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TO THE NAPA BOARD OF SUPERVISORS  
RE: Resolution NO. 2018\_ (CODE COMPLIANCE PROGRAM)

I am pleased that some peripheral recommendations of mine dated October 29, 2018 have been incorporated into the language of the proposed document. However none of the fundamental issues I raised have.

As amply evident by the Strategic Planning process comments, there is overwhelming support for increased transparency in the Board of Supervisors conduct of business, yet the proposed modification permitting process is codifying the exact opposite direction.

As I had pointed out, a process which formerly required use permit modifications to be reviewed by the Planning Commission during public hearings is now under the discretion of the Director, a single person.

To make matters worse, the Director's discretion is allowed to be founded on multiple ambiguous criteria on which he or she may base their decision such as "substantially conforming", "good faith effort", "timely completion", "significant violations", "extraordinary circumstances" and more, instead on what ought to be defined, quantified standards.

While it is appropriate for staff to apply defined standards in granting use permits, it is inappropriate for it to be allowed to do so in cases involving ambiguous criteria subject to interpretation which are best made during public discourse and by bodies answerable to the public such as the Planning Commission and the Board of Supervisors.

The proposed Resolution states:

1.vi.

*Notice of the Director's decision will be mailed to the applicant/property owner and owners of property located within 1,000 feet of the subject parcel, as well as interested parties, and will be posted on the PBES website. Any party entitled to appeal decisions under County Code Chapter 2.88 can appeal the decision to the Board of Supervisor*

- The 1,000 foot radius in Napa County may include only a handful of parcels owned by different neighbors. As we have seen during the Palmaz application, the overwhelming number of notices were mailed to parcels owned by the Palmaz family itself. Though the 1,000 foot radius may conform to the law, it severely limits the dissemination of information and transparency.
- The posting of the Director's decision on the PBES website also limits rather than expands transparency to the general public which has an interest in monitoring expanded winery uses involving traffic, water, deforestation and other resources impacting the common quality of life.
- The only opportunity the public will have to facilitate a review in a public forum is by way of appeals . What used to be a free forum for public discourse at the Planning Commission level is now only possible at the Board of Supervisors level with the substantial cost of an appeal.
- The Appeal process under Napa County Code Chapter 2.88 states:

17.52.061

*No person other than the applicant, owner (if different), or any person who was required to be given mailed notice under this chapter may appeal to the board the decision of the advisory agency to issue a conditional certificate or amended conditional certificate unless prior to the date of decision of the advisory agency to issue the conditional certificate or amended conditional certificate such person filed a written comment with the advisory agency regarding the application, including any comment regarding the environmental determination filed with the planning department during the public review period.*

Note that the Code grants any appellant standing only if he or she has submitted a written comment prior to the advisory agency's decision while the proposed Resolution requires the Director to mail notices to interested parties after his or her decision.

- The proposed Resolution does not address the fact that while violating wineries will have what amounts a preferentially rapid approval process for their use permit modifications by bypassing the review and public hearings at the Planning Commission level, law abiding wineries seeking increased modifications will not be afforded such luxury.

I am sure that such obvious unfairness has not escaped the Board of Supervisors and may very well be an underhanded way to do away with winery use modification approvals through the Planning Commission altogether.

COMMENT:

In taking the granting of winery use permit modifications out of the hands of the Planning Commission, the proposed Resolution limits opportunities for public input and discussion and reduces transparency.

It increases the Director's discretion by allowing him or her to apply ill defined discretionary and ambiguous standards in granting winery use permit modifications. Exactly because such standards are not quantified but are ambiguous, they ought to be subject to wider public discourse.

Not to be dismissed, is the risk that such concentration of discretionary power on a single individual can invite abuse. The type of abuse, very difficult to prove in a court of law.

The proposed Resolution is fraught with provisions which prevent rather than invite public participation and decreases transparency. There is ample evidence that this course is contrary to public sentiment and reduces faith in government.

**I urge the Board of Supervisors to send this Resolution as it stands for a revised draft based on principles of public inclusion.**