



Agenda Date: 6/8/2015

Agenda Placement: 6A

A Tradition of Stewardship
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Napa County Agricultural Protection Advisory Committee Board Agenda Letter

TO: Agricultural Protection Advisory Committee

FROM: Melissa Frost for David Morrison - Director
Planning, Building and Environmental Services

REPORT BY: David Morrison, Director, Planning, Building & Environmental Servi - (707) 253-4805

SUBJECT: Discussion and Tentative Recommendation Regarding the Range and/or Intensity of Winery-Related Uses in Agricultural Zoning

RECOMMENDATION

RECOMMENDATION

This meeting is being conducted by the Agricultural Protection Advisory Committee and County staff to allow for input, discussion, and tentative recommendation regarding proposals for amending the County Zoning Code. The focus of this meeting concerns the range and/or intensity of winery-related uses in the Agricultural Zones, including but not limited to: (1) the minimum parcel size for establishing new wineries; (2) the net loss of vineyards associated with winery development and/or expansion; (3) the role of estate grapes in winery production; and (4) other amendments related to the topic.

EXECUTIVE SUMMARY

Proposed Actions:

That the Agricultural Protection Advisory Committee:

1. Receive the staff presentation and ask any clarifying questions;
2. Accept public testimony regarding the proposed options;
3. Discuss and take tentative action regarding a framework for regulating the operational and locational characteristics of new or expanding wineries.

Discussion:

This meeting is being conducted by the Agricultural Protection Advisory Committee and County staff to allow for input, discussion, and action regarding proposals for amending the County Zoning Code. The focus of this meeting concerns the range and/or intensity of winery-related uses on Agriculturally zoned parcels, including but not limited to: (1) the minimum parcel size for establishing new wineries; (2) the net loss of vineyards associated with winery development and/or expansion; (3) the role of estate grapes in winery production; and (4) other amendments related to the overall topic.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION**SUPPLY AND PRODUCTION TABLE:**

At the May 26, 2015, APAC meeting, staff presented a table that revised a prior analysis of total County permitted wine production. The table included the following:

Post-WDO (75% Rule Applies):	13,038,048
Expansion of pre-WDO (75% Rule Applies)	19,121,599
Total Subject to the 75% Rule	25,472,537

Questions were raised regarding the accuracy of the numbers used. The first two entries add to 32,159,647. Why did staff indicate that only 25,472,537 gallons were subject to the 75% rule? The answer is that the first two numbers include numerous data that are double counted. For instance, a winery can have pre-WDO

status and be located within the Airport Industrial Area. In the analysis previously provided, the production for that winery is counted twice, inflating the size of the total number of permitted gallons.

Staff has gone back over the Winery Database to verify the numbers and correct for double counting. The results are shown below:

		Double Counted Gallons				
		Pending Wineries	Pre-WDO Wineries	Unknown Wineries	Airport Wineries	City Wineries
TOTAL PERMITTED PRODUCTION	126,799,292					
Wineries within cities	10,293,530			9,520		
Wineries with pending permits	1,373,340		21,000		28,500	
Wineries with unknown status	548,410		177,890			9,520
Wineries with per-WDO permits	43,692,225	21,000		177,890	600,000	
Wineries in the AIASP	47,941,000	28,500	600,000			
SUBTOTAL	22,950,787					
Pre-WDO wineries that expanded	11,310,349					
Wineries with post-WDO permits	12,477,348					
TOTAL GALLONS SUBJECT TO 75% RULE	23,787,697					
TOTAL GALLONS NEEDED TO COMPLY	17,840,773					

If the entries in the double counting columns are added up and divided in half (to eliminate the double counting), they total 836,910 gallons. When added to the subtotal of 22,950,787, it equals 23,787,697, which is the total number of gallons subject to the 75% rule.

