

## Morrison, David

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**From:** Randy Dunn <randy@dunnvineyards.com>  
**Sent:** Sunday, May 19, 2019 9:50 PM  
**To:** Morrison, David; Diane Dillon; Wagenknecht, Brad; Gregory, Ryan; Pedroza, Alfredo; Ramos, Belia  
**Subject:** Small winery permits

Ladies and gentlemen,

For those of you who are not familiar with my last 40 years: I started Dunn Vineyards in 1979. The first vintage was 650 cases or 1600 gallons; about 10 tons, coming from about 4 acres. So things progressed; up to 2000 cases, 5000 gallons, 33 tons, off of about 13 acres. You see where I am going--- 30,000 gallons is by no means a small, family, farmer, winery. This would mean a crush facility for about 200 tons of fruit, coming off of 50-70 acres!! Do you really think that this is within the economics of a small, family winery. This is about \$10 mil in vineyard value, then, how much for the small winery?

I invite each of you to visit my winery. We produce about 5000 cases, or 12,500 gallons. We are small in the grand picture of the wine world, but an operation about 2.5 times our size is not. Come see for yourselves.

Trying to push 30,000 gallon winery permits thru to protect the small guys out there is ridiculous, and I think that you all realize that. Sometimes, a person should look in the mirror.

R.L.Dunn

Sent from my iPad

**Morrison, David**

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**From:** Betsy Kane-Hartnett <betsy@2880wines.com>  
**Sent:** Sunday, May 19, 2019 6:52 PM  
**To:** Morrison, David; Dillon, Diane  
**Cc:** Meghan Kane-Hartnett; John Kane-Hartnett  
**Subject:** Small Family Wineries

Hello.

I understand the Board of Supervisors will be considering a future ordinance to help small family wineries, this Tuesday.

I certainly hope it will pass.

As the owner of an *extremely* small family winery (we produce less than 1,000 cases a year) we need all the protection we can get.

Thank you in advance for looking out for us.

Kind regards,

Betsy

--

Betsy Kane-Hartnett  
2880 WINES  
2880 Foothill Blvd  
Calistoga CA 94515  
[www.2880wines.com](http://www.2880wines.com)  
Phone: 707.942.6737  
Cell: 707.339.7200

2880 WINES

**Morrison, David**

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**From:** Paul Moser <psmoser@sbcglobal.net>  
**Sent:** Sunday, May 19, 2019 9:22 AM  
**To:** Morrison, David  
**Subject:** Small Family Wineries

Dear Mr. Morrison,

I applaud the intention of the commission to protect and smooth the way for small, family-owned wineries to flourish in a commercial environment that so heavily favors larger operations with deep pockets and large numbers of personnel. I do feel, however, that it is vital in this effort to create eligibility criteria that eliminate from the "small, family-owned" category all those operations that are actually owned by wealthy individuals who at best live part-time in the valley, who have no real role in operating their wineries, and who use them principally as trophies, "life-style enhancements," and often as a tax write-offs. I would think it would not be too hard to identify these operations and exclude them from consideration, and I sincerely hope you will do so.

Sincerely,

Paul Moser  
39 Culbertson Court  
Napa 94558





## Morrison, David

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**From:** Tom <tom@thegradecellars.com>  
**Sent:** Monday, May 20, 2019 9:17 PM  
**To:** Morrison, David  
**Cc:** Brenda Mixson  
**Subject:** Small Family Wineries

David,

We bought our 32-acre ranch outside of Calistoga in 1997. Since then we've taken steps toward our dream of having a small family winery on our property, and those steps have included becoming conscientious winegrape growing, building a successful wine brand and saving our money to build our dream. We've worked with consultants, performed the studies of our property and even met with you. You've always been encouraging.

We support any ordinance to help small family wineries which will satisfy the January 2019 Strategic Plan's goal to "Protect family-owned businesses, local wineries, and small farmers as a vital part of the economy, including preservation of the small vineyard exemption" (9H).

We are counting on you, as Director of Planning, and your colleagues to support America's backbone of small family businesses and Napa County's own legacy of small family wineries. It would be outrageous if the county's future is reserved only for established large wineries and other special interests in the county who want to secure themselves against competition.

Yours truly,

Tom Thornton & Brenda Mixson  
Owners  
The GRADE Cellars & Winfield Vineyard

The GRADE Cellars  
1236 Lincoln Avenue  
Calistoga, CA 94515



**THE GRADE**

Thomas Thornton, ALC, Proprietor  
The GRADE Cellars | [www.thegradecellars.com](http://www.thegradecellars.com) | 707.567.6230 (w) | 209.342.8622 (c)

**Morrison, David**

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**From:** Paul Holm <paulholm@theholmgroupp.com>  
**Sent:** Monday, May 20, 2019 1:54 PM  
**To:** dianedillon@countyofnapa.org  
**Cc:** Morrison, David  
**Subject:** Napa Small Family Wineries Protection Ordinance

Dear Diane and David -

I want to voice my support for the Small Family Winery ordinance the Napa Board of Supervisors is considering tomorrow.

I grow Cabernet and make wine in Calistoga. My family has been growing Cabernet just across the county line since the late 1960s.

As a small producer - with ever increasing regulations and competition - it is very difficult to make a profit. I love it, but any help the County could give in helping us do what we do and still stay in business, would be much appreciated. This ordinance has been on the table for over a decade and hopefully the Board will act tomorrow.

The character of the Napa Valley was shaped by small family wineries. I hope the current leaders can find ways to make sure we can survive and preserve our heritage.

Sincerely,

**Paul Holm**  
**Sebright Cellars**

P. O. Box 950  
Calistoga, California 94515  
415.520.5818 (fax)

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**Morrison, David**

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**From:** Bill Hocker <bill@wmhocker.org>  
**Sent:** Tuesday, May 21, 2019 9:33 AM  
**To:** Pedroza, Alfredo; Ramos, Belia; Gregory, Ryan; Dillon, Diane; Wagenknecht, Brad; Morrison, David  
**Subject:** Re: Winery use permit streamlining discussion

Supervisors and Dir. Morrison

The Matthiasson approval shows that the current review process can be expeditious for small wineries - as long as the proposals are appropriate for the communities in which they are located. The multi-year battles that some wineries are experiencing in obtaining approval are a direct result of the scale of the disruptive industrial and commercial impacts that they will bring to rural farming neighborhoods. A fast track process is a developers' (or realtors') solution to put winery development beyond the reach of community involvement. Instead, a mechanism within the current review process that actively seeks consensus about appropriate scale, beyond just telling residents and the developer to work it out among themselves, would be more useful.

Bill Hocker  
3460 Soda Canyon Rd



**Morrison, David**

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**To:** Tower Snow  
**Subject:** RE: Proposed Ordinance Streamlining Small Wineries

-----Original Message-----

From: Tower Snow <tower.snow@gmail.com>  
Sent: Thursday, July 18, 2019 12:40 PM  
To: Morrison, David <David.Morrison@countyofnapa.org>  
Subject: Proposed Ordinance Streamlining Small Wineries

Dear Mr. Morrison,

I have lived in this county since 1994.

Today, I hardly recognize it.

What has happened is appalling. A beautiful, serene place has been turned into a drunken parking lot for tourists and explosive developers.

Surely you and others must see this.

Does the valley today bear any resemblance to the valley that was here when you first came?

Please stop this insanity.

The proposed ordinance should not be approved.

There is already great anger in the valley at all the development. Is the County going to work to abate this or add fuel to the fire?

Respectfully submitted,

Tower C. Snow Jr.

For what it is worth, my estate home and everything I owned burned down in the first hour of the Atlas Fire.

Sent from my iPhone



**Morrison, David**

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**Subject:**

FW: Comments of Small Winery Protection and Use Permit Streamlining Ordinance

**From:** Charlotte Williams <[cdevorak@sonic.net](mailto:cdevorak@sonic.net)>

**Date:** Thursday, Jul 18, 2019, 18:38

**To:** Dillon, Diane <[Diane.DILLON@countyofnapa.org](mailto:Diane.DILLON@countyofnapa.org)>, Alfredo Pedroza <[Alfred.Pedroza@countyofnapa.org](mailto:Alfred.Pedroza@countyofnapa.org)>, Wagenknecht, Brad <[BRAD.WAGENKNECHT@countyofnapa.org](mailto:BRAD.WAGENKNECHT@countyofnapa.org)>, Gregory, Ryan <[Ryan.Gregory@countyofnapa.org](mailto:Ryan.Gregory@countyofnapa.org)>, Ramos, Belia <[Belia.Ramos@countyofnapa.org](mailto:Belia.Ramos@countyofnapa.org)>, Morrison, David <[David.Morrison@countyofnapa.org](mailto:David.Morrison@countyofnapa.org)>

**Cc:** Valdez, Jose (Louie) <[Jose.Valdez@countyofnapa.org](mailto:Jose.Valdez@countyofnapa.org)>

**Subject:** Comments of Small Winery Protection and Use Permit Streamlining Ordinance

July 18, 2019

Dear Napa County Board of Supervisors and Director Morrison,

Re: Proposed Small Winery Protection and Use Permit Streamlining Ordinance.

Napa Vision 2050 is very concerned about this proposed ordinance and see it as further erosion to the Agricultural Preserve, a shortcut to more urbanizing influences that degrade our environment and bring more traffic and events irreversibly into agricultural lands. It is unthinkable to take on such an open-door policy for more expansion, across potentially hundreds of wineries, without both individual and cumulative environmental impact analysis.

Specifically, we have the following questions and comments:

Why is the county acting to expand "small" wineries? Is there a compelling need to assist nearly half the wineries in the county to become larger with no appropriate environmental analysis?

Please clarify the number of "small wineries" that could avail themselves of this ordinance. How many plans and applications for additional small wineries are in process with the county? What is the potential total impact? What is the potential cumulative impact of the possible "no impact" expansions?

There is a distinct conflict in the wording of item #2 in the proposed ordinance. How is it possible that each small winery "has no new significant environmental impacts, and does not increase the severity of existing significant environmental impacts" when it is stated that small wineries have "limited impact." This ordinance (and the county) needs clear and consistent definitions of the words "limited" as well as "significant."

In light of the direction and needs of the Climate Action Plan, we must have a cumulative impact analysis on our carbon budget before this can be considered. On the surface, it is highly contraindicated for GHG and ongoing climate considerations.

The word "employee" must be defined. Many people who work at wineries are not employees of the winery; they are often hired through temp agencies or work for catering companies, vineyard management companies or other vendors. An increase of 10 or 10%, whichever is greater, in actual employees of a winery would lead to large impacts of more traffic, more emissions, more water usage, and wastewater concerns. The result could be far larger





than acknowledged based on official employees. This could result in at least 2,000 more workers driving to and from work (10 x 200 small wineries). Again, a need for a cumulative impact CEQA analysis.

