

STAFF ANALYSIS OF PLANNING COMMISSION RECOMMENDATIONS

The following review looks at each individual recommendation, indicates what type of implementing action would be required, and includes a brief analysis of the recommendation by staff.

1. Recommendation:

Avoid the use of variances as a principal tool for achieving compliance with land use regulations. Variances may be used only when there is specific evidence supporting all necessary findings.

Analysis:

Staff believes that both a General Plan Amendment and a Code Amendment would be required for this recommendation. Additional guidance regarding the appropriate use of variances is strongly needed for future use by the public, applicants, staff, and the Commission.

2. Recommendation:

Develop guidelines and benchmarks for consideration of future winery use permits based on the format of Proposal X.

Analysis:

Proposal X is essentially a table of potential development standards and parcel sizes. It is not clear what goals or aims the table is intended to achieve. It could be used to delineate areas of permitting authority between the Director, Zoning Administrator, and Planning Commission. It could be used to establish regulatory caps on the intensity of wineries based on parcel size. Or alternatively, it could be used to create sharper distinctions between winery development in the AP (Agricultural Preserve) zone versus winery development in the AW (Agricultural Watershed) zone. In addition, the visitation comparisons and locational criteria included in Recommendation No. 13 already provide general guidelines for evaluating future winery proposals. Further discussion would be needed to determine the purpose of Proposal X, before staff could recommend how it may best be implemented.

3. Recommendation:

Implement an annual code compliance process, including the following:

- a. Reporting must be submitted annually, by all wineries that have use permit approval within the unincorporated area;
- b. The principal officer of each winery shall sign a document certifying the amount of wine produced, compliance with the 75% rule, as applicable, and compliance with all conditions of approval;
- c. Copies of ATTB and CDFA forms shall be provided to the County to verify the above information;

- d. All data collected shall remain confidential to the extent allowed under the law;
- e. Enforcement and compliance review fees shall be adopted to support the cost of the expanded compliance review;
- f. Subject to applicable law, the County shall prepare a formula for calculating civil penalties associated with violating wineries;
- g. A more in-depth compliance review will be held if the winery is exceeding their annual production limit, or is in violation of the 75% rule. In-depth compliance reviews will also be held to investigate complaints received from the public;
- h. If it is determined that a violation has occurred, then the winery must immediately comply with the conditions of its use permit. An application to modify the use permit to correct the violation may not be submitted for one year;
- i. Staff will provide an annual report to the Planning Commission regarding the number of wineries found to be in violation during the previous year, and a summary of production, crush, and 75% rule compliance aggregate data.

Analysis:

Staff believes that this recommendation would require only a Code Amendment. Staff strongly supports nearly all of the provisions included in this recommendation. They would provide critical tools in improving the effectiveness of the code enforcement program, as well as detailed data as to how grapes and grape juice are used throughout the County. Additional research would be needed regarding certification of compliance by the principal officer of each winery. The language for such a declaration would have to be carefully worded and would require consultation with County Counsel's office. It is also unclear at this time what the penalty would be if a winery was found to be in violation following the signing of the declaration, and whether that penalty would accrue to the principal officer or the winery.

4. Recommendation:

Prohibit hold and haul of wastewater and related liquid by-products on all AP and AW zoned parcels for new wineries except during winery development, not to exceed one year from certificate of occupancy, or in an emergency situation.

Analysis:

Staff believes that both a General Plan Amendment and a Code Amendment would be needed for this recommendation, should direction be provided. Staff is unclear as to why the practice of hold and haul should be limited or prohibited. There is a concern that wineries should be able to process their wastewater on-site, consistent with the carrying capacity of the property. However, the County allows recycled water to supplement land uses in areas that are water deficient. The County also does not require that wineries rely solely on grapes grown on-site ("estate grapes") for wine production. So the principle of carrying capacity does not seem to be uniformly applied. There is also a concern that hold and haul adds truck trips, which contributes to traffic. That is true, but the amount of traffic contributed is very small and would not appreciably reduce either congestion or vehicular

emissions. Once again, the County has not chosen to prohibit wineries from importing juice by truck to the site, which which have similar effects. Staff is not opposed to the recommendation; but there does not appear to be a compelling reason for its implementation.

5. Recommendation:

Share the County's production reporting methodology with the five other Napa County jurisdictions and encourage annual winery data collection from wineries located in the unincorporated area for the purposes of capturing more complete data.

Analysis:

Implementation of this recommendation could be accomplished through coordination on a staff-to-staff level. No further action would be required. Staff strongly supports this effort to ensure comprehensive data collection so that decision-makers have a full understanding of trends and cumulative conditions.

