



Agenda Date: 6/22/2015

Agenda Placement: 6A

A Tradition of Stewardship
A Commitment to Service

Napa County Agricultural Protection Advisory Committee **Board Agenda Letter**

TO: Agricultural Protection Advisory Committee

FROM: David Morrison - Director
Planning, Building and Environmental Services

REPORT BY: David Morrison, Director, Planning, Building & Environmental Servi - (707) 253-4805

SUBJECT: Discussion and tentative recommendation regarding the appropriate range and intensity of winery-related uses in agricultural zoning

RECOMMENDATION

This meeting is being conducted by the Agricultural Protection Advisory Committee and County staff to allow for input, discussion, and tentative recommendation regarding proposals for amending the County Zoning Code. The focus of this meeting concerns; (1) definitions of agricultural and accessory uses in the Agricultural Zones; (2) proposals regarding the appropriate range and intensity of agricultural uses on agriculturally zoned parcels; and (3) other amendments related to the topic.

EXECUTIVE SUMMARY

That the Agricultural Protection Advisory Committee:

1. Receive the staff presentation and ask any clarifying questions;
2. Accept public testimony; and
3. Discuss and take tentative action regarding a framework for regulating the operational and locational characteristics of new and/or expanding wineries.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: 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

BACKGROUND:

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At the meeting of June 8, the Committee Chair requested staff to prepare the following: (1) working definitions to clearly define and differentiate agricultural and accessory uses in the Agricultural Zones; (2) framework for reviewing the appropriate range and intensity of winery uses on agriculturally zoned parcels; and (3) improvements to the code enforcement program, specifically with regards to the potential for self-certification. Committee members and members of the public were also invited to submit their proposals on these issues. The Committee also requested a copy of the viewshed ordinance.

DEFINITION:

Staff provides the following background for the Committee's information and consideration.

Napa County General Plan:

The General Plan includes the following relevant policies:

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 noncommercial 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-15:

The County affirms and shall protect the right of agricultural operators in designated agricultural areas to commence and continue their agricultural practices (a "right to farm"), even though established urban uses in the general area may foster complaints against those agricultural practices. The "right to farm" shall encompass the processing of agricultural products and other activities inherent in the definition of agriculture provided in Policy AG/LU-2, above. The existence of this "Right to Farm" policy shall be indicated on all parcel maps approved for locations in or adjacent to designated agricultural areas and shall be a required disclosure to buyers of property in Napa County.

Napa County Code:

The County Code includes the following relevant ordinances:

Section 18.08.020 - Accessory use:

"Accessory use" means any use subordinate to the main use and customarily a part thereof. An accessory use must be clearly incidental, related and subordinate to the main use, reasonably compatible with the other principal uses in the zoning district and with the intent of the zoning district, and cannot change the character of the main use. Unless provided otherwise in this title, accessory uses may be conducted in the primary structure or in structures other than the primary structure. Where the zoning regulations applicable to a zoning district specifically identify the accessory uses which are permitted in conjunction with a primary use in that zoning district, no other accessory uses in conjunction with the primary use will be permitted in that zoning district. Structures constituting an accessory use that are related to a winery are further limited to the extent provided by Section 18.104.200.

Section 18.08.040 – Agriculture:

"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, except as provided in subsection (F) of this section;
- 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. Farm management shall mean the operation, maintenance and storage of farm machinery, equipment, vehicles and supplies used exclusively for agricultural cultivation and harvesting where all

machinery, equipment, vehicles and supplies are leased or owned and operated by the farm manager whether that manager is an owner, tenant, or agricultural contractor, and regardless of whether properties managed are contiguous or under similar ownership, provided that at least seventy-five percent of the managed acres are within Napa County. Farm management shall not include manufacturing for sale or retail sales of any kind and shall not include businesses devoted to equipment storage, rental or repair rather than farming. Farm management shall not include the operation, maintenance or storage of equipment used for construction of structures, even if those structures are in support of agriculture;

1. Offices used for farm management shall meet the definition of accessory uses in Section 18.08.020;
 2. Farm management activities established or expanded after June 30, 2006, alone or in combination with any wineries subject to Section 18.104.220 shall not occupy more than fifteen acres or twenty-five percent of the parcel size, whichever is less;
 3. No single farm management building or structure newly constructed or expanded after June 30, 2006 shall exceed five thousand gross square feet. Multiple smaller buildings are permitted as long as they conform to the lot coverage standard in subsection (E)(2) above;
 4. Uncovered storage areas shall be screened from preexisting residences on adjacent parcels and from designated public roads defined in Chapter 18.106. Screening shall generally consist of evergreen landscape buffers;
 5. Farm managers shall possess all applicable local, state and federal permits and licenses;
 6. All exterior lighting, including landscape lighting, for farm management uses shall be shielded and directed downward, located as low to the ground as possible, and the minimum necessary for security, safety, or operations. Additionally, motion detection sensors must be incorporated to the greatest extent practical. No flood-lighting or sodium lighting of buildings is permitted, including architectural highlighting and spotting. Low-level lighting shall be utilized in parking areas as opposed to elevated high-intensity light standards. Prior to issuance of any building permit for construction, two copies of a separate detailed lighting plan shall accompany building plans showing the location and specifications for all lighting fixtures to be installed on the property shall be submitted for department review and approval.
- F. Agriculture shall not include the raising and keeping of more than twenty-five roosters per acre, up to a maximum of one hundred roosters per legal parcel, except as may be permitted pursuant to Chapter 6.18.