With gridlock on Silverado Trail and Highway 29: Traffic must be analyzed as part of the cumulative impact of this expansion.

What does "change in hours of operation" mean? Music until 10 pm every weekend? Early dinners and late-night dancing? Expanded weddings and auctions? With the change in direct to consumer marketing, we need clarification on what hours and how this will interface with our already impacted residents and restaurants operating within the urban centers.

Marketing events could jump to a staggering 260% increase in from 10 to 26 events annually. For a neighbor, this is an event, and all its attendant traffic and noise, every other weekend of the year. Multiply this by 200 or more wineries. This is not a negligible impact.

On gallonage: when the overall increases are counted, this could amount to a 50% increase in production (20k – 30k gallons) Is that correct?

This proposed small winery protection may be "streamlining" for a large number of wineries. For the environment, our air quality, traffic and the quiet, rural quality of life we treasure, it's a whopper of a "steamroller".

Sincerely,  
Charlotte Williams  
President, Napa Vision 2050

59 View Rd., Calistoga, CA 94515

[cdevorak@sonic.net](mailto:cdevorak@sonic.net)

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Streamlining Small Winery Permits  
To Director Morrison & the Napa Board of Supervisors

July 22, 2019

Dear Director Morrison & Board Members,

It is impossible for me to sit back and watch you continue to chip away at the visionary safeguards established by the original Agriculture Preserve. With each chip the protection of our Napa Valley agricultural land and its needed watershed is put at greater risk. Even now, given our grave traffic, housing and climate issues you continue your assault. What are you thinking? Who are you serving? What/who is motivating this newest action? Who will truly benefit?

First of all, what is your definition of a, "small family winery?" Those of us who actually are small producers make between 300 and 2000 cases of wine per year. When you get any higher than that you are talking a completely different animal. At four tons per acre, one acre will produce approximately 200 cases depending on the liquid to solid ratio. Many Napa Valley vineyards are kept to 2 tons per acre. This translates to 100 cases per acres.

If we average these figures, a "small" 10,000 case winery needs 66 acres of vineyard. Given that the valley floor is planted out, that means 66 hillside acres per each small winery. It also means more employees with no local housing options spewing carbon while driving up and down the valley or increasingly on narrow, winding mountain roads. It means more winery events causing more traffic & disruption, fewer trees to capture the carbon, the demise of wildlife and on and on and on.

Last spring, the board felt like they had accomplished something when they gave all offending wineries a moratorium to turn themselves in and become compliant. As I said at the public comment meeting, this will just become another way to let the offenders off the hook and for them to increase their offenses. As feared, they are just being offered more ways to be, "compliant." I am sorry to be proven right.

Not only does this go against everything that Napa Valley needs right now, but it also goes against those who care and those who have played within the rules. What we need now is a hard focus on the climate crisis, traffic and lack of affordable housing. For those who only care about the bottom line, it seems you can't see the forest for the trees.

Many wineries, shops and restaurants are struggling. It seems we need to look at the bigger picture. This brings me to one definition of insanity; doing the same thing and expecting a different outcome. How about rather than continuing to dilute the safeguards, we tighten them up. Let's treat this valley like the precious place that it is, rather than carnival sites with each barker trying to out do the other. As we cheapen what we have, so do others.

The current situation is not sustainable, neither for the greater community, nor for the grape growers and wine producers. I implore our Board of Supervisors, Director Morrison and your staffs to end these distractions and concentrate on the serious issues that affect **ALL** of your constituents.

Sincerely,

Laurie Claudon  
Clark-Claudon Vineyards



Andrea A. Matarazzo

Partner

andrea@pioneerlawgroup.net

direct: (916) 287-9502

August 15, 2019

*Via Electronic Mail*

David Morrison, Director  
Napa County  
Planning, Building, and Environmental Services  
1195 Third Street  
Napa, CA 94559

Re: Napa County Small Winery Protection and Use Permit Streamlining  
Ordinance  
Our File No. 5305-001

Dear Mr. Morrison:

We submit these comments regarding the outline you circulated concerning a potential "Small Winery Protection and Use Permit Streamlining" ordinance for Napa County on behalf of Cain Cellars, Inc., dba Cain Vineyard & Winery. Cain is unique not only as a creator of three distinctive Cabernet blends reflective of its location at the crest of the Spring Mountain District, but as a vineyard and winery focused on classical winegrowing rather than tourism and marketing. While Cain appreciates the County's efforts to more efficiently process small projects or minor modifications, we are concerned that the scope of the current proposal may be unduly limiting.

In accordance with its existing 1981 use permit, Cain is not open to the public for tours and wine tasting. Very limited visitation by appointment allows Cain's customers in groups of no more than four people (averaging 20 visitors per week) to experience educational vineyard walks and see where their wine grows. Cain has no tasting room and visitor appointments are focused – like the winery itself – on the winegrowing process. Marketing events are limited to two pick-up days (less than 100 guests each) and four private client educational events (less than 20 guests each) per year. The vast majority of Cain's wines (approximately 90%) are distributed through the wholesale system, online, and through allocations. Only about ten percent (10%) of Cain's wine sales are made directly to customers who visit the winery by appointment, and total annual

Re: Napa County Small Winery Protection and Use Permit Streamlining  
Ordinance

August 15, 2019

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visitation is far less than the permitted 1600. Cain hosts fewer visitors in the course of a year than some Napa County wineries see in an average week.

Cain keeps detailed records which show that it operates in accordance with the terms of its existing use permit, as it has done for decades. Based on the terms of its existing use permit and its decades-long record of compliance with that permit, Cain voluntarily participated in the County's status determination process. Staff's determination was issued on July 23, 2019, which Cain has appealed.

We view staff's interpretation of the permit and file to be too narrow, particularly given the County's own interpretation of vehicle occupancy and other factors, and we believe Cain's existing uses are within the terms of the permit. Even if a permit application were required to memorialize existing uses and conform the use permit to them, the increment of difference between the express terms of the permit and existing operations is de minimis. Currently, the County considers all operational changes as "major," even in a situation such as Cain's, where any operational changes that could conceivably trigger a requirement for permit modification are nominal. The County Code should be amended to allow consideration of this type of situation as minor.

Indeed, under the County's current regulations, a winery can expand by increasing its floor area up to 25 percent with staff-level approval, but it cannot increase its employee numbers, or increase its production capacity, visitation or marketing programs without obtaining a major modification of its use permit. The current regulations allow for limited physical expansions to be processed as a minor modification to an existing permit, and similar allowances should be made for limited operational adjustments as well.

In that vein, as noted above, Cain appreciates and supports the County's efforts to more efficiently process small projects or minor operational modifications. We are concerned that the scope of the current proposal may be unduly limiting, however, because it is unclear whether an existing operator such as Cain, with existing permitted production of 59,000 gallons per year, would qualify for the streamlined process for minor operational changes unrelated to production. We request clarification that minor operational changes unrelated to production may be requested by operators whose existing permitted capacity exceeds 30,000 gallons per year.

Re: Napa County Small Winery Protection and Use Permit Streamlining  
Ordinance

August 15, 2019

Page 3

Thank you for the opportunity to comment on the draft outline. Please send any further notices or information concerning the Small Winery Protection and Use Permit Streamlining ordinance to me at the above address.

Very truly yours,

PIONEER LAW GROUP, LLP



ANDREA A. MATARAZZO

AAM:sr





**Morrison, David**

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**To:** Beth Milliken; 'Laurie Claudon'; Wagenknecht, Brad; Gregory, Ryan; Dillon, Diane; Pedroza, Alfredo; Ramos, Belia  
**Subject:** RE: Proposal - Small Winery Streamlining

**From:** Beth Milliken <beth@spottswood.com>  
**Sent:** Tuesday, July 23, 2019 2:41 PM  
**To:** 'Laurie Claudon' <laurie@clarkclaudon.com>; Wagenknecht, Brad <BRAD.WAGENKNECHT@countyofnapa.org>; Gregory, Ryan <Ryan.Gregory@countyofnapa.org>; Dillon, Diane <Diane.DILLON@countyofnapa.org>; Pedroza, Alfredo <Alfredo.Pedroza@countyofnapa.org>; Ramos, Belia <Belia.Ramos@countyofnapa.org>; Morrison, David <David.Morrison@countyofnapa.org>  
**Subject:** RE: Proposal - Small Winery Streamlining

I agree wholeheartedly with the sentiments you have shared with our supervisors and with David Morrison, Laurie – thank you for including me on this!

To Ryan, Diane, Brad, Alfredo and Belia – I am crafting my own letter on this issue, as I strongly feel that we cannot make it easier to get a winery permit or to modify one's permit. Doing so undermines the integrity of our Ag Preserve, our Ag Watershed and our agricultural heritage.

You will all hear from me soon, in my own words. I hope that you will choose to protect the integrity of Napa Valley. This is the job you are elected to do.


Very sincerely,

Beth

**Beth Novak Milliken**  
*President & CEO*

**SPOTTSWOOD**

SPOTTSWOOD ESTATE VINEYARD & WINERY  
1902 Madrona Avenue • St. Helena CA 94574  
707 963-0134 • [spottswood.com](http://spottswood.com)

 Please pause before printing – Riley





# SAVE THE FAMILY FARMS

## NAPA VALLEY

[Savethefamilyfarms.com](http://Savethefamilyfarms.com)

Belia Ramos, David Morrison, Minh Tran  
August 19, 2019 Meeting

**STFF Team: Hayley Hossfeld, Elise Nerlove,  
George O'Meara, Terry Scott, Bill Wolf**

Save the Family Farms Confidential

# Agenda

- Executive Summary
- Save the Family Farms - Mission
- Review suggested Micro Producer requirements
- Comparison: Full Winery Permit vs. Micro Producer Permit
- Review Environmental Impact
- Call to Action

## Executive Summary

- **Situation** - due to a set of unintended consequences (post WDO), small family farms & vineyards (micro producers) do not have a sustainable business model to grow, produce and taste/sell their wine. Small family farms & vineyards are different than existing Small Family Wineries (e.g. Terraces).
- **Complication:** This has created a void or business model for anyone less than 5-10,000 gallons to legally make a living growing, producing, tasting & selling wine from their Napa vineyards.
- **Implication:** If nothing changes, Napa Valley small family farms & vineyards will disappear.
- **Position:** We do not want to change the Winery Definition Ordinance (WDO) and are trying to develop a reasonable set of compliance conditions for micro producers.
- **Proposal:** please support the creation of a joint team with Napa County staff to develop the options, conditions, restrictions, etc. for a micro producer permit for limited wine tasting & direct to consumer sales.



