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 2010 production review. Pursuant to Board of Supervisors Resolution 2010-48, the 2010 review will consider visitation and marketing as well as production.

### **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:

- 1 *"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.) Typically, the Department has requested three years of data because production can vary from year to year and an average of three to five years of data is allowed to determine compliance.

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.)

### **2009 Production Review Results:**

Spreadsheets showing each winery's production totals have been provided as attachments and are based on the TTB information submitted. They demonstrate that twelve out of the twenty-one wineries are compliant while five are over their approved production limit. As shown on the attached 2009 Wine Production Compliance Summary Sheet, the last four wineries were not reviewed. This is because three of the wineries hold permits that have either not been used or have not produced wine on-site for over five years and may have lost their entitlement pursuant to Napa County Code Section 18.124.120 (C.)(6.). For example, Winery L is compliant at one site but is out of compliance on a different winery site because it is being used exclusively for wine storage. Winery D did not respond to three requests by the County (one certified mail) for TTB information. Its status is pending further investigation by the Department. In addition to the twenty-one 2009 wineries reviewed, staff carried over and reviewed the one non-compliant winery found during the 2008 review. This winery was still out of compliance.

### **Conclusion:**

The attached 2009 Wine Production Compliance Summary Sheet anonymously lists the twenty-one wineries reviewed. Of those wineries, twelve were found to be compliant; five were out of compliance. Staff employed averaging for one winery but it was still out of compliance. Additionally, three appear to be non-producing and one did not respond. Likewise the carry-over winery from the 2008 review was not in compliance.

Staff intends to issue notices of violation to the four wineries seriously out of compliance (Wineries G, I, P & V) and require either a reduction to their approved production level or approval of a use permit modification as a solution. The two other non-compliant wineries (Wineries M & Q), could be asked to provide additional years of production data (via TTB forms) to allow for averaging as a means to demonstrate compliance. Staff also recommends further investigation of the wineries with questionable status (Wineries B, D, H, L-2nd site & U). If the property owner cannot provide evidence of five years of continuous on-site wine production, either use permit revocation or a new winery use permit approval are suggested remedies.

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 2010 review. These wineries will be asked to provide documentation of their visitation and marketing activities, in addition to their TTB forms. *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 . TTB Example Form
- C . Sample Request Letter
- D . 2009 Winery Spreadsheets
- E . 2009 Compliance Summary Sheet

Napa County Planning Commission: Approve

Reviewed By: Melissa Gray