6. Recommendation:

Limit the total development area, for parcels up to 40 acres in the AP and AW zones, to no more than a cumulative total of 20% of a parcel, including new winery, residential and/or permitted uses. The total development area for parcels larger than 40 acres would be capped at a fixed eight (8) acres maximum.

Analysis:

Staff believes that both a General Plan Amendment and a Code Amendment would be needed for this recommendation. This is a positive step forward to both minimize impacts to farmland and to protect the visual resources that are highly valued by both residents and visitors. Staff supports the concept of maximum development areas for agricultural parcels. However, the Board may want to consider extending this principle to non-winery uses as well, to ensure that residential estates and other rural development leave the majority of their property in farmland and open space. In addition, it's not clear to staff why a total development area should be limited to 8 acres, regardless of the size of the parcel. Additional research is recommended to determine whether the viability of the proposed cap.

7. Recommendation:

Modify the County Code to include outdoor hospitality areas and Type 3 caves in the total area used to determine the maximum square footage for accessory uses for new wineries in the AP and AW zones.

Analysis:

Staff believes that this recommendation would require only a Code Amendment. It appears that the intent of this recommendation is not primarily to minimize development to save farmland, as it limits hospitality within Type 3 caves which generally do not result in the

loss of agricultural land. The primary intent instead seems to be to ensure that hospitality uses do not cumulatively overshadow the primary uses of vineyards and wine production. At one time, tasting and events generally occurred in the primary tasting room or production facilities such as the barrel room. Over the years, hospitality has grown to encompass caves, lawns, patios, gardens, verandas, rooftops, bocce ball courts, and other ancillary areas. In calculating the maximum allowed number of visitors to a winery, it has become important to consider the capacity of the caves and outdoor areas. Consequently, staff supports the recommendation.

8. Recommendation:

Establish a process for the approval of use permits for small wineries as defined in Napa County's Local Procedures for implementing California Environmental Quality Act (CEQA):

- a. Include less than 5,000 square feet of enclosed building space;
- b. Involve no more than 5,000 square feet of cave excavation, with all of the excavated cave spoils to be used on site;
- c. Produce 30,000 gallons of wine or less per year;
- d. Generate less than 40 passenger vehicle (or equivalent) trips per day, except on those days when marketing events are taking place, or host no more than 15 tasting room visitors per day;
- e. Hold no more than 10 marketing events per year, each with no more than 30 attendees, as well as one Auction Napa Valley event with no more than 100 attendees;
- f. Produce at least 75 percent of wine production from grapes grown on site ("estate grapes"), unless the farm has experienced a catastrophic event;
- g. The use permit may not be modified for at least 5 years after initial approval by the County, to discourage speculation and/or a piece meal project, to the extent allowed by law; and

If any of the above criteria are exceeded in either the initial application or future modifications, the request may not be considered categorically exempt and will be heard by the Planning Commission as the decision making body.

Analysis:

Staff believes that this recommendation would require only a Code Amendment. Staff strongly supports the recommendation, both as a means for streamlining the planning process and the efficient use of staff resources, as well as the potential benefit it may have to allow for greater entry into the Napa market by family wineries and emerging entrepreneurs. However, staff is concerned that the limitations proposed in the recommendation may be overly restrictive such that few if any applicants may qualify. In particular, the requirement for 75 percent estate grape production would require a winery producing 30,000 gallons to be established on a parcel of at least 50 acres. There are comparatively fewer parcels of that size available and the cost would be prohibitive to many start-up wineries. In addition, staff is concerned with the legality of prohibiting any modification of the use permit for five years after permit approval. Further research would

be needed to determine if there is both a nexus and a legal mechanism that would allow implementation of that provision.

9. Recommendation:

Strongly encourage elected and appointed of the County, and their staffs, to take the following actions:

- a. Implement the land use policies identified in the Napa County General Plan update.
- b. Enforce all current regulations fairly and consistently.
- c. Deny any unrealistic use permit applications and modifications that are depending on the excessive use of variances.
- d. Consistently follow existing procedures.
- e. Discontinue creative efforts to justify projects on non-conforming parcels.
- f. Be consistent in the interpretation, application and enforcement of all use permits.
- g. Complete items the County Board of Supervisors and Planning Commission identified at the joint special hearing on March 10, including:
 - County Climate Action Plan;
 - Circulation Element of the General Plan; and
 - Summit of County, City, and Town officials to discuss joint efforts to address regional land use and transportation issues.

Analysis:

Staff believes that this recommendation will require a mixture of General Plan Amendments and Code Amendments. Many of the provisions included in this recommendation are already included within the General Plan and Zoning Code, and are strongly supported by staff. It is noted that some of the terms included are not precise and would be challenging to enforce, such as “unrealistic,” “excessive,” and “creative.” Staff would instead recommend that the Board direct staff to prepare policy language that would establish the goals, values, and principles that the County would use in considering applications, rather than undefined and subjective descriptions.

