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**NAPA COUNTY GRAND JURY  
2014-2015**

**MAY 12, 2015**

**FINAL REPORT**

**ARE NAPA COUNTY WINERIES  
FOLLOWING THE RULES?**

# **ARE NAPA COUNTY WINERIES FOLLOWING THE RULES?**

## **SUMMARY**

The Grand Jury undertook an investigation to determine if the Napa County Planning Department is issuing winery use permits that conforms to the requirements of the Winery Definition Ordinance (WDO), which regulates wineries located within the Napa County Agriculture Preserve. The Grand Jury also investigated if the Planning Department is adequately monitoring the compliance of the wineries with their use permit requirements.

Wineries and the attendant vineyards are Napa County's largest industry providing the most jobs and greatest economic impact on the county. Wineries have been present since the earliest Europeans settled in the region, but the growth of wineries and the expansion of existing wineries have dramatically increased their footprint in the county in recent years. Increasing public concern over the impact of winery growth on traffic, water resources, and other quality of life issues has been expressed in the news media and in public hearings.

The approvals of new wineries and winery expansions are regulated through use permits issued by the County and are administered by the County Planning Department. The Planning Department is also charged with enforcing winery compliance with the conditions of their use permits. Wineries established before the enactment of the current regulations are to some extent exempt from these regulations, but if these wineries expand, the current regulations do apply. Public concern has also been expressed about the lack of transparency in winery compliance with their use permit conditions.

The number of wineries in Napa County is growing. According to data published by the Planning Department in the seven-year period ending in 2013, a yearly average of 18 use permits were approved. These use permits authorized an average of eight new wineries each year, plus 10 winery expansions allowing approximately 180,000 gallons of additional wine production. There was an attendant approval of about an additional 28,000 visitors for tasting and 3,000 visitors for marketing events for each year.

The focus of this investigation was to determine if the Planning Department has followed the guidance of the WDO in issuing use permits and if the winery audits

are sufficient to determine if the wineries are in compliance with their use permit requirements.

The Grand Jury concluded that the planning staff does a conscientious job of reviewing use permit applications for new wineries and for winery expansions to ensure their conformance with the WDO and the Napa County General Plan. Because of the number of applicants and the complexity of the permitting process, the length of time to obtain a permit frequently requires a year or more. The applicants bear the costs of the staff's time required to issue permits.

The Napa County Planning Department also has the responsibility for auditing the compliance of the wineries with their use permit conditions. The Grand Jury also concluded that the code enforcement staff is doing a professional job in its audit and compliance function in so far as their limited resources permit. There has been approximately 30% of one code enforcement inspector devoted to auditing winery compliance. An additional code enforcement inspector was added to the staff in January of 2015, but will have a range of duties other than winery audits. The Grand Jury reviewed the audit results of winery compliance with their use permits for calendar years 2011-2013.

The investigation revealed that only 20 wineries are audited each year out of the approximately 467 wineries in the Napa County winery database. In the audits of 2011-2013 from 30% to 40% of the wineries audited were not in compliance for one or more requirements of their permits. The audits are limited in scope and all conditions specified by the use permits are not reviewed. This coupled with the relatively small number of wineries audited may not give a full picture of compliance.

The Grand Jury urges that the number and scope of the audits be increased to give a broader indication of compliance with the WDO even though this may require more code enforcement staff than currently employed. The identifications of the wineries that are audited are not released. The Grand Jury also urges that the names of non-compliant wineries be released to give greater transparency to the process and to raise public awareness.

Finally, the Grand Jury urges the 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.

## **GLOSSARY**

Ag Preserve: Agriculture Preserve of Napa County, Ordinance 274 of April 9, 1968

General Plan: Napa County General Plan of 2007

TTB: Federal Alcohol and Tobacco Tax and Trade Bureau

WDO: Collective term for the Winery Definition Ordinances  
Winery Definition Ordinance, Ordinance NO. 947 January 23, 1990  
Winery Definition Ordinance, Ordinance NO. 1340 May 11, 2010

## **BACKGROUND**

### **AGRICULTURE PRESERVE OF NAPA COUNTY**

Concerned that residential and commercial development would slowly overwhelm the agricultural nature of Napa County, the Board of Supervisors passed in 1968 a landmark-zoning ordinance that created the first Agricultural Preserve in the United States. The ordinance reflected a commitment to agriculture as the “highest and best use” of most of the land outside of the local towns and the city of Napa. The ordinance dictated that the only commercial activity allowed in these areas was agriculture, and furthermore, set minimum lot sizes that prevented fragmentation of existing parcels, thus limiting the potential for development. The pertinent sections of the Agricultural Preserve Ordinance have been incorporated into the “Agricultural Preserve and Land Use” elements of the General Plan. The County’s General Plan is the official policy statement of the Board of Supervisors and serves as a broad framework for guiding the development of Napa County.

