

DEPARTMENT: Planning

BY: Kris Schenk
PHONE: 209-966-5151

RECOMMENDED ACTION AND JUSTIFICATION:

Approve issuance of a "Letter of Public Convenience and Necessity" based on maximizing convenience to customers of the downtown gasoline station and mini-mart by facilitating a 'one-stop' shopping experience.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

See Attached Statement of Justification

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

A Negative Action would result in no issuance of a "Letter of Public Convenience and Necessity" and the facility would not be able to offer Off Sale Beer and Wine to its customers.

Financial Impact? () Yes () No	Current FY Cost: \$	Annual Recurring Cost: \$
Budgeted In Current FY? () Yes () No () Partially Funded		
Amount in Budget: \$ _____		List Attachments, number pages consecutively _____
Additional Funding Needed: \$ _____		Memo to Board with attachment _____
Source:		ABC form-245 _____
Internal Transfer _____		Statement of Justification _____
Unanticipated Revenue _____ 4/5's vote		Draft Letter of Public Convenience and Necessity _____
Transfer Between Funds _____ 4/5's vote		_____
Contingency _____ 4/5's vote		_____
() General () Other		_____

CLERK'S USE ONLY:

Res. No.: 10-576 Ord. No. _____
Vote - Ayes: 4 Noes: Two
Absent: _____
 Approved
() Minute Order Attached () No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.

Date: _____
Attest: MARGIE WILLIAMS, Clerk of the Board
County of Mariposa, State of California
By: _____
Deputy

COUNTY ADMINISTRATIVE OFFICER:

Requested Action Recommended
 No Opinion
Comments:

CAO: [Signature]



MARIPOSA PLANNING

COUNTY OF MARIPOSA

5100 BULLION STREET • POST OFFICE BOX 2039

MARIPOSA, CALIFORNIA 95338-2039

209 . 742 . 1220 • FAX 209 . 742 . 5024

Kris Schenk, Director

kschenk@mariposacounty.org

Eileen Collins, Planning Technician

ecollins@mariposacounty.org

MEMORANDUM

Date: December 7, 2010

To: Mariposa County Board of Supervisors

From: Eileen Collins, Planning Technician

Topic: Issuance of a "Letter of Public Convenience and Necessity" for Dieter H Dubberke Inc and Jason S. Dubberke Inc. located at 5037 Highway 140 for the Grizzly Gas Station.

Requested Action:

The applicant has requested that the Board of Supervisors authorize the issuance of a "Letter of Public Convenience and Necessity" to the Department of Alcohol Beverage Control (ABC) to allow an Off-Sale Beer and Wine license for the Grizzly Gas Station located at 5037 Highway 140. The letter will allow the applicant to offer the sale of beer and wine to customers at their facility, for off-site consumption only. This request is necessary as the ABC considers the area "over concentrated with off-sale alcohol licenses" and requires Board approval to increase the number.

Background:

The Department of Alcoholic Beverage Control (ABC) regulates the issuance of alcohol licenses. The ABC has established a limit of ten (10) Off Sale Licenses in Mariposa County, Census Tract 001, without the issuance of a "Letter of Public Convenience and Necessity", by the Board of Supervisors. The area does have a total of twelve (12) Off Sale licenses issued. Please see attached list of issued permits. By requiring this letter, the ABC is providing the local jurisdiction the ability to permit alcohol licenses above the number outright permitted by the ABC. The applicant has been required by the ABC to receive a "Letter of Public Convenience and Necessity" due to the number of Off-Sale licenses, which exist within Census Tract 06-043-010-001. That area encompasses the Mariposa TPA, portions of Midpines, and runs to the westerly county line, including Catheys Valley. The Board has the opportunity to determine whether the increase of Off-Sale Licenses is detrimental to the area.

Zoning Designation:

The subject property is zoned General Commercial, is in the Historic Design Review Overlay District and is located within the Mariposa Town Planning area. The off-site sale of alcohol is consistent with the zoning.

①

Liquor Licenses in Mariposa County – Status as of 12/7/2010

The following information is from the Alcohol Beverage Control (ABC)

Type 20 = Off Sale Beer & Wine – (Package Store) Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are allowed on the premises.