Section 18.08.370 - Marketing of wine:

"Marketing of wine" means any activity of a winery which is conducted at the winery on a prearranged basis for the education and development of customers and potential customers with respect to wine which can be sold at the winery on a retail basis pursuant to Chapters 18.16 and 18.20. Marketing of wine may include cultural and social events directly related to the education and development of customers and potential customers provided such events are clearly incidental, related and subordinate to the primary use of the winery. Marketing of wine may include food service, including food and wine pairings, where all such food service is provided without charge except to the extent of cost recovery.

Business events are similar to cultural and social events, in that they will only be considered as "marketing of wine" if they are directly related to the education and development of customers and potential customers of the winery and are part of a marketing plan approved as part of the winery's use permit. Marketing plans in their totality must remain "clearly incidental, related and subordinate to the primary operation of the winery as a production facility" (subsection (G)(5) of Sections 18.16.030 and subsection (I)(5) of 18.20.030). To be considered directly related to the education and development of customers or potential customers of the

winery, business events must be conducted at no charge except to the extent of recovery of variable costs, and any business content unrelated to wine must be limited. Careful consideration shall be given to the intent of the event, the proportion of the business event's non-wine-related content, and the intensity of the overall marketing plan.

Section 18.08.620 - Tours and tastings:

"Tours and tastings" means tours of the winery and/or tastings of wine, where such tours and tastings are limited to persons who have made unsolicited prior appointments for tours or tastings. Tours and tastings may include food and wine pairings, where all such food service is provided without charge except to the extent of cost recovery and is incidental to the tasting of wine. Food service may not involve menu options and meal service such that the winery functions as a café or restaurant.

Section 18.08.640 – Winery:

"Winery" means an agricultural processing facility used for:

- A. The fermenting and processing of grape juice into wine; or
- B. The refermenting of still wine into sparkling wine.

Temporary Event Manual

Temporary event(s) are defined as:

A festival, fair, show, showcase, house or garden design tour, concert, dance, rally, parade, demonstration of competition of creative athletic form to which the public is invited or admitted with or without the payment of an admission charge. They include but are not limited to, music, dance, theatre, 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.

Interpretative Guidance for 2010 County Code Amendment:

Cultural and social events that are unrelated to (customer) education and development are explicitly not permitted, while cultural and social events that are directly related to (customer) education and development have always been allowed. Business events are similar to cultural and social events, in that they are only permitted as part of "marketing of wine" if they are directly related to the education and development of customers and potential customers of the winery and are part of an approved marketing plan that in its totality is "clearly incidental, related and subordinate to the primary operation of the winery as a production facility."

To ensure that the intensity of winery activities is appropriately scaled, the County considers the remoteness of the location and the amount of wine to be produced at a facility when reviewing use permit proposals, and endeavors to ensure a direct relationship between access constraints and on-site marketing and visitation programs.

Consolidated Definition

Based on the above adopted policies, ordinances, and guidance, staff suggests the following working definition for agricultural, and accessory uses:

Agriculture is the raising of crops, trees, and livestock; the production and processing of agricultural products; farm management activities; farm worker housing and related accessory uses.

Agricultural processing includes crushing; wastewater disposal; aging, processing, bottling, storage, and shipping of bulk wine; office and laboratories; retail sales of wine; marketing activities for the education and development of consumers and members of the wine trade regarding wine produced by the winery, and limited non-commercial food service.

Accessory uses must be related, subordinate and incidental to the main use. They must also be reasonably compatible with and cannot change the character of the primary agricultural uses.

Uses accessory to agriculture include dwellings and guest cottages; small care homes; minor communications facilities; kennels and veterinary offices; non-commercial energy systems; limited recreational uses; campgrounds and related lodging; sanitary landfills; levee repair and maintenance; and agricultural processing facilities (other than wineries).

Uses accessory to a winery include tours and tastings; retail sale of wine-related items; display of art or items of historical, ecological, or viticultural significance; child care centers; and temporary events.

PROPOSALS

As previously provided, staff has included both Options C and F from the May 26, 2015 meeting of the APAC, for reference by the Committee.

Option C:

Establish a small winery use permit for new facilities located on parcels of 10 to 40 acres.

Sub-options:

1. Limit tasting visitation to an absolute maximum of 10 visitors per week;
2. Prohibit marketing events and/or food events of any kind;
3. Require that a percentage of grapes used at the winery are grown on the property or on other property under the same ownership:
 - a. Require at least 75% estate grapes; or
 - b. Require 100% estate grapes;
4. Prohibit the use of off-site water for growing grapes or making wine;
5. Prohibit any net reduction in vineyard acreage;
6. Limit production to 15,000 gallons (allow production to be increased by 1,500 gallons for each additional acre over 10 in the parcel where the winery is located);
7. Limit all non-permeable development (including agricultural outbuildings, paved areas, and residences) to 40% of the entire parcel area. The remaining 60% must be retained as agriculture and/or open space.
8. Amend the County Code to define "small wineries," a "small quantity of wine," "small marketing events," and "mostly grown on site;"
9. Require a full use permit when small wineries are located in proximity to urban areas;
10. Require that at least 50% of the parcel must be planted in vineyards; and/or
11. Prohibit any future changes to these restrictions for any reason.

Option F:

Proposals that do not directly address minimum parcel size, estate grapes, or vineyard loss.

