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**Public Comments – Napa Valley Vintners
& Winegrowers of Napa County**



napa valley vintners



WINEGROWERS
of napa county

December 13, 2016

Mr. David Morrison, Director
Ms. Charlene Gallina, Supervising Planner
Planning, Building & Environmental Services Department
1195 Third Street, #210
Napa, CA 94559

Re: Updated Standard Conditions of Approval for Wineries

Dear Mr. Morrison and Ms. Gallina:

Napa Valley Vintners (“NVV”) and Winegrowers of Napa County (“Winegrowers”) jointly submit these comments on the most recently proposed revisions to the standard conditions of approval for wineries. We appreciate that staff have incorporated many of the suggestions that we offered in our July 20, 2016 letter. We believe that staff’s reorganization of the conditions into general conditions, ongoing operational conditions, and construction conditions makes good sense. This letter will supplement and update the comments that we submitted on July 20.

Not all of the standard conditions apply to every winery project. We recommend that you add a preamble or recitals to that effect. For example, there are wineries in the industrial park that are not subject to the Winery Definition Ordinance (“WDO”). There are pre-WDO wineries to which some of the conditions, such as the required “Tours and Tastings by Prior Appointment Only” sign in section 9.2, do not apply. There also are winery modifications that do not impact certain subject areas of these conditions, such as a winery modification that involves no construction or landscaping, in which case the construction and landscaping conditions are inapplicable. Finally, the preamble or recitals should state that there may be issues of vested rights, nexus, rough proportionality, and/or legal nonconformities, so each situation has to be analyzed under its own facts.

1. The statement in section 4.1 is in error. The WDO, at Section 18.16.030(G)(5)(c) for AP zoning and 18.20.030(I)(5)(c) for AW zoning, authorizes the following retail wine sales, and the standard condition should track this same language:

"Retail sale of (1) wine fermented or refermented and bottled at the winery, irrespective of the county of origin of the grapes from which the wine was made, providing nothing herein shall excuse the application of subsections (B) and (C) of [Section 18.104.250](#) regulating the source of grapes; and (2) wine produced by or for the winery from grapes grown in Napa County;"

2. Section 4.2 regarding the wines that can be tasted at Tours and Tastings should be deleted. The WDO provision related to Tours and Tastings at section 18.08.620 of the County Code does not restrict what wines can be tasted at a winery. This subject is governed by state law,

specifically, Business and Professions Code Section 23356.1, which is attached to this letter along with all other cited code sections.

3. We urge the Commission to adopt in Section 4.3(d) our previous recommendation that wineries have a quiet cleanup period from 10 to 11 p.m. after approved marketing events. In that same section, we urge the Commission to add an explicit statement that Auction Napa Valley events need not be included in the participating wineries' marketing plan because they are covered by ANV's Category 5 Temporary Permit. We also suggest that any winery whose use permit includes an ANV event be allowed to use that authorized marketing event for any other charitable event.
4. Section 4.6 (Grape Source) should not summarize the 75% grape source rule but instead should cite to the actual code section (Section 18.104.250(B) and (C)) or copy the language verbatim. The first sentence of the proposed standard condition is inaccurate and misleading.
5. Section 4.9 (Ground Water Management – Wells): The reference to the Napa County Groundwater [Conservation] Ordinance as the legal basis for imposing new conditions on the permittee is incorrect. That ordinance specifically exempts projects requiring a use permit because the groundwater review occurs in conjunction with the use permit application (County Code Section 13.15.030(B)) and projects serving agriculture (Sections 13.15.030(A)(2) and 13.15.040). The condition should cite the proper legal authority for such action.
6. Section 4.21 (Previous Conditions): We would appreciate a clarification of whether the conditions listed will include all previous conditions or only certain of them. The latter would require the exercise of discretion on the county's part and vigilance on the applicant's part. Some prior conditions may have been superseded by changes in law or subsequent modifications or be internally inconsistent with other conditions. And some conditions may raise the subject of vested rights or legal nonconformities.
7. Section 4.16 (General Property Maintenance – Lighting, Landscaping, Painting, Outdoor Equipment Storage, and Trash Enclosure Areas): This section duplicates the more specific conditions at sections 6.3, 6.4, 6.5, 6.6, and 6.7.
8. Section 6.2(c): We recommend that this provision read as follows:

“All newly designed and newly constructed buildings, facilities, site improvements, and alterations or additions to existing buildings must comply with the applicable California Building Code accessibility requirements, as well as the applicable requirements of the American with Disabilities Act (ADA).
9. Section 6.6(d) (Outdoor Storage/Screening/Utilities): We recommend that this provision read as follows:

“Exterior winery equipment shall be located, enclosed, or muffled so as not to exceed noise thresholds in the County Code.”

10. Section 6.12 (Permit Prerequisite Mitigation Measures): The term “permit prerequisite mitigation measures” is unclear. It should be defined or otherwise clarified.
11. Section 6.14 (Final Maps). Neither Final Maps nor Conditions, Covenants, and Restrictions (“CC&Rs”) are applicable to winery use permits, so this section should be deleted.
12. Section 7.1(d) (Storm Water Control). The requirement to comply with construction and post-construction storm water pollution prevention protocols should not be imposed on winery use permit modifications that do not involve any construction-related activities. The County should clarify that, in the absence of any new construction, there is no legal nexus to require applicants to comply with such protocols.
13. Section 8.1 on Temporary Occupancy does not allow the use of Temporary Certificates of Occupancy (“TCOs”) for hospitality buildings or in excess of 180 days. While it would require an amendment to County Code Section 15.08.070(B) (limiting Temporary Occupancy permit to no more than 180 days), there should be provisions for extensions of time, particularly in instances where the project is required to obtain some other permit for the project from a state agency such as Caltrans, and the approval process exceeds 180 days. The tolling period for use permits in Section 18.124.090 has this language, and it should be included here. The 2012 condition on Temporary and Final Occupancy includes the following wording that has been proposed for deletion in the new condition: “Marketing and/or Tours and Tastings are not typically authorized until grant of Final Occupancy, but exceptions where extenuating circumstances exist and are subject to review and approval by the County Building Official, County Fire Marshall and the Director of Planning, Building and Environmental Services.” That language has been replaced by the following: “TCOs shall not be used for the occupancy of hospitality buildings.” We prefer the existing condition.

Thank you for this opportunity to comment. We reserve the right to raise additional issues in the future that are not included in this letter. The revised conditions were circulated on December 6, and neither NVV nor Winegrowers has had an opportunity to meet since that date.

Sincerely,



Emma Swain
Board Chair, Napa Valley Vintners



Chris Indelicato
President, Winegrowers of Napa County

Attachment: Cited Code Sections

13.15.030 - Classification of applications.

Applications described in Section 13.15.020 shall be classified as follows for the purpose of determining whether a groundwater permit is required by this chapter:

- A. Applications Exempt from Groundwater Permit Requirement.
1. In the case of uses permitted without a use permit under any provision of this code, the applications or development set forth in Section 13.15.020 are exempt from the requirement that a groundwater permit must be obtained unless the application or development:
 - a. Is for a project located on a parcel included within those groundwater deficient areas depicted on Map 13-1 and is not otherwise specifically exempted;
 - b. Is to develop or improve an on-site or off-site water supply serving more than a single contiguous parcel; or
 - c. Where the development or improvement, regardless of the number of parcels served, is able to connect to a public water supply.
 2. Applications to develop or improve an on-site or off-site water source serving agriculture are also exempt from the requirement of a groundwater permit under this chapter to the extent provided in Section 13.15.040.
 3. Applications to construct or develop rainwater harvesting or graywater recycling systems when that is the sole purpose of the project and the resulting harvested or recycled water will be used to augment existing groundwater sources or as the sole source of water for use at that site.
 4. Minor improvements to a water system.
 5. Convenience improvements to a water system.
- B. Applications Requiring Use Permits. In the case of a proposed development requiring the issuance of a use permit pursuant to any provision of this code, applications which propose to develop, improve or utilize an on or off-parcel groundwater source in conjunction with such development are not required to obtain a groundwater permit under this chapter. Groundwater review of such applications shall occur in accordance with the county's procedures to obtain a use permit.
- C. Applications Involving a Ministerial Approval.
1. Applications for a single-family dwelling unit and associated landscaping on parcels two acres in size or less, when such residence will be the only use on the parcel, shall be issued a groundwater permit providing they install a meter on the well serving the parcel, read the meter every six months, and report these meter readings to the public works department when requested by that department. If the parcel is greater than two acres, a ministerial permit shall be issued providing they meet the following requirements:
 - a. The permittee shall install a meter on the well serving the parcel to measure all groundwater used on the parcel. The configuration of the installation shall conform to a drawing prepared by the permittee and shall conform to the technical standards set forth by the director of public works.
 - b. On or near the first day of each month the permittee shall read the water meter and provide this data to the director of public works during the first week of April and October of each year. The permittee shall also grant to the director of public works the right to access and verify the operation and readings of the meters and well levels at any reasonable time during regular working hours.
 - c. The permittee shall be limited to 0.60 acre feet of water per year or such other amount as may be adopted by the board by resolution.

This groundwater permit shall not be available when other dwellings, accessory uses, agricultural development or other discretionary uses exist on the property or when water from an approved public water system is available to the property. In such cases, a groundwater permit must first be obtained pursuant to the procedures set forth in Section 13.15.060 et seq. Any permittee that qualifies for a groundwater permit issued pursuant to this section may instead apply for a groundwater permit pursuant to the procedures set forth in Section 13.15.060 et seq.
 2. Applications for agricultural land redevelopment that will utilize groundwater on parcels included within those groundwater deficient areas depicted on Map 13-1 shall be issued a groundwater permit without any additional requirements providing the size of the replant is two acres in size or less. If the replant is greater than two acres, a ministerial permit will be issued providing that they meet the following requirements:

- a. The permittee shall install a meter on all wells or water supply and distribution systems serving the parcel to measure all groundwater used on the parcel. The configuration of the installation shall conform to a drawing prepared by the permittee and shall conform to the technical standards set forth by the director of public works.
- b. On or near the first day of each month the permittee shall read the water meter and provide this data to the director of public works during the first week of April and October of each year. The permittee shall also grant to the director of public works the right to access and verify the operation and readings of the meters and well levels at any reasonable time during regular working hours.
- c. The permittee shall be limited to an average of 0.30 of acre feet of water per acre per year or such amount as may adopted by the board by resolution. This limitation shall be calculated as the average water used over a three-year period with no yearly use exceeding the acre foot of water per acre per year allotment by more than fifteen percent.

Any permittee that qualifies for a groundwater permit issued pursuant to this section may instead apply for a groundwater permit pursuant to the procedures set forth in [Section 13.15.060](#) et seq.

- D. Applications for a minor modification or cancellation of an existing groundwater permit.
1. Applications for a minor modification or a cancellation of an existing groundwater permit shall be made through a ministerial permit process.
 2. Applications for a minor modification or cancellation of an existing groundwater permit shall be made to the department in writing on a form prescribed by the department. The application shall state the grounds for the application, the specific modification being requested and shall include any information or evidence needed to support the request. The application shall also demonstrate that the proposed use complies with the standards required for issuance of a groundwater permit as set forth in this chapter.
 3. An application for an administrative permit for a minor modification or cancellation of an existing groundwater permit shall be accompanied by a fee in the amount established by resolution of the board of supervisors.
 4. Issuance Prerequisites. An application for a minor modification or cancellation of an existing groundwater permit shall be considered only if the following standards are met:
 - a. Minor Modification. The proposed modification does not increase water use over the existing permitted use and the resultant water use request meets the fair share standard for the parcel as established in the Department of Public Works Water Availability Policy Report (even if the original permit allowed a higher water use) and the application does not request a modification to a ministerial permit that would have otherwise been processed through the groundwater permit process outlined in [Section 13.15.060](#); or
 - b. Cancellation. The cancellation of a groundwater permit shall only be allowed if evidence is submitted that the project which triggered the groundwater permit has been cancelled and is no longer being pursued.