The total permitted production table has been revised as follows to reflect the more accurate numbers. In addition, staff has corrected the assumptions behind the 2030 permitted production. The General Plan projected that there would be 225 new wineries between 2005 and 2030. A total of 88 have been approved to date, so the number of new wineries assumed has been reduced to 137. The General Plan estimated that half of all new wineries would be under 50,000 gallons in production so staff used 50,000 for all new wineries (the average to date has been 42,828, so 50,000 seems a reasonable number and will continue to be used).

However, the General Plan did not specify the number of modifications or their estimated production. The

number of modifications since 2005 has equaled the number of new wineries. One modification accounts for more than half of the total permitted production of modified applications. Staff believes that it should be considered an outlier and not counted. The resulting average production is similar to new wineries, so here too, the 50,000 gallon production estimate seems reasonable. Consequently, the total numbers for 2030 did not change from the prior estimate.

	2013 (Actual)	2014 (Actual)	2030 (Projected)
Total Acreage (Bearing Acres)	43,568	43,591	51,910
Total Wine Grape Yield (assume 4 tons/acre)	174,272	174,364	207,640
Total Gallons (assume 160 gallons/ton)	27,883,520	27,898,240	33,222,400
Total Wine Grape Sourcing Capacity @75% Napa County Content (total gallons x 1.333)	36,464,537	37,197,560	44,296,423
Permitted Winery Capacity gallons)			
Total:	126,799,292	126,799,292	138,049,292
Cities:	10,293,530	10,293,530	
AIASP:	47,941,000	47,912,500	
Pending:	1,373,340	1,373,340	
Unknown:	548,410	548,410	
WDO-Exempt:	43,692,225	43,692,225	43,692,225
Post-WDO (75% Rule Applies):	12,477,348	12,477,348	
Expansion of pre-WDO (75% Rule Applies)	11,310,349	11,310,349	
Total Subject to the 75% Rule	22,950,787	22,950,787	34,200,787
Gallons Required to Comply with 75% Rule	17,840,773	17,840,773	25,650,590
@40% Permitted Capacity Utilization:	50,719,717	50,719,717	55,219,717
@40% Production Subject to 75% Rule:	9,515,079	9,515,079	13,680,315
Production Exempt from 75% Rule:	41,204,648	41,204,648	41,539,402

PROPOSALS:

At the meeting of May 26 hearing the Committee directed staff to include a discussion of the appropriate range and intensity of non-agricultural uses on agriculturally zoned parcels. Specifically, the Committee wanted to further consider Proposals C and F. Those Proposals are provided herein for the Committee's reference.

Option C:

Establish a small winery use permit for new facilities located on parcels of 10 to 40 acres.

Sub-options:

1. Limit tasting visitation to an absolute maximum of 10 visitors per week;
2. Prohibit marketing events and/or food events of any kind;
3. Require that a percentage of grapes used at the winery are grown on the property or on other property

under the same ownership:

- a. Require at least 75% estate grapes; or
- b. Require 100% estate grapes;
4. Prohibit the use of off-site water for growing grapes or making wine;
5. Prohibit any net reduction in vineyard acreage;
6. Limit production to 15,000 gallons (allow production to be increased by 1,500 gallons for each additional acre over 10 in the parcel where the winery is located);
7. Limit all non-permeable development (including agricultural outbuildings, paved areas, and residences) to 40% of the entire parcel area. The remaining 60% must be retained as agriculture and/or open space.
8. Amend the County Code to define "small wineries," a "small quantity of wine," "small marketing events," and "mostly grown on site;"
9. Require a full use permit when small wineries are located in proximity to urban areas;
10. Require that at least 50% of the parcel must be planted in vineyards; and/or
11. Prohibit any future changes to these restrictions for any reason.

Option F:

Proposals that do not directly address minimum parcel size, estate grapes, or vineyard loss.

