



A Tradition of Stewardship
A Commitment to Service

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NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: David Morrison - Director
Planning, Building and Environmental Services
REPORT BY: David Morrison, Director, Planning, Building & Environmental Servi - (707) 253-4805
SUBJECT: Code Compliance Discussion

RECOMMENDATION

Director of Planning, Building and Environmental Services requests the Board accept staff presentation and provide direction regarding the following proposals:

- a. Land Use Compliance program;
- b. Annual Winery Reporting program;
- c. Revisions to the Temporary Event Permit program; and
- d. Prioritization of the land use workload for PBES and County Counsel's office.

EXECUTIVE SUMMARY

On August 22, 2017, the Board initiated discussions regarding a revised code compliance program. The Board directed staff to return on September 17, 2017, with a comprehensive land use compliance program that included the following components: 1) a systematic program with enforceable deadlines for landowners to apply for new permits or modifications to resolve outstanding violations; 2) a reporting program that would include annual production and grape sourcing data for all wineries located within the unincorporated area; 3) revisions to the current process and procedures for temporary events, including a probationary period for temporary events that have violations and 4) recognition of the significant work needed to carry out additional enforcement efforts, in light of existing workload priorities for both PBES and County Counsel. Today's discussion will provide direction in each of these areas.

PROCEDURAL REQUIREMENTS

1. Staff Presentation
2. Public Comment

3. Motion, second, discussion vote on the item.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Government Code Sections 15307, 15308, 15309, and 15321 of the CEQA Guidelines categorically exempts actions taken by regulatory agencies to protect natural resources and the environment, perform inspections, and enforcement actions by regulatory agencies. Government Code Section 15262 statutorily exempts feasibility or planning studies for possible future actions. Based on the above citations, CEQA is not applicable.

BACKGROUND AND DISCUSSION

During the discussion held on August 22, 2017, staff provided a history of land use compliance actions taken by the Board from 1986 through adoption in 2017 of a new Code Compliance and Procedures Manual that governs enforcement for all divisions within PBES, not just zoning and building. In addition, staff provided a summary of recent actions, including the appointment of the Agricultural Protection Advisory Committee (APAC) in 2015. Among the directions to staff resulting from the APAC recommendations was the following:

1. Prepare a plan to implement a phased, self-certification compliance program.
1. The first phase would require all wineries to report their production and grape sourcing data to the County. An ordinance to require production and grape sourcing would be considered late in 2016; would be implemented in 2017, and the first reports would be due in 2018. During this phase, staff would review the existing methodology for calculating wine production for consistency with the ATTB (Alcohol, Tobacco, Tax and Trade Bureau) definition, as well as current types of winery operations. Staff would also work with County Counsel to prepare a series of papers explaining the legal guidelines by which existing vested rights are determined.
1. The second phase would involve an opportunity for wineries to come in for a voluntary review of their use permit to: (1) consolidate and streamline existing use permit conditions of approval; (2) determine and specify existing vested rights; (3) clarify the scope of activities addressed; and/or (4) consider alternative effective measures of tasting and marketing visitation. The reviews would not involve any change to legally established vesting or permitted rights. Depending on the volume of such requests and the extent of the Planning Division workload, outside planning and legal consultants may be needed to implement this second phase. The current practice of the wine audit would continue through the first and second phases.

Over the past three years, the Board of Supervisors has given significant attention to strengthen and enhance the effectiveness of code compliance in Napa County. These include:

1. Increased the number of code compliance staff from 3 to 6;
2. Created code compliance as a separate division within PBES;
3. Adopted a new Code Compliance Manual and standard forms;
4. All compliance staff obtained certification by the California Association of Code Enforcement Officers;
5. Expanded the role of the Code Compliance Division to include conservation, engineering, and

- environmental health;
6. Held annual workshops with the Board of Supervisors on the status of code compliance efforts and development of new goals;
 7. Adopted an ordinance to allow for the recordation of Notices of Violation and Citations;
 8. Standardized the formula for calculating civil penalties for conservation and zoning violations;
 9. Held four community clean-up events in unincorporated neighborhoods;
 10. Responded to a Grand Jury report; and
 11. Compliance staff trained in safety and provided protective equipment.