Sub-options:

1. Establish a one-year moratorium on new or amended winery applications.
2. Prohibit new wineries within Municipal Watersheds.
3. Prohibit new custom crush facilities within the AW zone.
4. Establish a fee as part of the use permit to pay for a code enforcement position, dedicated to monitoring and enforcing winery use permit requirements.
5. Create a formula to restrict the permitted number of visitors based on the amount of winery production.
6. Establish a fee as part of the new or amended use permit to support the County workforce proximity housing fund.
7. Require all wineries to comply with existing County regulations.
8. Limit the total number of annual use permits for new and/or amended winery use permits:
 - a. Allocate annual permits by parcel size and/or production capacity, encouraging a variety of operations;
 - b. Tie any increase to the number of permits to the increase in grape supply;
 - c. Establish a cap and trade program whereby holders of unutilized permitted capacity may sell their rights to other wineries, upon County approval;
9. All new and amended winery use permits shall be subject to the following:
 - a. Require that the winery parcel have sufficient water source(s) on site for all production and winery activities (no trucking of water to augment the needs of winery production or activities shall be permitted). If water becomes insufficient for the permitted production capacity, the winery's permitted capacity shall be reduced to an appropriate level;
 - b. Require that all sewage/processed waste disposal systems be contained entirely within the winery parcel (no "hold and haul" system shall be permitted or expanded);
 - c. Require that grape source(s) be identified and proven to Napa County before any application is deemed to be complete;
 - d. Require wineries to annually report grape source, wine production and visitation counts to Napa County in order to verify compliance;
 - e. Limit maximum coverage of new wineries to 5% of the existing parcel or 5 acres, whichever is less;
 - f. Limit maximum permitted production for new wineries based on the acreage of existing and proposed vineyards;
 - g. Limit actual production based on the number of current and yielding acres of vineyard;
 - i. Limit visitation based on the number of actual gallons produced. Visitation levels should also be based on road access and impacts to adjoining properties;
 - j. Limit marketing events to wineries on at least 20 acres, taking road access and impacts on adjoining properties into account;
 - k. Limit marketing events to 0.1 visitors per gallon of actual production;
 - l. Restrict marketing events in the AW Zone to daylight hours only;
10. Instead of minimum parcel size, estate grapes, or net vineyard loss, adopt performance metrics based on impacts to traffic and public services;
11. Prepare a list of problems and issues that need to be resolved before recommending any new regulations;
12. Amend the County Code to define agriculture as including wineries and other production facilities as conditional uses, except as provided for in Policy AG/LU-16, and that marketing activities and other

accessory uses are incidental and subordinate to the main use.

The following are summaries of the proposals that have been provided by the public, committee members, and staff since the June 8, 2015 meeting. These are just summaries and readers are encouraged to view the attachments to see the full text of each proposal.

Proposal O – Rudy Von Strasser:

1. Retain the current variance rules without any revision.

Proposal P – Dan Mufson:

1. Add a violation fee to use permits and use permit modifications that correct code violations. This would be similar to the building permit violation fee that is charged when a person applies for a permit for work that commenced without a building
2. Increase the winery audit from 20 to 35, which would allow for all wineries to be evaluated within 12 years (instead of 23), while keeping staff time for the audit to 50 percent of a full-time position.
 - a. As an alternative, the full audit could be kept at 20, but all wineries could submit production and visitation data to PBES annually. It may also be possible to create a web portal that would allow winery owners to log in and submit their compliance data online.
 - b. A second option would be to expand the scope of the Audit. At present, the audit is limited to looking at production, grape sourcing, visitation, and retail sales. The Audit could include a review of the winery's conditions of approval to ensure that all relevant requirements are being met.
 - c. A third option would be to require that wineries found to be in violation remain in the audit until compliance is received, and be subject to appropriate penalties or fines.
3. Establish a mandatory compliance program with the following components:
 - a. It will apply to all existing and new wineries.
 - b. The data will be submitted online to create a database.
 - b. An annual sworn affidavit by the Owner/President must be submitted certifying their use permit compliance.
 - c. Formal audits will be performed by County personnel trained for this purpose, or third-party audit firms.
 - d. The program is to be funded by fees based on visitation (tasting, events) and/or permitted wine production. The funding goal is to support annual audits of 33% of the wineries.
 - e. There will be a schedule of mandatory penalties for non-compliance based on the factor in question: In addition to monetary fines, the penalties will mandate a return to the operations outlined in the original Conditions of Approval, and thereafter, a three-year waiting period, with clean audits, to apply for any use permit modifications for production or visitation increases.
 - f. The components of the audit will include: production, grape sourcing, visitation, retail sales, the approved marketing plan, events, temporary events, food costs for food and wine pairing events, water usage and waste water volumes and handling. The Audit could include a review of the winery's Conditions of Approval.

Proposal Q – Christina Benz:

1. Include a visitation allowance within Winery Use Permits, but not an allowance for marketing

events for greater than 50 people. All winery marketing events of more than 50 people would be required to obtain a Temporary Use Permit. In addition, require that the application process notify neighbors within 2500 feet of the event.