Sub-options:

1. Establish a one-year moratorium on new or amended winery applications.
2. Prohibit new wineries within Municipal Watersheds.
3. Prohibit new custom crush facilities within the AW zone.
4. Establish a fee as part of the use permit to pay for a code enforcement position, dedicated to monitoring and enforcing winery use permit requirements.
5. Create a formula to restrict the permitted number of visitors based on the amount of winery production.
6. Establish a fee as part of the new or amended use permit to support the County workforce proximity housing fund.
7. Require all wineries to comply with existing County regulations.
8. Limit the total number of annual use permits for new and/or amended winery use permits:
 - a. Allocate annual permits by parcel size and/or production capacity, encouraging a variety of operations;
 - b. Tie any increase to the number of permits to the increase in grape supply;
 - c. Establish a cap and trade program whereby holders of unutilized permitted capacity may sell their rights to other wineries, upon County approval;
9. All new and amended winery use permits shall be subject to the following:
 - a. Require that the winery parcel have sufficient water source(s) on site for all production and winery activities (no trucking of water to augment the needs of winery production or activities shall be permitted). If water becomes insufficient for the permitted production capacity, the winery's permitted capacity shall be reduced to an appropriate level;
 - b. Require that all sewage/processed waste disposal systems be contained entirely within the winery parcel (no "hold and haul" system shall be permitted or expanded);
 - c. Require that grape source(s) be identified and proven to Napa County before any application is deemed to be complete;
 - d. Require wineries to annually report grape source, wine production and visitation counts to Napa County in order to verify compliance;
 - e. Limit maximum coverage of new wineries to 5% of the existing parcel or 5 acres, whichever is

- less;
- f. Limit maximum permitted production for new wineries based on the acreage of existing and proposed vineyards;
 - g. Limit actual production based on the number of current and yielding acres of vineyard;
 - i. Limit visitation based on the number of actual gallons produced. Visitation levels should also be based on road access and impacts to adjoining properties;
 - j. Limit marketing events to wineries on at least 20 acres, taking road access and impacts on adjoining properties into account;
 - k. Limit marketing events to 0.1 visitors per gallon of actual production;
 - l. Restrict marketing events in the AW Zone to daylight hours only;
10. Instead of minimum parcel size, estate grapes, or net vineyard loss, adopt performance metrics based on impacts to traffic and public services;
 11. Prepare a list of problems and issues that need to be resolved before recommending any new regulations;
 12. Amend the County Code to define agriculture as including wineries and other production facilities as conditional uses, except as provided for in Policy AG/LU-16, and that marketing activities and other accessory uses are incidental and subordinate to the main use.

ZONING:

The Committee asked staff to evaluate existing non-agricultural uses in the AP (Agricultural Preserve) and AW (Agricultural Watershed) Zones, and to group them into general categories. The following table attempts to provide that information in a concise format that allows for comparisons.

	AP		AW	
	Allowed	Permitted	Allowed	Permitted
Agriculture				
Agriculture		Processing of ag products other than wine	Agriculture	Processing of ag products other than wine
Pre-1974 wineries		Feed lots	Pre-1974 wineries	Feed lots
Small wineries with certificates of exemption issued prior to codification		Wineries, including crushing, wastewater disposal, processing, storage, bottling	Small wineries with certificates of exemption issued prior to codification	Wineries, including crushing, wastewater disposal, processing, storage, bottling
Wineries with use permits issued prior to codification		Winery-related uses, including offices, labs, marketing, and retail sales	Wineries with use permits issued prior to codification	Winery-related uses, including offices, labs, marketing, and retail sales
		Winery accessory uses, including tours and tastings, educational displays, sale of wine-related items,		Winery accessory uses, including tours and tastings, educational displays, sale of wine-related items,