As a result of these efforts, the number of backlog compliance cases has been reduced by more than 25%, from 986 in 2014 to 676 in 2017. The backlog has been reduced while at the same time the number of new cases increased from 305 in 2014 to over 350 in 2017.

At the August 22, 2017 the Board of Supervisors directed staff to develop a comprehensive Land Use Compliance program that includes the following components:

1. A systematic program with enforceable deadlines for landowners to apply for new Use Permits or modifications to resolve outstanding violations;
2. A reporting program that would include annual production and grape sourcing data for all wineries located within the unincorporated area;
3. Revisions to the current process and procedures for temporary events, including a probationary period for temporary events that have violations;
4. Recognition of the significant work needed to carry out additional enforcement efforts, in light of existing workload priorities for both PBES and County Counsel's office.

The following are staff's recommended proposals for each of the components directed by the Board.

1. Land Use Compliance Program

Not all land use entitlements are the same. Use permits and entitlements established prior to the Winery Definition Ordinance (WDO) are significantly different than those granted today. Additional regulations have been adopted at the federal, state and local level over the past 26 years, which has further increased the complexity of requirements and associated enforcement of Use Permits.

Since 1986, Napa County has regularly reviewed and refined its approach to code compliance. Enforcement requires a careful balance between a variety of goals, including environmental protection, public health and safety, private property rights, due process, fairness, and economic development. As extensively described in the August 22, 2017, staff report, the Board of Supervisors has taken numerous steps since 2014 to further strengthen the code compliance program and make it more effective in addressing public concerns. The following staff recommendations build upon these recent efforts to provide an orderly and predictable process for transitioning to a more effective and consistent means of enforcement.

Application Deadlines:

Staff recommends that the Board of Supervisors establish a deadline of March 27, 2018, for all landowners who wish to apply for a Use Permit or modification, Erosion Control Plan or modification, or other permit to voluntarily remedy their violations. By 2:00 PM on that date, a substantially conforming application to establish a new Use Permit, or modify an existing Use Permit, would have to be received by the Planning, Building, and Environmental Services (PBES) Department. A "substantially conforming" application would be one that includes a majority of the information required in the application checklist, and where the information is responsive to the requirements. The

application does not have to be complete in order to be submitted by the deadline, but in order for the application to be “substantially conforming,” applicants must make a good faith effort to make the application as complete as practicable in the circumstances.

Use Permit holders who submit an application for any new or modified permit by the deadline of March 27, 2018, would have until July 10, 2018 to complete their application to the County’s satisfaction. It should be noted that Section 401 of the adopted Napa County’s Local Procedures for Implementing the California Environmental Quality Act (CEQA) states that no application for a permit is deemed complete until all information has been submitted necessary to either complete an Initial Study, determine that the project is exempt, or determine that the project is not subject to CEQA. Applications that are determined by the PBES Director to be incomplete by July 10, 2018, would be closed out and any unused funds would be returned to the applicant. Following the closing out of the permit application, staff would send a Notice of Violation and initiate the regular compliance process outlined in the Code Compliance Policies and Procedure Manual.

There are several reasons for the recommendation of the March deadline. The date provides 28 weeks or nearly 7 months, from the date of this hearing. It recognizes that many private firms essential to the preparation of a permit application (planners, civil engineers, traffic consultants, water consultants, etc.) are currently experiencing a backlog and are not available in the near term. For wineries, this allows some additional time for owners who are busy with harvest this year. The March deadline also allows owners to work on their applications over the winter months, when both production and hospitality activities are less intensive.