Type 21 = Off Sale General – (Package Store) Authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold. Minors are allowed on the premises.

The combined number of Off Sale Licenses (Type 20 and Type 21) is twelve (12) for Census Tract 06-043-010-001. That area encompasses Mariposa TPA, portions of Midpines, and runs to the westerly county line, including Catheys Valley. The following are the holders of those permits.

1. Type 21 Plaza Bar (Hornitos) – Ortiz, Richard
2. Type 21 Pioneer Market – Dubberke, Inc.
3. Type 21 Yosemite Liquor – Dubberke, Inc.
4. Type 20 Pioneer Gas – Dubberke, Inc.
5. Type 20 Lake McSwain Marina – Kemper, John M III
6. Type 20 Catheys Valley Food & Gas – Singh, Amrit
7. Type 20 49er Super Market – Singh, Gurdeep
8. Type 21 Lucky Logger Liquor – Drummond, Loretta May
9. Type 20 Simpson & Trabucco – Valencia, Esther
10. Type 20 Stage Stop Mini Mart – JH Verna Inc
11. Type 20 Miners Inn Motel – Baba Ji Incorporated
12. Type 21 Thrifty Payless Inc - Rite Aid

The ABC provides local jurisdiction the ability to permit alcohol licenses above the number permitted by ABC per Section 23958 and 23958.4 of the Business and Professions Code.

To obtain a Type 20 or Type 21 Off Sale license, an individual would need to either purchase an existing license and have it transferred to their establishment through an ABC permit process OR request a “Letter of Public Convenience and Necessity” from the local governing body.

INFORMATION AND INSTRUCTIONS -

RECEIVED

SECTION 23958.4 B&P

- Instructions This form is to be used for all applications for original issuance or premises to premises transfer of licenses.
- Part 1 is to be completed by an ABC employee, given to applicant with pre-application package, with copy retained in holding file or applicant's district file.
 - Part 2 is to be completed by the applicant, and returned to ABC.
 - Part 3 is to be completed by the local governing body or its designated subordinate officer or body, and returned to ABC.

5 of 10 licenses
Mariposa County Planning Dept.

PART 1 - TO BE COMPLETED BY ABC

1. APPLICANT'S NAME
Dieter H Dubberke Inc and Jason S Dubberke Inc

2. PREMISES ADDRESS (Street number and name, city, zip code)
5037 Highway 140 Mariposa CA 95338

3. LICENSE TYPE
20

4. TYPE OF BUSINESS

<input type="checkbox"/> Full Service Restaurant	<input type="checkbox"/> Hofbrau/Cafeteria	<input type="checkbox"/> Cocktail Lounge	<input type="checkbox"/> Private Club
<input type="checkbox"/> Deli or Specialty Restaurant	<input type="checkbox"/> Comedy Club	<input type="checkbox"/> Night Club	<input type="checkbox"/> Veterans Club
<input type="checkbox"/> Cafe/Coffee Shop	<input type="checkbox"/> Brew Pub	<input type="checkbox"/> Tavern: Beer	<input type="checkbox"/> Fraternal Club
<input type="checkbox"/> Bed & Breakfast:	<input type="checkbox"/> Theater	<input type="checkbox"/> Tavern: Beer & Wine	<input type="checkbox"/> Wine Tasting Room
<input type="checkbox"/> Wine only	<input type="checkbox"/> All		

<input type="checkbox"/> Supermarket	<input type="checkbox"/> Membership Store	<input type="checkbox"/> Service Station	<input type="checkbox"/> Swap Meet/Flea Market
<input checked="" type="checkbox"/> Liquor Store	<input type="checkbox"/> Department Store	<input type="checkbox"/> Convenience Market	<input type="checkbox"/> Drive-in Dairy
<input type="checkbox"/> Drug/Variety Store	<input type="checkbox"/> Florist/Gift Shop	<input type="checkbox"/> Convenience Market w/Gasoline	
<input type="checkbox"/> Other - describe:			