If the modification request is not able to meet the above standards, the applicant has the option of applying for a new groundwater permit pursuant to [Section 13.15.060](#).

13.15.040 - Agricultural activities exempt from groundwater permitting requirements.

- A. Applications to develop or improve a water source serving agriculture, as defined in [Section 18.08.040](#) of this code, shall be exempt from the requirement of a groundwater permit under this chapter where the water would only serve the property where the water source is located, or contiguous property. For purposes of this section only, "contiguous property" refers to property in common ownership that is joined at more than one common point to the property the water source is located, or connected in a pattern of parcels, each joined to another, that includes the property where the water supply system is located. If the contiguous property consists of more than one parcel, all parcels must be in agricultural production, in order to qualify for an exemption pursuant to this section. To qualify for the exemption in this section, in the case of parcels designated Agricultural Resource ("AR") or Agriculture, Watershed and Open Space ("AWOS") at least eighty percent of the allowable, plantable land of each parcel must be in agricultural production.

- B. Developments or improvements in water sources serving agriculture on any other properties, including adjacent property not qualifying as "contiguous" for purposes of this section, shall be subject to the same permitting criteria and standards identified in Sections 13.15.030 and 13.15.070.
- C. Notwithstanding subsection (A) of this section, developments or improvements in water sources located on parcels included within those groundwater deficient areas depicted on Map 13-1 shall be subject to those permitting criteria and standards identified in Sections 13.15.030 and 13.15.070.

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.

18.16.030 - Uses permitted upon grant of a use permit.

The following uses may be permitted in all AP districts, but only upon grant of a use permit pursuant to [Section 18.124.010](#):

- A. Farmworker housing and seasonal farmworker centers conforming to [Section 18.104.300](#) or [18.104.310](#), unless exempt from a use permit requirement under subsection (M) of [Section 18.16.020](#);
- B. Facilities, other than wineries, for the processing of agricultural products grown or raised on the same parcels or contiguous parcels under the same ownership;
- C. Kennels and veterinary facilities;
- D. Feed lots;
- E. Noncommercial wind energy and conversion systems;
- F. Wineries, as defined in [Section 18.08.640](#);
- G. The following uses in connection with a winery:
 1. Crushing of grapes outside or within a structure,
 2. On-site aboveground disposal of wastewater generated by the winery,
 3. Aging, processing and storage of wine in bulk,
 4. Bottling and storage of bottled wine and shipping and receiving of bulk and bottled wine, provided the wine bottled or received does not exceed the permitted production capacity,
 5. Any or all of the following uses provided that, in the aggregate, such uses are clearly incidental, related and subordinate to the primary operation of the winery as a production facility:
 - a. Office and laboratory uses,
 - b. Marketing of wine as defined in [Section 18.08.370](#),
 - c. Retail sale of (1) wine fermented or refermented and bottled at the winery, irrespective of the county of origin of the grapes from which the wine was made, providing nothing herein shall excuse the application of subsections (B) and (C) of [Section 18.104.250](#) regulating the source of grapes; and (2) wine produced by or for the winery from grapes grown in Napa County;
- H. The following uses, when accessory to a winery:
 1. Tours and tastings, as defined in [Section 18.08.620](#),
 2. Display, but not sale, of art,
 3. Display, but not sale, of items of historical, ecological or viticultural significance to the wine industry,
 4. Sale of wine-related products,
 5. Child day care centers limited to caring for children of employees of the winery;
- I. Telecommunication facilities, other than satellite earth stations, that do not meet one or more of the performance standards specified in [Section 18.119.200](#);
- J. Satellite earth stations that cannot, for demonstrated technical reasons acceptable to the director, be located in an Industrial (I), Industrial Park (IP), or General Industrial (GI) zoning district;
- K. Facilities, other than wineries, for the processing of agricultural products where the products are grown or raised within the county, provided that the facility is located on a parcel of ten or more acres, does not exceed five thousand gross square feet, and is not industrial in character. Only those agricultural products raised or processed on-site may be sold at the facility;
- L. Farm management uses not meeting one or more of the standards contained in subsections (E)(2), (E)(3), and (E)(4) of [Section 18.08.040](#).