Similarly, the July deadline provides 15 weeks or nearly 4 additional months in which to complete the application. This time would be needed to provide any supplemental information required and to clarify and/or correct any plans or studies submitted. For winery owners, a later deadline would start to conflict with harvest and production activities for 2018.

The processing of applications received by the March deadline would be prioritized. Those applications that do not involve any violations, or are limited to addressing existing violations and/or clarifying existing entitlements, would move forward as usual. Any permit application received before March 27, 2017, that includes requests to both remedy existing violations and to expand existing entitlements would be "decoupled" and subject to a two-step process. The first step would be the processing and a decision on those portions of the application that remedy existing violations. Once all outstanding violations have been addressed to the County's satisfaction, then and only then would the second step begin of processing and considering the requests for expanded entitlements. It is anticipated that processing time for the second step would be reduced, as the analysis would build upon the work already completed in the first step.

Following the submittal of the application, staff would conduct a compliance inspection to verify the existence of any violations and to check for life, health, and safety concerns. Staff would send a new or amended (if an investigation is already open) Notice of Violation to the owner, that clearly lists all violations determined through the inspection and how compliance can be achieved. Those violations that pose an immediate threat to public health and safety, and/or threaten the environment, would have to be addressed before the application could be determined complete. (Note that if a building was constructed without permits or an existing building has been converted to a new occupancy, Building Permits cannot be issued until a Use Permit or Modification is granted.) Owners who submit an application for any new or modified permit by the above deadline would continue to be subject to penalties for constructing improvements without a Building Permit.

Applicants who seek to participate in this program should be advised that the County does not make any promise or representation that their applications will be granted in whole or in part. Each application will be considered on its own respective merits

Between now and March 27, 2018, the County would provide outreach and education to landowners regarding the

Land Use Compliance program, future compliance penalties, and the rights and obligations associated with various entitlements.

Post-Deadline Violations:

All properties affected by new violations that occur after March 27, 2018, would be required to come into immediate compliance with permitted approvals. This would also apply to all pre-existing violations where a substantially conforming application has not been received by 2:00PM at PBES. In addition, applicants would be required to operate within their existing permit approvals for one year from the date of the initial Notice of Violation, before they may apply for a new use permit or use permit modification to address or allow the land uses (or extent of land uses) that had been conducted without permission and that constituted a violation (or any portion thereof). Owners would also be subject to fines or penalties for past and ongoing violations.

Staff would continue to place a high priority on those violations that address immediate threats to public health and safety, and/or the environment. Staff would also prioritize those cases where the violation is clear and resolution can be quickly obtained. Violations that are complex (such as those involving pre-WDO vesting rights) or those violations that do not present an immediate health and safety concern (such as exceeding the number of permitted employees) would be treated as lower priorities.

Use Permit Determination:

Section 18.132.050 of the County Code currently provides a review process for land uses that were permitted prior to existing zoning requirements (non-conforming uses), as well as those uses which were legally established without a use permit. However, there is no equivalent process for the review of approved use permits that were not clearly defined or regulated at the time, may have inconsistencies resulting from subsequent use permit modifications, or may be subject to rules that are no longer applicable.

Staff proposes that the Board of Supervisors establish a Use Permit Determination (UPD) process. This would allow any property owner the opportunity to voluntarily go through a review by the County to determine the extent of their existing entitlements. The purpose of such use determinations would be solely to document and/or delineate existing property rights, and would not reduce or affect established entitlements. To provide guidance to both staff and landowners in this process, County Counsel's office would issue a series of documents regarding vesting rights, small winery exemptions, and other topics relevant to determining the extent of permitted winery uses. These documents would be issued over the next six months.

Under the UPD process, staff would review existing use permits, use permit modifications, other land use entitlements, and documents provided by the applicant. The resulting analysis would provide a written decision by the PBES Director that would provide the owner with a clear understanding of both their rights and obligations, which the owner and staff would then rely upon in the future to determine if a land use is operating in compliance. The PBES Director's decision would be issued administratively, without a public hearing. Any interested party could appeal the decision to the Board of Supervisors.

