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Conservation, Development and Planning

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MEMORANDUM

To: Napa County Planning Commission and Interested Stakeholders	From: Hillary Gitelman
Date: October 26, 2009	Re: WDO & Temporary Events

At the October 6, 2009 joint meeting of the Planning Commission and the Board of Supervisors, planning staff was directed to:

1. quickly review any options that might exist for using our temporary events ordinance as a way to permit social and cultural events at wineries;
2. offer support to industry group discussions about potential changes to the Winery Definition Ordinance (WDO) of 1990; and
3. assemble some data regarding regional economic conditions and characteristics of Napa County wineries.

The first of these subjects is addressed in this memo via a series of five questions and answers which reference relevant sections of the Napa County General Plan and Napa County Code. The staff interpretations and suggestions inherent in these questions and answers are simply initial thoughts, and are provided to frame discussion by the Commission at their November 18, 2009 meeting. Based on input from the Commission and interested stakeholders at that time and in the weeks that follow, staff will formulate a recommendation for consideration by the Commission and the Board around the end of January, when the Board of Supervisors has requested a report on industry group discussions and staff's data gathering efforts.

Question 1: Are wineries currently allowed to hold weddings, parties and similar cultural and social events?

Answer: Generally no, but it depends on when the winery was established and on what conditions were placed on the winery at the time of its approval. Some wineries were established prior to 1974, before there was a requirement for a use permit. These wineries may continue to host cultural and social events if it was part of their operations prior to 1974 (and if they are recognized via a county-approved certificate of conformity). Wineries approved between 1974 and when the WDO was adopted in 1990 may only host cultural and social events

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if they were permitted as part of the winery's use permit. Wineries approved after adoption of the WDO in 1990 may not host cultural and social events because of language included in the definition of "marketing" adopted at that time unless the event qualifies as a "temporary event" and has required permits. Generally, "temporary events" are events protected under the First Amendment of the US Constitution, and are open to the public. (See Question 4 & the definitions provided.)

It should be noted that the prohibition on cultural and social events at post-WDO wineries does not mean that marketing events cannot have a cultural or social component. For example, wine club members may be invited to an event featuring the winery's wine, which also involves music, art, etc. However, the code has been consistently interpreted to prohibit these wineries from hosting weddings, birthday parties, wedding anniversary celebrations, and other purely social events because they have been deemed "unrelated to... education and development" of the persons/groups specified in the definition of "marketing."

Question 2: Are wineries currently allowed to hold business meetings, conferences, and similar events?

Answer: Only if the business meetings are non-commercial and primarily focused on wine education and development. As noted above, wineries established prior to 1974 -- before there was a requirement for a use permit -- may continue to host business meetings, conferences, etc. if these activities were part of their operations prior to 1974 (and if they are recognized via a county-approved certificate of conformity). Wineries approved between 1974 and when the WDO was adopted in 1990 may hold such events if they were permitted as part of the winery's use permit.

Since adoption of the WDO, it has not always been clear whether business meetings and similar events qualify as marketing events. A strict reading of the ordinance would suggest that wineries may *not* host business meetings and the like unless they are "limited to activities for the education and development" of the persons or group involved and are singularly focused on "wine which can be sold at the winery on a retail basis." Under this interpretation, only a business meeting solely focused on the production and sale of wine would be acceptable. However, business meetings that have a marketing objective (e.g. a wine tasting or education event scheduled for a group of bankers as part of a corporate retreat), have often been considered marketing events, as long as a prevalence of such events does not constitute commercial activity or turn the winery into a conference center. Clearly this is one area of the code and the WDO that would benefit from clarification via a code amendment, or the kind of "administrative interpretation" discussed in response to Question 3.

Question 3: Could the County use an "administrative interpretation," rather than a code amendment to allow wineries to hold weddings, parties, business meetings, etc?

Answer: The County could use an interpretation to clarify when business meetings are acceptable. However the County could not use an administrative interpretation to allow weddings, parties, and similar social events. Also, administrative interpretations in general have significant disadvantages over formal code amendments.