18.20.030 - Uses permitted upon grant of a use permit.

The following uses may be permitted in all AW districts, but only upon grant of a use permit pursuant to [Section 18.124.010](#):

- A. Parks and rural recreation uses and facilities as defined in [Chapter 18.08](#), conforming to the standards in [Chapter 18.104](#);
- B. Farmworker housing and seasonal farmworker centers conforming to [Section 18.104.300](#) or [18.104.310](#), unless exempt from a use permit requirement under subsection (R) of [Section 18.20.020](#);
- C. Facilities, other than wineries, for the processing of agricultural products grown or raised on the same parcels or contiguous parcels under the same ownership;
- D. Kennels, horse boarding and/or training stables, veterinary facilities, and wildlife rescue centers;
- E. Feed lots;
- F. Sanitary landfill sites;
- G. Noncommercial wind energy and conversion systems;
- H. Wineries, as defined in [Section 18.08.640](#);
- I. The following uses in connection with a winery:
 1. Crushing of grapes outside or within a structure,
 2. On-site, aboveground disposal of wastewater generated by the winery,
 3. Aging, processing and storage of wine in bulk,
 4. Bottling and storage of bottled wine; shipping and receiving of bulk and bottled wine, provided the wine bottled or received does not exceed the permitted production capacity,
 5. Any or all of the following uses provided that, in the aggregate, such uses are clearly incidental, related and subordinate to the primary operation of the winery as a production facility:
 - a. Office and laboratory uses,
 - b. Marketing of wine as defined in [Section 18.08.370](#),
 - c. Retail sale of (1) wine fermented or refermented and bottled at the winery, irrespective of the county of origin of the grapes from which the wine was made, providing nothing herein shall excuse the application of subsections (B) and (C) of [Section 18.104.250](#) regulating the source of grapes; and (2) wine produced by or for the winery from grapes grown in Napa County;
- J. The following uses, when accessory to a winery:
 1. Tours and tastings, as defined in [Section 18.08.620](#),
 2. Display, but not sale, of art,
 3. Display, but not sale, of items of historical, ecological or viticultural significance to the wine industry,
 4. Sale of wine-related products,
 5. Child day care centers limited to caring for children of employees of the winery;
- K. Telecommunication facilities, other than satellite earth stations, that do not meet one or more of the performance standards specified in [Section 18.119.200](#);
- L. Satellite earth stations that cannot, for demonstrated technical reasons acceptable to the director, be located in an Industrial (I), Industrial Park (IP), or General Industrial (GI) zoning district;
- M. Campgrounds on public lands conforming to the standards in [Chapter 18.104](#);
- N. Hunting clubs (large) as defined in [Chapter 18.08](#) and subject to the standards in [Chapter 18.104](#);
- O. Facilities, other than wineries, for the processing of agricultural products where the products are grown or raised within the county, provided that the facility is located on a parcel of ten or more acres, does not exceed five thousand gross square feet, and is not industrial in character. Only those agricultural products raised or processed on-site may be sold at the facility; and
- P. Farm management uses not meeting one or more of the standards contained in subsections (E)(2), (E)(3), and (E)(4) of [Section 18.08.040](#).

18.104.250 - Wineries—Production capacity.