2. When findings can be made, limit setback variances to a 15% reduction of the required setback.

Proposal R – Charlie Hossom:

1. Maintain the current WDO including the 10 acre minimum parcel size. Consider sensible improvements to the ordinance that would make land use restrictions more consistent with larger parcels or other County policies.
2. Strengthen or improve use of traffic studies to assess the off-parcel impacts of a proposed project. I believe using emergency response time as a metric will permit the County to assess areas where proposed growth will have significant impacts or where smart growth can occur.
3. Require wineries to self-report their water use, wastewater generated, gallons of wine produced, and visitation records. I suggest that as wineries are already required to report most of this information to various governmental agencies, that reporting dates and periods be coordinated with the other required reporting periods to facilitate compliance. I believe that metrics could be developed that would allow the County to assess how water-wise a proposed project will be. Perhaps gallons of water used per gallon of wine produced. A similar standard could be used for wastewater. No hold and haul projects should be permitted for any commercial purpose. It is simply unsustainable.
4. Limit temporary use permits within the AP and AW zones to those that support the agricultural use of the land. They should only be granted to wineries that are in full compliance with their Use Permit guidelines. The granting of temporary use permits must be looked at both individually and collectively. They should only be granted at a level that the County infrastructure can sustainably support.
5. Variances to County code should be the exception and not the norm. Variances that improve public safety, facilitate traffic flow, or are otherwise beneficial, should be granted. Variances to County code that ignores the original intent such as setbacks should not be granted approval.

Proposal S – Ginna Beharry:

1. Use the definition of Marketing of Wine in the WDO as a guideline for approval of all Temporary Events that take place at wineries or vineyards in AP or AW zones. It would apply to all Temporary Events held at wineries whether or not the event requires a license (not all temporary events require a license). Limit the number of Temporary Events allowed annually per facility. The temporary event or the granting of a temporary event license to a winery shall consider the size of the winery, winery location and proximity to neighbors such that the use with or without license may be limited in numbers of guests, hours of use and number of times such use or license may be employed over time. The existing Temporary Event categories 1 – 4 currently allow multiple events per year. These multiple uses per year may be inappropriate if applied to such events at wineries. Cumulative effects of temporary event licenses shall also be considered such that multiple events are not overlapping on the same night in the same area or that neighbors are not subject to special events on successive days/weekends by a number of different wineries.
2. Include notification requirements for all events that have 100 or more attendees, are held after normal

business hours and are held outdoors with amplified music or lighting. Require notification of all neighbors within 1/2 mile.

3. Only grant variances when all of the required Findings are strictly met. Variances, road exceptions and conservation regulation exceptions are appropriate planning tools but should not be used to make a winery 'fit' on a parcel.

Proposal T – Shari Gardner:

1. Limit the extent of variances to 20%.
2. Prohibit any net loss of vineyard for winery development
3. Limit the number of winery permits issued annually in the Ag Preserve and Ag Watershed, and consider a cap on the total number of winery permits issued in these areas.

Proposal U – Bill Hocker:

- 1: Rescind the 2010 WDO modifications in their entirety.
- 2: Change the language of the "Marketing of Wine" definition in the 1990 WDO to eliminate the ambiguous and all-encompassing phrase, "or members of a particular group for which the activity is being conducted on a pre-arranged basis."
- 3: Empower County staff with the means to adequately detect and enforce non-compliance of use-permits at wineries.

Proposal V – Debra Dommen:

1. Implement General Plan Policy CON-27, Action Item CON NR-1 to amend the Conservation Regulations to include incentives such as a streamlined review process for new vineyard development and for projects that incorporate environmentally sustainable practices that avoid or mitigate environmental impacts. Projects may be approved with a ministerial permit if they meet all of the following requirements:
 - a. Projects of less than 15 acres or less 20 acres if there is a net reduction of sedimentation by 50%;
 - b. No slopes of more than 30 percent;
 - c. No increase in peak flow discharge of surface water downstream;
 - d. No lowering of groundwater levels, location in MST, or reduction in summer base flow to either the aquifer or downstream receiving waters;
 - e. No new appropriative surface water diversion, or water transfer between sub-basins;
 - f. No increase in soil loss;
 - g. No increase in downstream sedimentation or water pollution;
 - h. Exceed stream setbacks, restore disturbed/denuded areas;
 - i. No conversion or loss of sensitive natural communities, no development of core USFWS areas, no fill in wetlands, preserve 60% of the tree canopy and 40% of the shrub and herbaceous cover, avoid disturbance of bat roosts, avoid disturbance of special status bird nests, and limited wildlife fencing;

- j. No disturbance of significant cultural resources;
- k. All staging and grading conducted between April 1 and September 1, best management practices installed by September 30;
- l. Field monitoring during and after construction, groundwater monitoring;
- m. Limited to one project per parcel, excepting work approved prior to 2007; and
- n. Cannot be located in Mineral Resource Area, cannot include visitor-serving uses.

Proposal W – Self Certification:

Establish a self-certification process to ensure that each winery is actively aware of the terms of its Use Permit and to raise awareness and align members of the winery management team regarding compliance of each condition. Most inadvertent non-compliance will be quickly eliminated by such a program and the awareness of marketing and sales personnel to WDO requirements would dramatically reduce the pressure for non-compliant events and initiatives.

The filings would be confidential. The self-certification would be made by the principal officer of the entity owning or leasing the winery facility. The officer would attest to its accuracy and completeness. If subsequently shown to be inaccurate or complete, penalties will be at the discretion of the Planning Director.

The self-certification process would include:

-) Sharing of TTB reports regarding production and grape sourcing;
-) A calculation showing compliance with the total production maximum;
-) A calculation showing compliance with 75% rule;
-) Visitor counting methodology and totals;
-) Summary of major marketing events and attendance;
-) Description of retail merchandise on sale;
-) Description of any site rental activity; and
-) Description of food preparation facilities and assurance of compliance with Environmental Health standards for food preparation and public water supply.

