

NAPA COUNTY
RESPONSE TO THE GRAND JURY FINAL REPORT ON
ARE NAPA COUNTY WINERIES FOLLOWING THE RULES?

AUGUST 11, 2015

The Grand Jury requested responses from the Board of Supervisors, which are included below.

Finding 1. The code compliance audit does not review or inspect the following: water usage and wastewater treatment, which are essential to the production of wine; the accessory uses of facilities to determine if they meet the 40% or less square footage requirement of the area of the production facilities.

Napa County Board of Supervisor's Response: The Board of Supervisors partially agrees with this finding. The majority of wineries located in the unincorporated area are on private wells. The County does not have any ordinance that currently mandates metering and/or monitoring of private wells. Such requirements have been imposed on individual properties, but only when the County has determined that there is substantial cause for enhanced review, not as a standard requirement. Further, it is unclear how limiting the County's review solely to wineries would provide a complete or accurate understanding of groundwater resources. The Board of Supervisors believes that the issue of water monitoring and usage should be considered within the overall context of the forthcoming Groundwater Sustainability Plan Alternative.

With regards to wastewater treatment, all winery discharges are regulated and inspected by the California Regional Water Quality Control Board. Having the County establish a parallel program to the existing State procedures would be unnecessary and costly.

The Grand Jury is correct that the wine audit does not review accessory uses to ensure that they do not exceed 40 percent of the area of the production facility. Instead, the review of accessory uses is conducted both as a part of the Use Permit approval process; and each time that a building permit for a winery is submitted.

Finding 2. In the audit years 2011-2013, the number of wineries that were out of compliance on one of more activities audited varied from 29% to 40%. The names of the non-compliant wineries are not released to the public.

Napa County Board of Supervisor's Response: The Board of Supervisors partially agrees with this finding. The number of wineries that have been out of compliance over the past several years is correct. Although the names of non-compliant wineries are not released as a part of the wine audit, staff does make copies of Notices of Violation available to the public upon request, which includes the name of the property owner where the alleged violation occurred.

Finding 3. The County's ability to expand the audit program is limited because only 30% of one code enforcement inspector has been devoted to winery audits. An additional inspector was hired in January 2015, but will have other code enforcement duties besides winery compliance inspections.

Napa County Board of Supervisor's Response: The Board of Supervisors agrees with this finding. The additional code enforcement officer has been hired and began her duties on July 1, 2015. While the finding is correct as stated, it should be noted that winery violations account for only 6 percent of the 1,280 complaints received from the public in the last five years. Zoning violations, including wineries, made up only 23 percent of violation investigations in 2014. They also account for a small number of the nearly 1,000 cases on backlog. The majority of complaints and violation investigations involve building permits and substandard buildings. The number and type of violations can ebb and flow, as can the potential threats that they represent to the public health and safety. With the addition of the new code enforcement officer, sufficient staffing has been made available to allow flexibility in meeting increased workload demands if the wine audit is expanded, while continuing to respond to urgent enforcement needs.

Finding 4. Penalties or restriction of wineries' activities for non-compliance is determined by county officials. Since the penalties are decided on a case-by-case basis, wineries have no way of knowing the cost of code infractions.

Napa County Board of Supervisor's Response: The Board of Supervisors disagrees with this finding. Fines are strictly set by State law. The administrative fines for most offenses can be found in the County's Schedule of Fines, Resolution Number 00-120. As permitted pursuant to State law, administrative fines for most County code violations are \$100 for the first offense, \$200 for the second offense, and \$500 for the third and all subsequent offenses. Other types of fines may apply, as determined by the applicable legislation or regulation. Under the Building Code, the administrative fine is \$100 for the first offense and \$500 for the second offense, and \$1,000 for each subsequent offense. The Health and Safety Code allows fines of up to \$1,000 per day. Civil penalties assessed against illegally constructed vineyards are based upon a pre-determined formula that takes into account grape varietal planted, acreage disturbed, and the amount of time that the land has been disturbed. For cabernet, the penalty equates out to \$956.71 per acre per month of disturbance.

Assembly Bill (AB) 514 would increase the administrative fines that cities and counties may impose in certain circumstances on violators of the County's zoning ordinance. The first offense would increase fine limits to a minimum of \$1,000 and maximum of \$5,000. The second offense would increase to a minimum of \$2,500 and maximum of \$5,000. The third and subsequent offenses would increase to a minimum of \$5,000 and maximum of \$15,000. The Board of Supervisors indicated its support of AB 514 in their meeting of June 2, 2015.

Finding 5. The lack of specificity in the winery database for actual production quantities makes it extremely difficult to determine if the growth of wineries is in conformance with the General Plan. The Planning Department is developing a more extensive winery database.

Napa County Board of Supervisor's Response: The Board of Supervisors disagrees with this finding. Beginning in November, 2014, County staff began an extensive review and update to the winery database. Each entry was re-checked for accuracy, data was obtained from the five cities to include wineries within incorporated areas (to the extent possible), and wineries were cross-checked with databases from the U.S. Alcohol, Tobacco, Tax and Trade Bureau (ATTB) and California Department of Alcohol Beverage Control (ABC). In addition, new columns were added to the database regarding zoning, 75% compliance, American Viticultural Area (AVA), parcel size, and Supervisorial District.