## STFF Mission

Save the Family Farms is committed to making  
Napa Valley Family Farms & Vineyards  
viable for future generations

## Suggested Micro Producer Requirements

- Subject property must be in Napa County and be located in AW Zoning.
- Subject property will be a minimum of 5 acres and include a 3 acre vineyard
- Owner must live on subject property
- Subject property will participate in an annual compliance process & educational component
- Annual production not to exceed 10,000 gallons total
- 75% of grapes must be estate grown.
- All grapes must be 100% Napa Valley
- All wine will be made at custom crush facilities and subject property will provide on-site production in the form of barrel fermentation (minimum X? barrels)
- Tastings & sales will be "by appointment only" limited up to 5 vehicles (not buses) per day with potential to modify based upon seasonal demand
- Must have proper AP02 license as required by California ABC
- Any existing winery AP02 permit holder will have the option to utilize the new "Micro Producer" use permit.
- Subject property will meet applicable Fire and Safety regulations as determined by Napa County

"Benefit Comparison"	"New Winery Permit"	"Micro Producer Permit"
Visitors / Tastings	Visitors / Tastings range from 1,000 to over 250,000	Tastings & sales will be "by appointment only" limited to 5 vehicles per day
Traffic Issue	Yes	No
Make wine on premise (XXX thousand gallons)	Yes	Shared Production
Environmental Impact	Yes	No
Sell custom crush capacity	Yes	No
Enormous Visibility & Marketing Resources	Yes	No
Multiple Marketing Events	Yes	No
Serve Food (bites to full meals)	Yes	No
Vast resources for marketing budget, sales, advertising	Yes	No
Sell merchandise & food deliver tasting experiences	Yes	No
Production volume to leverage distribution	Yes	No
Warehousing of finished wine	Yes	No
Infrastructure expansion	Yes	No
New employees needed to run the business	Yes	No
Store front locations	Yes	Yes
Visit Napa 2% Tax Benefit	Yes (\$8M annually to promote Napa)	No



## STFF Environmental Impact

- Proven to stabilize vineyard land and fire protection
- Eliminates the need to unnecessarily remove vineyards, cut down trees and pave over AG land with new buildings, parking lots and road improvement requirements.
- No new construction traffic and eliminates all associated traffic to build & operate a new winery/production facility (2+ years)
- Reduces the need for more workers and traffic from those workers.
- Requires no additional waste water treatment. (portable toilets)
- When compared to a full winery, we reduce water usage, electricity and gas consumption and other precious resources.
- Reduces pollutants entering ground water, streams and rivers.
- Does not need to meet the 3-1 tree regulation, etc.
- Reduces and minimizes takeover of Napa Valley small family farms

## Call to Action

- We would like the BOS to approve County staff to work collaboratively for development of a compliance proposal for a micro producer use permit along with a set of conditions, options and restrictions

**Morrison, David**

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**Subject:** FW: Proposed small winery Ordinance-Coalition Napa Valley.  
**Attachments:** Redline - Proposed Small Winery Ordinance-Coalition Napa Valley.pdf; Proposed Small Winery Ordinance-Coalition Napa Valley.doc

**From:** Harvest Duhig <[harvestvino@gmail.com](mailto:harvestvino@gmail.com)>  
**Sent:** Thursday, August 29, 2019 10:37 AM  
**To:** Harvest Duhig <[harvestvino@gmail.com](mailto:harvestvino@gmail.com)>  
**Subject:** Fwd: Proposed small winery Ordinance-Coalition Napa Valley.

Dear Napa BOS,

We- the steering committee of CNV have taken the opportunity with careful consideration to provide detailed edits to the " Small winery protection and Use permit streamlining Ordinance" .

Attached you will find our both redline and clean drafts of the ordinance. Both documents were submitted to Director Morrison by 8/9 and County council.

Upon review, we would be pleased to meet with you if further explantion or clarificaiton of logic is required.

Best,

Harvest Duhig

## **Small Winery Protection and Use Permit Streamlining Ordinance**

### **1. Small Winery Protection:**

Create a Use Permit category that would require a public hearing before the Zoning Administrator for those wineries that meet all of the following qualifications:

- a. Maximum of 20,000 gallons in production;
- b. Maximum of 40 additional ADT (20 daily round trips) associated with the winery, which would not trigger Road and Street Standards for private driveways (if allowed by BOF), and can be flexibly applied to employees, visitors or deliveries; vehicle trips for all uses other than the winery (such as residential or agricultural uses) are excluded from this calculation;
- c. Maximum of 10,000 square feet of occupied space, can be applied to buildings, caves, or cut and cover caves;
- d. Maximum of 10 marketing events per year, each event may not exceed 24 additional ADT (12 daily round trips); and
- e. Maximum of 15% non-estate fruit can be used in production; at least 85% of the fruit must be from land owned or leased by the winery and located within the same or an adjacent AVA (American Viticultural Area) in Napa County.

This provision would apply to existing Small Winery Exemption operations, existing small wineries with use permits that otherwise meet the criteria for Small Winery Protection, and new small wineries.

This action would be appealable to the Planning Commission.

### **2. Use Permit Process Streamlining:**

Any Minor Modifications, Very Minor Modifications, and Substantial Conformance request may be approved by the Director if it meets the following criteria: (1) has no new significant environmental impacts; (2) does not increase the severity of existing significant environmental impacts; and (3) is consistent with all development standards – no variances or exceptions.

The County would post all pending actions on the PBES website and would notice neighboring property owners within 1,000 feet of the project of all pending decisions, but there would be no public hearing. If new information arises during the processing indicating that the application does not meet any of the above criteria, the Director would refer to the Commission for a hearing as a Major Modification.

Proposed changes that qualify for this process would include:

- a. Convert production space to accessory space (or vice-versa), so long as the 60/40 production to accessory rule was maintained;
- b. Convert from hold and haul to on-site wastewater treatment;

- c. Change in the number of employees up to a total of 10 employees or 10%, whichever is greater;
- d. Change in the number of vehicles up to a total of 40 additional ADT (20 daily round trips); which can be flexibly applied to employees, visitors, or deliveries; vehicle trips for all uses other than the winery (such as residential or agricultural uses) are excluded from this calculation. Wineries with existing use permits that would otherwise meet the criteria for Small Winery Protection (per Section 1 above) will not trigger Road and Street Standards for private driveways (if allowed by the BOF); any other exceptions from the Road and Street Standards will be determined by the Director on a case-by-case basis.
- e. Change in production to a maximum of 30,000 gallons annually;
- f. Change in the number of marketing events, up to a maximum of 26 events annually;
- g. Change in hours of operation
- h. Change in aggregate building footprint by a maximum of either 5,000 square feet or 25%, whichever is greater; and
- i. Change in the number of parking spaces or the alignment of internal roads and driveways.

These actions would be appealable to the Planning Commission. In no way do these actions constitute a reduction in a winery's current use permit allowances.

**3. Airport Industrial Area Specific Plan (AIASP):**

The following provisions would apply only in the AIASP:

- a. Process all Minor Modifications through the Director. Those applications that do not meet the criteria above would be subject to a public hearing before the Zoning Administrator.
- b. Process all Major Modifications in a public hearing before the Zoning Administrator

### Addendum

Should the County wish to develop an ordinance to allow for tastings on vineyard properties, we would recommend proceeding as follows in order to be consistent with ABC regulations:

#### Offsite Tasting Rooms:

Create a use permit category that would require a public hearing before the Zoning Administrator for the creation of small offsite tasting rooms, subject to the following requirements:

- a. The winery must be the holder of an ABC Type 02 Winegrower's license at another facility in Napa County;
- b. A tasting room of no more than 500 square feet of indoor space may be permitted on a parcel of land that is i) at least 10 acres in size; ii) is owned or leased by the winery; and iii) does not currently have a winery on it;
- c. No food service is allowed, other than crackers and simple palate cleansers;
- d. The tasting room may not generate more than 20 ADT (10 daily round trips), which would not trigger Road and Street Standards for private driveways (if allowed by BOF), and can be flexibly applied to visitors, employees or deliveries; vehicle trips for all uses other than the winery (such as residential or agricultural uses) are excluded from this calculation;
- e. Tastings of wine, and retail sales of wine, are limited to wines produced by the winery at its licensed premises, and at least 85% of the fruit must be from land owned or leased by the winery and located within the same or an adjacent AVA;
- f. At least one winery owner, or member of a winery owner's family, must be present whenever the tasting room is open; and
- g. All tastings must be by prior appointment

These actions would be appealable to the Planning Commission

## Morrison, David

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**From:** Michael T. Carlson <mcarlson@caymus.com>  
**Sent:** Thursday, September 26, 2019 1:38 PM  
**To:** Morrison, David  
**Subject:** Small Winery Ordinance Draft/Use Permit Streamlining Ordinance Draft

David,

I hope all is well with you. I have reviewed the latest draft of the Winery Ordinance Proposal and on behalf of Caymus Vineyards and Wagner Family of Wine, make the following comments and observations for your consideration:

### Small Winery Ordinance:

- The County is proposing a total of 40 total ADT, as opposed to 40 additional trips. For existing small wineries, this means all employees, visitors and deliveries must fit within 20 daily round trips. If you assume an average of at least 1-2 daily round trips for deliveries and at least 3-4 daily round trips for employees (and these are conservative numbers), this leaves at most 15 daily round trips for visitors. Assuming 2.5 visitors per vehicle, that means 37 visitors per day. Deliveries should be exempted from this calculation, as that would free up space for another 5 or so visitors per day.
- The County has unfortunately adopted the NVV recommendation and has placed a two-year limit on further modifications for small wineries. Thus, any winery that receives expedited use permit processing as a small winery cannot submit another application to increase production, visitation or marketing for at least two years. This seems misguided and unnecessary. If a winery elects to go beyond the parameters for a small winery, it will have to proceed with the appropriate level of use permit modification and successfully navigate that process. Why put a false deadline to stunt a winery's growth more than all the existing regulations already provide for?
- On a more positive note, the additional language in subsection (b) regarding the intent of the ordinance being to exempt small wineries from the road and street standards is a positive development. Perhaps the County can clarify what the applicable road width would be for small wineries: are they treated as exempt agricultural roads, or can they be required to comply with a different road standard, such as the residential standard?

### Use Permit Streamlining Ordinance:

- This latest draft allows for employee increases of up to 10% or a total of 10 employees, whichever is greater. This is positive but 10% may be too low a threshold. Consider 25-50% increase as many wineries are understaffed.
- As with the small winery ordinance, the number of ADT remains at 40 total, rather than 40 additional. Any increase in production, visitation or marketing will likely trigger a major modification. Also, this section applies to wineries of all sizes and for this additional reason, capping vehicle trips at 40 misses the mark. This should be 40 additional ADT.
- Similarly, increases in marketing events up to 11 per year. I would ask that the County clarify that it applies only to events over a particular size. The County references events with 12 daily round trips (this would be 30 people, at 2.5 visitors per vehicle). I would encourage the County to revise the ordinance to state that changes in the number of large marketing events of up to 11 per year, with "large" defined as events with more than 12 daily round trips (24 ADT). Increases in the number of small marketing events should be allowed if they (taken together with any other requested changes) do not increase ADT by more than 40 additional trips (20 round trips). This would make the suggested ADT consistent with this marketing section.