If not in compliance with some component of the Use Permit, a three-year program, including interim milestones to achieve compliance, would be required, subject to approval by Planning Director (or Zoning Administrator). Penalties would be imposed only if a winery failed to complete an approved compliance plan.

In lieu of the existing random winery audit program, filings would be subject to discretionary review by the Planning Director for up to 2 percent of the total filings annually (similar to the IRS selection for audit standards). Reduces total workload to 8-10 per year and targets most likely issues.

Proposal X – Winery Use Permit Framework:

In order to provide a catalyst for discussion, staff has attempted to integrate and consolidate many of the issues and suggestions that have been offered both at APAC and that are being considered by the Planning Commission. This is an effort to develop a broad consensus position that can be used as a starting point for general consideration, not as an attempt to drive the discussion.

This proposal is by no means exhaustive or all-inclusive. There are many different perspectives on which issues should be included, which have the highest priorities, and what should be done about each of them. Staff is not offering this as being set in stone. If the Committee finds this exercise valuable, they are

encouraged to add to it, delete from it, and modify it as they feel appropriate.

	AP			AW		
	10 – 20 Acres	20-40 Acres	40+ Acres	20 – 40 Acres	40-80 Acres	80+ Acres
Review Authority	Zoning Administrator	Planning Commission	Planning Commission	Zoning Administrator	Planning Commission	Planning Commission
Production Capacity	20,000 gallons	50,000 gallons	Per Use Permit	20,000 gallons	40,000 gallons	Per Use Permit
Estate Grape Requirement	15% of total production	15% of total production	Per Use Permit	10% of total production	10% of total production	Per Use Permit
Maximum Area of Winery Development	25% of total parcel	20% of total parcel	15% of total parcel	20% of total parcel	15% of total parcel	10% of total parcel
Maximum Hospitality Area	30% of Winery Development Area, including outdoor visitation, and Type 3 caves	40% of Winery Development Area, including outdoor visitation, and Type 3 caves	40% of Winery Development Area, including outdoor visitation, and Type 3 caves	30% of Winery Development Area, including outdoor visitation, and Type 3 caves	40% of Winery Development Area, including outdoor visitation, and Type 3 caves	40% of Winery Development Area, including outdoor visitation, and Type 3 caves
Tasting Room Visitors	100/week	150/week	Per Use Permit	50/week	75/week	Per Use Permit
Food Service	No food prep or kitchen	Food preparation area, no kitchen	Per Use Permit	No food prep or kitchen	Food preparation area, no kitchen	Per Use Permit
Marketing Event Visitors	250/year	550/year	Per Use Permit	200/year	400/year	Per Use Permit
Hours of Operation	Tasting: 7:00 pm Events: 9:00 pm	Tasting: 7:00 pm Events: 9:00 pm	Per Use Permit	Tasting: 6:00 pm Events: 9:00 pm	Tasting: 6:00 pm Events: 9:00 pm	Per Use Permit
Variances	No more than 25% for public road setbacks	No more than 15% for public road setbacks	Maximum 0%	No more than 25% for public road setbacks	No more than 15% for public road setbacks	Maximum 0%
Temporary Events	Per Use Permit	Per Use Permit	Per Use Permit	Per Use Permit	Per Use Permit	Per Use Permit
Retail Products	No retail	Wine-related products	Wine-related products	No retail	Wine-related products	Wine-related products
Hold and Haul	Limit 3 years	Limit 2 years	Limit 1 year	Limit 3 years	Limit 2 years	Limit 1 year

VIEWSHED PROTECTION PROGRAM

Chapter 18.106 - VIEWSHED PROTECTION PROGRAM

18.106.010 - Purpose.

The purpose and intent of these regulations is to protect the public health, safety, and community welfare and to otherwise protect the scenic quality of the county both for visitors to the county as well as for its residents by ensuring that future improvements are compatible with existing land forms, particularly county ridgelines and that views of the county's many unique geologic features and the existing landscape fabric of the county's hillside areas are protected and preserved. These regulations are consistent with the goals and policies of the Napa County general plan, particularly as specified in the land use, open space and conservation, circulation and the scenic highways elements. Furthermore, it is intended that these regulations accomplish the following:

- A. Provide hillside development standards to minimize the impact of man-made structures and grading on views of existing landforms, unique geologic features, existing landscape features and open space as seen from designated public roads within the county;
- B. Protect and preserve views of major and minor ridgelines from designated public roads;
- C. Create a development review process that maximizes administrative, staff level approval of projects which meet administrative standards, while also providing a vehicle for review by the zoning administrator or planning commission of those projects that do not meet the administrative standards;
- D. Minimize cut and fill, earthmoving, grading operations and other such man-made effects on the natural terrain to ensure that finished slopes are compatible with existing land character; and
- E. Promote architecture and designs that are compatible with hillside terrain and minimize visual impacts.

18.106.020 - Definitions.

Unless otherwise specified, the terms indicated below shall have the following meaning:

"Accessory structures" shall mean structures that are subordinate and supplementary to the predominate use of the parcel, be it agricultural, residential, or a combination thereof.

"Agricultural structure" shall mean a structure supportive and/or ancillary to an authorized on-site agricultural use as defined by Section 18.08.040 of the code.

