

Use Permit Modifications

Draft – October 25, 2010

What is a Use Permit?

While Napa County allows a number of uses “by right” in specific zoning districts county-wide (including, for instance, single-family residences and many agricultural structures), most uses in most zoning districts require a **Use Permit**. Use Permits are reviewed and acted on by the Napa County Planning Commission and all Use Permits include a **scope** of the approved use. The scope of a Use Permit is a highly detailed description of the permitted use, including all of the buildings, facilities, and infrastructure which will be a part of the operation. These detailed descriptions allow the Planning Commission to ensure consistency with applicable zoning and General Plan requirements, as well as to meet the County’s obligations under the California Environmental Quality Act (CEQA); they also serve a vital record-keeping function- allowing the County to maintain up-to-date information about the activities occurring within its boundaries and to better plan for future development.

For example, a winery Use Permit would include its allowed annual wine production, the size of its guest parking lot, and the square footage of its tasting room, and many other items. Similarly, a Use Permit for a medical office building might describe the number of doctor’s offices approved, the building’s architectural details, and the square footage of any shared waiting room space. It is the Use Permit scope, along with any conditions of approval adopted by the Planning Commission, which actually constitute the formal Use Permit.

What is a Use Permit Modification?

As everyone knows, businesses grow and change over time. What happens when a winery, which may have been approved with three full-time employees, gets a 99 point review and overnight needs that many employees just to answer the phones? There’s also the common situation of plans which change between Planning Commission approval and building permit application- making the building permit request inconsistent with the scope of the approved Use Permit. Napa County has established the Use Permit modification process to provide a streamlined way for businesses which are growing or changing to expand their operations and adjust their Use Permit.

Section 18.124.130 of Napa County’s Zoning Code sets the ground rules for processing Use Permit modifications. There are three different classes of modifications, each with its own particular review and processing requirements. They are: **Very Minor Modifications**, **Minor Modifications**, and **Major Modifications**.

Comment [cmc1]: Planning staff is also considering the possibility of a VERY VERY minor or “teeny weeny” mod, which would allow for small technical changes to be made to use permits quickly and for a reduced fee. A “teeny weeny mod” procedure could potentially be instituted simply with a change to the Department’s fee resolution... we just need to come up with a better name for it.

Very Minor Modifications

Very Minor Modifications typically include changes to Use Permits which do not alter their “overall concept, density, intensity, or environmental impact” and which would result in a less than 10% increase in overall square footage. For example, the addition of a 200 square foot mechanical equipment enclosure at an existing 20,000 square foot warehouse could qualify as a Very Minor Modification, as could the redesign of a winery crushpad to install a rain-proof cover or provide additional space for bottling trucks to maneuver.

Very Minor Modifications are reviewed by the Planning Director and can be approved without a public hearing and without formal legal notice to neighboring property owners (though noticing is sometimes still provided as a courtesy). *As of August 2010, the fee for a Use Permit Very Minor Modification was \$2,770.31, reflecting the average amount of time it takes for Planning staff to process this type of application, plus review fees for consulting departments/agencies.*

Minor Modifications

Minor Modifications, like Very Minor Modifications, are changes which would not alter a Use Permit’s “overall concept, density, intensity, or environmental impact.” Minor Modifications include **noncontroversial** changes such as the relocation of approved buildings from one location to another on a property and increases in square footage of up to 25%.

Examples of Minor Modifications might include the relocation of an approved dog boarding kennel from a location 100 feet away from the nearest neighbor to another location 50 feet further away. A 10,000 square foot winery’s proposal to add 2,000 square foot of additional barrel storage space to an existing building might also qualify as a Minor Modification. However, an increase in office or restaurant square footage, even if less than 25% of the existing facility, generally would not qualify as a Minor Modification because it would result in an increase in the “intensity” (for instance, the number of employees) of the use.

When a request for a Minor Modification is submitted and all of the necessary County departments have recommended approval, the Planning Department mails a *Notice of Intent* to affected neighbors. If no neighbors object to the project during the comment period, the Minor Modification can be approved administratively. If objections are raised, a formal public hearing is noticed and held in front of the County’s Zoning Administrator. Both sides are allowed to make their case and the Zoning Administrator either renders a decision or refers the issue on to the Planning Commission for their determination. *As of August 2010, the fee for a Use Permit Minor Modification was \$5,044.32, reflecting the average amount of time it takes for Planning staff to process this type of application, plus review fees for consulting departments/agencies.*

Comment [cmc2]: County staff understands that controversy is an awfully subjective word and that whether or not a project is controversial is sometimes totally outside of the applicant’s control. However, the word “noncontroversial” is used in the County Code section regulating Minor Modifications, so an amendment to the Zoning Code would be necessary to change that standard.

Major Modifications

Major Modifications are a catch-all category for applications which involve either an increase in square footage of more than 25%, changes to the intensity, density, or overall concept of a facility, or changes which are deemed to be environmentally significant.

Examples of changes in Use Permit scope which would nearly always qualify as Major Modifications include: any increase in winery production, any increase in winery visitation, any winery marketing events beyond those allowed by the existing use permit, any change in the class of use at an existing commercial facility (say a request to convert a deli/market into a sit-down restaurant), or any request that would impact an environmentally sensitive area (such as building a new driveway up a steeply-sloping heavily-wooded hillside.)

For purposes of processing, Major Modifications are treated very much like new Use Permit applications. A public hearing must be held before the Planning Commission to consider a Major Modification and neighboring property owners will receive formal notice. If the Planning Commission approves the use, it will usually do so subject to certain conditions being met by the applicant. Alternatively, the Planning Commission may deny Major Modifications which are inconsistent with Napa County's Zoning Code or General Plan. *As of August 2010, Use Permit Major Modifications were billed to applicants on a time and materials basis, with final costs based on the County's actual time spent processing the application. Hourly fees for the average Major Modification come to about \$16,000.*

Comment [cmc3]: Increases in winery production or visitation represent an "intensification" of the use, always requiring a Major Modification. As the Code is now written, there is no threshold under which they could be treated as a Minor Modification.