By law, “administrative interpretations” or other policies that are adopted by staff or decision-makers may not conflict with regulations or policies formally adopted as part of the County’s zoning ordinance or General Plan. Also, because such interpretations may be reversed or re-interpreted with little public notice any time there is a change in staff or a change in the composition of the Commission and/or the Board, they can be considered arbitrary and are not generally viewed as good public policy. Use of an interpretation may also be at odds with General Plan Policy AG/LU-107 which states that “The County shall provide a clear, consistent, timely, and *predictable* review process...” [emphasis added].

With that said, planning staff understands that the prohibition on cultural and social events and the issues surrounding business meetings described in response to Question 1 & 2 are themselves based on interpretations of code language. In the case of cultural and social events, County staff and policy makers have routinely interpreted birthday parties, weddings, etc. to be cultural and social events that are “unrelated to ... education and development” of the persons and groups called out in the definition of “marketing.” This interpretation is supported by the last statement in the definition of marketing: “...but shall not include cultural and social events unrelated to such education and development...”

In the case of business meetings, County staff and policy makers have interpreted some business meetings as falling within the definition of “marketing,” while acknowledging that the practice of hosting other business meetings can be considered a commercial activity outside the definition of “marketing.” Careful consideration should be given to legal issues and potentially preferable alternatives before using an administrative interpretation to clarify when business meetings are acceptable. While there is no phrase in the code expressly describing these meetings as *not* falling within the definition of marketing (as there is for social and cultural events), there is still the disadvantage that an administrative interpretation can be reversed with little public notice (i.e. only by posting an agenda 72 hours in advance of the meeting) whenever the composition of the Commission or the Board changes.

Question 4: Could the County use the existing temporary events ordinance to allow weddings, parties, business meetings, etc. at wineries?

Answer: Not without amending the ordinance. Temporary events are by definition (see below) related to “expressive activities” protected by the First Amendment of the US Constitution and are open to the public. Common examples include concerts, lectures, and benefit dinners held by non-profit organizations. Wineries may hold social, cultural, and business-related events using the temporary event ordinance (and independent of their approved marketing programs), but only if the events are open to the public (with or without

payment of an admission charge), and are permitted via the procedures outlined in Chapter 5.36 of Napa County Code. Generally, any temporary event with more than 50 attendees requires a permit, which must be applied for at least 60 days in advance of the event. Obviously, weddings, birthday parties and other events that are *by invitation only* do not fall within the definition of temporary events, so the ordinance would have to be amended to provide another category of temporary event that is by invitation, presuming the Commission and the Board can make the case that such events are expressive activities protected under the First Amendment. This idea is discussed in response to Question 5, below.

Question 5: How could the existing temporary events ordinance be amended to permit weddings, parties and similar cultural or social events at wineries?

Answer: While it would be possible to amend the rules governing temporary events to permit “by invitation only” cultural and social events if these events were considered a form of public expression related to First Amendment rights, there may be unintended consequences of such a change and alternative code amendments would be preferable. Four options are evaluated here.

If the temporary events ordinance was simply amended to allow events that are by invitation only (events like weddings, birthday parties, etc.) by making the argument that these events provide for public expression, then these types of events could be permitted at homes, barns, warehouses, and at other properties throughout the County as well as at wineries. As a result, there could be an excessive number of events, and properties that hold regular events could become commercial enterprises in violation of General Plan policies and zoning restrictions.

This unintended consequence (i.e. the potential over-proliferation of events) could be addressed by enacting a new special events ordinance that is unrelated to the First Amendment and that limits the number of events allowed by invitation only (e.g. up to 100 weddings per year on a first come first served basis, and no more than one such event per property per year). The new special events ordinance would not be specific to wineries, and would allow events at a wide variety of locations via an administrative permit, similar to permit required for hot air balloon launching facilities. Strict limitations would have to be included in the new ordinance to avoid conflicting with General Plan policies and zoning restrictions prohibiting commercial activities in agricultural areas.