10. Recommendation:

Adopt a rule that does not prohibit the net loss of vineyards as a part of new and/or amended winery use permits.

Analysis:

Staff believes that both a General Plan Amendment and a Code Amendment would be needed for this recommendation. There was a great deal of discussion regarding this issue at both the APAC and the Planning Commission. Given Napa County’s firm and historic commitment to the preservation of farmland, it may seem counterintuitive to have a rule that would continue to deliberately allow the net loss of vineyards in new applications. But during the course of developing this recommendation, it was made clear that such a restriction would significantly inhibit the efficient design of new and/or expanded winery facilities, as well as the siting of residences and agricultural buildings. There were also

concerns that strict enforcement could prevent the replanting of existing vineyards, as well as the replacement of vineyards damaged due to disease, infestation, or disaster. A prohibition on the net loss of vineyards would require the preservation of the existing landscape without any opportunity for adaptation, innovation, or future changes in market or environmental conditions. As such, staff supports the recommendation.

11. Recommendation:

Implement the recommended new requirements for winery use permits so that they become effective no later than January 1, 2017. Prioritize requirements to be implemented as soon as possible. Review new winery requirements to ensure that they do not affect existing permitted and legally conforming property rights.

Analysis:

Staff believes that both a General Plan Amendment and a Code Amendment would be needed for this recommendation. This is a very complicated legal issue that will require extensive analysis to implement. Staff will need to carefully construct the ordinances and policies necessary to carry out the Board's direction, to ensure that existing property rights and entitlements are protected for existing wineries, while also ensuring that any proposed regulations are equitably applied to all new development (both modifications and new wineries). These concerns will have to be evaluated for each proposed recommendation with regards to how it may affect the various categories of legally conforming operations and approvals. The County successfully navigated these issues with both the adoption of the WDO as well as the 2010 Interpretive Guidance. Staff is confident that these issues will be resolved for this set of recommendations; however, implementation needs to be done carefully to ensure that all private and public interests are fully protected.

12. Recommendation:

Amend Policy AG/LU-2 as follows:

"Agriculture" is defined as the raising of crops, trees, and livestock; the production and processing of agricultural products; and related marketing, sales and other accessory uses. Marketing activities and other accessory uses shall remain incidental, subordinate, and related to the main use. Agriculture also includes farm management businesses and farm worker housing.

Analysis:

Staff believes that this recommendation would require only a General Plan amendment. Staff supports the recommendation as it would strengthen the consistency between both the Policy and the associated Action Item, as well as consistency between the General Plan and Zoning Code.

13. Recommendation:

Include the following information in staff reports regarding winery use permits for consideration by the Commission in decision-making:

- a. Comparison with wineries that have similar production as the proposed project;
- b. Comparison with wineries within one mile of the project site;
- c. Site-specific criteria.

Analysis:

Staff believes that this recommendation would only require direction from the Board to the Planning Commission. The Commission has been requesting this information from staff for the past year and it has provided valuable context for considering new applications. Uniform development standards that force all applications to fit into the same template would run counter to the County's policy support for maintaining a diversified wine industry. By using tables that compare proposals to existing wineries of similar production and those located close to the subject property, the Commission is able to consider applications in a fair and equitable manner. At the same time, by looking at locational criteria, the Commission is able to take into account any unique, site-specific characteristics and/or community benefits that distinguish the proposed project from other wineries. This has provided a balanced and consistent approach that has improved the decision-making process.

14. Recommendation:

Provide an annual report to the Planning Commission on prior year winery activity that includes the following information:

- a. Total permitted and actual wine production;
- b. Total wine grape acreage and production;
- c. Total amount of wine crushed within Napa County, amount of grapes imported into Napa, and amount of grapes exported out of the County;
- d. Total production, tasting room visitation, marketing visitation, and variances permitted by the County;
- e. Gross and net loss of vineyards and farmland;
- f. Average and median visitation numbers for groups of wineries based on production levels.
- g. Number of temporary event permits issued, and number of visitors allowed.

Analysis:

Staff believes that this recommendation would only require direction from the Board to the Planning Commission. This is an important recommendation that is strongly supported by staff. The County is limited in being able to effectively regulate and manage land use without access to comprehensive and current information. Regular monitoring and data collection is critical to the principle of adaptive management, which in turn is fundamental to the ongoing success of the General Plan over its 25-year timeframe. The annual report would allow for regular assessment of the effectiveness of the County's policies and

ordinances, and provide an opportunity for course corrections to be taken more quickly and with more precision.