



Agenda Date: 7/13/2015

Agenda Placement: 6A

A Tradition of Stewardship  
A Commitment to Service

## Napa County Agricultural Protection Advisory Committee **Board Agenda Letter**

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**TO:** Agricultural Protection Advisory Committee

**FROM:** 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 Variances and Code Compliance for Winery-Related Uses in Agricultural Zoning

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### **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: (1) marketing and temporary event data; (2) variances; (3) code compliance; and (4) issues related to these topics.

### **EXECUTIVE SUMMARY**

That the Agricultural Protection Advisory Committee:

1. Receive the staff presentation and ask any clarifying questions;

2. Accept public testimony; and
3. Discuss and take tentative action regarding recommendations concerning variances and code compliance programs.

**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****BACKGROUND:**

At the meeting of June 22 the Committee Chair requested staff to prepare the following: (1) additional information regarding marketing and temporary events; (2) comparison of proposals related to variances; and (3) comparison of proposals related to ensuring regulatory compliance.

**RESEARCH:**

Staff was specifically requested to provide the following information:

1. The actual number of full meal service granted and associated with marketing events:

Staff does not currently keep track of the number of full service meals approved as a part of the Use Permit approval in the Winery Database. Assembling that information would take at least 2-3 months.

2. The total number of marketing events approved:

According to the Winery Database, a total of 22,938 annual marketing events are currently approved. This equates to an average of 64 per day. It should be noted that 167 wineries (about 35%) do not have approved marketing events. Over half of all approved marketing events are associated with a total of 10 wineries. (Three of the wineries account for nearly a third of all marketing events) The vast majority of events are approved at wineries located along Highway 29, between Yountville and St. Helena, with a smaller concentration located in Carneros.

3. The total number of temporary events granted including type of events, location of events, and the number of attendees associated with those events for the 2015 calendar year.

As of June 1, 2015, a total of 51 temporary event permits have been issued since the beginning of the calendar year.

The majority of events are charity fundraisers or educational. "Music in the Vineyards" accounts for 11 of the 55 permits. "Afternoon in the Vineyards" represents 7 permits, "Morning in the Winery" has 4 permits, the Festival del Sole has 3 permits, and "Kitchens in the Vineyards" also had 3 permits.. Together, these five multi-site events total more than half of the permits issued to date this year. Other beneficiaries of temporary events include Jamieson Animal Rescue, Up Valley Family Center, Lucky Penny Productions, St. Helena Boys and Girls Club, Wine to Water, Vine Village, Can V, St. Helena Heart Institute, Planned Parenthood, and Nimbus Arts. A total of 11 permits do not fall into either the charitable or educational category. They primarily consist of concerts.

The majority of events occur on the valley floor, in the Agricultural Preserve. There are 14 events held along the St. Helena Highway; another 9 are located on the Silverado Trail. Six events were held on Kirkland Ranch Road, with 3 each on Big Ranch Road and Zinfandel Lane. Duhig Road, Conn Creek, and Rutherford each had 2 events. The remaining events were scattered around the County.

Temporary events are approved for a maximum number of attendees. The spreadsheet staff provided is incomplete on some entries, so the numbers do not total to 55. Additional work will be needed to refine the data. The permits approved in 2015 can be generally grouped as shown in the following table. Broadly speaking, the vast majority of temporary events are permitted for less than 250 people. Very large events of more than 1,000 persons make up slightly more than 10 percent of permits issued.

Maximum Number of Attendees Permitted	Number of Events Permitted in 2015
100	12
250	19
500	7
1,000	3
2,000	2
More than 2,000	1

### **VARIANCES:**

The following is a summary of proposals that have been submitted to date relating to the issue of variances:

#### **Proposal O – Rudy Von Strasser:**

1. Retain the current variance rules without any revision.

#### **Proposal Q – Christina Benz:**

1. When findings can be made, limit setback variances to a 15% reduction of the required setback.

#### **Proposal R – Charlie Hossom:**

1. Variances to County code should be the exception and not the norm. Variances that improve public safety, facilitate traffic flow, or are otherwise beneficial, should be granted. Variances to County code that ignores the original intent such as setbacks should not be granted approval.

#### **Proposal S – Ginna Beharry:**

1. Only grant variances when all of the required Findings are strictly met. Variances, road exceptions and conservation regulation exceptions are appropriate planning tools but should not be used to make a winery 'fit' on a parcel.

**Proposal T – Shari Gardner:**

1. Limit the extent of variances to 20%.

**Proposal X – Winery Use Permit Framework:**

	AP			AW		
	10 – 20 Acres	20-40 Acres	40+ Acres	20 – 40 Acres	40-80 Acres	80+ Acres
Variances	No more than 25% for public road setbacks	No more than 15% for public road setbacks	Maximum 0%	No more than 25% for public road setbacks	No more than 15% for public road setbacks	Maximum 0%

**COMPLIANCE:**

Although the matter of ensuring regulatory compliance by wineries was not included in the tasks assigned to the APAC by the Board of Supervisors, the Board also indicated that the Committee was free to address other issues as appropriate. The issue of how to improve the existing code compliance program has been raised by several APAC members, as well as comments from the public.

It should be noted that the issue of code enforcement continues to be a high priority of the Board of Supervisors, which had added two new enforcement officers over the past six months, and has directed staff to regularly report back with recommendations on improving regulatory compliance. The first enforcement workshop was held in March of this year. At that time, the Board directed staff to implement the following six recommendations:

- ) Hire a new officer;
- ) Establish a community clean-up program;
- ) Increase the amount of fines and penalties;
- ) Consider a building amnesty program;
- ) Clarify the Temporary Certificate of Occupancy process; and
- ) Expand the wine audit.

The next workshop is scheduled for August 4.

