



**NAPA COUNTY GRAND JURY
2014-2015**

MAY 12, 2015

FINAL REPORT

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

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

2 **SUMMARY**

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

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

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

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

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

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

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

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

50 The investigation revealed that only 20 wineries are audited each year out of the
51 approximately 467 wineries in the Napa County winery database. In the audits of
52 2011-2013 from 30% to 40% of the wineries audited were not in compliance for
53 one or more requirements of their permits. The audits are limited in scope and all
54 conditions specified by the use permits are not reviewed. This coupled with the
55 relatively small number of wineries audited may not give a full picture of
56 compliance.

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

63 Finally, the Grand Jury urges the Board of Supervisors and the Planning
64 Commissioners to determine whether the WDO as written provides the regulatory
65 framework necessary to maintain a winery industry that is consistent with the
66 Agriculture Preserve Ordinance.

67

68 **GLOSSARY**

69 Ag Preserve: Agriculture Preserve of Napa County, Ordinance 274 of April
70 9, 1968

71 General Plan: Napa County General Plan of 2007

72 TTB: Federal Alcohol and Tobacco Tax and Trade Bureau

73 WDO: Collective term for the Winery Definition Ordinances

74 Winery Definition Ordinance, Ordinance NO. 947 January 23,
75 1990

76 Winery Definition Ordinance, Ordinance NO. 1340 May 11,
77 2010

78 **BACKGROUND**

79 **AGRICULTURE PRESERVE OF NAPA COUNTY**

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

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

93 Wineries had been allowed in the Ag Preserve. But, with the ensuing pace of
94 winery development in the county, it became clear that specific winery definitions
95 were necessary as to what sorts of activities would be allowed in wineries to
96 comply with the Agriculture Preserve Ordinance. To accomplish this, the County
97 Board of Supervisors passed the WDO, Ordinance No. 947, in 1990. This

98 ordinance set out regulations and required a use permit for all wineries established
99 after July 31, 1974. Wineries that were established before this date and were
100 operating in a legal fashion could continue operation without a use permit.
101 However, any expansion beyond the level that existed before July 31, 1974, would
102 require obtaining a use permit.

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

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

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

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

130

131 **WINERY USE PERMITS**

132 As a result of the WDO, wineries that were established after July 31, 1974, were
133 required to obtain a "use permit." Wineries that legally existed before July 31,
134 1974, did not require a use permit to continue operation. These wineries are
135 considered to be "grandfathered in" as to their production and marketing activities.
136 However, any modification of a pre-July 31, 1974 winery's activities or expansion
137 of its production of wine required a use permit conforming to the WDO. There is,
138 however, no legal limit on the number of wineries operating in the county.
139 The WDO established a minimum parcel size of 10 acres for new wineries, but
140 recognized that many legally existing wineries were on smaller parcels. For these
141 "small wineries" the WDO specified that a "Certificate of Exemption" must be
142 obtained. Any expansion of the "small wineries" however, required that the
143 winery proceed in accordance with the requirements of the WDO ordinance.

144 **METHODOLOGY**

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

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

162

163 **DISCUSSION**

164 **USE PERMITS**

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

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

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

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

196 Another source of uncertainty is that wineries that were established before July 31,
197 1974, do not require a use permit unless they have applied for a permit to expand.
198 Wineries in commercial areas not subject to agricultural land use zoning are also
199 not included. These wineries are not included in the County database. The Federal

200 Alcohol, Trade and Tax Bureau, (TTB) which taxes the alcohol content produced
201 by all wineries reported that there were 603 wineries in Napa County in 2014.
202 (There are other estimates of the number of wineries from the State Alcohol
203 Beverage Control Board and the Napa Valley Vintners membership and the
204 planning staff has estimated that the number of wineries with separate labels and
205 addresses could be as high as 1,260.) These differences in winery count between
206 the County database, the TTB, and the other organizations are apparently due to
207 the following:

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

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

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

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

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

236

237 **WINERY AUDITS**

238 The Code Enforcement staff is part of the Planning Department and is responsible
239 for auditing winery compliance with their use permit requirements. Approximately
240 30% of one code enforcement staff member's time has been devoted to winery
241 audits.

242 The Planning Commissioners directed the Planning Department to initiate an
243 annual "spot" audit of winery production in 2005. The Planning Commission began
244 the production review by randomly selecting 20 wineries by blind draw. Prior to
245 2009, only six wineries from the original 20 selected were audited, but since 2009
246 all of the 20 wineries selected have been reviewed.

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

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

261 Winery audits are performed on a seven-year cycle such that if a winery is deemed
262 to be in compliance it will not be subject to another audit for at least seven years.
263 Wineries that are not in compliance are audited again the following year.
264 However at this rate of 20 winery audits per year out of the County's database of
265 approximately 467 wineries, it will take decades before all wineries have been
266 audited and are audited again.

267 Winery audits review the following activities:

268 Is wine production within the limits of the use permit?

269 Is grape sourcing compliant with the 75% Napa County grapes requirement?

270 Are the number of tours and tasting events within permit requirements?

271 Are the number of marketing events within the permit limits?

272 Are all the products for retail sale wine related?

273 Winery audits do not review the following:
274 Water usage, which is vital to wine production, and wastewater treatment.
275 The accessory uses of facilities to determine if they meet the 40% or less
276 square footage requirement of the area of the production facilities.
277 Penalties for non-compliance have been on a case-by-case basis and depend on the
278 nature of the infraction, but have included monetary penalties and orders to limit or
279 cease production. Generally, if the non-compliance is minor, such as a small
280 overage in production for one year, the winery is allowed to continue its operations
281 but is audited the following year to ensure that it is in compliance.
282 The planning and code enforcement personnel were forthcoming in addressing our
283 inquiries. Audit reports were available upon request and the audits for 2011 -2013
284 were reviewed. These reports provided hard data on the compliance of the audited
285 wineries with their use permit requirements. For these audit years, the number of
286 wineries that were out of compliance on one or more of the activities audited grew
287 from 29% in 2011 to 40% in 2013. The non-compliant wineries were not
288 specifically identified in the audit reports because the reports contain proprietary
289 market information.

290 **FINDINGS**

- 291 F1. The code compliance audit does not review or inspect the following:
292 Water usage and wastewater treatment, which are essential to the production
293 of wine.
294 The accessory uses of facilities to determine if they meet the 40% or less
295 square footage requirement of the area of the production facilities.
- 296 F2. In the audit years 2011-2013, the number of wineries that were out of
297 compliance on one of more activities audited varied from 29% to 40%. The
298 names of the non-compliant wineries are not released to the public.
- 299 F3. The County's ability to expand the audit program is limited because only 30%
300 of one code enforcement inspector has been devoted to winery audits. An
301 additional inspector was hired in January 2015, but will have other code
302 enforcement duties besides winery compliance inspections.
- 303 F4. Penalties or restriction of wineries' activities for non-compliance is
304 determined by county officials. Since the penalties are decided on a case-by-
305 case basis, wineries have no way of knowing the cost of code infractions.

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

310 **RECOMMENDATIONS**

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

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

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

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

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

330 **REQUEST FOR RESPONSES**

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

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

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335 Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that 336 reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.
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