

Comment noted; no response required (comment on wine industry, not DWDO or EIR).

Comment 425, page B-145 (FEIR)

We have attained our world recognition with a minimum amount of local regulation and have created a mechanism of self-regulation through market forces.

Response

Comment noted; no response required (comment on wine industry, not DWDO or EIR).

Comment 426, page B-145 (FEIR)

In planning for the future, one must remember the past. We are a county which created the agricultural preserve with the intent of maximizing our lands in a genteel use which would accomodate economic growth with a minimum infringement on our natural beauty. Progress will best be served by the continuation of our agricultural dedication, yet understanding that this growth will in itself, clear more land, plant more vineyards and by virtue of this endeavor, create the need for more wineries.

Response

Comment noted; no response required (comment on wine industry, not DWDO or EIR).

Comment 427, page B-145 (FEIR)

Hauling grapes to an industrial park aesthetically, as well as intrinisically, seperates wine from its place of origin. As a visitor to a winery it is important to have a sense of the feeling of land not the sense of an industrial park. These aesthetic values are part of the successful marketing of our only agricultural crop.

Response

Preservation of the aesthetic value of Napa Valley is one of the objectives of the DEIR.

Comment 428, page B-146 (FEIR)

The intensity of small endeavors such as my own or many other wineries under the small winery use permit exemption is the very basis on which the world class image is built in the Napa Valley. The reason small winery use permits were created was to facilitate small entities an equal opportunity to participate in the wine industry without burdensome requirements which would have otherwise precluded all but the independently wealthy from their endeavors.

Response

Comment noted; no response required (comment not on DWDO or EIR).

Comment 429, page B-146 (FEIR)

"...Napa is now poised on a new explosion of production...many of the critical assumptions used within the EIR are typically understated and undervalued...." Mr. Steltzner goes on to discuss a number of new technologies that can increase production including higher densities, soils polymers, and new root stocks.

Response

The consultants did work with the University of California researchers as well as a number of other vineyard experts, including Richard Nagaoka. The types of technological changes suggested in this comment were taken into account in our projections. Two important questions must be asked when assessing the ultimate impact of technological change:

- 1) How fast will technological change be adopted by various growers and hence what is the rate of increase in the average yield for the County as a whole?
- 2) Assuming that in large measure the rate of adoption is influenced by economic factors such as the demand for wine, how will this influence the rate of technological change.

The adoption of technological innovations by growers will be at best uneven, bringing down the average increase in yields. It is furthered constrained by the rate at which the demand for wine is growing. Hence, while the technical capability for vastly increasing grape production exists, as detailed by the reviewer, the adoption of that capability will remain constrained by the growth in the demand for wine and other economic factors. At the same time, it is clear that Napa grape growers will rapidly adopt new technologies

if they believe that it would be more profitable for them, which after all is the essence of technological progress in the world of business.

Comment 430, page B-147 (FEIR)

Sustainably, these yields will require a dramatic increase in capacity at the winery site.

Response

Comment noted; no response required (informational point).

Comment 431, page B-147 (FEIR)

Vineyard development and growth within Napa County represents a phenomenal growth for the future even excepting the proposed build-out as outlined by the Environmental Assessment Part 3. As seen in this hastily drawn document, the use of soil amenities such as cross linked polymers can significantly alter and enhance the water holding capacity of soils. (The commenter goes on to discuss the uses of polymers, the history of this product and its use in water limited areas of the world.)

Response

Refer to response #429.

Comment 432, page B-147 (FEIR)

The University of California is about to be the recipient of a million and a half dollar Federal Grant for a National Grape Importation facility. The new lands that will be planted within the Napa Valley will not necessarily be in climate regimes conducive to expansion of current varieties but will draw on a new world collection and produce varieties not now commonly found in our product lines.

Response

Refer to response #429.

Comment 433, page B-148 (FEIR)

These small steps (in reference to the above comment) will culminate in the next ten to fifteen years in huge plantations of vineyards beyond those necessitated by replanting due to disease and economic disadvantage.