		and child care centers		and child care centers
		Farm management uses		Farm management uses
Residential				
	Single family dwelling	Farmworker housing (large)	Single family dwelling	Farmworker housing (large)
	Residential care facility (small)		Second unit	
	Family day care		Residential care facility (small)	
	Guest cottage		Family day care	
	Farmworker housing (small)		Guest cottage	
			Farmworker housing (small)	
Infrastructure				
	Minor antennas	Noncommercial wind energy	Minor antennas	Sanitary landfills
	Telecommunication facilities (small)	Telecommunication facilities (large)	Telecommunication facilities (small)	Noncommercial wind energy
		Satellite earth stations	Maintenance and repair of levees	Telecommunication facilities (large)
				Satellite earth stations
Other				
		Kennels	Hunting clubs (small)	Parks and rural recreation
		Veterinary facilities	Overnight lodging as allowed prior to 1977	Kennels, horse boarding, and stables
			RV park or campground as allowed prior to 1996	Veterinary facilities and wildlife rescue centers
			Floating dock accessory to residential or ag use	Campgrounds on public lands
			Quasi-private recreational uses	Hunting clubs (large)

WINERY STANDARDS

The Committee asked staff for a description of the existing development standards that apply to wineries. The following is a summary of the relevant provisions of the Winery Definition Ordinance.

-) **Accessory Structure Coverage:** The maximum square footage of all winery accessory structures shall not exceed forty percent of the area of the production facility. "Production facility" for the purpose of this section means crushing, fermenting, bottling, bulk and bottle storage, shipping, receiving, laboratory, equipment storage and maintenance facilities, but shall not include wastewater treatment or disposal areas which cannot be used for agricultural purposes (Section 18.104.200).
-) **Pre-1990 Coverage:** For those wineries established prior to 1990, the winery development area of a winery shall be the aggregate paved or impervious or semipermeable ground surface areas of the production facility, storage areas (except caves), offices, laboratories, kitchens, tasting rooms and paved parking areas for the exclusive use of winery employees. Expansion of the development area beyond that which existed in 1990 may be permitted only if required by the Director to correct emergency health and safety conditions not related to expansion of production (Section 18.104.210).
-) **Parcel Coverage:** The maximum coverage of new or expanded wineries shall be twenty-five percent of the existing parcel or fifteen acres, whichever is less. Coverage for the purposes of this measure shall be the aggregate paved or impervious ground surface areas of the production facility, storage areas (except caves), offices, laboratories, kitchens, tasting rooms, paved areas and access roads to public or private roads or rights-of-way and aboveground sewage disposal systems. The calculation of coverage shall not include farm management uses (Section 18.104.220).
-) **Setbacks:** The minimum setback for wineries shall be six hundred feet from the centerline of any state highway, Silverado Trail, or any arterial county road. The minimum setback for wineries shall be three hundred feet from the centerline of any other public road or private road used by the public. For purposes of this section only, a private road is considered "used by the public" if it provides primary access to at least one parcel other than the parcel(s) on which the winery is located. Underground portions of caves are not subject to the winery or yard setback requirements. Cave portals shall be required to meet the setback if the portal is visible from the applicable road. If the associated entry pad outside of the cave portal is used for winery functions, then the pad is also required to meet the winery setback requirements.
- Any winery established before 1990 may expand within the minimum setback so long as the expansion is placed no closer to the centerline of the right-of-way than the nearest point of the existing structure to which the expansion is attached. All new freestanding structures shall comply with the setback. Legal structures established before 1990, may be exempted from the setback if the expansion will result in a more environmentally beneficial placement of the winery. However, the winery may not expand beyond the legally established footprint of the structure as it existed in 1990 (Section 18.104.230).
-) **Exception to Setback for Historic Features:** Wineries may be located a minimum of three hundred feet from a state highway, Silverado Trail, or any arterial county road, if the Commission, or the Board of Supervisors, finds that: (A) The proposed site contains historic buildings, structures or landscapes which are either listed on or eligible for listing on the California or National Historic Register, and the proposed project will retain and incorporate such eligible or listed buildings, structures or landscapes into the final project design; (B) The proposed winery or structure(s) will be located within an existing footprint or developed or disturbed portion(s) of the site such that the final project will be within the historical context and scale of the site; (C) The proposed winery or structure is part of an overall historic preservation plan for the site which includes the preservation and enhancement of historical buildings and structures and old growth landscape including, but not limited to, old vines and mature

trees and a certification that the project is in conformance with the Secretary of the Interior Standards and Guidelines for Historic Preservation Projects. Retention of these elements shall be made a condition of the approved permit; and (D) The proposed winery or structure shall not be located closer to a state highway, Silverado Trail, any arterial county road, or any other public or private road used by the public than any existing historic structures or buildings on the site.

