



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning & Development
Department No.: 053
For Agenda Of: June 21, 2016
Placement: Administrative
Estimated Time: N/A
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Glenn S. Russell, Ph.D., Director 568-2085
Director Planning & Development
Contact Info: Jeff Wilson, Deputy Director 568-2518
Planning & Development
**SUBJECT: Public Convenience or Necessity Determination for Zinke Wine Company
Case No. 16PCN-00000-00002**

County Counsel Concurrence

As to form: Yes

Other Concurrence: N/A

As to form: No

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

That the Board of Supervisors:

- a) Authorize the Chair to sign the attached letter (Attachment-1) and forward the application (Attachment-2) and letter to the California Department of Alcohol Beverage Control (ABC) denying the request for a determination of public convenience or necessity for the off-sale beer and wine license requested by Sideways Out West, LLC for the Zinke Wine Company, located at 2360 Alamo Pintado Ave in Los Olivos; and
- b) Determine that this activity is exempt from California Environmental Quality Act review per CEQA Guidelines Section 15378(b)(5) (Attachment-3).

Summary Text:

On May 23, 2016, Planning and Development (P&D) received a request (ABC form 245) for a Public Convenience or Necessity (PCN) determination for the Zinke Wine Company, located at 2360 Alamo Pintado Avenue in Los Olivos. A letter from the applicant regarding public convenience or necessity is included as Attachment-4. The requested license would allow the sale of beer and wine for consumption off the premises where sold. P&D staff have reviewed the applicant's request, and recommend that the Board deny the request for a determination of public convenience or necessity, based on the information provided in the Background discussion, below. A transmittal letter indicating denial of the request for a determination of public convenience or necessity and ABC Form 245 are attached for the Board's consideration.

Background:

The requested license is a Type-20 Off-Sale license, which is defined as follows, "*Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are allowed on the premises.*" The request is tied to the Zinke Wine Company Retail Use, which would include retail sales of bottled and prepackaged foods. The subject application is for 2360 Alamo Pintado Avenue, Los Olivos, located in Census Tract 19.05. The size of the Census Tract is based on population and encompasses an approximately 125 square mile area. The Census Tract extends roughly from Highway 154 and Alamo Pintado at the east to Happy Canyon Road at the south and west and Zaca Road to the north. Census Tract 19.05 includes Ballard and Los Olivos.

The Department of Alcoholic Beverage Control (ABC) establishes a threshold for the number of licenses, including Type-20 licenses, issued in each census tract in order to control the concentration of establishments granted licenses for the sale of beer and wine for consumption off the premises where sold (classified as "off-sale" licenses) (Bus. & Prof. Code, § 23817.5.) Any census tract that exceeds the threshold for off-sale retail licenses is deemed a census tract of undue concentration (see Bus. & Prof. Code, § 23958.4(a)(3).) Specifically, undue concentration exists when "*the ratio of off-sale retail licenses to population in the census tract or census division in which the applicant premises are located exceeds the ratio of off-sale retail licenses to population in the county in which the applicant premises are located.*" Census tract 19.05 has a population of 3,231 and is allowed 3 off-sale licenses¹. There are currently 23 existing off-sale licenses within census tract 19.05, 20 more than allowed. Therefore, pursuant to the ABC, undue concentration exists in census tract 19.05 and the allowable threshold is exceeded.

Undue concentration may also be deemed to exist if "*the applicant premises are located in a crime reporting district that has a 20 percent greater number of reported crimes . . . than the average number of reported crimes as determined from all crime reporting districts within the jurisdiction of the local law enforcement agency.*" (Bus. & Prof. Code § 23958.4(a)(1).) Pursuant to the Santa Barbara County Sheriff's Office, the property is not in a reporting district that has a 20 percent greater number of reported crimes than the average number of reported crimes in the Santa Ynez Valley jurisdictional area. Therefore, undue concentration does not exist based upon crime data.

¹ Data obtained from the ABC Census Tract Authorizations (All Counties) report

When a census tract is subject to an undue concentration of off-sale licenses, Business and Professions Code Section 23958.4(b)(2) provides that the ABC may issue a license if the local governing body (County Board of Supervisors) “determines within 90 days of notification of a completed application that public convenience or necessity would be served by the issuance.” If, within 90 days, the local governing body finds that public convenience or necessity for the license has not been demonstrated, the ABC will not likely issue the license. If the license is denied, the applicant may choose to file an appeal of the decision and proceed through the ABC’s appeal process. (Bus. & Prof. Code § 23080 et. seq.)