### **THE WINERY DEFINITION ORDINANCE (WDO)**

Wineries had been allowed in the Ag Preserve. But with the ensuing pace of winery development in the county, it became clear that specific winery definitions were necessary as to what sorts of activities would be allowed in wineries to comply with the Agriculture Preserve Ordinance. To accomplish this, the County Board of Supervisors passed the WDO, Ordinance No. 947, in 1990. This ordinance set out regulations and required a use permit for all wineries established after July 31, 1974. Wineries that were established before this date and were

operating in a legal fashion could continue operation without a use permit. However, any expansion beyond the level that existed before July 31, 1974, would require obtaining a use permit.

The WDO regulates many facets of a winery's operations and design, including size, location, signage, availability of tours and tastings, production capacity, grape sourcing, special events, and retail sales. It also regulates the accessory uses of the winery facilities for promotion and marketing of wine. The WDO defines certain other activities that may be present on the winery property such as farm labor housing and day care for children, but does not allow non-winery related commercial development.

With some important qualifications, the WDO defines a winery as a business that makes wine. Specifically, it says a winery is an "agricultural processing facility" for "the fermenting and processing of grape juice into wine." The WDO allows for wineries to sell and market wine, but such marketing activity must be "accessory" and subordinate to production. The maximum square footage of structures devoted to accessory uses related to the winery must be 40% or less than the area used for wine production.

With the principal goal of preserving Napa County's agricultural lands, as well as providing a reliable market for its agricultural products, the WDO dictates that new wineries or any expansion of existing wineries after January 23, 1990, must source at least 75% of their grapes from Napa County. Wineries that were established prior to this date, but obtained a use permit to expand their production must also use at least 75% Napa County grapes for the additional wine produced from the expansion.

The WDO was amended in 2010 by County Ordinance NO. 1340 to address certain issues related to the marketing of wine and the sale of other items in the wineries. Specifically covered in this ordinance are: the marketing of wine, food, and wine pairings conducted as part of "tours and tasting" and the sale of wine and wine related products at the winery. Retail sales of non-wine related products were prohibited.

## **WINERY USE PERMITS**

As a result of the WDO, wineries that were established after July 31, 1974, were required to obtain a “use permit.” Wineries that legally existed before July 31, 1974, did not require a use permit to continue operation. These wineries are considered to be “grandfathered in” as to their production and marketing activities. However, any modification of a pre-July 31, 1974 winery’s activities or expansion of its production of wine required a use permit conforming to the WDO. There is, however, no legal limit on the number of wineries operating in the county. The WDO established a minimum parcel size of 10 acres for new wineries, but recognized that many legally existing wineries were on smaller parcels. For these “small wineries” the WDO specified that a “Certificate of Exemption” must be obtained. Any expansion of the “small wineries” however, required that the winery proceed in accordance with the requirements of the WDO ordinance.

## **METHODOLOGY**

The Grand Jury undertook a series of interviews with the Napa County Planning Department and Code Enforcement executives and working level professionals. Interviews were also conducted with a planning commissioner and a county supervisor. Additional interviews were held with a number of independent consultants and engineers who support and guide winery use permits applications with the county planning staff. The Napa Valley Vintner’s staff was another valuable source of information on the winery industry in Napa County. The Grand Jury also attended a public hearing of a joint session of the Supervisors and the Planning Commissioners that heard over 60 comments from the public on the wine industry and its impact on the community.

In every case, all information and facts in this report were confirmed by a second source and in many cases by multiple sources unless otherwise noted in the report. Valuable insights to the audit process were gained by reviewing the Code Enforcement audit reports for wineries for calendar years 2011-2013. The WDO provided a framework for understanding winery regulations and the winery permitting process. The Napa General Plan provided general guidelines for the planned pace of winery and vineyard development in the County.

## **DISCUSSION**

### **USE PERMITS**

Use permits for new wineries or winery modifications are under the jurisdiction of the Napa County Planning Department. Applicants for winery permits are required to provide a detailed description of their winery business including the number of employees, maximum production rate, number and description of winery structures, and marketing programs. The reviews by the Planning Department are thorough and time consuming and frequently require 9 to 12 months or more before a permit is issued. The applicant bears the cost of the reviews.

Although the details of all winery permit applications are reviewed and vetted by the Planning Department, the final decision on approval or disapproval is the responsibility of the Napa County Planning Commissioners. The meetings of the Planning Commissioners are open to the public. If there is an aggrieved party to the issuance of a permit, the application may be brought before the County Board of Supervisors. The County Zoning Code does, however, define certain minor modifications to use permits that may be approved directly by the Planning Department without the involvement of the Planning Commissioners.

There has been considerable discussion in the local press and the community about opposition to certain winery and vineyard projects in the Valley and the impact of the industry's growth on traffic, the environment and other quality of life issues. These public concerns pose the question as to whether the WDO should be revised to moderate the growth of wineries. The planning staff was clearly sensitive to this public discourse and appeared to be proceeding cautiously in approving new use permits.

Considerable effort was expended to determine the actual number of wineries in the county. The Planning Department's public data indicates that there are 467 wineries that have been issued use permits, but this does not include all wineries. Part of the difficulty in estimating the number of wineries is due to the number of "virtual wineries." These are wineries that do not own their own crushing and processing equipment, but use "brick and mortar" wineries to provide these services under contract. Use permits for wineries, however, "go with the land" and must include the production total for both their own wine and the wine of any custom crushing that the winery performs for virtual wineries.