-) **Minimum Parcel Size:** Wineries are permitted to be located or operated on parcels zoned AP or AW only if the single parcel on which it is located is at least one acre for those wineries legally established prior to 1990, and 10 acres for all wineries established after 1990 (Section 8.102.240).
-) **Pre-Prohibition Wineries:** Substantially intact buildings used as wineries prior to 1920, but not being used as wineries as of 1990, may be used as wineries subject to the approval of a use permit, except as modified by this section. The minimum parcel size for a pre-Prohibition winery shall be two acres. A parcel that is made substandard (i.e., reduced in size to less than ten acres) after the date of adoption of this ordinance is not eligible for the exceptions allowed by this section.

The setback requirements of Section 18.104.235 shall not apply to pre-Prohibition wineries, but the findings required by Section 18.104.235 shall apply to pre-Prohibition wineries.

No pre-Prohibition winery shall be entitled to the same annual production capacity or type or intensity of social or marketing activity it had prior to Prohibition. These matters shall be determined on a case by case basis in connection with consideration of the use permit for the pre-Prohibition winery, but in no case shall exceed twenty thousand gallons per year.

A winery located on a parcel less than five acres in size shall demonstrate compliance with all applicable water and sewage requirements and that the sewage disposal system shall be contained entirely within the subject parcel (18.104.245).

-) **Winery Production:** Small wineries that were lawfully established after 1974, without first obtaining a use permit prior to 1990, shall be limited to the production limit established in its certificate of exemption or twenty thousand gallons per year, whichever is less.

Wineries that were established prior to 1974 without obtaining a use permit because a use permit was not required, and which have not subsequently been issued a use permit specifying maximum annual production capacity, shall be limited to the production capacity existing as of 1974.

Wineries which were established only after the issuance of a use permit and in conformance with all applicable county regulations prior to 1990 shall be limited to the production capacity authorized by the use permit.

Wineries that were established after 1990 shall be limited to the maximum production capacity established by the use permit.

All new wineries established after 1990 or pre-existing wineries which expand beyond their winery development area shall be subject to the following additional limitations: (1) At least seventy-five percent of the grapes used to make that portion of the winery's still wine which is produced as a result of the expansion shall be grown within the county of Napa; (2) At least seventy-five percent of the grapes used to make the still wine used to make the sparkling wine that is produced as a result

of the expansion shall be grown within the county of Napa.

Any expansion of the production capacity for any of the aforementioned wineries shall require use permit approval (Section 18.104.250).

-) **Pre-1991 Wineries:** Any winery use permit approved prior to 1990 and used before 1991, which is inconsistent with Sections 18.08.620 (tours and tastings) or 18.104.230 (setbacks), and all certificates of exemption regardless of the date of issuance, shall be subject to additional requirements (Section 18.104.255).

***** PLEASE NOTE

The Committee requested staff to provide information regarding both variances and events. Staff understands that many of these issues are inter-connected, particularly when discussing the range and intensity of winery-related uses allowed within the agricultural zones. That information is provided for the Committee members' benefit below, but both variances and temporary events are included in the next round of discussion items and should be considered at that time.

VARIANCES:

The Committee asked staff for background on variances and the rates at which they've been approved.

The Napa County Code defines a variance as:

A grant of relief from the requirements of this chapter, which permits construction in a manner that would otherwise be prohibited by this chapter (Section 16.04.470).

A variance shall not be granted for a parcel of property which authorizes a use or activity which is not authorized by zoning district regulations governing the parcel of property (Section 18.128.080).