Staff Resources:

The number of property/business owners who will take advantage of the Land Use Compliance Program is difficult to predict. It is expected that Code Compliance staff would require additional short-term staffing to conduct compliance inspections and initiate administration of the Winery Reporting Program. Planning staff may be required to process any increased workload, to ensure that applications that do not involve violations move forward through the permitting process in a timely manner. County Counsel staff may also be needed, to assist with both the increased code compliance demands after March 27, 2018, as well as the additional volume of use permit applications.

To provide flexibility, staff proposes that temporary contractors for Code Compliance, Planning, and County Counsel be hired and, depending upon the workload, would remain until the majority of Use Permit applications submitted by the March 27, 2018, deadline have been processed. The full cost of contract personnel would be paid for by the applicants.

2. Winery Annual Reporting:

On an annual basis, all wineries in the unincorporated area would report the following information to the PBES Director:

- a. Number of gallons of wine production for the previous year, as determined by the County Winery Production Process chart; and
- b. Number of gallons crushed and juiced for the previous year from grapes that that were grown in Napa County.

This information is already required to be provided to the US Alcohol, Tobacco Tax Bureau (TTB) and the California Department of Food and Agriculture (CDFA).

Staff would work with the County Information Technology Services (ITS) to create a protected webpage where each winery can submit their information electronically, so as to minimize any burdens associated with the reporting process. Scanned TTBs and CDFA documents will also be submitted as an attachment to verify the information. All TTB and CDFA information submitted to the County will be treated as proprietary and will be maintained in a secured database with limited access. Once reporting has been reviewed by staff to verify compliance, the TTB and CDFA data shall be destroyed, except when used as part of a violation investigation. If the data and subsequent staff review indicate a winery to be in violation based on production and/or grape sourcing, a full evaluation of all Use Permit Conditions of Approval will occur and the winery owner shall be notified of any additional violations that are determined as a result of the investigation.

All production reporting will be evaluated pursuant to the County Winery Production Process hand-out (see attached), including the use of a rolling three-year average. The Winery Production Process chart was developed in conjunction with the industry and has been consistently used by staff for compliance purposes since 2009. For the first year of reporting (2018), staff would request data for the past three years (2015-2017), to determine current compliance with production requirements. Staff acknowledges that the Winery Production Process is not identical for all wineries and that agricultural yields vary year to year. Staff has conducted a review of the production process handout and determined that information continues to be reliable.

There are also concerns regarding a small percentage of wineries that do not meet the Production Process formula, due to multiple facilities, moving of products at different stages, and consolidate ownership. Those wineries that wish to submit alternative calculations may submit an amended report, which explains the methodology proposed to calculate a winery's production and grape source percentage. It is expected that the Winery Reporting interface will be developed in-house through working with ITS; however, there may be a need to hire a consultant to assist with the development of the software program. It is intended that the program would be available for winery owners to report their data in the Spring of 2018.

3. Temporary Events:

The attached chart illustrates the number of Temporary Event Permits issued by year since 2010. (Note: The 2017 amount is only counting through August 30th.) During this time, the highest number of temporary events occurred in 2010 where there were 135. The lowest number occurred in 2013 with 61, which was only half as many as the number of events in 2010. It appears at this point, that 2017 may equal or surpass the number in 2010. If the

present rate of events continues, there would be 144 events in 2017.

With regards to potential violations, the County's permitting software does not track event-related complaints separately. However, after reviewing the files, staff estimates that there have been 31 event-related complaints filed with the County since 2010. It should be noted that 84% of the event-related complaints have occurred since 2014, with over half (14) of all complaints occurring in 2015. Of those 31 complaints, 19 resulted in the issuance of Notices of Violation.