Another source of uncertainty is that wineries that were established before July 31, 1974, do not require a use permit unless they have applied for a permit to expand. Wineries in commercial areas not subject to agricultural land use zoning are also not included. These wineries are not included in the County database. The Federal Alcohol, Trade and Tax Bureau, (TTB) which taxes the alcohol content produced

by all wineries reported that there were 603 wineries in Napa County in 2014. (There are other estimates of the number of wineries from the State Alcohol Beverage Control Board and the Napa Valley Vintners membership and the planning staff has estimated that the number of wineries with separate labels and addresses could be as high as 1,260.) These differences in winery count between the County database, the TTB, and the other organizations are apparently due to the following:

- Virtual wineries are not included in the County database.
- Wineries in the County's municipalities have their own land use-zoning requirements and are not included in the County database.
- Wineries in commercial or industrial zoned districts are not under agriculture land use zoning and would not be included in the County winery database.

The Planning Department is in the process of developing a more comprehensive winery database.

A number of consultants who support the wineries in applying for and obtaining use permits were interviewed and were very informative in evaluating the application process from the standpoint of the wineries in cost, time, and effectiveness. In their view, the time required to apply for and receive a permit has increased significantly. Since the applicant bears the cost, it has grown considerably more expensive to obtain a permit.

Although there has been public concern expressed in the public media about the impact of winery expansion in the City of Napa and other County municipalities, this investigation did not review the winery use permit and audit process for these municipalities

The number of wineries and the production of wines is growing. According to data published by the Planning Department for the seven-year period ending in 2014, there was an average of 18 new use permits issued each year, of which an average of eight are for new wineries. These use permits authorized an average production of approximately 180,000 gallons of additional wine per year. The attendant number of visitors is also growing. The new use permits for this period also authorized an average of about 28,000 additional visitors each year for tasting rooms and an average of 3,700 visitors for marketing events. It should be noted that all wineries do not necessarily produce the amount of wine allowed or have as many visitors as specified by their use permit.

## **WINERY AUDITS**

The Code Enforcement staff is part of the Planning Department and is responsible for auditing winery compliance with their use permit requirements. Approximately 30% of one code enforcement staff member's time has been devoted to winery audits.

The Planning Commissioners directed the Planning Department to initiate an annual "spot" audit of winery production in 2005. The Planning Commission began the production review by randomly selecting 20 wineries by blind draw. Prior to 2009, only six wineries from the original 20 selected were audited, but since 2009 all of the 20 wineries selected have been reviewed.

In 2010, the Planning Department broadened the scope of the audits and began reviewing tours and tastings log books and marketing events for all wineries drawn in the audit. The audit determined how the information was recorded and whether they were in compliance with the use permit conditions regarding visitations. Goods for sale in the tasting rooms were reviewed to determine if they met the definition in the WDO to allow only the sale of "winery related items."

Beginning in 2011, grape sourcing data were reviewed for each winery to determine if they were in compliance with the 75% Napa County grape requirement for Napa Valley wineries subject to the WDO. This information is available since all California wineries are required to submit grape sourcing information to the State of California's Department of Food and Agriculture. Information on winery production may also be checked against the data from the Federal Alcohol and Tobacco Tax and Trade Bureau, (TTB), which taxes the production of alcohol.

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 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 planning and code enforcement personnel were forthcoming in addressing our inquiries. Audit reports were available upon request and the audits for 2011 -2013 were reviewed. These reports provided hard data on the compliance of the audited wineries with their use permit requirements. For these audit years, the number of wineries that were out of compliance on one or more of the activities audited grew from 29% in 2011 to 40% in 2013. The non-compliant wineries were not specifically identified in the audit reports because the reports contain proprietary market information.

## **FINDINGS**

**F1.** The code compliance audit does not review or inspect the following:

Water usage and wastewater treatment, which are essential to the production of wine.

The accessory uses of facilities to determine if they meet the 40% or less square footage requirement of the area of the production facilities.

**F2.** In the audit years 2011-2013, the number of wineries that were out of compliance on one of more activities audited varied from 29% to 40%. The names of the non-compliant wineries are not released to the public.

**F3.** The County's ability to expand the audit program is limited because only 30% of one code enforcement inspector has been devoted to winery audits. An additional inspector was hired in January 2015, but will have other code enforcement duties besides winery compliance inspections.

**F4.** Penalties or restriction of wineries' activities for non-compliance is determined by county officials. Since the penalties are decided on a case-by-case basis, wineries have no way of knowing the cost of code infractions.

**F5.** The lack of specificity in the winery database for actual production quantities makes it extremely difficult to determine if the growth of wineries is in conformance with the General Plan. The Planning Department is developing a more extensive winery database.

## **RECOMMENDATIONS**

- 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.

## **REQUEST FOR RESPONSES**

Pursuant to Penal Code section 933.05, the Grand Jury requests responses as follows:

- Napa County Board of Supervisors - **R1, R2, R3, R4, R5**