Another variation on this theme would be to create a new special events ordinance allowing social and cultural events, but only at wineries and only when such events are held in lieu of permitted marketing events. This approach could make use of the same kind of administrative permit process described above, but also would necessitate changing the definition of “marketing” to avoid internal inconsistencies within Napa County Code. Specifically, the definition of “marketing” would need to be amended along the following lines (proposed new text is underlined):

"Marketing of wine" means any activity of a winery identified in this paragraph which is conducted at the winery and is limited to members of the wine trade, persons who have pre-established business or personal relationships with the winery or its owners, or members of a particular group for which the activity is being conducted on a prearranged basis. Marketing of wine is limited to activities for the education and development of the persons or groups listed above with respect to wine which can be sold at the winery on a retail basis pursuant to Chapters 18.16 and 18.20, and may include food service without charge except to the extent of cost recovery when provided in association with such education and development, but shall not include cultural and social events unrelated to such education and development except as provided in Section [insert section number].

The most efficient way to provide wineries with greater flexibility regarding events would be to avoid establishment of a new administrative permit process and simply adjust the definition of "marketing" further. For example, the following amendment was proposed in 2005 (proposed new text is underlined):

"Marketing of wine" means any activity of a winery identified in this paragraph which is conducted at the winery and is limited to members of the wine trade, persons who have pre-established business or personal relationships with the winery or its owners, or members of a particular group for which the activity is being conducted on a prearranged basis. Marketing of wine is limited to activities for the education and development of the persons or groups listed above with respect to wine which can be sold at the winery on a retail basis pursuant to Chapters 18.16 and 18.20, and may include food service without charge except to the extent of cost recovery when provided in association with such education and development, but shall not include cultural and social events unrelated to such education and development.

Notwithstanding the preceding paragraph, "marketing of wine" may include a cultural, social or business event if such event occurs during the period commencing on the effective date of Ordinance No. 1267 and ending two years from the effective date of Ordinance No. 1267 and if the event conforms to all of the following requirements:

- A. the winery has a valid use permit which specifically allows marketing events to be held at the winery;
- B. the event is limited to members of the wine trade or persons who have pre-established relationships with the winery or its owners, or is being conducted for a particular group on a prearranged basis;
- C. the event involves the education and development of customers for the winery;
- D. the only alcoholic beverages served at the event are wines which can be sold at the winery on a retail basis pursuant to Chapters 18.16 and 18.20 of this Code;
- E. the only food service provided in association with the event is without charge, except to the extent of cost recovery;
- F. the event is not scheduled to begin or end during "peak" travel times of 4:00 to 6:00 p.m. on weekdays and 1:00 to 4:00 p.m. on weekends;

- G. the event may not include the use of outdoor amplified music unless it is specifically authorized by a use permit modification approved by the zoning administrator pursuant to section 18.10.020 of this Code and is based on an analysis outlining feasible methods for complying with the County's noise ordinance and those methods are included as conditions of approval on the use permit modification;
- H. events within one-quarter mile of residential uses must end (including clean-up) by 10:00 p.m. unless a different time is authorized by a use permit modification approved by the zoning administrator and is based on an analysis outlining feasible methods for complying with the County's noise ordinance and such methods are included as conditions of approval on the use permit modification pursuant to section 18.12.020 of this Code;
- I. the event will not exceed the number of attendees specified in the winery's use permit for visitors to a particular marketing event; and
- J. the event will be counted towards the total number of marketing events per year authorized by a winery's use permit.

Pre-WDO wineries which have not established specific marketing plans may continue to do marketing activities consistent with the visitation allowed in their existing use permits. Where it is unclear what marketing activities were previously authorized, a use permit modification request or a certificate of extent of legal non-conformity shall be submitted by the permittee to clarify the intensity of marketing activities allowed.