"Benches" or "shelves" shall mean flat areas which could be used as a building site which are otherwise surrounded by slopes of fifteen percent or greater.

"Building height" shall be as defined in the currently adopted edition of the California Building Code used by the county.

"Code" means the Napa County Code.

"Commission" shall mean the Napa County planning commission.

"Defensible space" shall be interpreted pursuant to the requirements of Chapter 3 of Part 2 of Division 4 of the Public Resources Code (commencing with Section 4290).

"Department" shall mean the Napa County planning, building and environmental services department.

"Design Manual" shall mean the manual entitled "Viewshed Protection Manual" on file with the department. The Design Manual shall contain graphic examples of major and minor ridgelines, projects which do and do not meet the criteria contained in this chapter, and landscape plan provisions.

"Designated public roads" shall mean scenic highways as identified in Figures 75 and 76 of the scenic highways element of the Napa County general plan, and such other county roads as may be designated by resolution of the board of supervisors.

"Director" shall mean the director of the planning, building and environmental services department and/or the director's designee.

"Floor area" shall be defined to be the area encompassed by the outside surface of the structure foundation.

"Grading" shall be as defined in Section 18.108.030 of the code. Grading includes earthmoving activity as defined in Section 18.108.030 of the code.

"Major ridgeline" shall mean a ridgeline, which is prominently visible from a substantial land area within the county. Major ridgelines are characterized by the lack of a topographical backdrop where the sky is visible beyond the ridge.

"Minor ridgeline" shall mean a ridgeline which is not prominently visible to a large area of the county. Minor ridgelines are typically lower in height, when compared to the surrounding terrain and may be visible only to a limited area, or have a backdrop of a nearby higher topographical feature.

"Predominant portion" shall mean the principal or main part of the structure including architectural features likely to be silhouetted against the sky.

"Ridgeline" shall mean a visually prominent, relatively narrow strip or crest of land, which includes the highest points of elevation within a watershed, that separates one drainage basin from another.

"Slope" shall be determined in the same manner as defined in Section 18.108.030 of the code.

"Structures" shall mean that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or comprised of parts joined together in some definite manner. Structure includes, but is not limited to, primary and accessory buildings, single-family residences and improvements, additions, reconstruction and remodeling to said structures.

"Substantial views" shall mean views of a structure wherein fifty-one percent or more of the area facing the designated road(s) can be seen.

18.106.030 - General provisions.

- A. **Applicability—New and Expanded Structures.** No building permit, erosion control plan for structural development, grading or other administrative permit shall be issued by any county staff, agency or department for any new structure or improvement to an existing structure if the structure is located on a slope of fifteen percent or more as defined in Section 18.106.020 or if the structure is located on any minor or major ridgeline as defined in Section 18.106.020 except as specifically provided for herein. The ordinance codified in this section shall apply to all new structures located on slopes of fifteen percent or more or located on a minor or major ridgeline. In the event of a conflict among the regulations in this chapter and those elsewhere in this code, the regulations in this chapter shall prevail. The provisions of this chapter shall also apply to projects undertaken by public agencies and special districts except for the maintenance of existing county public roads within existing rights-of-way.
- B. **Applicability—Grading or Earthmoving Activities.** No permit or administrative or discretionary approval shall be issued to authorize any grading or earthmoving activity, including grading or earthmoving necessary to create or improve an existing or new driveway, road or other access, or benches or shelves, if such earthmoving or grading would occur on slopes of fifteen percent or more until the applicant has complied with the applicable provisions of this chapter. Agricultural roads within planted areas subject to erosion control plans under Chapter 18.108 of the code shall not be subject to this requirement.
- C. **Relationship to the Review of Tentative Parcel Maps, Final Maps, and Subdivision Maps.** All future building sites identified on either a tentative parcel map, final map, or subdivision map shall be reviewed and conditions of approval established to ensure conformity with the purpose and intent of this chapter.
- D. **Relationship to Previously Approved Use Permits and Small Lot Subdivisions.** All structures described in a use permit approved prior to the effective date of Ordinance Number 1189 shall not be subject to the requirements of this chapter. Parcels in small lot subdivisions (defined as groups of at least five parcels of less than two acres each for the purposes of this section) established prior to the effective date of Ordinance Number 1268 shall not be subject to the requirements of this chapter.
- E. **Relationship to Previously Accepted or Approved Building Permits.** All residential structures or accessory structures for which a building permit was approved prior to the effective date of Ordinance Number 1189, or for which a building permit application had been accepted and deemed complete for departmental review by the county prior to December 1, 2001, shall not be subject to the requirements of this chapter. Such structures and the accompanying permits may be modified prior to the final occupancy inspection if the predominant portion of the proposed modifications to the structure is screened from view from a designated public road by natural vegetation, landscaping, architectural design, and colortone that is in accordance with the Design Manual and provisions of this chapter.
- F. **Relationship to Use Permit Applications.** Applications requiring the issuance of a use permit or use permit modification, as required by the code, will be reviewed for their adherence to the requirements

of this chapter during the application process for the issuance of the use permit or use permit modification.

- G. Relationship to Conservation Regulations. The structures or activities referred to in Section 18.108.050, except subsections (A) and (B), shall be exempt from the requirements of this chapter and will be cleared for further processing.
- H. Determination of Adverse Effects on Ridgelines. The director shall determine whether the proposed location of a structure could adversely affect a minor or major ridgeline for the purpose of administering this chapter based upon elevation of the proposed structure, the height of its roof line and the location of the structure in relationship to surrounding topography.
- I. Application Form and Fee. Applications for new, expanded or remodeled structures subject to this chapter shall be submitted to the department on a form provided by the department accompanied by a fee determined by a resolution adopted by the board of supervisors.