Regulatory compliance was also a topic of interest to the Napa County Grand Jury, which issued their report on the subject in May. Their relevant recommendations are provided herein for the Committee's reference.

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

2. Develop a process for monitoring and inspecting winery water treatment and disposal. A plan for monitoring water usage should also be implemented.
3. Make the inspection reports of non-compliant wineries more transparent to the public in much the same fashion as health code violations of restaurants are reported.
4. Establish and publish a range of penalties and/or operating restrictions for non-compliance infractions of use permit requirements. Such action should encourage wineries to be more cognizant of the cost of non-compliance.

In addition, some portions of Option F (proposals that did not directly address the seven tasks assigned to the Committee by the Board of Supervisors) also relate to the issue of compliance and are provided as follows:

**Option F:**

1. Establish a one-year moratorium on new or amended winery applications.
2. 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.
3. Require all wineries to comply with existing County regulations.
4. Require wineries to annually report grape source, wine production and visitation counts to Napa County in order to verify compliance.

Finally, those individual proposals that deal with the issue of compliance are herein provided for the Committee's reference, including one new suggestion: Proposal Y, submitted by the Napa Valley Vintners.

**Proposal P – Dan Mufson:**

- !. Add a violation fee to use permits and use permit modifications that correct code violations. This would be similar to the building permit violation fee that is charged when a person applies for a permit for work that commenced without a building permit.
2. Increase the winery audit from 20 to 35, which would allow for all wineries to be evaluated within 12 years (instead of 23), while keeping staff time for the audit to 50 percent of a full-time position.
  - a. As an alternative, the full audit could be kept at 20, but all wineries could submit production and visitation data to PBES annually. It may also be possible to create a web portal that would allow winery owners to log in and submit their compliance data online.
  - b. A second option would be to expand the scope of the Audit. At present, the audit is limited to looking at production, grape sourcing, visitation, and retail sales. The Audit could include a review of the winery's conditions of approval to ensure that all relevant requirements are being met.
  - c. A third option would be to require that wineries found to be in violation remain in the audit until compliance is received, and be subject to appropriate penalties or fines.
3. Establish a mandatory compliance program with the following components:
  - a. It will apply to all existing and new wineries.
  - b. The data will be submitted online to create a database.

- b. An annual sworn affidavit by the Owner/President must be submitted certifying their use permit compliance.
- c. Formal audits will be performed by County personnel trained for this purpose, or third-party audit firms.
- d. The program is to be funded by fees based on visitation (tasting, events) and/or permitted wine production. The funding goal is to support annual audits of 33% of the wineries.
- e. There will be a schedule of mandatory penalties for non-compliance based on the factor in question: In addition to monetary fines, the penalties will mandate a return to the operations outlined in the original Conditions of Approval, and thereafter, a three-year waiting period, with clean audits, to apply for any use permit modifications for production or visitation increases.
- f. The components of the audit will include: production, grape sourcing, visitation, retail sales, the approved marketing plan, events, temporary events, food costs for food and wine pairing events, water usage and waste water volumes and handling. The Audit could include a review of the winery's Conditions of Approval.

### **Proposal W – Self Certification:**

Establish a self-certification process to ensure that each winery is actively aware of the terms of its Use Permit and to raise awareness and align members of the winery management team regarding compliance of each condition. Most inadvertent non-compliance will be quickly eliminated by such a program and the awareness of marketing and sales personnel to WDO requirements would dramatically reduce the pressure for non-compliant events and initiatives.

The filings would be confidential. The self-certification would be made by the principal officer of the entity owning or leasing the winery facility. The officer would attest to its accuracy and completeness. If subsequently shown to be inaccurate or complete, penalties will be at the discretion of the Planning Director.

The self-certification process would include:

- ) Sharing of TTB reports regarding production and grape sourcing;
- ) A calculation showing compliance with the total production maximum;
- ) A calculation showing compliance with 75% rule;
- ) Visitor counting methodology and totals;
- ) Summary of major marketing events and attendance;
- ) Description of retail merchandise on sale;
- ) Description of any site rental activity; and
- ) Description of food preparation facilities and assurance of compliance with Environmental Health standards for food preparation and public water supply.

If not in compliance with some component of the Use Permit, a three-year program, including interim milestones to achieve compliance, would be required, subject to approval by Planning Director (or Zoning Administrator). Penalties would be imposed only if a winery failed to complete an approved compliance plan.

In lieu of the existing random winery audit program, filings would be subject to discretionary review by the Planning Director for up to 2 percent of the total filings annually (similar to the IRS selection for audit standards). Reduces total workload to 8-10 per year and targets most likely issues.

**Proposal Y – Napa Valley Vintners (Peter McCrea):**

A principal officer of each winery would be required to annually submit to either the County, or an independent auditing firm under contract to the County, the following:

- ) The amount of permitted wine production, per the approved Use Permit;
- ) The amount of wine actually produced;
- ) Compliance with the County's 75% rule, to the extent applicable; and
- ) TTB and CDFA reports to verify the above information.

All data would be kept confidential to the County. Production figures would be considered in terms of the 3-year rolling average currently used by the County to determine compliance.

If a winery is found to be non-compliant with any of the above requirements, then County staff would undertake additional investigation into other aspects of the operation, including, but not limited to the following:

- ) Visitation;
- ) Marketing events;
- ) Food and wine pairings, including compliance with Environmental Health standards; and
- ) Retail merchandise.

**SUPPORTING DOCUMENTS**

- A . Attachment A - Draft APAC Minutes for June 22, 2015
- B . Attachment B - Letter from Julie Arbuckle regarding Proposal X
- C . Attachment C - Letter from Peter McCrea re: Proposal Y

Recommendation: Approve

Reviewed By: Melissa Frost