Response

Refer to response #429.

Comment 434, page B-148 (FEIR)

The burden suggested by creating county agency involvement in agricultural land development the requirement of grading and/or leveling permits, water impoundment, etc. permits will only increase cost to the County by their taking on an increase in responsibilities that now reside in state agencies but will increase the cost of development endeavors which thereby will allow those development endeavors to flow to counties without such regulation, placing them in the development and experimentation forefront heretofore has been part of Napa and from which it has drawn its reputation for leadership in the world.

Response

The commenter's position is inconsistent with the legal obligation the County of Napa has to the community to protect the local environment. There is no suggestion nor desire to over-regulate, merely provide adequate controls to ensure the long-term productivity of the agricultural resources. The potential of increased costs to development is minor when weighed against the profits generated. It is also evident that sound policies will provide increased economic opportunity, not detract from it. It is extremely unlikely that the restrictions under consideration will cause good projects to relocate to other counties that lack necessary regulation. The fact that Napa County has demonstrated concern for preserving the very agricultural resource that has given the county an international reputation for quality will only enhance its acknowledged role for leadership in the industry.

Comment 435, page B-148 (FEIR)

The tactic of the environmental impact statement as a requirement shows only the inability of the County to create and administer its own regulations. Circumvention of legal statutes by use of the EIR only inhibits agricultural development.

Response

The commenter's point on circumvention of legal statutes by use of the EIR is unclear. Because the County is considering a change to the existing zoning ordinance it was determined that an EIR should be prepared. The EIR is a full-disclosure informational document that provides everyone an opportunity to evaluate what changes will occur, and to actively participate in the process. This is not circumvention of statutes, but adherence to state law.

Comment 436, page B-148 (FEIR)

Agricultural development could be enhanced and encouraged with the continued pursuit of acquisition of Lake Berryessa water for distribution to the only user for which it was originally designed-agriculture. Acquisition of this water in anticipation of population growth rather than agricultural use seems to be a misdirected implementation of our County's struggle for the maintenance and development of its agricultural resource within the Bay Area bowl.

Response

Comment noted; no response required (comment on wine industry, not DWDO or EIR).

Comment 437, page B-148 (FEIR)

As increased winery production will flow from higher yields per acre and expanded lands the number of wineries is of much less importance than their size.

Response

We concur with the comment. Our position has been, and continues to be, to highlight the need to control density.

Comment 438, page B-148 (FEIR)

Using one critical assumption which is that the consumer wishes to try the product and visit the location of its creation, we assume that tasting will always be an integral part of any processing facility. As facilities increase in size the need for hospitality centers such as in-house food preparation, large tasting rooms and

shopping facilities spreads the large number of visitors through activities allowing organized management of these visitors. A small facility in contrast, does not generate enough visitors to staff anything but limited tasting.

Response

The commenter has made several key points, with which we concur in principle. First, recognizing that tasting is an integral part of a processing facility (not an agricultural use), secondly, there will always be a demand for the opportunity to taste products, and the need for ancillary services. The issue is how does this growth occur without having a negative effect? We agree with the commenter that a mechanism that permits organized management of activities, and facilitates the movement and flow of visitors is essential. These types of activities are consistent with commercial uses and, using Vintners Village as an example, can provide the consumer a full-range of services and the ambience of the Napa Valley. The comment on limited tasting is correct.

Comment 439, page B-149 (FEIR)

I think back at the small winery use permit ordinance under which I'm, I believe, the first recipient. Its purpose was to allow government to function at the administrative level and encourage and sustain agricultural endeavors and zoning. Alteration of this ordinance will most certainly economically catch small winery use permit holders in a no-win situation.

Response

The comment is directed towards a provision of the DWDO. The commenter should express his concern when the project is under consideration. However, we do not concur that a conditional use permit process would place a small winery in a no-win situation. More importantly, the community in general would benefit.