5. COUNTY POPULATION	6. TOTAL NUMBER OF LICENSES IN COUNTY <input type="checkbox"/> On-Sale <input type="checkbox"/> Off-Sale	7. RATIO OF LICENSES TO POPULATION IN COUNTY <input type="checkbox"/> On-Sale <input type="checkbox"/> Off-Sale
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8. CENSUS TRACT NUMBER CT 001.	9. NO. OF LICENSES ALLOWED IN CENSUS TRACT 10 <input type="checkbox"/> On-Sale <input checked="" type="checkbox"/> Off-Sale	10. NO. OF LICENSES EXISTING IN CENSUS TRACT 12 <input type="checkbox"/> On-Sale <input checked="" type="checkbox"/> Off-Sale
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11. IS THE ABOVE CENSUS TRACT OVERCONCENTRATED WITH LICENSES? (i.e., does the ratio of licenses to population in the census tract exceed the ratio of licenses to population for the entire county?)

Yes, the number of existing licenses exceeds the number allowed

No, the number of existing licenses is lower than the number allowed

12. DOES LAW ENFORCEMENT AGENCY MAINTAIN CRIME STATISTICS?

Yes (Go to Item #13) No (Go to Item #20)

13. CRIME REPORTING DISTRICT NUMBER	14. TOTAL NUMBER OF REPORTING DISTRICTS	15. TOTAL NUMBER OF OFFENSES IN ALL REPORTING DISTRICTS
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16. AVERAGE NO. OF OFFENSES PER DISTRICT	17. 120% OF AVERAGE NUMBER OF OFFENSES	18. TOTAL NUMBER OF OFFENSES IN REPORTING DISTRICT
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19. IS THE PREMISES LOCATED IN A HIGH CRIME REPORTING DISTRICT? (i.e., has a 20% 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)

Yes, the total number of offenses in the reporting district equals or exceeds the total number in item #17

No, the total number of offenses in the reporting district is lower than the total number in item #17

20. CHECK THE BOX THAT APPLIES (check only one box)

a. If "No" is checked in both item #11 and item #19, Section 23958.4 B&P does not apply to this application, and no additional information will be needed on this issue. Advise the applicant to bring this completed form to ABC when filing the application.

b. If "Yes" is checked in either item #11 or item #19, and the applicant is applying for a non-retail license, a retail bona fide public eating place license, a retail license issued for a hotel, motel or other lodging establishment as defined in Section 25503.16(b) B&P, or a retail license issued in conjunction with a beer manufacturer's license, or winegrower's license, advise the applicant to complete Section 2 and bring the completed form to ABC when filing the application or as soon as possible thereafter.

c. If "Yes" is checked in either item #11 or item #19, and the applicant is applying for an off-sale beer and wine license, an off-sale general license, an on-sale beer license, an on-sale beer and wine (public premises) license, or an on-sale general (public premises) license, advise the applicant to take this form to the local governing body, or its designated subordinate officer or body to have them complete Section 3. The completed form will need to be provided to ABC in order to process the application.

Governing Body/Designated Subordinate Name: County Board of Supervisors

PREPARED BY (Name of Department Employee)
A Marquez

3

PART 2 - TO BE COMPLETED BY THE APPLICANT (If box #20b is checked)

21. Based on the information on the reverse, the Department may approve your application if you can show that public convenience or necessity would be served by the issuance of the license. Please describe below the reasons why issuance of another license is justified in this area. You may attach a separate sheet or additional documentation, if desired. Do not proceed to Part 3.

SEE ATTACHED

22. APPLICANT SIGNATURE

23. DATE SIGNED

12-7-10

PART 3 - TO BE COMPLETED BY LOCAL OFFICIALS (If box #20c is checked)

The applicant named on the reverse is applying for a license to sell alcoholic beverages at a premises where undue concentration exists (i.e., an over-concentration of licenses and/or a higher than average crime rate as defined in Section 23958.4 of the Business and Professions Code). Sections 23958 and 23958.4 of the Business and Professions Code requires the Department to deny the application unless the local governing body of the area in which the applicant premises are located, or its designated subordinate officer or body, determines within 90 days of notification of a completed application that public convenience or necessity would be served by the issuance.

Please complete items #24 to #30 below and certify or affix an official seal, or attach a copy of the Council or Board resolution or a signed letter on official letterhead stating whether or not the issuance of the applied for license would serve as a public convenience or necessity.