The following table summarizes and defines the number of off-sale licenses in census tract 19.05:

Off-sale Licenses in Census Tract 19.05²		
ABC License Type	Definition	Number
Type 17	Allows wholesale sales of beer and wine.	N/A
Type 20 (stand alone)	Authorizes the sale of beer and wine for consumption off the premises where sold.	1 (Zaca Lake Retreat)
Type 20 combined with a Type 17	When a Type 20 is combined with a Type 17, it allows: <ul style="list-style-type: none"> • Sale of wine only • Electronic/internet retail sales to consumers (no brick and mortar store) • Electronic/internet or direct sales to other wholesalers or retailers 	20
Type 21	A Type 21 authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold.	1 (Country Grocery)
Type 85	A Type 85 allows electronic/internet retail (not wholesale) sales of wine.	1
Total “Brick and Mortar” Licenses	-----	2
Total Electronic-Only Licenses	-----	21

² Data obtained from the California ABC License Query System

Grand Total	-----	23
--------------------	-------	----

According to the ABC, 21 of the existing off-sale licenses allow internet/electronic sales only. These licenses do not allow a “brick and mortar” location. Therefore, there are only 2 existing “brick and mortar” locations in the census tract. The “two brick and mortar” off-sale establishments have been issued to businesses at 800 Zaca Station Road (Zaca Lake Retreat) and 2948 Grand Avenue (Country Market) and are approximately 13 miles and 0.1 miles, respectively, from the proposed Zinke Wine Company off-sale location. The “electronic/internet sales only” licenses may be obtained directly from the ABC and are not required to obtain a PCN determination from the County when undue concentration exists (see Bus. & Prof. Code, § 23393.5.). The “brick and mortar” locations are required to obtain a PCN determination from the County when undue concentration exists (Bus. & Prof. Code, § 23958.).

In addition to the “off-sale” licenses in census tract 19.05, there are a number of “on-sale” licenses. On-sale licenses permit “*the consumption of alcohol on the premises where sold,*” and include tasting rooms, restaurants, bars and clubs. Tasting rooms, restaurants and clubs are not required to obtain PCN determinations from the County. Bars are required to obtain PCN determinations from the County. The on-sale licenses are not included in the ratio established by Business and Professions Code Section 23958.4 to determine if undue concentration of off-sale licenses exists. Nonetheless, the on-sale licenses do contribute to alcohol consumption and sales within a particular area. The following table summarizes the number of on-sale licenses within census tract 19.05:

On-sale Licenses in Census Tract 19.05³		
Establishment Type	ABC License Type	Number of Licenses
Restaurant	41 (beer and wine)	4
	47 (spirits, beer, wine)	5
Bar	42 (beer and wine)	1
Club	51 (e.g. Elks Lodge)	1
Figueroa Mtn. Brewery	23 (small beer manufacturer)	1
Wine Tasting Room	02	60
Total		72

The majority of on-sale licenses within census tract 19.05 are dedicated to tasting rooms. The majority of the tasting rooms and other on-sale establishments are located within the town of Los Olivos and are within walking distance of the proposed Zinke Wine Company location and the Country Market. Because an undue concentration of off-sale licenses exists, and because there are off-sale and on-sale

³ Data obtained from the California ABC License Query System

establishments within close proximity to the proposed Zinke Wine Company location which provide for the sale and consumption of alcohol, neither public convenience nor necessity has been demonstrated. Therefore, P&D staff recommends that your Board deny the request for a determination of public convenience or necessity.

Fiscal and Facilities Impacts:

Budgeted: Yes

Fiscal Analysis:

The total estimated cost to process this PCN is approximately \$3,020.16 (16 staff hours). Work to process the PCN is funded in the Planning and Development Permitting Budget Program, as shown on page D-289 of the adopted 2015-2017 FY budget. The requestor of the PCN determination does not pay a fee for the research and preparation of required documents.

Special Instructions:

The Clerk of the Board shall forward a copy of the Minute Order to P&D, Attn: David Villalobos and a second copy of the Minute Order to P&D, Attn: Nicole Lieu.

The Clerk of the Board shall send the executed letter and application to:
Department of Alcohol Beverage Control, Attention Matt Austin, 3220 S. Higuera Street, Suite 233,
San Luis Obispo, CA 93401

Attachments:

1. Board of Supervisors letter to State Department of Alcohol Beverage Control
2. Alcohol Beverage Control Form ABC 245
3. CEQA Exemption
4. Applicant Letter Pertaining to Public Convenience or Necessity, dated May 17, 2016

Authored by:

Nicole Lieu, Senior Planner