Comment 440, page B-149 (FEIR)

It appears the only way to solve the problem (see comment above) is to make all wineries conform in uses. Expansion, alteration would then fall under the new existing rules.

Response

We agree with the comment. Adoption of a viable ordinance will be extremely beneficial in solving long-term issues.

Comment 441, page B-149 (FEIR)

The physical development of our hillsides will allow us to contain population expansion to the incorporated city limits so long as those yet unplanted grounds are viewed to have potential of expansion of wine and quality otherwise they shall be viewed as building sites.

Response

We agree with the comment. Our intent is to ensure that preserving the integrity of agricultural lands is a priority. Prime soils should be used for agricultural production, not as building sites.

Comment 442, page B-149 (FEIR)

The attitude was and still should be, only the dedicated and the hardiest will wish to visit if the traffic is bad enough. The great catch-all, public safety and welfare, can be over done by exorbitant road requirements, etc., so the mitigation is diminishment of the public usage side of wineries without cessation. After all, why kill the goose that lays the golden egg? The future lies in the County's ability to sustain growth in agriculture and thereby, wineries, from an administrative level. It is here we as a County can absorb minimum population and create maximum public benefit.

Response

Comment noted; no response required (comment not on EIR).

Sullivan, Roche and Johnson for Mr. and Mrs. Scott Heldfond (November 10, 1989)

Comment 443, page B-151 (FEIR)

The DEIR appears to underestimate the impact of additional wineries on the environment of the Napa Valley. One hesitates to argue with the "experts", but then they do not always agree and in this instance appear to be wrong. Even with the "mitigated DWDO alternative", we feel congestion and further invasion of the Ag Preserve will take place.

Response

The commenter's concern is valid. We believe that the DEIR has focussed on the significant effects, particularly misuse of the agricultural preserve, and provided mitigation to reduce future impacts to a level of insignificance. The administrative functions that must implement and enforce the necessary regulations are, as the commenter has recognized, part of the local political process, not the EIR process.

Comment 444, page B-152 (FEIR)

This "Environmentally Superior Alternative" is the only true alternative the county should follow.

Response

Comment noted; no response required (position statement).

Comment 445, page B-152 (FEIR)

The Interim Measures should extend the moratorium to Winery construction (which would appear legally possible in light of continuing efforts to reasonably apply the County's police power in a comprehensive manner) rather than allow nine new wineries per year.

Response

It is the position of the Napa County Counsels' office that the moratorium cannot be extended. The DEIR suggested the Interim Measure as a "bridge" to permit the County an opportunity to implement the necessary mitigation, review the effectiveness, and evaluate the need for modification.

Comment 446, page B-152 (FEIR)

In order to avoid a commercial/recreation (spelled: Disneyland) economy in the Valley, no new winery should be allowed on less than forty (40) acres.

Response

Comment noted; no response required (position statement).

Comment 447, page B-153 (FEIR)

Provide that on Highway 29 the wineries be separated by not less than 2500 feet (with a grandfather provision for existing wineries).

Response

The text (traffic) has been amended to incorporate the 2500' separation (with grandfather provision).

Comment 448, page B-153 (FEIR)

Provide that a winery supply at least fifty percent (50%) of its own grapes from the land surrounding the winery.

Response

It is assumed that the commenter is attempting to control importation of grapes from outside Napa County as a means to diffuse traffic impacts. This type of measure goes beyond the scope of the DEIR by attempting to regulate the market.

Comment 449, page B-153 (FEIR)

The new ordinance should apply to all pending wineries; i.e., those who have not started actual construction on the effective date. This complies with constitutional due process requirements and will avoid excessive "grandfathering".

Response

We would concur with the comment in principle. However, the issue of "being in the pipeline" (i.e., completed application) prior to the effective date of the ordinance needs resolution. County Counsel must determine the legal status of these projects.