- The County proposed a seemingly liberal square footage limit – with changes of up to 50% or 5,000 – but the ordinance then specifies “whichever is less,” which effectively means that any square footage increase of more than 5,000 s.f. is a major mod. Considering that the current threshold is increases of up to 25%, this seems like a large step backwards.
- The County has also added a laundry list of minor changes that would qualify for a minor mod. This section should state “including but not limited to” or wineries run the risk that some minor request, not on the list, is then treated as triggering a major mod.

Thank you for your consideration of these important points.

Regards,  
Mike

**Michael T. Carlson**  
Vice President and General  
Counsel

Main Office: 707.963.4204

mcarlson@caymus.com  
wagnerfamilyofwine.com







September 29, 2019

David Morrison, Director  
Planning Building & Environmental Services  
County of Napa  
1195 Third Street  
Napa, CA 94559

RE: Small Winery Protections and Use Permit Process Streamlining

Many thanks for preparing an outline of your proposed ordinances for public review and comment. Here are a few of my suggestions:

**Small Winery Protection:**

Please clarify and/or expand the use of the word “employees.” It can easily, and incorrectly in my view, be interpreted as only those who work directly for the winery. Many of the small wineries use contract staff for tasting room, hospitality, and crush/production – and these people should be included the “employee” count.

Thank you for including the restriction on increasing production, visitation, or marketing events for two years after Small Winery Use Permit. This was one item of discussion at APAC.

**Use Permit Process Streamlining:**

See comment above regarding the word “employee” that likewise applies to this proposed process.

This process shifts the focus from number of visitors and/or employees to the number of vehicle trips. This may be easier to monitor but can multiply the number of people onsite quickly when the vehicle is a bus or van. Is it the intention to control both the vehicles and the number of people?

Change in hours of operation to include times before 9AM or after 6PM. What is the outer limit on this? Could a winery be open until 2AM just like the bars in town? The County has a noise ordinance, but no limits on boundaries for wineries. Please establish some reasonable limits or we may end up with a winery open 24 hours a day [at the extreme].

Let's not forget when the “small” change of allowing food pairings has evolved into full restaurant meals.

Connection to a municipal water service is one of the actions that would not require a Minor Modification. Please expand the description so that prior approval from local agencies and/or LAFCO may be necessary.

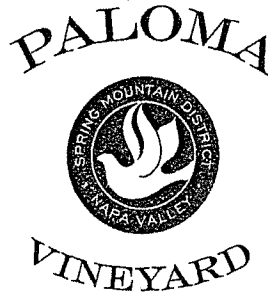
Change in the alignment of internal roads and driveways (where there is no increase in impermeable area) is another action that would not require a Minor Modification. Please clarify if referenced driveways connect to a public roadway. If so, this change may not be so trivial as to avoid a Minor Modification.

Thanks for your consideration.

Regards,

***Eve Kahn***

Eve Kahn, Chair  
Get a Grip on Growth  
PO Box 805  
Napa, CA 94559



Oct. 1, 2019

Attn: Supervisor David Morrison  
Re: user permit modifications

Supervisor Morrison,

First, let me thank you for your efforts to reach this 4<sup>th</sup> draft. It seems to be moving in the right direction. But still needs some help if you truly want us to survive.

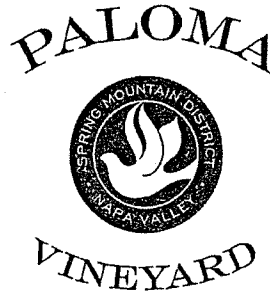
Why we are doing this in the middle of harvest is ridiculous? I am a one-man (plus one field worker) vineyard/winery. I do the farming, winemaking, tastings, sales, deliveries. At this time of year, my time is spent in the winery, yet here I am writing this letter and attending the Oct. 15 meeting.

Much of the proposed changes do not affect me as I am under 10,000 gallon and do not do large events. However, my existing user permit which is 26 years old allows two tasters per day. I would not be in existence today if I had adhered to that number. But the new 4<sup>th</sup> draft regs push me past the 10% and into a major modification. The cost of which would put me out of business.

While the maximum of 15% non-estate does not impact me, it impacts many small Napa wineries—my friends and neighbors. Napa is predominantly a red fruit valley, but to diversify, many buy both red and white fruit from other AVAs to balance their portfolio. Who and how that formula was devised is beyond me. And makes no logical sense!

My immediate concerns, that might affect me, are the road and gate widths, and drilling a new well cased to 50-feet in concrete. If those are applied (after being here for 36 years) and making wine for 26 years it would end a 2<sup>nd</sup> generation family-owned business and jeopardize my livelihood!

Please remember, we are not part of the zillionaires club. We built our vineyards and businesses one vineyard block or structure at a time over the course of many years. We did not have a home on the property for the first 10 years as we were focused on the vineyard.



Finally, to have gov't. bureaucrats and/or elected officials (no offense meant) who have never grown grapes, made or sold wine, dictate how we have to run our businesses is just plain wrong. This should have been a public consultation process where all of the stakeholders have a voice. This final Oct. 15 does not meet those standards.

I have one employee and work 12 hours a day, seven days a week. And way more during harvest. Supervisors have no idea of the cost, labor and risk in running vineyard/winery operation Now it is being done in a kneejerk reaction to the fall-out and negative feedback. And using up valuable time and resources at a time that the wine industry is struggling.

Having said all that, I sincerely believe you are trying when most of the supervisors don't seem be bothered. These small family-owned and operated wineries are what is left of the character of Napa. The rest is either a playground for the rich or corporate giants.

Please do not force us out of the picture.

Sincerely,

A handwritten signature in black ink, appearing to be "Sheldon Richards", with a long, sweeping horizontal line extending to the right.

Sheldon Richards, farmer, winemaker, sales guy, tasting room staff, delivery boy and chief bottle-washer!  
Paloma Vineyard

**Morrison, David**

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**From:** Tom Davies <tom@vsattui.com>  
**Sent:** Thursday, October 03, 2019 11:29 AM  
**To:** Morrison, David  
**Cc:** Susan Orenstein; Chuck Wagner; Dario Sattui; 'Stu Smith'; Harvest Duhig; Steven Rea; 'Ryan Waugh'; Julie Arbuckle; Bill Keever  
**Subject:** Small Winery Protection comments

Hi David,

I have a few comments regarding the proposed Small Winery Protection and Use Permit Streamlining Ordinances. In particular:

1e – I believe it is too restrictive to require 85% of the fruit to be within the same AVA as the winery. I propose you include “adjacent.” It would read...from land owned or leased by the winery located within the same or adjacent AVA in Napa County. Many of the AVAs are in proximity to one another and would give a little more flexibility in grape sourcing.

Bottom of 1. In regards to referring a project to the planning commission if significant controversy – We both understand that projects that have no controversy are always heralded as great project and it only takes one person to stir-up a controversy. I strongly believe you need to define “significant controversy.” One or two people should not be able to derail a project just because they don’t want a winery near where they live (in an agriculturally-zoned areas). Significant should be defined to illustrate that it would take many individuals (not just a few) that live near a project with legitimate and verified complaints to refer a project to the commission.

Limitations of ADT – I appreciate that residential or agricultural trips have been excluded from the ADT calculation, but I believe only visitors should be counted. Visitors are the incremental increase. It makes no sense to me that we need to count the UPS driver, FedEx deliveries, mail deliveries, the Alhambra water truck, the PG&E reader, garbage pickup, Comcast repair person, contactors, gardeners, washing machine repair person, and on and on and on. All these trips are typical of the average household in Napa County. It is likely that on any given day you could have 10 round trips just for the above. What’s left for visitation and employees?

And finally, here is something I don’t understand: If a winery is already permitted for let’s say 50 visitors a day, then why could they not apply for an additional 40 ADT under the Streamlining process? If CEQA defines 40 ADT as environmentally exempt, then it should apply equally to a base of zero or 50, as both are incremental increases. Under Streamlining

2d, I would insert the following: Change in the number of vehicles up to 40 ADT. I would omit "total." This proposed ordinance, as written would be of no use to the winery that is seeking only a small increase in visitation if they already have existing and approved visitation for 40 ADT or more. I believe many wineries are in this category.

Thanks for allowing me to submit these comments and suggestions – it is greatly appreciated!

Best regards,

Tom

Tom C. Davies  
President  
V. Sattui Winery  
1111 White Lane  
St. Helena, CA 94574  
☎ 707-286-7220 Direct Line  
☎ 707-225-2875 Cell  
🌐 [www.vsattui.com](http://www.vsattui.com)

**Morrison, David**

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**Subject:** FW: Small Winery Protection and Use Permit Streamlining Ordinance  
**Attachments:** PastedGraphic-2.tiff; 08.05.19 Skeleton Outline WGN comments-1.pdf

**From:** Michelle Benvenuto <michelle@napawinegrowers.com>  
**Sent:** Friday, October 04, 2019 3:31 PM  
**To:** Morrison, David <David.Morrison@countyofnapa.org>  
**Subject:** Fwd: Small Winery Protection and Use Permit Streamlining Ordinance

Hi David,

Please see concerns regarding the Small Winery Protection and Use Permit Streamlining Ordinance noted below that were sent to each Board member (in light of public comment made by Sharon Krull at the 9/24/19 BOS meeting). Winegrowers remains concerned with item 1e. and recommend consistency of the 75% rule:

Thank you,

Michelle Benvenuto  
Executive Director  
Winegrowers of Napa County

PO Box 5937  
Napa, CA 94581  
(707) 738-4847  
[michelle@napawinegrowers.com](mailto:michelle@napawinegrowers.com)

## Small Winery Protection and Use Permit Streamlining Ordinance

### 1. Small Winery Protection:

Create a Use Permit category that would require a public hearing before the Zoning Administrator for those wineries that meet all of the following qualifications:

- a. Maximum of 20,000 gallons in production;
- b. Maximum of 20 ADT (10 daily round trips), which would not trigger Road and Street Standards for private driveways (if allowed by BOF), and can be flexibly applied to employees, visitors, or deliveries;
- c. Maximum of 10,000 square feet of occupied space excluding unenclosed space (e.g. covered crush pads), can be applied to buildings, caves, or cut and cover caves;
- d. Maximum of 10 marketing events per year, each event may not exceed 12 ADT; and
- e. ~~Demonstrated compliance with the 75% Rule~~ Maximum of 15% non-estate fruit must be used in production; all other fruit must be from land owned or leased by the winery and located within the same AVA (American Viticultural Area).