Definitions from Napa County Code

- *"Agriculture"* means the raising of crops or livestock and includes the following:
 - A. Growing and raising trees, vines, shrubs, berries, vegetables, nursery stock, hay, grain and similar food crops and fiber crops;
 - B. Grazing of livestock and feeding incidental thereto;
 - C. Animal husbandry, including, without limitation, the breeding and raising of cattle, sheep, horses, goats, pigs, rabbits and poultry and egg production;
 - D. Sale of agricultural products grown, raised or produced on the premises;
 - E. Farm management uses meeting all of the standards in subsections (E)(1) through (E)(6) of this section.... (excerpt from Napa County Code Section 18.08.040)
- *"Marketing of wine"* means any activity of a winery identified in this paragraph which is conducted at the winery and is limited to members of the wine trade, persons who have pre-established business or personal relationships with the winery or its owners, or members of a particular group for which the activity is being conducted on a prearranged basis. Marketing of wine is limited to activities for the education and development of the persons or groups listed above with respect to wine which can be sold at the winery on a retail basis pursuant to Chapters 18.16 and 18.20, and may include food service without charge except to the extent of cost recovery when provided in association with such education and development, but shall not include cultural and social events unrelated to such education and development. (Napa County Code Section 18.08.370)
- *"Commercial use"* means a use that involves the exchange of cash, goods or services, barter, forgiveness of indebtedness, or any other remuneration in exchange for goods, services, lodging, meals, entertainment in any form, or the right to occupy space over a period of time. It does not include the growing and subsequent sale of crops or livestock, the manufacturing, assembly, or processing and subsequent sale at wholesale of a product, or the operation of a telecommunication facility. (Napa County Code Section 18.08.170)
- *"Temporary event"* or *"event"* means any festival, fair, show, showcase, house or garden design tour, concert, dance, rally, parade, demonstration or competition of creative athletic form, or any other gathering or assemblage of individuals for the purpose of observing or engaging in expressive activities within the ambit of the First Amendment of the United States Constitution and Sections 2, 3 and 4 of Article 1 of the California Constitution, including, but not limited to, music, dance, theater, speech, athletics, or any other visual, audio, or tactile arts or combination thereof, including incidental retail sales of the products of such activities, as long as such sales are not advertised off-site; which is held at any place other than a highway as defined in Section 10.24.010 of this code, a permanent building or installation constructed and primarily used for the

purpose of conducting such activity or one similar thereto, property owned or leased by the state of California, or property owned or leased by a public school district for use as a public school site, and to which the public is invited or admitted with or without the payment of an admission charge. (excerpt from Napa County Code Section 5.36.101)

Relevant Policies from the Napa County General Plan

- Goal AG/LU-1:** Preserve existing agricultural land uses and plan for agriculture and related activities as the primary land uses in Napa County.
- Policy AG/LU-1:** Agriculture and related activities are the primary land uses in Napa County.
- Policy AG/LU-2:** “Agriculture” is defined as the raising of crops, trees, and livestock; the production and processing of agricultural products; and related marketing, sales and other accessory uses. Agriculture also includes farm management businesses and farm worker housing.
- Action Item AG/LU-2.1:** Amend County Code to reflect the definition of agriculture” as set forth within this plan, ensuring that wineries and other production facilities remain as conditional uses except as provided for in Policy AG/LU-16, and that marketing activities and other accessory uses remain incidental and subordinate to the main use.
- Policy AG/LU-13:** The 1990 Winery Definition Ordinance, recognized certain pre-existing wineries and winery uses as well as new wineries. For wineries approved after the effective date of that ordinance, agricultural processing includes tours and tastings by appointment only, retail sales of wine produced by or for the winery partially or totally from Napa County grapes, retail sale of wine-related items, activities for the education and development of consumers and members of the wine trade with respect to wine produced by or at the winery, and limited non-commercial food service. The later activity may include wine-food pairings. All tours and tastings, retail sales, marketing activities, and non-commercial food service must be accessory to the principal use of the facility as an agricultural processing facility. Nothing in this policy shall alter the definition of “agriculture” set forth in Policy AG/LU-2.
- Policy AG/LU-16:** In recognition of their limited impacts, the County will consider affording small wineries a streamlined permitting process. For purposes of this policy, small wineries are those that produce a small quantity of wine

using grapes mostly grown on site and host a limited number of small marketing events per year.

Action Item AG/LU-16.1: Consider amendments to the Zoning Ordinance defining “small wineries,” a “small quantity of wine,” “small marketing events,” and “mostly grown on site,” and establishing a streamlined permitting process for small wineries which retains the requirement for a use permit when the winery is in proximity to urban areas.