- A. Wineries located or operated on parcels zoned AP or AW are subject to the following maximum annual production capacities:
1. Wineries (commonly known as and hereafter referred to as "small wineries," the rules and regulations relating thereto having been adopted by the board by Resolution No. 80-21 and amended by Resolution No. 86-55) that were lawfully established subsequent to July 31, 1974 without first obtaining a use permit prior to the date of adoption of the ordinance codified in this section: the production limit established as a part of the issuance of the winery's certificate of exemption or twenty thousand gallons per year, whichever is less. Any expansion of production capacity of a small winery shall be prohibited unless a use permit is obtained;
 2. Wineries that were established prior to July 31, 1974 without obtaining a use permit because a use permit was not required, and which have not subsequently been issued a use permit specifying maximum annual production capacity: the production capacity existing as of July 31, 1974. Any expansion of the production capacity shall be prohibited unless a use permit is obtained;
 3. Wineries located on a single parcel which do not qualify under subsection (A)(1) or (2) of this section, but were established only after the issuance of a use permit and in conformance with all applicable county regulations prior to the effective date of the ordinance codified in this section: the production capacity authorized by the appropriate use permit. Any expansion of the production capacity shall be prohibited without the amendment of the use permit;
 4. Wineries that were established after the date of adoption of the ordinance codified in this section: maximum production capacity shall be as established by the applicable use permit.
- B. All wineries first established subsequent to the date of adoption of the ordinance codified in this section: at least seventy-five percent of the grapes used to make the winery's still wine, or the still wine used by the winery to make sparkling wine, shall be grown within the county of Napa.
- C. All existing wineries which expand beyond their winery development area shall be subject to the following additional limitations:
1. At least seventy-five percent of the grapes used to make that portion of the winery's still wine which is produced as a result of the expansion shall be grown within the county of Napa.
 2. At least seventy-five percent of the grapes used to make the still wine used to make the sparkling wine that is produced as a result of the expansion shall be grown within the county of Napa.

23356.1. (a) A winegrower's license also authorizes the person to whom issued to conduct winetastings of wine produced or bottled by, or produced and packaged for, the licensee, either on or off the winegrower's premises. When a winetasting is held off the winegrower's premises at an event sponsored by a private nonprofit organization, no wine may be sold, and no sales or orders solicited, except that orders for the sale of wine may be accepted by the winegrower if the sales transaction is completed at the winegrower's premises. For purposes of this subdivision, "private nonprofit organization" means an organization described in Section 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23701i, 23701k, 23701l, 23701r, or 23701w of the Revenue and Taxation Code.

(b) Notwithstanding any other provisions of this division, a winegrower who, prior to July 1, 1970, had, at his or her premises of production, sold to consumers for consumption off the premises domestic wine other than wine which was produced or bottled by, or produced and packaged for, the licensee, and which was not sold under a brand or trade name owned by the licensee, and who had, prior to July 1, 1970, conducted winetastings of the domestic wine at his or her licensed premises, is authorized to continue to conduct the winetasting and selling activities at the licensed premises.

(c) A winegrower who was licensed as such prior to July 1, 1954, and who prior to July 1, 1970, had, at his or her licensed premises, sold to consumers for consumption off the premises, wine packaged for and imported by him or her, and who conducted winetastings of the wines at his or her licensed premises, may continue to conduct the winetasting and selling activities at the licensed premises.

(d) The department may adopt the rules as it determines to be necessary for the administration of this section.

(Amended by Stats. 2007, Ch. 246, Sec. 1. Effective January 1, 2008.)

From: [Michelle Benvenuto](#)
To: [Gallina, Charlene](#); [Morrison, David](#)
Cc: [Rex Stults](#); [Richard Mendelson](#)
Subject: COA Comments
Date: Tuesday, December 13, 2016 3:46:19 PM
Attachments: [Microsoft Word - NVV & Winegrowers - COA 12.13 DRAFT.docx.pdf](#)
[Cited Code Sections.pdf](#)

Hi Charlene and David,
Attached please find Napa Valley Vintners and Winegrowers of Napa County's comments regarding the proposed COA changes.

Thank you,

Michelle Benvenuto
Executive Director
Winegrowers of Napa County

PO Box 5937
Napa, CA 94581
(707) 258-8668 office
(707) 738-4847 cell
(707) 258-9228 fax
michelle@napawinegrowers.com