24. WILL PUBLIC CONVENIENCE OR NECESSITY BE SERVED BY ISSUANCE OF THIS ALCOHOLIC BEVERAGE LICENSE?

Yes

No

See Attached (i.e., letter, resolution, etc.)

25. ADDITIONAL COMMENTS, IF DESIRED (may include reasons for approval or denial of public convenience or necessity):

CITY/COUNTY OFFICIAL NAME

27. CITY/COUNTY OFFICIAL TITLE

28. CITY/COUNTY OFFICIAL PHONE NUMBER

29. CITY/COUNTY OFFICIAL SIGNATURE

30. DATE SIGNED

RECEIVED

DEC 07 2010

Mariposa County Planning Dept.

STATEMENT OF JUSTIFICATION

Project Name: GRIZZLY GAS

Project Address: 5037 HIGHWAY 140, MARIPOSA, CALIFORNIA

Grizzly Gas is requesting a determination of Public Convenience or Necessity by the County Board of Supervisors in order to allow the addition of Department of Alcohol Beverage Control type 20 license for sale of beer and wine in conjunction with the operation of a downtown gas station and mini-mart. The hours of operation are 6:00 a.m. to 10:00 p.m. seven days a week.

The request comes directly from the state Alcohol Beverage Control Board (ABC) pursuant to the Business and Professions Code Section 23958.4. As you are aware the ABC requires a letter of "Public Necessity and Convenience" from the governing body if the applicant intends to sell alcoholic beverages in any area that has an over concentration of liquor licenses or a high crime rate.

Dieter Dubberke and Jason Dubberke have for a long time been leaders in the community, and are known for their ability to provide goods and products to people of this town. The contributions they have made to the local high school and community are without equal. Beer and wine sales are expected to be around (5) five percent of the total sales.

The use is wholly proper in relation to the adjacent commercial operations, being a supplier of gasoline, and convenience goods in the downtown area. The use is consistent and compatible with the community, and only seeks to provide the same level of goods that are found in any other area the size and makeup of downtown Mariposa, California. Grizzly Gas understands the responsibilities of operating a retail store with beer and wine being sold.

The requested use at this location will not be materially detrimental to the use, enjoyment or valuation of the property, or of other businesses located in the vicinity. The addition of this specialty retail store is wholly consistent with the commercial intent, and will not inhibit its implementation. It will not hinder the achievement of community developmental goals, nor will it affect the character or progress of the immediate neighborhood.

(5)

1. The proposed location will not affect the general welfare of the surrounding property owners.
2. The proposed location will not result in an undesirable concentration of like retail stores because there are few other similar outlets in town.
3. The proposed location will not detrimentally affect the nearby surrounding area in consideration to the proximity and nature of the proposed use with respect to almost no residential structures, no schools, hospitals, playgrounds, or other places of assembly, which would attract an undesirable element.
4. Grizzly Gas will comply with all applicable standards requested by the Alcohol Beverage Control Board, Mariposa County Sheriff's Dept, and any other applicable county departments.

(6)



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COUNTY OF MARIPOSA

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Kris Schenk, Director

kschenk@mariposacounty.org

Eileen Collins, Planning Technician

ecollins@mariposacounty.org

December 22, 2010

Department of Alcohol Beverage Control
31 East Channel Street, Room 168
Stockton, CA 95202

RE: Applicant: Dieter H. Dubberke Inc and Jason S. Dubberke Inc

At their December 21, 2010 meeting, the Mariposa County Board of Supervisors approved the issuance of this "Letter of Public Convenience and Necessity" for the addition of one (1) Type 20 Off-Sale Beer and Wine License in Census Tract 06-043-010-001 to the following location:

Applicant: Dieter H. Dubberke Inc and Jason S. Dubberke Inc
Business: Grizzly Gas Station
Site: 5037 Highway 140
License: Type 20 Off-Sale Beer and Wine License

It was determined that the ability to offer Off-Sale Beer and Wine will make a more convenient shopping experience for the public.

Sincerely,

Kris Schenk, Planning Director
County of Mariposa, Planning Department