

**RESOLUTION NO. 2018-\_\_**

**RESOLUTION OF THE BOARD OF SUPERVISORS OF NAPA COUNTY,  
STATE OF CALIFORNIA, EFFECTIVE OCTOBER 30, 2018, PROVIDING  
DIRECTION TO COUNTY STAFF REGARDING THE COUNTY CODE  
COMPLIANCE PROGRAM, ANNUAL WINERY PRODUCTION  
AND GRAPE SOURCE REPORTS, AND REGULATION  
AND PERMITTING OF TEMPORARY EVENTS**

**WHEREAS**, on August 22, 2017, the Board of Supervisors directed staff of the County Planning Building & Environmental Services Department (“Staff”) to present for the Board’s consideration Staff’s recommendations regarding certain changes to the County’s land use regulation and compliance program that included the following components: 1) a systematic program with enforceable deadlines for landowners to apply for new permits or modifications to resolve outstanding violations; 2) a reporting program that would include annual production and grape sourcing data for certain wineries located within the unincorporated area of Napa County; and 3) revisions to the current process and procedures for temporary events; and

**WHEREAS**, on September 12, 2017, in public session, Staff presented its recommendations to the Board on the issues described above, and accepted the Board’s direction; and

**WHEREAS**, on October 30, 2018, in public session, Staff presented its recommendations to the Board on the issues described above, and accepted the Board’s direction; and

**WHEREAS**, the Board heard and considered Staff’s presentations and all public comments and written input on Staff’s recommendations; and

**WHEREAS**, on October 30, 2018, the Board gave direction to Staff to make certain modifications to Staff’s recommendations to be set forth in a Resolution for the Board’s consideration,

**NOW, THEREFORE, BE IT RESOLVED**, effective as of November 13, 2018, as follows:

1. The Board hereby directs Staff to implement the following procedures and policies in connection with the processing of land use entitlement applications that are related to properties that are the subject of County Code violations. These procedures and policies do not apply to the issuance and/or enforcement of Building Permits, except where specified:
  - a. Establish a deadline of 2:00 PM on March 29, 2019 (“deadline”), for all landowners who wish to apply for a permit to voluntarily remedy their violations. Qualified permit applications must be substantially conforming and must be received by the Planning, Building, and Environmental Services (PBES) Department by the deadline. A “substantially conforming” application must include a substantially complete set of the documents required in the application checklist, and information responsive to the requirements. A “substantially conforming” application need not include technical studies where the applicant demonstrates the studies could not be completed by the deadline due to seasonal conditions or other extenuating circumstances. All excluded technical studies must be submitted as soon as possible, not to exceed 120 days from

the deadline. ~~Applicants must make a good faith effort to make the application as complete as possible.~~

- i. ~~Require applicants to make a continuous good faith effort to complete their applications in as timely a manner as is practicable.~~ Napa County’s Local Procedures for Implementing the California Environmental Quality Act (CEQA) state that no application for a permit shall be deemed complete until all information has been submitted necessary to complete ~~an Initial Study~~ **substantially conforming application**, determine that the project is **categorically exempt**, or determine that the project is not subject to CEQA. After 120 days from the deadline, when the PBES Director (“Director”) determines, in the Director’s sole discretion, that an application is incomplete ~~and that the applicant is not making a good faith effort towards timely completion~~, the application will be closed out and any unused funds will be returned to the applicant.
- ii. Advise applicants who seek to participate in this program that the County does not make any promise or representation that their applications will be granted in whole or in part. Each application will be considered on its own respective merits.
- iii. Within 30 days of the submittal of a substantially conforming application, staff shall conduct a compliance inspection of each property for which an application was received pursuant to this program. The inspection would verify the violations that the applicant was requesting to correct in the application and the existence of health and safety violations. Upon verification of violation(s), **including any omitted in the substantially conforming application**, staff will send a ~~new or amended~~ Notice of Violation to the owner, which will clearly list ~~the verified~~ **all inspection identified** violations and any health and safety violations determined through the inspection, and will describe how compliance ~~can~~ **must** be achieved. Those violations that pose an immediate threat to public health, safety, and/or threaten the environment, must be abated before the application can be deemed complete. Owners who submit a **substantially conforming** application ~~for any new or modified permit~~ by the above deadline would continue to be subject to penalties for constructing improvements without a Building Permit.
- iv. ~~Revise staff reports to “decouple” recommendations regarding all discretionary applications submitted before the deadline that involve both existing significant violations and requests to expand operations.~~ The project description, **staff report shall describe recommendations, and options** presented in staff reports ~~will clearly distinguish between portions of a proposed project that are necessary to remedy existing significant violations. and those portions of a proposed project that would expand beyond current levels of operation.~~ Significant violations are defined as those involving wine production in excess of approved limits, grape sourcing that does not comply with the 75% grape source rule (if applicable), visitation **and /** or marketing in excess of approved limits, and unpermitted building construction and/or occupancy. ~~The recommendations for those elements of a proposed project dealing with~~