Commented: The 85% estate fruit rule likely would prevent this from being helpful path for wineries established as small winery use permit exemptions.

~~This provision would apply to existing Small Winery Exemption operations, as well as owners who custom crush, provide on-site production in the form of barrel fermentation, and want to allow limited tasting.~~

This action would be appealable to the Planning Commission.

### 2. Use Permit Process Streamlining:

Any Minor Modifications, Very Minor Modifications, and Substantial Conformance request may be approved by the Director if it meets the following criteria: (1) has no new significant environmental impacts; (2) does not increase the severity of existing significant environmental impacts; and (3) is consistent with all development standards – no new variances or use permit exceptions. (Road and Street Standards do not apply to Minor Modifications and Very Minor Modifications.)

The County would post all pending actions ~~Minor Modifications~~ on the PBES website and would notice neighboring property owners within 1,000 feet of the project of all pending decisions on Minor Modifications, but there would be no public hearing. If new information arises during the processing indicating that the application does not meet any of the above criteria, the Director would refer to the Commission for a hearing as a Major Modification.

Proposed changes that qualify for this process would include:

- a. Convert production space to accessory space (or vice-versa), so long as the 60/40 production to accessory rule was maintained;
- b. Convert from hold and haul to on-site wastewater treatment;
- c. Change in the number of employees by 10% or an increase of up to a total of 10 employees, whichever is less;
- d. Change in the number of vehicles up to a total of 40 ADT (20 daily round trips); which can be flexibly applied to employees, visitors, or deliveries;
- e. Change in production ~~to a maximum of up to an additional 30,000 gallons~~ annually;

Commented: CEQA consistency - A new 30K winery is exempt under CEQA, therefore adding 30K of production to an existing winery should also qualify.



- f. Change in the number of marketing events, up to a total maximum of 26 events annually;
- g. Change in hours of operation;
- h. Change in aggregate building footprint (including caves) by a maximum of either 5,000 square feet or 25%, whichever is greater;
- i. Increase in tours and tastings by up to 25% where no new infrastructure is required and increase would result in 40 or less ADT;
- h.i. Removal of use permit limitations on custom crush activities; and
- i.k. Change in the number of parking spaces or the alignment of internal roads and driveways.

These actions would be appealable to the Planning Commission.

**3. Airport Industrial Area Specific Plan (AIASP):**

The following provisions would apply only in the AIASP:

- a. Process all Minor Modifications through the Director. Those applications that do not meet the criteria above would be subject to a public hearing before the Zoning Administrator.
- b. Process all Major Modifications in a public hearing before the Zoning Administrator.
- b-c. These actions would be appealable to the Planning Commission.



napa valley vintners

## memo

**Date:** October 4, 2019

**To:** David Morrison, Napa County Planning Director

**Subject:** Use Permit Streamlining and Small Winery Ordinance Outline

**From:** Napa Valley Vintners Use Permit Task Force & Community and Industry Issues Committee

### OVERVIEW

On behalf of the more than 550 members of Napa Valley Vintners (NVV), we appreciate the opportunity to provide additional comments to Napa County on the revised outline for Use Permit Streamlining and a new Small Winery Ordinance.

As noted in our previous memo, the NVV has established a Winery Use Permit and Compliance Task Force comprised of vintner members that represent a diverse cross section of the NVV membership. This task force and NVV's Community and Industry Issues Committee have reviewed the revised draft outline ("Revised Outline") and provided their comments via this memo.

We applaud the County for spending the time and resources to develop these ideas and are, overall, encouraged by the progress that is being made.

As also mentioned in our previous memo, while the NVV is supportive of the County's efforts, we reserve the right to offer further feedback and endorse, take no position, or oppose the resulting ordinance(s).

### COMMENTS

The NVV Board of Directors voted on September 12, 2019, to recommend that the County decouple the Small Winery Protection Ordinance from the proposed changes to facilitate Use Permit Streamlining. It is our belief that the County's priority should be to streamline the process of modifying use permits, which likely will resolve many of the current compliance challenges facing existing wineries.

Small Winery Protection, which is a valid policy goal, should be further discussed at a later date. If the County decides to continue to pursue both issues concurrently, substantial revisions are needed to the Small Winery Protection outline. To reiterate our comments from our first memo:

**I. Small Winery Protection:**

**1.a. "Maximum of 20,000 gallons in production."**

The NVV believes the 20,000-gallon production limit is too high and should be significantly lowered. We are happy to provide industry statistics to help you establish a more reasonable gallonage limit for small wineries in line with current industry metrics.

**1.e. "Maximum of 15% non-estate fruit can be used in produce; at least 85% of the fruit can be from land owned or leased by the winery and located within the same AVA."**

The Task Force recommends that this provision be removed from the Revised Outline entirely, as it conflates remote winery issues with small winery issues. Further, other aspects of the outline serve to limit vehicle trips. This provision would potentially hamper a small, start-up winery in its early stages, and the 85% threshold could be devastating in the event of frost, pest problems, replanting, etc. It also might force small wineries to locate in remote areas where the owner's vineyard is located.

Further, it is unclear to which AVA the ordinance is referring. Does this mean the larger Napa Valley AVA, or does this provision require wineries to source fruit directly from the nested AVA where they are located, significantly disadvantaging and limiting the operations of wineries located in small and less densely planted AVAs.

**II. Use Permit Process Streamlining:**

**2.a. "Convert production space to accessory space (or vice-versa), so long as the 60/40 production to accessory rule was maintained;"**

This provision is listed as requiring a Minor Modification. However, later in the Revised Outline, Section (a) states that "any interior remodel changes that do not violate the 60/40 rule" will qualify for Administrative Approval. Please confirm that interior changes that comply with the 60/40 rule will require an Administrative Approval only.

**2.b. "Convert from hold and haul to on-site waste water treatment;"**

This provision is listed as requiring a Minor Modification. However, later in the Revised Outline, Section (n) states that to "install waste water improvement or change from hold and haul to on-site disposal, where there is not increase in waste water treatment capacity" will qualify for Administrative Approval. Please confirm that provision 2.b is an error and that provision (n) is correct.

**2.c. "Change in the number of full and/or part time employees..."** This section should be edited to read, "Change in the number of Full-Time Equivalent Employees..."

**2.d.** The County's methodology for determining when a left turn lane is required differs from the methodology used by Caltrans. The latter is a more detailed and nuanced analysis that evaluates multiple factors including the direction of traffic. The County's method, while simple, can often result in the imposition of a left turn lane simply by adding one new employee or one small marketing event. NVV recommends that the County consult with a traffic engineer to review the local and state standards and who can make a recommendation for the continued status quo, revised or new County standards. The goal of the recommendation would be to create a more defensible and realistic standard.

**2.h. "Change in aggregate building footprint (including caves) by a maximum of either 5,000 square feet or 50%, whichever is less."**

Caves should be excluded from this provision since the addition of caves qualify for a categorical exemption, provided they do not create more than 5,000 additional square feet with the spoils to be used on site.

2.i. This provision should allow for any amount of increase in impermeable area for parking and/or internal roads, provided that the increase does not violate the WDO Coverage Rule that limits coverage to no more than 25% of the winery parcel or 15 acres, whichever is less.

Additional items that should also be streamlined include the following:

1. Adding landscaping at a winery facility	Administrative Approval
2. Adding access gates to a winery facility	Administrative Approval
3. Upgrades or improvements to existing, permitted, food service facilities	Administrative Approval
4. Issuance of a Food Facility Permit where the use permit already allows for food service	Administrative Approval
5. Modifying use permit to allow for food pairings	Minor Modification

## **CONCLUSION**

On behalf of the NVV, we appreciate the County's commitment to refine the use permit process in hopes of streamlining, making it less costly and more efficient, and providing more clarity and consistency for all parties. We encourage the County to adopt the proposed streamlining measures and separately, take the necessary time to thoughtfully evaluate the creation of a new Small Winery use permit tier.



CENTER for BIOLOGICAL DIVERSITY

10/4/2019

*Sent via email*

David Morrison  
Director  
Napa County Planning, Building & Environmental Services  
1195 Third Street, 2<sup>nd</sup> Floor  
Napa, CA 94559  
(707) 253-4417  
David.morrison@countyofnapa.org

**Re: Small Winery Protection and Use Permit Streamlining Ordinance**

Dear Mr. Morrison:

These comments are submitted on behalf of the Center for Biological Diversity (the "Center") regarding Napa County's ("County") consideration of the draft Small Winery Protection and Use Permit Streamlining Ordinance ("Proposed Ordinance," included as Attachment1). The Center is concerned that the Proposed Ordinance will spur significant increases in the intensity of wine industry activities in Napa County, while allowing such individual increases and their cumulative impacts to evade proper environmental review. The Proposed Ordinance will potentially allow for a dramatic increase in wine production throughout the County, cumulatively impacting the demand for water, visitor and employee traffic, as well as creating more demand for the conversion of undeveloped land to new vineyards. Given the Proposed Ordinance's potential significant environmental impacts, review under the California Environmental Quality Act ("CEQA") is required. The Center urges the County to thoroughly assess the environmental impacts of the Proposed Ordinance via the CEQA review process, so that the public and decision-makers will be fully apprised of the scope of the Proposed Ordinance's impacts.

The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 68,000 thousand members and online activists throughout California and the United States. The Center has worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in Napa County.

**I. The Proposed Increases in Permitted Production Levels Would Lead to Potentially Significant Cumulative Impacts on County Resources.**

The Proposed Ordinance will expedite the process for wineries of all sizes, not just small wineries, to expand production. Widespread production increases resulting from the issuance of permits under the Proposed Ordinance have the potential to significantly impact the environment, and as such, the Proposed Ordinance is a “project” as defined by CEQA. (Pub. Res. Code § 21065; Cal. Code Regs., tit. 14 (“CEQA Guidelines”) § 15378.) As a “project” under CEQA, the consideration of the Proposed Ordinance must include the preparation of an initial study. (CEQA Guidelines § 15065.) The Center urges the County to delay consideration of the Proposed Ordinance until an initial study has been prepared pursuant to CEQA.