Comment 450, page B-153 (FEIR)

In sum, it seems only logical to have wineries that are really only tourist attractions be located on commercial or industrial land, not on prime agricultural land. The essential issue is: is Napa going to be the American Bordeaux or the American Riviera? An agricultural asset with unlimited life or a recreational facility subject to "trendy" popularity and ecological deterioration.

Response

We concur with the comment. Every effort should be made to ensure that non-agricultural uses are not permitted to continue expansion into the agricultural preserve.

Bill Phillips (Summit Engineering) (November 9, 1989)

Comment 451, page B-154 (FEIR)

The main purpose of the DWDO was the preservation of agriculture in Napa County with a focus on regulation of wineries. Simplistic alternatives include: no growth, controlled growth, and uncontrolled growth. Uncontrolled growth is not a viable alternative, no growth is not realistic, would be highly improbable from a legal standpoint and a disaster to the wine industry. Controlled growth, through a final WDO, MEA and their related restrictions, must also be carefully considered to avoid detrimental impact on the wine industry. If restrictions make agriculture and related processing not economically viable, the pressures for other types of development will be brought to bear on Napa County.

Response

The commenter's opening statement is not completely accurate. Although the Findings of Fact attached to the DWDO speak to the importance of agriculture to Napa Valley, the substance of the DWDO does not address preservation of agriculture. The main purpose of the DWDO, as submitted, is regulating future wineries. We concur that regulations should not be oppressive, but provide for long-term productivity.

It is unclear what the commenter is attempting to address when he states "...wineries are extremely important to the protection of agriculture...". Providing a competitive market for an agricultural product is important. However, competing for land that should remain dedicated to increased agricultural production is extremely detrimental.

Comment 452, page B-156 (FEIR)

Do not concur with interpretation of intent. Ordinance would not facilitate creation of new substandard (from a zoning standpoint) parcels; would allow restricted (capacity keyed to acreage) use of existing parcels less than 40 acres. Such use (small "estate" wineries) would be supportive of the agricultural use and not deny the landowner a right to look at economic alternates for use of the land.

Response

Refer to Comment #212.

Comment 453, page B-156 (FEIR)

Some level of sales and marketing activities are essential to the continued existence and economic viability of agricultural uses. The intent of the WDO is to place reasonable controls on such uses without a detrimental effect on the basic purpose of the ordinance: preservation of agriculture. Perhaps the more appropriate action is clarification of permitted uses in either the General Plan or the Zoning Ordinance. (One example is the latest version of the Sonoma County General Plan which provides for agricultural support facilities and promotes sales and marketing of locally produced agricultural products).

Response

The commenter has put forth the conclusion that "what is good for wineries, is good for agriculture", and that the basic purpose of the ordinance is "preservation of agriculture". Wineries certainly play an important role in the marketing of Napa County products. However, there would not be any Napa County wines without Napa County grapes, and quality grapes can only be produced from the prime agricultural soils evident in Napa County. Wineries are not agricultural uses, they are processing facilities. The DWDO is concerned with their growth, and related activities, not preservation of agriculture. Many of the uses that would be permitted under the DWDO would not be good for agriculture, and do not enhance preservation of agriculture.

Comment 454, page B-156 (FEIR)

Mitigation Measure 2: abate existing non-agricultural uses. May not be appropriate to abate, for example, uses which commenced prior to establishment of County Use Permit requirements for same.

Response

The text has been amended to protect any existing legal use.

Comment 455, page B-156 (FEIR)

Land Use (same statement as #454).

Response

Refer to comments #452, 453, 454.

Comment 456, page B-156 (FEIR)

Restrictions are already in force through Environmental Management and Regional Water Quality Control Board are adequate to protect hillside development.

Response

These have been deleted.

Comment 457, page B-157 (FEIR)

Requirements for detention basins need evaluation on a case by case basis depending on downstream conditions and other concerns. The level of pollutants needs to be identified.

Response

See response to comments #84, 85, 86.

Comment 458, page B-157 (FEIR)

A design review ordinance may have guidelines, but not design standards.