~~violations and those dealing with an expansion beyond existing operations/entitlements will be considered separately by the decision-making body.~~

- v. Except for substantially conforming applications received by PBES prior to the deadline, require all properties that have new or continued health and safety or significant pre-existing violations to come into immediate compliance with legal entitlements and all applicable County Code requirements. Owners of properties with health and safety or significant violations shall be required to operate within their existing legal entitlements for one year from the date of the initial Notice of Violation, ~~absent extraordinary circumstances~~, before a use permit or modification application to remedy the violation(s) may be submitted to PBES. Owners may also be subject to fines or penalties for past and ongoing violations. This provision is intended to and shall require that the environmental impacts of discretionary permit applications shall be assessed against a “baseline” of operations that are within existing legal entitlements, rather than in violation of them. Owners may submit a use permit ~~or modification application~~ to remedy violation(s) ~~during~~ following the one-year period while they operate within their legal entitlements, but only if they agree in writing that their legal entitlements or their existing legal operations, whichever is lower, shall be used as the environmental baseline for all CEQA analysis related to the application. Public hearings for such use permit or modification applications shall not be scheduled until the owner has operated within legal entitlements for one year from the date of the ~~initial~~ Notice of Violation. ~~absent extraordinary circumstances.~~
  
- vi. ~~Continue to allow any property owners to voluntarily initiate a review by the County to determine the extent of their existing entitlements and/or permissible uses of their property. The purpose of such status determinations would be solely to document and/or delineate existing property rights, and would not reduce or affect established entitlements. Staff would evaluate existing use permits, use permit modifications, other land use entitlements, and any documentary evidence provided by the applicant. The resulting analysis would lead to a written decision by the PBES Director that would provide the owner with a clear understanding of both their rights and obligations, which the owner and staff would then both rely upon in the future to determine if a land use is operating in compliance with existing entitlements and the County Code. The Director’s decision would be issued administratively within 120 days of the application being determined complete, without a public hearing. 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 Supervisors. If the Director denies, in whole or in part, a status determination application accepted as complete prior to the deadline set forth in subparagraph v, above, the deadline will be extended for an amount of time equal to the time required to process the status determination application or 120 days, whichever is less. This extension is to allow the owner an opportunity to~~

~~prepare a substantially conforming use permit or modification application to remedy any outstanding violations.~~