The Napa County General Plan, which was adopted in 2008, does not include any numeric references or limits on either the number of wineries or total production allowed. However, assumptions were made in the Final Environmental Impact Report (FEIR) for the General Plan regarding the future development of new wineries during the life of the General Plan. Page 2.0-9 states: "The current trend in winery development suggests that there could be about 225 new wineries approved between 2005 and 2030, most of them relatively small (less than 50,000 gallons annual production)."

From January 1, 2006 through July 1, 2015, a total of 88 new wineries have been approved by Napa County. Those 9.5 years represent 38 percent of the total General Plan timeframe of 25 years. Similarly, 38 percent of the 225 new wineries anticipated in the FEIR would be 86. The 88 actual new wineries approved represent only a 2 percent deviation from the FEIR forecast of 86. The FEIR also expected that more than 50 percent of the new wineries would have annual production of less than 50,000 gallons annual production. Since 2006, 66 of the 88 new wineries approved (75%) were for annual production of less than 50,000 gallons. As a result, the Board of Supervisors believes that to date, the growth of new wineries has developed in conformance with the assumptions in the FEIR upon which the General Plan was based.

Recommendation 1. By January 1, 2016, the Planning Department to increase the number of yearly winery code enforcement audits from the current rate of 20 audits per year so that every winery would be audited at least every five years or at such intervals that the Planning Commissioners or County Supervisors deem to be appropriate.

Napa County Board of Supervisor's Response: The Board of Supervisors agrees with this recommendation. At their meeting on March 3, 2015, the Board directed staff to bring back recommendations on expanding the wine audit. The Agricultural Protection Advisory Committee (APAC) is expected to make its tentative recommendation on the structure of the wine audit (including expansion of the audit) on July 27, 2015. The APAC recommendations will be forwarded to the Planning Commission on September 2, 2015. The Commission, in turn, will forward their recommendations to the Board of Supervisors on November 24, 2015.

Recommendation 2. By June 30, 2016, the Planning Department and the Planning Commissioners to develop a process for monitoring and inspecting winery water treatment and disposal. A plan for monitoring water usage should also be implemented.

Napa County Board of Supervisor's Response: The Board of Supervisors disagrees with this recommendation. The majority of wineries located in the unincorporated area are on private wells. The County does not have any ordinance that currently mandates metering and/or monitoring of private wells. Such requirements have been imposed on individual properties, but only when the County has determined that there is substantial cause for enhanced review, not as a standard requirement. Further, it is unclear how limiting the County's review solely to wineries would provide a complete or accurate understanding of groundwater resources. The Board of Supervisors believes that the issue of water monitoring and usage should be considered within the overall context of the forthcoming Groundwater Sustainability Plan Alternative.

With regards to wastewater treatment, all winery discharges are regulated and inspected by the California Regional Water Quality Control Board. Having the County establish a parallel program to the existing State procedures would be unnecessary and costly.

Recommendation 3. By January 1, 2016, the Planning Department to make the inspection reports of non-compliant wineries more transparent to the public in much the same fashion as health code violations of restaurants are reported.

Napa County Board of Supervisor's Response: The Board of Supervisors partially agrees with this recommendation. More transparency in the code enforcement process would allow both residents and visitors to know which wineries are in compliance and which are not, as well as the nature of the violations. However not all information can be made publicly available. For instance, it is County Counsel's opinion that the production, crush, and grape sourcing data provided by individual winery operators in forms submitted to the ATTB and California Department of Food and Agriculture (CDFA) are proprietary under State and Federal law and may not be disclosed to the public. Similarly, although the names of non-compliant wineries are not released as a part of the wine audit, staff does make copies of Notices of Violation available to the public upon request, which includes the name of the property owner where the alleged violation occurred. Any other details of cases where there are ongoing violation investigations would not be available to the public. The Board will take up the issue of transparency within the overall context of the wine audit recommendations being forwarded to it by the APAC and the Planning Commission.

Recommendation 4. By June 30, 2016, the county Board of Supervisors and the Planning Commissioners to determine whether the Winery Definition Ordinance (WDO) as written provides the regulatory framework necessary to maintain a winery industry that is consistent with the Agriculture Preserve Ordinance.

Napa County Board of Supervisor's Response: The Board of Supervisors agrees with this recommendation. Due to growing concern regarding the rate, location, and intensity of winery development projects in the unincorporated area, the Board of Supervisors formed the APAC on March 17, 2015. The intent of the APAC was to make recommendations to the Planning Commission regarding revisions to the standards governing the development and expansion of wineries, operations, activities, and related matters. The APAC is required to report on its recommendations to the Planning Commission by September 2, 2015. The Planning Commission is then mandated to make its recommendations to the Board of Supervisors by November 10, 2015.

Recommendation 5. By June 30, 2016, the Planning Commissioners to establish and publish a range of penalties and/or operating restrictions for non-compliance infractions of use permit requirements. Such action should encourage wineries to be more cognizant of the cost of non-compliance.

Napa County Board of Supervisor's Response: The Board of Supervisors agrees with this recommendation. Staff is currently working on a Frequently Asked Questions (FAQ) hand-out, which would include information regarding the types of fines and penalties that may be assessed for non-compliance. The hand-out will be posted on-line and will be included in future compliance workshop presentations provided by staff to the wine industry and other interested members of the public.