



A Tradition of Stewardship
A Commitment to Service

MEMORANDUM

To:	Planning Commission	From:	Charlene Gallina, Supervising Planner
Date:	December 21, 2016	Re:	Agenda Item: 8A – Responses to Public Comments on the Adoption of the 2017 Standard Conditions of Approval

In response to the public comments submitted by the Napa Valley Vintners and Winegrowers of Napa County on December 13, 2016 to the updated draft conditions, the following represents staff’s assessment and recommendations of the requested changes to be reviewed and considered by the Commission at the meeting.

Introduction Statement – Second Paragraph

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.

Staff Response: Once standard conditions are adopted by the Board of Supervisors, Planning staff would be given training on the application of conditions with respect to processing development application of all types to ensure consistency. In this case, should a standard condition not be applicable or relevant then such condition would be removed and notated as “Reserved”. It should be further noted that a preamble or recital is not warranted within this document given that applicable or relevant standard conditions will be recommended on a case by case basis given the merits of the project, as well as, its legal standing under the County Code.

- 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;"

Staff Response: To avoid confusion between Pre-WDO and Post-WDO winery proposals, staff is recommending the following retraction of language and reference to the WDO provisions until clarification is provided by the Board of Supervisors regarding interpretation of the WDO.

~~Retail sales shall be limited to only those persons visiting by appointment or attending marketing events. No drop in retail sales shall be permitted. [Statement Applies to Post WDO Wineries Only]~~ Retail sales of wines shall be limited to the winery's operational hours and to only those wines produced at the winery as set forth in the County Code.

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.*

Staff Response: To avoid confusion between Pre-WDO and Post-WDO winery proposals, staff is recommending the following retraction of language and reference to the WDO provisions until clarification is provided by the Board of Supervisors regarding interpretation of the WDO.

Tours and Tastings shall be limited to those wines produced at the winery as set forth in the County Code. ~~Sections 18.16.030(G)(5)(c) –AP Zoning and 18.20.030(I)(5)(c) AW Zoning.~~

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.*

Staff Response: It should be noted that not all winery applications request that marketing events end at 10 pm thereby allowing cleanup to go to 11 pm. Therefore, staff recommends that the ending times of a marketing event along with one (1) hour for a quiet clean up following the end of the event not to exceed 11 pm be evaluated on a case by case basis with a final recommendation to the Planning Commission. Staff has no concerns with adding the following language to clarify participation of Auction Napa Valley and how charitable events are to be addressed.

Add the following new paragraph to Condition 4.3 after the last paragraph addressing marketing event cleanup:

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. Any other charitable events shall be utilized out of the marketing event program authorized under this permit.

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.

Staff Response: It should be noted that the only change from the 2012 version of the condition has been the following: [ADD THE FOLLOWING STATEMENT IF A PRE-WDO WINERY: provided that this requirement does not apply to the winery's original _____ gallons of production that were approved prior to the adoption of the Winery Definition Ordinance.] This statement was added to ensure that pre-WDO wineries requesting a modification are acknowledged of their rights. The remaining change was to address minor language edits. It should be further noted that no prior comments had been made by the wine industry during the 2012 changes to the County's standard conditions.

For clarification purposes, staff has no concerns in making the following change:

At least 75% of the grapes used to make the ~~winery's~~ wine at the winery shall be grown within Napa County where required under the County Code. [ADD THE FOLLOWING STATEMENT IF A PRE-WDO WINERY: provided that this requirement does not apply to the winery's original _____ gallons of production that were approved prior to the adoption of the Winery Definition Ordinance.] The permittee shall keep records of annual production documenting the source of grapes to verify that 75% of the annual production is from Napa County grapes. The report shall recognize the Agricultural Commissioner's format for County of origin of grapes and juice used in the Winery Production Process. The report shall be provided to the PBES Department upon request, but shall be considered proprietary information and not available to the public.

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.

Staff Response: The proposed changes recommended by the Public Works Department are in accordance with the Napa Valley Groundwater Sustainability - A Basin Analysis Report for the Napa Valley Subbasin, which was prepared in accordance with Sustainable Groundwater Management Act and approved by the Board of Supervisors on December 13, 2016.

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.*

Staff Response: As discussed in the staff report, this condition has been revised to implement the concept of "consolidation", which simply means that all previous use permit conditions will be compiled into a single document as part of a new use permit modification action. This would essentially be a sequential list of past entitlements incorporated into the conditions of the new entitlement. Duplicated conditions would remain unless revisions are specifically requested by the permittee/applicant. This option was selected, since it was less labor intensive with respect to staff resources and based upon project workload. To address any inconsistencies, staff recommends the incorporation of the following language into this condition:

4.21 [OPTIONAL TO BE USED ONLY IF A MAJOR MODIFICATION] PREVIOUS CONDITIONS

~~The permittee shall comply with the following previous conditions of approval, including revisions where so indicated, for the winery use. Original language to remain is shown unchanged, original language to be removed is shown in strikethrough, and proposed language is underlined:~~

- ~~a. [Carry over previous applicable non-construction and/or operational conditions. Reference Use Permit and/or Modification number, as well as, applicable condition number, and provide a brief explanation of any proposed changes to the condition.]~~

The permittee shall comply with the following previous conditions of approval for the winery use as consolidated into the attached document. To the extent there is a conflict between previous conditions of approval and these conditions of approval, these conditions shall control.

[List all previous conditions into a separate document. Reference Use Permit and/or Major, Minor, Very Minor

Modification number, as well as, condition number. No changes should be proposed to the previous condition.]

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.*

Staff Response: Staff acknowledges comment. However, conditions of similar topic have been broken out into areas of operation, permitting, and construction characteristics to ensure that the permittee and their project development team understand their individual responsibilities within each step of the development process. Therefore, staff recommends no changes to these conditions.

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).”

Staff Response: In discussion with the Building Division, staff is recommending no further changes are necessary to this condition. Staff finds that the updated condition is sufficient.

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.”

Staff Response: Comment acknowledged. Staff has no concerns in making a change to this condition and removal of any redundant language as follows, since noise disturbance should be predicated on a set threshold:

d. Exterior winery equipment shall be ~~designed to be located, enclosed, or muffled so as not to create a noise disturbance or exceed noise thresholds in accordance with 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.*

Staff Response: Any proposed mitigation measures that would need to be incorporated in the construction plans during the processing of a grading/demolition/environmental/building permit or other permits would be identified under this condition category. No further clarification is recommended due the placement of this condition under COA 6.0.

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.*

Staff Response: Comment noted. However, to ensure consistency amongst all standard condition document types, staff recommends that this condition remain. It should be further noted that such condition may be applicable to wineries located in the Napa Valley Business Park, as well as, in special cases where by a winery proposal consists of a single winery with multiple winemaking facilities.

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.*

Staff Response: Once standard conditions are adopted by the Board of Supervisors, Planning staff would be given training on the application of conditions with respect to processing development application of all types to ensure consistency. In this case, should a standard condition not be applicable or relevant then such condition would be removed and notated as “Reserved”.

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.*

Staff Response: This statement was requested to be removed back in 2015 by the Building Official and the Code Enforcement Division in response to some wineries operating without a Final Certificate of Occupancy and to bring this standard condition into compliance with County Code. Any changes would require an amendment to the County by the Board of Supervisors.