- vii. To the extent feasible, assign one planner to each application for a use permit or use permit modification who will be the point of contact for the owner throughout the process. Contract with appropriate and qualified consulting firms to provide short-term support for Code Compliance, Planning, County Counsel, and other functions as needed if implementation of the above procedures results in a significant increase in workload for PBES and/or County Counsel's office. Budgets may be adjusted as necessary to accommodate the additional expenditures, following approval by the Board of Supervisors. The full cost of contract personnel would be paid for by the applicants. Contract personnel may be retained until the permit applications submitted prior to the deadline have been fully processed.
  - viii. Provide outreach and education to landowners and the public regarding the policies and procedures contained within this Resolution, between now and the deadline.
  - ix. Provide quarterly updates to the Board of Supervisors regarding the status of implementing the policies and procedures contained within this Resolution, including but not limited to reports on the number of permit applications received, the timelines for processing such applications, number of code compliance cases, and the number and the performance of contract personnel.
2. The Board of Supervisors directs Staff to return to the Board with a proposed Ordinance for the Board's consideration at a public hearing to enact annual winery reporting requirements with the following proposed elements:
- a. Require that all wineries within the unincorporated area, other than those referenced in sub-section (d) below, annually report by July 1 the following information to the PBES Director, beginning in 2019 and each year thereafter: (A) number of gallons of wine produced in the previous calendar year; and (B) number of gallons crushed and juiced in the previous year from grapes that were grown in Napa County, (C) number of visitations and marketing events.
  - b. Evaluate all production reporting pursuant to the County Winery Production Process, including the use of a rolling three-year average. For the first year of reporting in 2019 only, wineries will shall submit data for the previous three years to determine current compliance with production requirements. Production data will be required annually thereafter.
  - c. Acknowledge that the Winery Production Process formula is not equally applicable to all winery operations. Those wineries that wish to submit alternative calculations may submit an amended report, which shall explain the methodology proposed to calculate a winery's production and/or grape source percentage.

- d. Exempt wineries outside the Agricultural Preserve and Agricultural Watershed Zoning districts and pre-Winery Definition Ordinance (WDO) wineries within those zoning districts which do not have to comply with the 75% Napa County grape source requirement, from annually submitting sourcing data and United States Department of Agriculture (USDA) California Grape Crush Inquiry Reports. However, such wineries must provide annual production level reports, along with scanned United States Alcohol, Tobacco Tax and Trade Bureau (TTB) Reports of Wine Premises Operation, to verify that they are staying within their approved or recognized pre-WDO levels.
  - e. Require scanned TTB Reports of Wine Premises Operations, and United States Department of Agriculture (USDA) California Grape Crush Reports to be submitted as attachments to verify the information submitted to the County. All information submitted to the County will be treated as proprietary and will be maintained in a secured database with limited access. Once reporting has been reviewed by staff to verify compliance, production and grape source data will be destroyed, except when used as part of an ongoing violation investigation related to wine production and/or grape sourcing. The County will engage in outreach and education efforts to ensure that winery owners are informed of the reporting requirement.
  - f. Conduct an inspection and full evaluation of all entitlement requirements and conditions of approval, when the reporting data submitted to the County indicates that a winery is in violation of either their production limit, ~~and/or~~ their grape sourcing requirement **and their numbers of visitation and events**. If violations are discovered, staff will send a Notice of Violation to the owner, which will clearly list all violations and how compliance can be achieved.
  - g. Create the software and Internet interface necessary to minimize the burden for wineries to report their annual data to the County electronically. In addition, develop a database/spreadsheet to evaluate the production data in accordance with the County Winery Production Process. The software programs shall be designed to ensure that all data and analysis obtained through annual winery reporting is fully secured with restricted staff access. Staff will work with Information Technology Services (ITS) to develop the program. If additional expertise is required, ITS may hire a consultant to assist with the development of the software program. Budgets may be adjusted as necessary to accommodate the additional expenditure, following approval by the Board of Supervisors.
3. The Board directs Staff to return to the Board with a proposed Ordinance for the Board's consideration at a public hearing for revisions to the current process and procedures for regulation and permitting of temporary events, with the following proposed elements:
    - a. Create an enforcement process for Temporary Events, similar to the procedures currently used by the Public Works Department to enforce permits that allow Special Events on Public Roadways. The enforcement process would include the ability to place permit holders "on probation" when a violation has been confirmed, and to allow for the denial of applications for Temporary Event permits where there are multiple violations.