Comment [cmc4]: The reference to employee numbers has been deleted here, because the County is moving towards approving employment ranges (such as 0-10 employees) instead of specific numbers. As a result, there may be a limited number of cases in which employment could be increased, in small increments, with a Minor Modification.

Appeals

Because the Planning Director and the Zoning Administrator have the discretion to refer particularly thorny modifications to the Planning Commission, more contentious items are often decided at that level. However, whether a Use Permit Modification is Very Minor, Minor, or Major and whether it is decided by the Planning Director, the Zoning Administrator, or the Planning Commission, all decisions are ultimately appealable to the Board of Supervisors.

Recent Rule Changes Affecting Winery Use Permit Modifications

A number of new rules and regulations affecting wineries have been adopted over the last several years, each of which might lead a winery to consider amending its Use Permit. Some of the most commonly asked about follow, with relevant information on the applicable Use Permit Modification process provided in each case. Please note that the below speaks only to wineries which are currently operating under Use Permit.¹

¹ There exists a limited class of wineries which were operating legally without the requirement for a Use Permit prior to July 31, 1974. To the extent their activities as of that date have been recognized as legal by the County, those wineries may continue those specified activities without need for a Use Permit Modification.

AB 2004 (Evans) Sale of Wine for On-Site Consumption

Regulatory Change- In July 2008, the State adopted AB 2004 (Evans), which amended the State's Business and Professional Code to allow wineries to sell their wine to customers for consumption on-premises.

Modification Status- In most circumstances, the addition of retail wine sales for on-site consumption to an existing winery Use Permit will require a Use Permit Modification. It is not the sale of wine itself which triggers the need for a Modification, but the need to create a space on the property for the on-site consumption. So, for example, if on-site consumption is proposed to occur entirely within existing tasting room space, no Modification would be necessary. If, however, a new picnic area or new indoor wine bar area is proposed for AB 2004 on-site consumption, a Modification of some description *would* be necessary. Modifications resulting from these changes will generally qualify as Very Minor or Minor Modifications, with the distinction hanging on the square footage of the proposed new on-site wine consumption areas. Assuming that no increase in visitation is proposed, picnic grounds (or their indoor equivalents) constituting less than a 10% change to winery area would generally be processed as Very Minor Modifications, those proposing a 10%-25% change would be Minor Modifications, and in the rare case that an addition would result in a more than 25% addition, a Major Modification would be necessary.

Food and Wine Pairing as a Component of Tours and Tastings

Regulatory Change- In May 2010, the Board of Supervisors adopted Ordinance № 1340, which, among other things, allows winery's to offer food and wine pairings as a component of traditional "tours and tastings" winery visitation.

Modification Status- The addition of food service to tours and tastings winery visitation will generally require Use Permit Modification. It is important that the County's Department of Environmental Management be given an opportunity to vet any changes resulting from the addition of commercial food service, including new or altered kitchen facilities, solid waste facilities, and/or wastewater treatment systems. The Planning Division must also confirm that the "food service... (does) not involve menu options and meal service such that the winery functions as a café or restaurant." (NCC §18.08.620). As a general rule, the determination as to whether or not the addition of food and wine pairings to tours and tastings winery visitation would qualify as a Major, Minor, or Very Minor Modification will depend on the square footage of any associated improvements. For instance, if a new 800 square foot commercial kitchen is proposed and that constitutes a 12% increase in winery area, it would most likely be processed as a Minor Modification. Alternately, if the winery has an existing commercial kitchen and all of the existing facilities (specifically including its wastewater systems) are adequate to allow tours and tastings with food pairings, the change could be processed quickly and easily as a Very Minor Modification.

Comment [cmc5]: Please see comment 1 on page 1, this would be a perfect example of the sort of change that could potentially be processed as a "teeny weeny mod" if that procedure is implemented.

As noted above, the extent of any necessary wastewater treatment and/or disposal improvements will be considered when the County decides how to process Modifications that seek to add food pairings to existing tours and tastings visitation. However, unlike structural changes, the calculus there is less about the square footage of the proposed expansion and more about the qualitative scale of the change. The addition of several leach lines to an existing system to accommodate the tours and tastings food service is unlikely to require more than a Very Minor Modification. If, however, an entirely new or upgraded wastewater disposal system is required, it would likely trigger a Minor Modification or, depending on the environmental sensitivity of the area, even a Major Modification.

Sale of Wine-Related Products

Regulatory Change- Ordinance № 1340 allows winery's to sell "wine-related products."

Modification Status- So long as the sale of wine-related products occurs entirely within existing legal tasting room space (as opposed to any approved "production" area), no Modification is generally necessary to allow it.

Business Meetings as a Component of Marketing

Regulatory Change- Ordinance № 1340 clarifies that business events are allowed as a part of approved winery marketing programs, provided that they are consistent with Board-adopted interpretive language (see Board of Supervisors Resolution № 2010-48).

Modification Status- So long as business events replace existing approved marketing events on a one-to-one basis and so long as they have the same character (timing, size, etc.) as the events they replace, no Modification is generally necessary to allow them.

Please note that this factsheet is intended as a brief summation of Napa County's rules and regulations regarding Use Permit Modifications. It does not, and is not intended to, provide a complete restatement of the various existing rules and regulations concerning the same. Please refer to the Napa County Code or contact the Planning Department at 707.253.4417 if you have specific questions.