An initial study is needed to fully assess the impacts of the Proposed Ordinance. The process of obtaining a minor modification would allow a small winery, with production under 20,000 gallons/year, to increase production to 30,000 gallons/year. (Proposed Ordinance § 2(e).) According to the Napa County Winery Database, there are 219 wineries that have approved production of 20,000 gallons or less per year.<sup>1</sup> Each of these wineries would be able to increase their permitted production to 30,000 gallons under the proposed minor modification category, resulting in a potential cumulative production increase of hundreds of thousands of gallons annually in the County. Such an increase in production capacity would correspondingly boost demand for grapes, triggering a cascade of pressure on water and land resources that are already in short supply. The intensification of winemaking processes requires increased water use, both in the vineyard and the winery, which often requires increased groundwater pumping. The need for more vineyards drives the conversion of hillside habitats that support the County’s incredible biological diversity. Moreover, the increased pressure on resources would be focused on the geographic area of the applicant, due to the requirement that such wineries source no less than 85% of their fruit from the American Viticulture Area (“AVA”) within which the winery is located. (Proposed Ordinance § 1(e).)

For example, an increase of approximately 200,000 gallons/year in production capacity spread amongst small wineries would require an additional 1,060 tons of grapes, grown on 250 acres of land that would use almost 25 million gallons of water annually.<sup>2</sup> While every small winery may not seek the maximum allowable expansion, the above example is still most likely conservative, as wineries could increase their production by over 10,000 gallons/year while still being well below the 30,000 gallon/year threshold.

Despite the Proposed Ordinance’s stated goal of easing the competitive disadvantage felt by small wineries, it also allows up to a 10% increase for wineries with permitted production already above 30,000 gallons/year under a “minor modification” application. (Proposed Ordinance § 2(e).) Allowing a 10% increase in production for the more than 200 wineries with production levels already over 30,000 gallons/year could result in resource demands that dwarf the sample calculation provided above. Each of these applications could be approved without a public hearing and would only go to the Planning Commission at the discretion of the Zoning Administrator or Director, as discussed in more detail below. While the cumulative impacts of

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<sup>1</sup> Napa County Winery Database, February 2019, <https://www.countyofnapa.org/DocumentCenter/View/4258/Winery-Database-Listing-PDF?bidId=>

<sup>2</sup> These approximations are based on the following assumptions, accounting for the 85% rule: 160 gallons of wine per ton of grapes; 4.3 tons of grapes per acre (2018 Napa County average); and 60 gallons of water per vine, per growing season (see Bloodlines Vineyard ECP DEIR at 4.6-9); at 1556 vines per acre (7’ x 4’ spacing).

many small wineries receiving approval for production increases warrants analysis, the prospect of the County rubber-stamping bigger increases for the largest producers is even more alarming. There are ten wineries in the Agricultural Preserve ("AP") with current use permits that allow a total of over 30 million gallons to be produced each year.<sup>3</sup> A 10% increase in production for any one of these giants has significant ramifications for the County's finite natural resources.

It is well documented that currently available land for new vineyards on the Napa Valley floor is severely limited. Any increase in local demand for grapes will in turn increase the pressure to convert non-agricultural land (such as forests, scrublands and grasslands) to new vineyards. Applicants will inevitably seek to put new vineyards on parcels in the Agriculture Watershed areas, endangering ecologically valuable landscapes that are critically important to both Napa's wildlife and its residents. These potential impacts require CEQA review, and the County must proceed with such analysis before further consideration of the Proposed Ordinance.

## **II. The Proposed Ordinance Should Be Revised to Clarify the Circumstances that Require Planning Commission Review of a Project Application.**

While the Proposed Ordinance allows for certain applications to be considered by the Planning Commission, it is not clear what triggers this type of review. The Proposed Ordinance allows the Zoning Administrator or the Director to refer a project to the Planning Commission where there is "significant controversy and/or significant environmental impacts." (Proposed Ordinance §§ 1, 2.) But the Proposed Ordinance does not define what constitutes a significant controversy or significant environmental impact. Does one public comment, voicing intense opposition to an application, meet the threshold of significant controversy?

Moreover, concerning actions under both the Small Winery Protection and Use Permit Process Streamlining provisions, the decision to refer an application to the Planning Commission appears to be completely within the discretion of the Zoning Administrator or the Director. Both provisions state that the decision-maker *may* refer a project to the Planning Commission, but provide no parameters that guide that decision. (Proposed Ordinance §§ 1, 2.) The lack of guidelines to which the decision-maker must adhere deprives the process of transparency and undermines the public's understanding of how potentially controversial applications are handled.

The determination of what constitutes a significant environmental impact, such that Planning Commission review is needed, is critically important given the potential for cumulative impacts, discussed above. It is apparent that the County intends not to perform CEQA review for applications for minor modifications under the Proposed Ordinance, so it is unclear how potentially significant environmental impacts will be assessed. Furthermore, it is difficult to imagine a scenario where a significant environmental impact would be identified and disclosed, since the County would likely determine that a new winery application for 30,000 gallon/year production or less would satisfy criteria for a small winery categorical exemption from CEQA review. (Napa County's Local Procedures for Implementing CEQA, Appendix B, page 2.) Given the absence of mandatory environmental review of individual permit applications under the

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<sup>3</sup> Napa County Winery Database.

Proposed Ordinance, the County must conduct CEQA review of the Proposed Ordinance before further consideration by the Board of Supervisors.

### **III. The Proposed Ordinance Provides Only Nominal Protection for Small Wineries.**

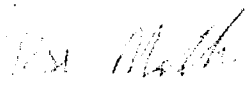
The County has regularly expressed its desire to “take proactive steps to ensure [small wineries’] continued survival.” (Board Agenda Letter, 5/21/19 at 2.) It is troubling that the County’s answer to the competitive disadvantage experienced by smaller wineries is to propose an ordinance that enables all industry participants to grow their production with little regard for impacts on County natural resources. As Napa struggles to balance wine industry expansion with the need to protect the quality of life of County residents, the Proposed Ordinance appears to further thumb the scales in favor of industry interests. As noted above, the Proposed Ordinance could ultimately benefit the mega-producers of the County more than it benefits the small wineries. The wineries with use permits allowing over 1 million gallons/year, that can host large numbers of visitors, have established sales divisions with expansive distribution networks and the funds to brush aside regulatory hurdles- they hardly need things streamlined. By coupling the small winery ordinance and the use permit streamlining together, the Proposed Ordinance, whoever well-meaning, will only exacerbate the competitive disadvantage felt by small producers in the County while increasing the industry’s negative environmental impacts.

### **IV. Conclusion**

Thank you for the opportunity to submit comments on the Proposed Ordinance. We appreciate the County’s willingness to engage concerned stakeholders in this process. We hope the County seriously considers the far-ranging environmental impacts of the Proposed Ordinance, and takes the necessary steps to address these concerns.

Please add the Center to your notice list for all future updates to the Proposed Ordinance and do not hesitate to contact the Center with any questions at the number or email listed below.

Sincerely,

  
Ross Middlemiss  
Staff Attorney  
Center for Biological Diversity  
1212 Broadway, Suite #800  
Oakland, CA 94612  
Tel: (510) 844-7100  
rmiddlemiss@biologicaldiversity.org



**Morrison, David**

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**From:** Kirsty Shelton <ks@palisadeslanduse.com>  
**Sent:** Monday, October 07, 2019 5:08 PM  
**To:** Morrison, David  
**Subject:** Simple request for consideration for the Small Winery conversation  
**Attachments:** Redline - 2019-09-16 Morrison Draft Small Winery Protection Ordinance-12729331-v1 and 2019-09-16 Morrison Draft Small Winery Protection Ordinance-1272.pdf

Hi David,

Thank you for considering our request, attached, on behalf of White Rock Vineyards to consider including the Small Winery Exception in the Small Winery Ordinance prior to the Board meeting next week.

Please don't hesitate to reach out with any questions.

--

Kindly,  
Kirsty

Kirsty L. Shelton  
Principal Land Use Planner  
Palisades Land Use

office: 707.692.6636  
mobile: 707.265.6510

## **Small Winery Protection and Use Permit Streamlining Ordinance**

### **1. Small Winery Protection:**

Create a Use Permit category that would require a public hearing before the Zoning Administrator for those new or existing wineries (whether by use permit or small winery exemption), that meet all of the following qualifications:

- a. Maximum of 20,000 gallons in production;
- b. Maximum of 40 total ADT (20 total daily round trips) which can be flexibly applied to employees, visitors, or deliveries. Vehicle trips for all uses other than the winery (such as residential or agricultural uses) are excluded from this calculation. The intent of this provision is to exempt this level of traffic from evaluation under the Road and Street Standards, subject to pending Board of Forestry approval. However, projects may be subject to County left-turn lane requirements.
- c. Maximum of 10,000 square feet of occupied space excluding unenclosed space (e.g., covered crush pads), which can be applied to buildings, caves, or cut and cover caves;
- d. Maximum of 11 marketing events per year; 10 events where attendees for each event may not exceed a total of 24 ADT (12 daily round trips), and 1 annual event where attendees may not exceed a total of 76 ADT (38 daily round trips);
- e. Maximum of 15% non-estate fruit can be used in production; at least 85% of the fruit must be from land owned or leased by the winery and located within the same AVA (American Viticultural Area) in Napa County.
- f. No application may be submitted to the County for a modification increasing the amount of production, tasting room visitation, or marketing events for two years following approval of a Small Winery Use Permit.

The Zoning Administrator may refer a project to the Planning Commission, where there is significant controversy and/or significant environmental impacts.

### **2. Use Permit Process Streamlining:**

The County would post all pending Minor Modifications on the PBES website and would notice neighboring property owners within 1,000 feet of the project of all pending decisions on Minor Modifications, but there would be no public hearing. The Director may refer a Minor Modification application to the Planning Commission, where there is significant controversy and/or significant environmental impacts. Items that do not require a Minor Modification would not be noticed and there would be no public hearing.