A variance can only be granted if the following Findings can be met (Section 18.128.060):

1. That the procedural requirements set forth in this chapter have been met;
2. Special circumstances exist applicable to the property, including size, shape, topography, location or surroundings, because of which strict application of the zoning district regulations deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification;
3. Grant of the variance is necessary for the preservation and enjoyment of substantial property rights;
4. Grant of the variance will not adversely affect the public health, safety or welfare of the County of Napa;

5. That, in the case of groundwater basins identified as "groundwater deficient areas" under Section 13.15.010, grant of the variance would not require a new water system or improvement, or utilize an existing water system or improvement causing significant adverse effects, either individually or cumulatively, on said groundwater basins in Napa County, unless that variance would satisfy any of the other criteria specified for approval or waiver of a groundwater permit under Section 13.15.070 or 13.15.080 of this code;
6. That, in the case of other groundwater basins, or areas which do not overlay an identified groundwater basin, where grant of the variance cannot satisfy the criteria specified for approval or waiver of a groundwater permit under Section 13.15.070 or 13.15.080, substantial evidence has not been presented demonstrating that grant of the variance might cause a significant adverse effect on any underlying groundwater basin or area which does not overlay an identified groundwater basin;
7. In the case of a development or improvement with a reasonably foreseeable connection to a public water supply as defined in 13.15.010, regardless of the number of parcels served, grant of the variance would not require a new water system or utilize an existing water system necessitating a groundwater permit pursuant to Chapter 13.15. This finding shall not be required if the applicant presents substantial evidence demonstrating that grant of the variance for such development or improvement would not have a significant adverse effect on the underlying groundwater basin; or if that variance would satisfy any of the other criteria specified for approval or waiver of a groundwater permit under Section 13.15.070 or 13.15.080 of this code.

Since 2005, the Planning Commission has granted 176 winery use permits (88 new and 88 major modifications). Of those 176 use permits, 37 included requests for a variance, one of which was denied, for a total of 20 percent. The majority of variance requests were for new winery use permits (29), compared with major modifications (8). Almost all of the variance requests were for road setbacks. Of those, 13 were variances for a 600-foot setback, 12 were variances for a 300-foot setback on a public road, and 9 were variances for a 300-foot setback on a private road.

It should also be noted that during this same time, the Zoning Administrator approved 42 variances for non-winery development. The majority of these requests were for construction or additions to single family homes, although some variances pertained to agricultural outbuildings. The variances were for a variety of requirements, including road setbacks, yard setbacks, stream setbacks, and building separation.

Should the Committee want to make recommendations with regards to the issue of variances, staff suggests the following options for possible consideration:

-) Limiting the extent of variances (i.e., variances cannot exceed 20%);
-) Developing additional findings that have to be met to limit the applicability of variances;
-) Expanding the 300 and 600 foot setbacks to include non-winery development;
-) Reducing the 300 and 600 foot setbacks;

TEMPORARY EVENTS

Definition

A temporary event is any festival, fair, show, showcase, house or garden design tour, concert, dance, rally, parade, demonstration of competition of creative athletic form to which the public is invited or admitted with or without the payment of an admission charge. Temporary events include, but are not limited to, music, dance, theater, speech, athletics, or any other visual, audio, or tactile arts or combination thereof, including incidental retail sales of the products of such activities, as long as such sales are not advertised off-site. This includes any other gathering or assemblage of individuals for the purpose of observing or engaging in expressive activities within the ambit of the First Amendment of the United States Constitution and Section 2, 3, and 4 of Article 1 of the California Constitution.

A temporary event is held at any place other than a highway (as defined in Section 10.24.010 of the Napa County Code), a permanent building or installation constructed and primarily used for the purpose of conducting public assembly.

Guidelines

Please see Attachment A.

Standards:

Please see Attachment B.

SUPPORTING DOCUMENTS

- A . Attachment A - Temporary Event Guidelines
- B . Attachment B - Temporary Event Standards
- C . Draft 5-26-15 APAC Minutes
- D . Draft Revised APAC Meeting Schedule
- E . Correspondence Received

Recommendation: Approve

Reviewed By: Melissa Frost