It was requested at the Board meeting that staff look at the County's procedures for enforcing Special Event Permits on County Roads, to see if a similar approach could be used with Temporary Events. A summary of the existing process is provided as follows:

- | When a complaint regarding a Special Event is received by Public Works, staff investigates to determine if the alleged actions occurred and whether they violated the Special Event Permit. Valid complaints are referred to the event applicant, who must provide a written explanation regarding: (1) how the violation occurred; and (2) what steps will be taken to prevent reoccurrence in the future.
- | As a result of a valid complaint, the event is placed "on probation" for one year. If the violation reoccurs, the event is placed on probation for a second year. If the violation reoccurs again, the event is then prohibited for one year.
- | If a new violation occurs (different from the initial valid complaint), the event is placed on a new probation or continues if already on probation. A committee of agency partners reviews Special Events where there are multiple complaints and decides how long the probation should be extended. If there are no further problems after the valid complaint is received, the probation is lifted and its status is cleared. New complaints are evaluated independently, regardless of past occurrences.

Staff also reviewed other nearby jurisdictions to see how they regulate Temporary Events. Most of the surrounding Counties do not appear to have requirements for private businesses hosting public events. Several of the jurisdictions primarily focus on food permits. Solano, Yolo and Marin Counties all have a temporary food permit process which they use as a vehicle for regulating community events. In contrast, Sonoma County has a detailed program specific to Temporary Events, which is summarized as follows:

A zoning permit is required for events that have any one or more of the following characteristics:

- | Live amplified music;
- | An admission fee;
- | More than one-day event or a one-day event beyond the hours of 7:00 a.m. to 11:00 p.m.;
- | Overnight sleeping accommodations;
- | An event occurring more than once in a 30-day period;
- | Publicized to the public at large through printed advertisements, newspaper, radio, or television; or
- | Sale of food or beverage.

The following do not require a zoning permit:

- | Events conducted entirely within dedicated rights-of-way where encroachment/special event permits are obtained from the County or State. Special Event Encroachment Permit (PDF: 87 kB)
- | Events entirely within a building for which all necessary County permits have been obtained and which allow the particular use.
- | Events at fairgrounds or outdoor spectator facilities where a use permit has already been obtained.

Applications for the zoning permit must be submitted 12 weeks in advance of the event. Signage is placed by staff

in the neighborhood where the event is proposed to take place. After posting, there is a 10-day appeal period during which interested parties may file an appeal of the proposed permit. If no appeal is received, the permit is issued. If an appeal is received, a public hearing is held before the Board of Zoning Adjustments (BZA). The BZA is a 10-member body, separate from the Planning Commission, appointed by the Board of Supervisors to decide Use Permits, Variances, Coastal Development Permits. At the hearing, the appellant, the applicant and all interested persons are allowed to speak and present evidence, including petitions of support or opposition. The decision of the BZA may be appealed to the Board of Supervisors within 12 days of the decision.

Staff believes that although the number of event-related complaints is relatively rare (less than 1% of all compliance cases received in 2017 to date), both the number of complaints and the associated violations have been increasing in recent years. Consequently, staff recommends adopting a probationary process for violating applicants, similar to the one used by Public Works uses to enforce Special Events. Like the Special Event process, probation would be applied to the event applicant, as the responsible party, and would not extend to the site owner.

The Sonoma County process for Temporary Events is generally similar to the one practiced by Napa County, with one major difference. Applications in Sonoma County must be submitted 84 days in advance of the event. In Napa County, applications may be submitted up to 60 days in advance. On several recent occasions, it has proven difficult to provide time to refer an application to agencies for review, hold a public hearing when requested, and provide time to schedule a Board of Supervisors' hearing on appeal within the 60-day timeframe. As the County experiences more event-related complaints, the narrow timeframe will become more problematic. As a result, staff recommends that Napa County require that applications for Temporary Events be submitted 90-days in advance of the event.

Both the probationary process and the 90-day advance submittal deadline would require an amendment to the County Code. If the Board of Supervisors supports this direction, staff would begin work immediately to bring the necessary code changes back for consideration and adoption by the end of 2017.