Proposed changes that qualify as Minor Modifications to existing wineries (whether by use permit or existing small winery exemption) include:

- a. Convert production space to accessory space (or vice-versa), so long as the 60/40 production to accessory rule was maintained;

- b. Convert from hold and haul to on-site wastewater treatment;
- c. Change in the number of (full and/or part time) employees by either a 10% increase in existing employees or an increase up to a total 10 employees, whichever is greater;
- d. Change in the number of vehicles up to a total 40 ADT (20 daily round trips); which can be flexibly applied to employees, tasting room visitors, or deliveries. Vehicle trips for all uses other than the winery (such as residential or agricultural uses) are excluded from this calculation. The intent of this provision is to exempt this level of traffic from evaluation under the Road and Street Standards, subject to pending Board of Forestry approval. However, projects may be subject to County left-turn lane requirements. Any required exceptions from the Road and Street Standards will be determined by the Director on a case-by-case basis.
- e. Change in production to a maximum of 30,000 gallons annually, or an increase of 10% in production over existing approved amount;
- f. Change in the number of marketing events, up to a total of 11 marketing events per year; 10 events where attendees for each event may not exceed a total of 24 ADT (12 daily round trips), and 1 annual event where attendees may not exceed a total of 76 ADT (38 daily round trips); or a maximum increase of 10% in the number and/or total attendees of an existing marketing program.
- g. Change in hours of operation to include times before 9 AM or after 6 PM
- h. Change in aggregate building footprint (including caves) by a maximum of either 5,000 square feet or 50%, whichever is less; and
- i. Increase not to exceed 15% of impermeable area related to parking and/or internal roads

The following actions would not require a Minor Modification and only requires the appropriate Administrative Approval (building permit, environmental health permit, planning determination, etc.):

- a. Any interior remodel changes that do not violate the 60/40 rule
- b. Add outdoor shade structures
- c. Add EV recharging station
- d. Add recycled water system
- e. Add trash enclosure
- f. Add cover for crush pad
- g. Change or add plumbing, diverters, drains for storm water control
- h. Change or add permanent outdoor tanks (If no increase in production?)
- i. Add bicycle facilities (e.g., racks, showers, etc.)
- j. Add temporary trailer during construction
- k. Install fire suppression
- l. Change cave type (if no expansion), where it does not violate the 60/40 rule and where there is no increase in visitation or marketing
- m. Install water system improvements (including new or enlarged water tanks) or connection to municipal water service, where there is no increase in water use or groundwater demand

- n. Install waste water improvements or change from hold and haul to on-site disposal, where there is no increase in waste water treatment capacity
- o. Change in hours of operation between 9 AM and 6 PM
- p. Remove existing conditions of approval restricting custom crush facilities
- q. Extension of time to activate an approved use permit
- r. Define extent of on-site wine consumption (consistent with Section 23358 of the State Business and Professions Code), where there is no increase in visitation or marketing
- s. Change in the number of parking spaces or the alignment of internal roads and driveways, where there is no increase in impermeable area

3. **Airport Industrial Area Specific Plan (AIASP): Napa Valley Business Park Specific Plan (NVBPSP)**

The following provisions would apply only in the NVBPSP:

- a. Process all Major Modifications in a public hearing before the Zoning Administrator

The Director or Zoning Administrator may refer a project to the Planning Commission, where there is significant controversy and/or significant environmental impacts.



napa valley vintners

## memo

**Date:** November 8, 2019

**To:** David Morrison, Napa County Planning Director

**Subject:** Use Permit Streamlining and Small Winery Ordinance Outline

**From:** Napa Valley Vintners Use Permit Task Force and Community and Industry Issues Committee

### OVERVIEW

On behalf of the more than 550 members of Napa Valley Vintners (NVV), we appreciate the opportunity to provide additional comments to Napa County on the newly revised outline for Use Permit Streamlining and a new Small Winery Ordinance that was recently presented to the Napa County Board of Supervisors for their feedback.

As mentioned in our previous memos, while the NVV is supportive of the County's efforts, we reserve the right to offer further feedback and endorse, take no position, or oppose the resulting ordinance(s).

### COMMENTS

#### **I. "Micro Wineries"**

At their October 15 meeting, the Board of Supervisors directed Napa County Staff to develop an outline of what a new use permit tier for "micro wineries" could look like based on feedback from a group of interested grapegrowers who are seeking to conduct tastings on their property outside of the existing Napa County winery use permit framework.

Small family farms already have an existing regulatory pathway available to them to host tastings on their properties by electing to establish a winery, even a very small winery, on their properties, provided they meet the existing requirements as outlined in the Winery Definition Ordinance. New wineries, regardless of size, should be required to meet the existing requirements as outlined in the Winery Definition Ordinance as well as all other building, environmental and health and human services elements required of all wineries by the County.

## **II. Use Permit Process Streamlining**

- a. Streamlining would be further supported if Minor Modification applications were referred to the Zoning Administrator, with or without a public hearing, when there is a significant controversy and/or substantial environmental concern. The current proposal recommends that these issues would be referred to the Planning Commission.
- b. The provision that "Applications for minor modifications increasing production, tasting room visitation or marketing events for any one winery may not cumulatively exceed 25% over a three-year period" is confusing as to what threshold it refers and should be removed.
- c. Under (f) in the Draft Outline, the provision refers to an increase in impermeable or semi-permeable ground surface. However, the Napa County Code does not currently reference "semi-permeable" surface areas in Napa County Code Section 18.104.220 – "Wineries located in open space areas—Coverage." This section in the Draft Outline should be edited to refer to aggregate paved or impervious ground surface areas only. In this same section, allow for a 25% change in aggregate building footprint (including caves) or 3,000 additional square feet, whichever is greater.
- d. Where a use permit allows for commercial food service, the addition of a commercial kitchen should not be considered under a Minor Modification but should be issued as a building permit. Therefore, provision (i) "Addition of a new commercial kitchen" should be moved to the section "Administrative Approvals."
- e. Provision (h) "Change or add permanent outdoor tanks" should be edited to read "change or add permanent tanks," removing the word "outdoor."
- f. In addition to a change in hours of operation, a change in the days of operation of a winery should be included as an Administrative Approval.
- g. Considering the recent and anticipated future power shut offs, the addition of a generator, solar panels or micro-grid equipment at a winery facility should be streamlined as an Administrative Approval.

## **CONCLUSION**

On behalf of the NVV, we appreciate the County engaging in this process, which we regard as imperative for facilitating use permit compliance and for considering our suggestions.



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**From:** Thomas Adams <[tadams@dpf-law.com](mailto:tadams@dpf-law.com)>  
**Date:** Wednesday, Dec 18, 2019, 8:02 AM  
**To:** joellegPC@gmail.com <[joellegPC@gmail.com](mailto:joellegPC@gmail.com)>, anne.cottrell@lucene.com <[anne.cottrell@lucene.com](mailto:anne.cottrell@lucene.com)>, Whitmer, David <[Dave.Whitmer@countyofnapa.org](mailto:Dave.Whitmer@countyofnapa.org)>, andrewmazotti@gmail.com <[andrewmazotti@gmail.com](mailto:andrewmazotti@gmail.com)>, JeriGillPC@outlook.com <[JeriGillPC@outlook.com](mailto:JeriGillPC@outlook.com)>  
**Cc:** Morrison, David <[David.Morrison@countyofnapa.org](mailto:David.Morrison@countyofnapa.org)>  
**Subject:** Use Permit Streamlining Ordinance Comment

Dear Commissioners,

I have reviewed the draft Use Permit Streamlining Ordinance and am requesting that you consider greater allowances for new or expanded caves. This recommended change is also consistent with the APAC recommendations and the County's CEQA Class 3 Categorical Exemption and therefore, absent unusual circumstances, would not result in any significant environmental impacts. My comment is as follows:

- NCC 18.124.130(C) lists the types of projects that can be approved as minor modifications by the Zoning Administrator. This section limits any increases in building footprints (including caves) to a maximum of 25%. Allowing for the new construction or expansion of caves up to an additional 5,000 square feet with all excavated cave spoils used onsite is consistent with the Board of Supervisors Approved Recommendations from the Agricultural Protection Advisory Committee (APAC) and the County's CEQA Class 3 Categorical Exemption. Many wineries rely on caves as both an environmentally friendly and cost effective alternative to traditional buildings that have much greater visual and environmental impacts than caves. These benefits have long been recognized by the County as evidenced by the County's own CEQA exemption and the Board approved APAC recommendations and should be included in the ordinance.

Thank you for considering my comment.

Regards,

**THOMAS S. ADAMS, ESQ.**  
DICKENSON, PEATMAN & FOGARTY

1455 FIRST STREET, SUITE 301  
T: 707.252.7122 | F: 707.255.6876  
D: 707.261.7016  
[TADAMS@DPF-LAW.COM](mailto:TADAMS@DPF-LAW.COM) | [WWW.DPF-LAW.COM](http://WWW.DPF-LAW.COM)

For current wine law news, visit [www.lexvini.com](http://www.lexvini.com)

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DEC 18 2019

Agenda Item # 7A

Geoff Ellsworth  
gellsworth@cityof  
st-helena  
Item 7.4 Long

FOR Napa County Planning Commission WED DEC 18 2019

I am aware the County of Napa is interested in moving forward with a Small Winery Ordinance to streamline processing of small winery approvals.

Also on recent radar is the issue of increased tourism at vineyards/farms without wineries/processing facilities. (Save Family Farms issue).

Both of these are issues the County Administration needs to fully engage on with the **municipalities** here ( St. Helena, Napa, Yountville, Calistoga, American Canyon) who are impacted by these decisions.

80% of the people in Napa County live in our municipalities and have the right to have their elected representatives involved in these decisions.

Approval of wineries and other commercial activity of any size within the Napa County Ag Preserve creates cumulative impacts related to our collective water, housing, traffic, roads, emergency services, employee pool, environmental resources, and climate concerns. These impacts do not contain themselves to one jurisdiction or another.

All of these issues impact our municipalities, again where 80% of the people in Napa County live.

Property investment as well as the health and safety of residents in our municipalities is also affected by what occurs in the Napa County jurisdiction that surrounds us. As elected officials of these municipalities, and in order to truly represent the people we are elected to represent, the municipalities in Napa County need to be fully involved in decisions that occur on these matters.

There is a unique interplay existing in Napa County between **Municipalities (towns)** and **the County Administration** due to the Agricultural Preserve (one of very few Agricultural Preserves in the United States) created in 1972.

One of the tenets of that accord was that most commercial use and housing would be restricted to the municipal areas, while agricultural

DEC 18 2019

Changes to draft ordinance

18.124.130(D)(2)

Agenda Item # 7A

To all owners of real property, including businesses, corporations or other public or private entities, as shown on the latest equalized assessment roll within one thousand feet of the real property that is the subject of the proposed ~~zoning change project~~. In lieu of utilizing the assessment roll, the records of the county assessor or tax collector which contain more recent information than the assessment roll may be used; and

18.126.065

A winery operating under a use permit, or other entitlement consistent with this Title, may make the following additions, modifications, or changes to winery structures or operations through issuance of an administrative permit under this chapter, provided: (1) the additions, modifications, or changes are not otherwise subject to a discretionary permit under this Title; (2) the landowner complies with all other requirements of the County Code; (3) the landowner obtains any and all permits required by state law or the County Code, including without limitation, any building permits, environmental health permits, or storm water discharge permits; ~~and (4) the property is not located on a site that is included on any list of hazardous waste sites compiled pursuant to Government Code section 65962.5; and (5) the proposed additions, modifications, or changes are not located within areas containing designated, precisely mapped resources of critical concern:~~ *environmentally sensitive areas*

Q. Designation of the location of on-site wine consumption, consistent with Section 23358 of the Business and Professions Code, within the existing winery ~~footprint~~ development area, provided the location is not within 500 feet from the nearest off-site residence and there is no increase in visitation or marketing;

S. Additions of landscaping or modifications to existing landscaping, consistent with Chapter 18.118 of this code and provided there is no increase in groundwater use;

growing and processing would occur on the Agriculturally zoned lands in the County.