18.106.040 - Projects subject to administrative review.

- A. General Provisions. Permit applications which meet the criteria in subsection (A) or (E) of Section 18.106.030, and/or grading or earthmoving activities meeting the criteria in subsection (B) of Section 18.106.030, shall be submitted to the department for review by the director. If the application, either as submitted, or upon the inclusion of specified measures, meets the criteria specified in subsection (B) or (C) of this section, the director shall certify that the project complies with the applicable provisions of this chapter and the project will then be cleared for continuing processing pursuant to Title 15 of the code. The director may require the submittal of additional information including, but not limited to, a photo or computer simulation of the project and associated improvements, prior to determining that the project meets the criteria contained in this chapter.
- B. Visibility Determination. If the director determines that the project cannot be viewed from any designated public road, because of its relationship to surrounding topography or existing vegetation, then the project will be cleared for further processing pursuant to the code. If the determination was made based on existing vegetation coverage, then the property owner, prior to the issuance of a building permit, shall be required to execute and record in the county recorder's office a use restriction, in a form approved by county counsel, requiring the existing covering vegetation to be maintained, or replaced with equivalent vegetation, by the owner or the owner's successors, so as to prevent the project from being viewed from any designated public road.
- C. Administrative Criteria. A project shall be certified and cleared for further processing, if the director determines that a project meets all of the following conditions:
 - 1. The highest point of the proposed structure is located more than twenty-five vertical feet below a major or minor ridgeline;
 - 2. The project as designed and sited meets all of the following standards and substantially conforms to the Design Manual:
 - a. The maximum floor area, including all floors, of the main residence or agricultural structure is four thousand square feet or less and the maximum floor area, including all floors, for

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- accessory structures are a combined total of two thousand five hundred square feet or less,
- b. The height of the structure is twenty-four feet or less as measured from finished grade along fifty percent or more of the longest wall as viewed from any designated public road,
 - c. The improvement(s), including any required earthmoving or grading associated with the structure shall minimize removal of existing vegetation with emphasis on preserving mature trees. If the improvements require the removal of any tree with a diameter of six inches or greater, a detailed landscaping plan shall be prepared showing the location and replacement of trees and vegetation in a manner which screens the improvements from substantial views from designated public roads and provides for defensible space in conformance with state law,
 - d. A significant portion of natural on-site vegetation has been retained to naturally screen the project from views of designated public roads,
 - e. Landscaping will be installed and designed to screen the project from substantial views from designated public roads,
 - f. The project lighting, including site lighting, has been designed to minimize off-site visibility and glare,
 - g. The exterior color treatment of the structure will blend with the color of surrounding vegetation and landforms,
 - h. Exterior windows and trim are non-reflective, and
 - i. Roof angles and composition are designed to conform to existing landforms and landscape;
3. If the structure is an addition to an existing residence or an agricultural structure, the total floor area, including all floors shall not exceed four thousand square feet. If the addition pertains to an accessory structure, the total floor area, including all floors, shall not exceed a combined total of two thousand five hundred square feet;
 4. The project as sited and designed shall be in substantial compliance with the Design Manual to reduce its visual impact on the views of major and minor ridgelines as viewed from any designated public road and unique topographic or geologic features as viewed from any county road. The following landforms will be considered to be unique topographic or geologic features for the purposes of this subsection: Mt. St. Helena, Stag's Leap, Calistoga Palisades, Round Hill, Mt. George and Mt. St. John;
 5. Involves the grading of less than one and one-half acres of land;
 6. Future structures, including roads, driveways, wastewater disposal systems, and necessary earthmoving to construct project improvements shall be located to avoid environmentally sensitive areas as defined by Section 18.08.270 of the code;

7. A detailed landscape plan prepared by a qualified landscape professional shall be prepared which incorporates the criteria set forth in the Design Manual for review and approval by the director.
- D. Prior to the issuance of a building permit for any project authorized under this section, the property owner shall be required to execute and record in the county recorder's office a use restriction, in a form approved by county counsel, requiring building exteriors, and existing and proposed covering vegetation, as well as any equivalent level of replacement vegetation, to be maintained by the owner or the owner's successors so as to maintain conformance with either subsection (B) or (C) of this section.
- E. Projects that do not satisfy the criteria and standards contained in Section 18.106.040 shall be subject to review and approval under Section 18.106.050.

18.106.050 - Processing of projects subject to review and approval by the zoning administrator or the commission.

