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Agenda Date: 8/6/2014  
Agenda Placement: 10B

## Napa County Planning Commission Board Agenda Letter

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**TO:** Napa County Planning Commission  
**FROM:** Charlene Gallina for David Morrison - Director  
Planning, Building and Environmental Services  
**REPORT BY:** Linda St. Claire, Planner III Code Enforcement Officer - 707.299.1348  
**SUBJECT:** 2013 Winery Production Review

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### **RECOMMENDATION**

#### **2013 WINERY PRODUCTION AUDIT**

**CEQA Status:** 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.

**Request:** 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 2013, followed by selection of 2014 audit participants.

**Staff Recommendation:** Review and comment on the results of the 2013 winery use permit monitoring program and select 2014 participants.

**Staff Contact:** Linda St. Claire, 299-1348; [Linda.StClaire@countyofnapa.org](mailto: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 2014 review.

**Discussion:**

The 2013 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 17, 2013. 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 2013 Tax Trade Bureau (TTB) production reports, visitation numbers, and custom crush clientele. 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, 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 2013 review (i.e. discussion of the audit findings and the steps required to bring the eight wineries into compliance with their use permits), staff requests the Commission select twenty wineries from a blind drawing (and 5 alternates) for the 2014 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 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 or five 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).

In Table Two of the Grape Crush Report, the number of tons crushed by California processors by type, variety and reporting district where grown are reported. There are seventeen districts in the state and crush for 2013 was the highest on record with an increase of 7% overall. In 2013, the State of California crushed a total of 4,699,416 tons and Napa County crushed a total of 174,846.5 tons or approximately 25,177,896 gallons.

### **2013 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** (see Attachment F)

- | Sixteen wineries were found to be fully consistent with annual production levels specified in their use permits.
- | One winery went into bankruptcy and another was sold. The new owners did not retain the previous documents and there had been no production.

- | Two wineries (N & P) were found in compliance for production after averaging of two years of data. Winery N is currently in for a modification to their use permit. The remaining winery out of compliance for production (D) has not produced any wine for the past nine years. They understand that their use permit is in jeopardy for possible revocation. They will be included in the 2014 Audit.
- | One column was modified this year to show only the percentage of actual production in comparison to the approved production of each winery. Actual production ranged from 0% to 100% of the permitted production.
- | In addition to the twenty wineries in the 2013 audit, staff reevaluated the wineries from the 2012 audit that were found out of compliance. With this reevaluation, one winery (M) continued to be over production even after averaging three to five years of production records. The two remaining wineries are in for modifications to their use permits.

### **Visitation** (see Attachment G)

- | Eight wineries were found to be out of compliance for visitation. Six wineries were found to be out of compliance for Tours and Tastings, four wineries were found to be out of compliance for Marketing, and two of the eight wineries were found to be out of compliance for both Tours & Tastings and Marketing.
- | All of the wineries maintained adequate records.
- | Of the twenty wineries, five are pre-WDO (Winery Definition Ordinance) and three of them are allowed to conduct public tours & tastings with no set limits on the number of visitors.
- | Twelve wineries are allowed tours and tasting "By Appointment Only." Two are Pre-WDO wineries. The remaining one winery does not have authorization to conduct tours and tastings and two wineries do not have approved marketing plans.
- | Of the seven non-compliant wineries from the 2012 audit, three have or will apply to modify their use permits. The remaining four non-compliant wineries (F, H, Q & T) have agreed 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 on septic systems that have been sized to the number of approved visitors.

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. Staff conducted a visual inspection and found products in the tasting rooms generally meet the Ordinance's "wine related" requirement.

### **Grape Sourcing** (see Attachment F)

- | There are five Pre-WDO wineries in the 2013 audit which are not subject to the 75% rule.
- | The remaining wineries were evaluated and all but one were found compliant. Winery O was only 52% compliant, and purchased the remaining 48% of their grapes from District 3 (Sonoma and/or Marin Counties). Winery O is currently in the process of modifying their use permit. They will be included in the audit next year in hopes that compliance will be reached.

### **Staff Recommendation:**

As in previous years, staff will follow up with all wineries which exceed their production, visitation, and/or comply with the seventy-five percent rules. Each winery will receive a letter from staff indicating the audit results and discussing their options to comply with their use permit conditions. In regards to production and visitation, a winery has two options. They can either modify their use permit or return to the allowed levels. The seventy-five percent rule does not offer any options. All of the wineries which exceed their conditions (and have not entered into a modification process) will be required to submit 2014 production, visitation and grape sourcing data to ensure compliance has been met. At this time, staff is recommending that the Commission discuss the audit results

and provide any additional direction regarding wineries that are out of compliance.

Staff recommends one final action, that the Planning Commission conduct a blind draw of twenty use permits (plus 5 alternates) for the 2014 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 . Attachment A Request for Data
- B . Attachment B Winery Production Process
- C . Attachment C TTB Form
- D . Attachment D Visitation Questionnaire
- E . Attachment E Grape Crush Inquiry
- F . Attachment F Production Results
- G . Attachment G Visitation Results

Napa County Planning Commission: Approve

Reviewed By: Charlene Gallina