The Napa County Agricultural Preserve is/was an agreement between the Counties and the Municipalities and necessitates that our Municipalities be involved in this conversation in a comprehensive manner for proper balance to be maintained and citizens/residents of this County to be fairly served by their local governments.

**In recent years a roundtable approach with the County and Municipalities on important issues such as cannabis and climate change have been initiated.**

**The discussion of streamlining small winery approvals as well as vineyard/farm visitation and water distribution also need this round table approach to be properly analyzed and with all perspectives represented.**

**Our local LAFCO may also be a helpful tool in facilitating these discussions.**

**END**



## Morrison, David

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**From:** Lester Hardy <lester@lfhardy.com>  
**Sent:** Tuesday, December 17, 2019 5:47 PM  
**To:** 'Anne Cottrell'; 'Jeri Gill'; 'Joelle Gallagher'; Whitmer, David; 'Andrew Mazotti'  
**Cc:** Dooley, Jason; Morrison, David  
**Subject:** Winery Use Permit Streamlining Ordinance  
**Attachments:** Proposed Change to 18.126.065 (adds new Paragraph O) LFH 12-17-2019.docx

Dear Planning Commission Chair Gallagher and Commissioners Cottrell, Gill, Mazotti and Whitmer:

I am writing to ask your consideration of the attached revision to the draft Use Permit Streamlining Ordinance, which is on tomorrow's agenda as item 7A.

As you will see, the attached revision adds one new paragraph to section 18.126.065, which regulates administrative approvals of very minor modifications to winery use permits. The proposed change, which appears in redline format on the attachment, will allow administrative approval of changes to the days on which a winery is open for tours and tastings, so long as there is no increase in either the maximum number of visitors per day or the maximum number of visitors per day. I hope you will agree with me that this proposal is in keeping with the other changes to this section of the draft ordinance.

Thank you for your consideration of this proposal.

Best regards,





Lester Hardy

Law Office of Lester F. Hardy  
P.O. Box 667 (mailing address)  
1500 Railroad Avenue (street address)  
St. Helena, CA 94574  
Phone:  
(707) 967-9610 (office)  
(707) 480-8093 (mobile)



#### **18.126.065 Administrative Permits – Wineries**

A winery operating under a use permit, or other entitlement consistent with this Title, may make the following additions, modifications, or changes to winery structures or operations through issuance of an administrative permit under this chapter, provided: (1) the additions, modifications, or changes are not otherwise subject to a discretionary permit under this Title; (2) the landowner complies with all other requirements of the County Code; (3) the landowner obtains any and all permits required by state law or the County Code, including without limitation, any building permits, environmental health permits, or storm water discharge permits; and (4) the property is not located on a site that is included on any list of hazardous waste sites compiled pursuant to Government Code section 65962.5:

- A. Any interior remodel or changes to structures, provided the accessory-to- production ratio remains consistent with the requirements of Section 18.104.200 of this code;
- B. Additions of outdoor shade structures over areas previously approved for winery use not exceeding a cumulative total of 2,500 square feet in floor area, provided the accessory- to-production ratio remains consistent with the requirements of 18.104.200 of this code;
- C. Additions of charging stations for electric vehicles;
- D. Additions of systems to process, distribute, and/or store recycled water; 
- E. Additions of enclosures for trash receptacles; 
- F. Additions of covers over previously approved crush pads; 
- G. Changes or additions to plumbing, diverters, drains or other mechanisms for 

storm water control, consistent with Chapter 16.28 of this code;<sup>[SEP]</sup>H.

Changes to or additions of permanent outdoor tanks within previously approved

winery development areas, provided no increase in production is allowed;

I. Additions of bicycle facilities, including but not limited to bicycle racks;<sup>[SEP]</sup>

J. Use of a temporary trailer during construction occurring on the property;<sup>[SEP]</sup>

consistent with the requirements of section 18.126.060(K);<sup>[SEP]</sup>K. Change in the occupancy of a winery cave, permitted pursuant to Chapter 15.12

of the County Code and the California Building Code, provided the cave use remains consistent with the requirements of Section 18.104.200 and the change does not include an increase in visitation or marketing;

L. Installation of water system improvements or connection to municipal water service, consistent with any required approval by any local water agency and/or the Local Agency Formation Commission, and provided there is no increase in water use or groundwater demand;

N.—M. Installation of waste water improvements or changes from off-site disposal to on-site treatment or disposal, subject to the requirements of Title 13 of this code and any applicable state laws or regulations, provided there is no increase in waste water generation or treatment capacity;

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N. A change to hours of operation between the hours of 9:00 am and 6:00 pm;<sup>[SEP]</sup>

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~~Q.~~ O. A change to days of operation for tours and tastings so long as there is no increase in the maximum number of visitors per day or in the maximum number of visitors per week.

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~~P.~~ P. Removal of existing conditions of approval regarding custom crush facilities; ~~SEP~~

ee\dl\PI\Ord\2019 Small Winery Protection\Ord-SWPUPSA 20191028.doc-10

~~Q.~~ P. An extension of use permit expiration time, subject to the limitations set forth in section 18.124.080;

~~R.~~ Q. Designation of the location of on-site wine consumption, consistent with Section 23358 of the Business and Professions Code, within the existing winery footprint, provided the location is not within 500 feet from the nearest off-site residence and there is no increase in visitation or marketing;

~~S.~~ R. Change in the number of parking spaces or the alignment of internal roads and driveways, provided there is no cumulative increase in impermeable or semi-permeable ground surface area beyond twenty-five percent of the subject parcel or fifteen acres, whichever is less;

~~T.~~ S. Additions of landscaping or modifications to existing landscaping, consistent with Chapter 18.118 of this code;

~~U.~~ T. Expansions or improvements to existing permitted food service facilities, provided there is no increase in visitation or marketing; and

~~V.~~ U. Similar items as determined by the director, in the director's sole discretion.



## Morrison, David

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**From:** RTooker@fbm.com  
**Sent:** Wednesday, December 18, 2019 5:00 PM  
**To:** Morrison, David  
**Subject:** Planning Commission Follow-Up

Hi David - Thank you for your work on the Use Permit Streamlining Ordinance. Being on the other side of the lectern for so many years, I now recognize how fast three minutes comes and goes during the public comment period. That said, please accept these comments below as further clarification to my comments raised at the Planning Commission meeting this morning. To the extent they are helpful as you prepare for the Board of Supervisors, please consider them in your revisions. I believe these are consistent with the Commission's advisory recommendation, but understandably this is your call.

1. Concern over public controversy was raised by several members of the public and most, if not all, commissioners. Based on the stated report purpose to, among other things, provide regulatory relief for small wineries, streamline permit review, and clarify the circumstances under which the director may issue certain permits, recycling an undefined term "public controversy" in the new ordinance is subjective and therefore arguably inconsistent with the goals of regulatory relief, permit streamlining, and process transparency. I mentioned two points relating to this issue: (A) the draft text already provides that the director may pass to the commission an application if "the public interest would be furthered by having a particular application heard and decided by the planning commission" and (B) there are measures that could help frame the term "public interests" if it is to remain in the ordinance which I suspect it is.

As mentioned, I was confronted with this issue frequently in my former life by applicants who wanted the director to make a controversial decision to avoid a public circus, neighbors with long-standing disputes who wanted to politicize issues by having the commission review an application, and decision-makers who either sought review because a project was important or rejected the idea because a project was toxic. Below is what gave me some measure of protection. I think this is better than "public controversy" and it helps to frame the phrase "public interests" which although vague and interpretive could use some context.

"When, in the opinion of the Community Development Director, any matter set forth in Section 17.62.050(A) is of a size, importance or unique nature such that it is judged not to be a routine matter, it may be placed directly on the agenda of the Planning Commission for determination in lieu to having it processed by the Community Development Director."

2. I expressed concern in my comments this morning about Section 18.126.065 relating to a requirement that a "landowner complies with all other requirements of the County Code" as part of the process of issuing administrative permits. I opined there is a difference between a violation of code (e.g., a willful action such as installing a container without a permit) and noncompliance with the code as a result of a change to the regulations after approval and implementation of a use permit (e.g., replacing a Knox box with a Knox cabinet). As drafted, the ordinance requires compliance with the code regardless of whether there is a violation or a legal nonconformity using the general and undefined word "compliance."

I submit to you that every 3+ year old winery in the Napa Valley (and every home occupied by the Commissioners) does not "comply with the County Code." I believe what is intended here is if violations exist resulting from non-permitted structures or uses, unrelated to changes to code adopted subsequent to use permit approval, this should and will be cause for consideration in issuing an administrative permit. Conversely, if a

winery has decades old windows that do not contain tempered glass and they seek a minor expansion their windows do not have to be replaced. I suspect this is true, but the ordinance does not read this way.

Public safety is indeed critical, but determining that a winery seeking a charging station for an electrical vehicle, for example, does not comply with the code because they have not switched out a Knox box, changed their windows to tempered glass, increased the size of their address numbers to 6" to reflect new regulations, or any number of dozens of new regulations is not what was intended in the ordinance by "compliance." I heard one of the Commissioners mention their support for addressing "violations" (without a distinction about this or reference to legal non-conformities), but I am hopeful we are saying the same thing in the end.

A solution could be to revise the wording from "complies with all other requirements of the County Code" to something like "does not contain violations of the County Code."

3. I mentioned my confusion about Section 18.124.130.C.1 and 2 which both reference "any increase in the number of full-time equivalent existing permitted employees..." differently. Understanding their purposes are different, I submit to you an easy solution to the seemingly contradictory references next to one another in the ordinance (e.g., subsection B mentioning seasonal employees but not sure if in subsection A seasonal employees are also included; referencing in subsection B left-turn lane warrants but not sure if in subsection A they are included; etc.) is to:

"1. Any increase in the number of full-time equivalent existing permitted employees..."

"2. Any increase in the number of tours and tastings..."

"3. Any increase in deliveries..."

4. Capture the ADT and connection to the Road and Street Standards and/or left-turn lane warrants separately but relating back to subsections 1 through 3. A little less clunky as someone once said to me in the many ordinances I drafted over the years. Just a thought.

4. (This is where three minutes triggered and I could not finish my comments) It was apparent by listening to some on the Commission that this ordinance benefits only existing permit holders seeking minor changes and pre-WDO wineries seeking measured expansions. I had hoped this would be a process benefiting not just existing small wineries, but also new small wineries as supported by the General Plan references in the staff report. David, is this something that is on the horizon? The General Plan EIR should provide sufficient general cover for these uses, so I am uncertain why this next step was not taken?

Thanks for your consideration and for your response to the last item about why not pursue a zoning administrator hearing process for new small wineries as opposed to just existing ones. Thanks! - Rick

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