- b. Require that applications for Temporary Events be submitted a minimum of 90-days in advance of the date of the event. The County will engage in outreach and education efforts to ensure that property owners, non-profit organizations, and other sponsors of temporary events are informed of the change in the application timeline.

**THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED** by the Napa County Board of Supervisors, State of California, at a regular meeting of the Board held on the 13<sup>th</sup> of November 2018, by the following vote:

AYES:	SUPERVISORS	_____
		_____
NOES:	SUPERVISORS	_____
ABSTAIN:	SUPERVISORS	_____
ABSENT:	SUPERVISORS	_____

\_\_\_\_\_  
BRAD WAGENKNECHT, Chair of  
the Napa County Board of Supervisors

APPROVED AS TO FORM Office of County Counsel  By: <u>Jeffrey M. Brax</u> , (via e-signature) County Counsel  Date: <u>October 30, 2018</u>	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS  Date: _____ Processed By:  _____ Deputy Clerk of the Board	ATTEST: JOSE LUIS VALDEZ Clerk of the Board of Supervisors  By: _____
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**COMMENTS BY GEORGE CALOYANNIDIS**

GENERAL:

SEMANTICS:

When the County in the context of this Resolution uses the term "bringing into compliance", it means adjusting the entitled use permit levels to match those of the violations. And when it uses the term "permit modification" it means adjusting the new approved levels over and above those of the violations.

This terminology gives the public the wrong impression on two levels:  
First; "compliance" as most people understand it means "compliance with the law as it is", not adjusting the law to recognize a violation.  
Second: Adjusting a use permit to recognize violations, is in itself a "modification" and as such it may not be called "compliance".

When the County maintains that it brings wineries into compliance, it gives the public the literal impression that it compels wineries to operate under their existing use permits which they have violated when in reality it offers to adjust their use permits to fit their violations. This an unfair way to "market" this Resolution to the public.

The correct terms ought to be:  
Compelling a winery to operate under its existing legal entitlements should be termed "compliance".  
Recognizing a winery's violations with a new use permit should be termed "modification".  
Recognizing a winery's operation levels over and above its violation levels should be termed "enhanced modification".

#### DIRECTOR'S DISCRETIONARY POWERS:

My proposal seeks to minimize the Director's discretionary powers which as proposed are to be founded on undefined parameters such as "good faith effort", "absent extraordinary circumstances", "as is practical". I believe that the set time frames of the Deadline, the 120 days plus the one-year compliance period are generous enough as not to require discretionary rulings by the Director. The proper domain for discretionary rulings are the Planning Commission and the BoS.

The problems with administrative level decisions on how to treat violators are:  
First: They discourage timely compliance by creating excuses.  
Second: They are granted administratively which makes it almost impossible for them to benefit from public input.  
Third: Although Mr. Morrison reassured Supervisor Wagenknecht and myself during our meeting of 11/21/18 that the appeal process to the BoS is open to any member of the public *even though* it may not have submitted a comment, my reading of County Code Chapter 2.88 contradicts this assurance. The administrative route makes it practically impossible for members of the wider public to acquire standing for an appeal to the BoS.

Requiring all use permit applications whether they seek to recognize existing violations or seek enhance modifications at the Planning Commission level benefit from the Commission's input as well as that from the public. Transparency and enhanced public participation is beneficial to the process, not detrimental to it.

#### THE ADMINISTRATIVE MODEL WAS TRIED BEFORE CONFIRMING ITS SHORTCOMINGS

In May 2018, the Clos Pegase winery submitted an application seeking recognition of what it characterized as grandfathered marketing activities. County staff characterized the application as a *Very Minor Modification P16-00348* exempt from CEQA and processed it at the administrative level. Being neighbors, the Tofanelli family was notified and obtained standing by filing an objection which allowed it to appeal it to the BoS.