- A. If the director determines that a project does not meet the criteria in Section 18.106.040 the project shall not be cleared for further processing until the findings contained in subsection (B) of this section are made and a permit is issued by the zoning administrator, or upon referral, by the commission.
- B. The zoning administrator or commission shall make all of the following findings prior to approving a project:
 1. The project as designed or modified is consistent with Chapter 18.108 of the code;
 2. If the highest point of the proposed project is located more than twenty-five vertical feet below a major or minor ridgeline, that measures have been included in the project to reduce its visual impact on the major or minor ridgeline through use of existing natural vegetation, landscaping, topographical siting, architectural design, and colortone; or if the highest point of the proposed structure is within twenty-five vertical feet of a major or minor ridgeline, that the existing vegetation, proposed landscaping, topographical siting, architectural design, and colortone screen the predominant portion of the proposed structure;
 3. The proposed structure, access roads and other site improvements are sited and designed to minimize adverse effects on views from designated public roads;
 4. The proposed structure, access road and other site improvements, including earthmoving or grading, and benches or shelves minimize the removal of vegetation;
 5. The siting and design of site improvements and access roads minimize grading and alteration of natural landforms and topography;
 6. A landscape and/or vegetation retention plan in conformance with the Design Manual has been submitted and approved for the site that would provide maximum screening from designated public roads through preservation of existing vegetation and the planting of new vegetation and provide for defensible space in conformance with state law;
 7. The proposed structure and associated improvements substantially conform with the Design Manual in order to reduce their visual impact on the views of major and minor ridgelines as viewed

from any designated public road and unique topographic or geologic features as viewed from any county road. The following landforms will be considered to be unique topographic or geologic features for the purposes of this subsection: Mt. St. Helena, Stag's Leap, Calistoga Palisades, Round Hill, Mt. George and Mt. St. John;

- C. Prior to the issuance of a building permit for any project authorized under this section, the property owner shall be required to execute and record in the county recorder's office a use restriction, in a form approved by county counsel, requiring building exteriors, and existing and proposed covering vegetation, as well as any equivalent level of replacement vegetation, to be maintained by the owner or the owner's successor so as to maintain conformance with subsection (B) of this section;
- D. If one or more of the findings in subsection (B) of this section cannot be made, the application shall be forwarded to the commission for a possible exception pursuant to Section 18.106.070.

18.106.060 - Required public and private notification.

- A. Within seven days of the issuance of a tentative decision that the project is subject to administrative approval under Section 18.106.040, the director shall give notice of his tentative decision, including the date on which the tentative decision will become final, which date shall be ten calendar days following the date notice of the tentative decision is mailed.
 - 1. The notice shall be provided to the city or town closest to where the project is proposed to be built and to all public or private property owners located within one thousand feet of the outer perimeter of the property on which the project would be constructed as shown on the latest equalized assessment roll.
 - 2. The tentative decision shall be final once the period identified in the notice has expired unless an appeal has been filed by the applicant or any interested person pursuant to Chapter 2.88 of this code, in which case the tentative decision shall become final only if and when the appeal is withdrawn, dismissed or denied. If the appeal is granted, in whole or in part, the decision of the board on appeal shall become final in the manner and within the time set forth in Chapter 2.88.
- B. At least ten days prior to a decision by the zoning administrator or the commission under Section 18.106.050 or 18.106.070, notice of a public hearing shall be provided to the city or town closest to where the project is proposed to be built and to all property owners located within one thousand feet of the outer perimeter of the property on which the project would be constructed as shown on the latest equalized assessment roll.

18.106.070 - Exceptions.

Upon application by the property owner of a site, an exception to the requirement contained in subsection (B) of Section 18.106.050 may be granted by the commission. Such exception may be granted if, after conducting a public hearing and reviewing available building sites on the subject property, the commission makes all of the following findings:

- A. Compliance with the provisions of subsection (B) of Section 18.106.050 would result in greater visual impact than would the proposed construction on the proposed building site;

- B. Compliance with the provisions of subsection (B) of Section 18.106.050 would result in greater impact on existing landforms and landscape than would the proposed construction on the proposed building site;
- C. Measures have been included in the project to reduce its visual impacts as seen from any designated public roads. Such measures include but are not limited to:
1. Installation of landscaping designed to screen the project from view of designated public roads;
 2. Low level lighting on buildings and site which minimize off-site visibility and glare;
 3. Nonreflective exterior windows and window frames;
 4. Use of earth tone colors on building exteriors;
 5. Roof angles and composition designed to conform with the existing land forms and landscape; and
 6. Building height has been designed to minimize the silhouetting against the sky when viewed from any designated public road or open space owned or managed by a public agency or land trust.
- D. Prior to the issuance of a building permit for any project authorized under this section, the property owner shall be required to execute and record in the county recorder's office a use restriction, in a form approved by county counsel, requiring building exteriors, and existing and proposed covering vegetation, as well as any equivalent level of replacement vegetation, to be maintained by the owner or the owner's successors so as to maintain conformance with subsection (C) of this section.
- E. The project as designed or modified is consistent with the requirements of Chapter 18.108 of the code.

18.106.080 - Variances not prohibited.

Nothing in this chapter shall be construed as prohibiting any person from filing an application for a variance or as prohibiting the board of supervisors or commission from approving a variance pursuant to Chapter 18.128 of the code.

18.106.090 - Denials and potential takings.

No action shall be taken or a decision made pursuant to this chapter that denies the property owner economically viable use of the land (or the current legal standard in effect for a "takings" claim) under the Fifth Amendment of the U.S. Constitution at the time the applicant seeks project approval.

SUPPORTING DOCUMENTS

- A . Draft 6-08-15 APAC Minutes
- B . Proposal O - Rudy Von Strasser

- C . Proposal P - Dan Mufson
- D . Proposal Q - Christina Benz
- E . Proposal R - Charlie Hossom
- F . Proposal S - Ginna Beharry
- G . Proposal T - Shari Gardner
- H . Proposal U - Bill Hocker
- I . Proposal V - Debra Dommen

Recommendation: Approve
Reviewed By: Charlene Gallina