4. Work Priorities

The goals adopted for the Planning Division within PBES for the 2017-2018 Fiscal Year include the following:

1. Implement the agricultural protection measures adopted by the Board of Supervisors on March 1, 2016, as follows:

Agricultural Protection Measure	Status
Prepare guidelines for the consideration of variances;	Completed
Develop an annual winery reporting process	In Process - See above discussion
Develop a voluntary process for reviewing use determinations	In Process - See above discussion
Adopt an ordinance conforming the definition of agriculture in the County Code with the definition used in the General Plan	Completed
Adopt an ordinance limiting residential development areas in agricultural zones	Not Started
Establish guidelines for winery outdoor hospitality areas	Not Started
Adopt a limited winery ordinance	In Process - Draft circulated for public review
Establish a schedule for implementing General Plan action items	In Process - Will be included in the next annual General Plan report

Adopt a Code Compliance Manual	Completed
Update the Use Permit application and checklist	In Process - Will be completed by December
Adopt a Climate Action Plan	In Process - Draft Climate Action Plan presented to Planning Commission
Amend the Circulation Element and establish a Traffic Impact Fee	In Process - Consultant reviewing Administrative Draft
Develop winery comparison and locational criteria for staff reports	Completed
Coordinate with staff from the five cities on regional land use issues	Ongoing
Provide an annual winery report to the Planning Commission	Not Started
Review the compatibility of allowing continued hold and haul practices with the adopted Local Agency Management Plan (LAMP)	Draft LAMP tentatively approved by the Board of Supervisors, awaiting State review

2. Amend the County Code to update the Conservation Regulations; and
3. Prepare a comprehensive update to the Zoning Regulations within the County Code.

The Board of Supervisors has in recent years provided direction to staff on a number of additional tasks, including the following:

1. Adopt an ordinance requiring that pending public hearings be posted at the project site;
2. Adopt an ordinance updating the appeals process; and
3. Develop criteria for evaluating proposed wineries in remote locations.

Staff also believes that there are several further efforts that need to be addressed, including:

1. Update the Safety Element to address changes in State Fire requirements, flooding, sea level rise, and other revised data;
2. Update the General Plan to address several minor changes, designating the Oakville Cross Road as a view shed road, clarify the zoning "bubble" in the vicinity of Green Island Road, and add the MC (Major Commercial) Zone to the Zoning Consistency Table;
3. Standardize the template for the CEQA checklist and Initial Study; and
4. Complete the planning process improvement and customer service study.

Implementing the proposed Land Use Compliance program, the annual winery reporting program, and revising the Temporary Event Permit ordinance together represent a significant amount of work in the coming 1-2 years. As outlined above, there are a number of existing tasks, some of which are well along in development. Staff is requesting the allocation of temporary contract staffing in the coming year to assist in processing the potentially large volume of applications that may be submitted. However, even with the addition of short-term contract staff, it will not be possible to complete all of the tasks shown with the current level of resources. Staff would appreciate any prioritization that the Board of Supervisors may provide regarding which of the tasks listed above, or new tasks that were not included, that PBES should focus on in the coming 6 to 12 months.

5. Additional Direction

Staff notes that two additional directives were provided by the Board of Supervisors at the August 22, 2017, meeting:

- | Revise future staff reports to clearly delineate between proposed Use Permit modifications related to the remedy of existing violation and those that are expansions beyond existing entitlements; and
- | Clarify the winery database, to distinguish between existing entitlements where there is no permitted activity and those activities that are not specifically addressed by the permit. If the data is not clear, then an explanatory footnote should be added, clarifying that the database is for general informational purposes only and does not accurately reflect actual entitlements for individual wineries.

The Director has provided direction to staff to immediately implement both of these actions.

SUPPORTING DOCUMENTS

A . Attachment A - Temporary Event Charts

B . Attachment B - Winery Production Process

CEO Recommendation: Approve

Reviewed By: Helene Franchi