

Winery Production Audit Program Proposal

Napa County has a winery 'audit' program limited to 20 wineries per year. The Planning Commissioners choose the next year's subjects by drawing 20 numbers, plus 4 alternates, during a regularly scheduled public meeting. The identities of the chosen wineries are not made public during the drawing, the audit process or in the final audit report to the Supervisors. Inclusion in the process is totally voluntary and any chosen winery can refuse to be audited.

Staff sends a "self-reporting questionnaire" to a randomly selected group of wineries asking them to respond. It should be noted that the program is not an audit as defined by Merriam-Webster: "a complete and careful examination of an organization's accounts; a methodical review. Rather, it is a questionnaire: "a written set of questions that are given to people in order to collect facts or opinions about something."

Whereas, representatives of the winery industry have asked for increased compliance by the County: "Strict oversight of existing procedures, paired with fewer creative solutions to non-conforming parcels, will go a long way toward diminishing community and industry concerns. We further request continued attention be paid to the enforcement of food and wine pairing accessory use at wineries¹;

Whereas, citizens have voiced their dismay at the lack of enforcement of regulations for wineries²³⁴;

Whereas, the Planning Department has proposed a Napa County Code Enforcement program to the Board of Supervisors⁵:

Winery Use Permit Penalties

A significant amount of Code Enforcement staff time is required to bring wineries into compliance and these costs are not recovered unless the case is under litigation. Staff recommends that a violation fee be added 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

¹ Letter to Supervisor Dillon and Planning Commissioner Philips, dated March 3, 2015, from the Napa Valley Grapegrowers, Winegrowers of Napa County and Napa Valley Vintners.

² "Too much of a good thing," Napa Valley Register, dated March 18, 2015;

³ "Break the law, get a reward," Napa Valley Register, dated April 13, 2015;

⁴ "County needs to audit wineries more often," Napa Valley Register, dated June 1, 2015;

⁵ Napa County Code Enforcement, Board Agenda Letter, datexx??

permit. Fees charged for use permit violations can be used to cover enforcement costs.

Expand the Winery Audit

Within the past year there has been public interest in further expanding the Audit. Staff has several concerns with this proposal. The Audit currently takes approximately 30% of one staff member's time per year. Dedicating additional resources to this effort would require staff to place other violations back farther on the priority list.

Should the Board wish to consider expanding the audit, staff offers the following: With over 400 wineries in the unincorporated area, at the current rate of 20 wineries being audited each year, it would take 23 years to ensure that each winery is reviewed. Consequently, there have been requests to increase the number of wineries audited annually. Staff would recommend a modest increase from 20 to 35, which would allow for all wineries to be evaluated within 12 years (instead of 23), while keeping the Audit to 50 percent of a full-time position. 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 on-line.

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.

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.

Whereas, the 2014-2015 Napa County Grand Jury has just reported⁶ on winery compliance and has recommended an increase in the number and depth of winery audits (see summary in Appendix);

Whereas, Napa County does not know how many wineries there are, does not know the true level of compliance with winery permits and therefore may be out of compliance with CEQA regulations⁷;

⁶ Napa County Grand Jury Report (2014-2015), "Are Napa County Wineries Following The Rules?"

⁷ Letter to Napa County Board of Supervisors and Planning Commission, dated April 29, 2015, by Abbott and Kindermann LLP, on behalf of Beckstoffer Vineyards.

Therefore, the Agricultural Protection Advisory Committee recommends that in order to monitor the range and intensity of non-agriculture activities on a given parcel and to insure the regulators and the public that Napa County wineries are operating according to their use permits, it is proposed that a mandatory compliance program be established as “[e]nforcement is a critical component for the protection of quality of life and resources as well as for the integrity of our system of governance⁸”.

The program will have the following components:

1. It will apply to all existing and new wineries.
2. The data will be submitted online to create a database.
3. An annual sworn affidavit by the Owner/President must be submitted certifying their use permit compliance.
4. Formal audits will be performed by County personnel trained for this purpose, or third-party audit firms.
5. 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.
6. 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.
7. 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 to ensure that all relevant requirements are being met.

Appendix

Highlights from the Grand Jury Report:

The Planning Department is also charged with enforcing winery compliance with the conditions of their use permits. Public concern has also been expressed about the lack of transparency in winery compliance with their use permit conditions.

Winery audits are performed on a seven-year cycle such that if a winery is deemed to be in compliance it will not be subject to another audit for at least seven years. Wineries that are not in compliance are audited again the following year. However at this rate of 20

⁸ Letter to Napa County Planning Commission, dated June 3, 2015, by the Napa County Farm Bureau.

winery audits per year out of the County's database of approximately 467 wineries, it will take decades before all wineries have been audited and are audited again.

Winery audits review the following activities: Is wine production within the limits of the use permit? Is grape sourcing compliant with the 75% Napa County grapes requirement? Are the number of tours and tasting events within permit requirements? Are the number of marketing events within the permit limits? Are all the products for retail sale wine related?

Winery audits do not review the following:

*Water usage, which is vital to wine production, and wastewater treatment.
The accessory uses of facilities to determine if they meet the 40% or less square footage requirement of the area of the production facilities.*

Penalties for non-compliance have been on a case-by-case basis and depend on the nature of the infraction, but have included monetary penalties and orders to limit or cease production. Generally, if the non-compliance is minor, such as a small overage in production for one year, the winery is allowed to continue its operations but is audited the following year to ensure that it is in compliance.

The Grand Jury recommended that:

R1. By January 1, 2016, the Planning Department to increase the number of yearly winery code enforcement audits from the current rate of 20 audits per year so that every winery would be audited at least every five years or at such intervals that the Planning Commissioners or County Supervisors deem to be appropriate.

R2. By June 30, 2016, the Planning Department and the Planning Commissioners to develop a process for monitoring and inspecting winery water treatment and disposal. A plan for monitoring water usage should also be implemented.

R3. By January 1, 2016, the Planning Department to make the inspection reports of non-compliant wineries more transparent to the public in much the same fashion as health code violations of restaurants are reported.

R4. By June 30, 2016, the county Board of Supervisors and the Planning Commissioners to determine whether the WDO as written provides the regulatory framework necessary to maintain a winery industry that is consistent with the Agriculture Preserve Ordinance.

R5. By June 30, 2016, the Planning Commissioners to establish and publish a range of penalties and/or operating restrictions for non-compliance infractions of use permit requirements. Such action should encourage wineries to be more cognizant of the cost of non-compliance.

Submitted by Dan Mufson
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