Without going into the specifics of the case, records revealed that the events at the winery were held at a profit, that pre WDO marketing activities at wineries in the Ag Preserve were not permitted and thus could not be grandfathered, that CEQA studies which staff determined were exempt because of no changes in the physical environment were nevertheless required because of the marketing activities etc.

Valid or not, the Tofanelli arguments following thousands of dollars in appeal fees and legal fees on both sides, motivated the Clos Pegase winery to withdraw its application following a three month long process rather than having to spend even more money for further studies which in all likelihood it would have been required to perform.

All this would have been avoided had the application underwent public scrutiny at the Planning Commission level.

#### SPECIFIC COMMENTS ON THE PROPOSED TEXT:

1.a) The Deadline of March 29, 2019 plus 120 days ought to be more than enough time to submit a substantially conforming application.

1.i) The term "Initial Study" is a novel one in this text. Substitute "substantially complete application". See also COMMENT (1.a) on why repeated time extensions without standards ought to be eliminated, or in the very least defined.

1.iii) The defined extent of the "permit request" (1.a) is solely to "remedy violations", not to seek modified (enhanced) permits for violations beyond the level of existing ones. Yet subsequent provisions in this Resolution expand such request.

Note that this group of violators who in essence is granted amnesties are not required to undergo original use permit "baseline" CEQA analysis nor is it required to operate for the period of one year per the terms of its original use permits entitlements so as to reset the CEQA baseline.

The proposal to codify the environmental damage precipitated by advancing the CEQA baseline through violations is serious enough. To amplify the damage by codifying additional use permit levels beyond violation levels is a patent disregard for the integrity of the CEQA process and should not be accommodated as part of this process.

Expanded use permit modifications ought to follow the established process which also applies to law abiding wineries seeking to expand their levels of operation.

*Following* verified compliance with the granted violation levels for one year, such applicants may submit applications for enhanced use permit modifications.

1.iv) Per the above, "decoupling" as a vehicle to grant enhanced use permit modifications as part of this program is not proper. As suggested above, wineries which have been granted recognition of their violations should operate within a period of one year at these levels and if they are compliant, they may then apply for enhanced modifications following this period.

1.v) In the absence of specific standards, there should be no recognition of extraordinary circumstances for negating the one year operation provision and the "reset" of the CEQA baseline. Applicants which have been granted recognition of their violations are applicants who have shown disregard for the law. While an amnesty exception has been granted to those who have met the Deadline, this group of violators ought to be required to voluntarily operate under its original use permit for a period of one year and only after compliance has been verified apply for a revised use permit which will recognize its violations.



This group must then operate for an additional year under its revised use permit and if compliance is verified, may then apply for an enhanced use permit.

1.vi) This entire Section is confusing as much as it seems to create a third category of violators lacking a specific distinction. These applicants, whoever they may be are the same as in (1.v) because they both have failed to meet the Deadline and as a result ought to follow the same procedure specified in (1.v).

2.a.f.) Visitation and event numbers must be included in the annual winery compliance reporting requirement. They are perceived far more important by the public than those of production, obviously due to their effect on traffic.

During a small survey I conducted at the Farmers' Markets in Napa, St. Helena, Calistoga and the Bel Air during the Measure D signature gathering drive from 10/20/2018 to 10/28/2018, I asked 300 visitors the following questions and received the respective answers:

Number of persons responding	<b>300</b>
Do you object wineries violating their use permits?	<b>YES 221</b>
Do you object wineries producing more wine than they are allowed?	<b>YES 144</b>
Do you object wineries having more visitors than they are allowed?	<b>YES 205</b>
Do you object wineries having more events than they are allowed?	<b>YES 236</b>
Do you object wineries not observing the 75% rule?	<b>X</b>
(I had a difficult time explaining this rule and dropped the question)	