Response

We agree that it is appropriate to develop design guidelines through the Design Review Ordinance. Guidelines are policy statements and are mandatory. Design standards are specifications to implement guidelines. For example, a guideline may state: "Use drought resistant plants in landscaping." The associated standard would list specific drought resistant plants which may be used.

Comment 459, page B-157 (FEIR)

Regarding mitigation measure requiring flarred intersection improvements: entrance requirements along SR-29 set by CalTrans, public or private entrance as appropriate.

Response

The commenter appears to say that Caltrans should set access requirements for State Highways. There is no reason, however, to prevent the County of Napa from requiring higher standards than that required by the State.

Comment 460, page B-157 (FEIR)

Requirement should be keyed to level of use with standards set by CalTrans and Napa County Public Works.

Response

This has been done; see amended mitigation measure, page .

Comment 461, page B-157 (FEIR)

On mitigation measure #5, expand on development limitations and restrictions.

Response

This measure has been deleted from the EIR and may be included in the Wine Industry Growth Program EIR.

Comment 462, page B-157 (FEIR)

It is not reasonable to mandate that all winery employees cannot leave between 4:00 and 6:00. Other approaches such as different hours for different staff functions (production, administrative, maintenance) would be more viable. Very difficult to enforce.

Response

Wording has been revised; see page A-84. As 4:00 to 6:00 p.m. have been defined as critical it would be reasonable for wineries to schedule employees functions accordingly.

Comment 463, page B-157 (FEIR)

Regarding promotional events the question of sales/marketing aspects related to agricultural use must be considered.

Response

The DEIR has considered legitimate agricultural uses.

Comment 464, page B-157 (FEIR)

Employee car pooling is unenforceable.

Response

We recognize that the County of Napa could do little to enforce such a requirement. Because the wineries are part of the problem it would seem reasonable they would be motivated to become part of the solution. Working with the County to establish a workable transportation management plan does not seem unrealistic, nor inappropriate.

Comment 465, page B-158 (FEIR)

Mitigation Measure 1, Air Quality.

Response

The suggested mitigation measure to reduce odor complaints and/or violations which suggested mechanical aeration in new waste water ponds is intended to insure that ponds are aerobic. The mitigation measure has been amended to include language that: "Proposed multi-cells installation ponds which do not need mechanical aeration should have this verified through analysis".

Comment 466, page B-158 (FEIR)

Suggested change in Mitigation Measure 2.

Response

The text has been amended to include: "There shall be no stock piling leading to odors when waste water pond sludges are removed".

Comment 467, page B-158 (FEIR)

Suggested change in Mitigation Measure 3.

Response

The text has been amended to include: "In field application of waste materials, applications should be thinly applied or incorporated into soils".

Comment 468, page B-158 (FEIR)

The quarter-mile buffer between a waste water pond and dwellings not located on the property is excessive and too restrictive. Would, in essence, eliminate the ability to build medium-size wineries on medium-size parcels.

Response

Contiguous properties should not bear the burden of winery development. Proper site planning prior to development should permit the proper placement of ponds. 1320 feet from an occupied dwelling not on the property does not seem excessive or too restrictive.

Comment 469, page B-158 (FEIR)

Storing septage onsite should recognize the need for emergency transfers, and requirements of the Napa County Environmental Management.

Response

This mitigation has been deleted.

Comment 470, page B-159 (FEIR)

On-site sewage disposal for types of wastewater the cities will not treat is already in force through Environmental Management.

Response

See revised mitigation measures, page ____.

Comment 471, page B-159 (FEIR)

Suggest change in Mitigation Measure 3, Air Quality.

Response

Refer to comment #467.

Comment 472, page B-159 (FEIR)

Eliminate grace period or grandfathering. Need to acknowledge established uses which commenced prior to consideration in the Use Permit process.

Response

The County can, through administrative action, provide a determination on existing uses, and if they have been legally instituted. Established uses do not necessarily constitute legal uses.

Comment 473, page B-159 (FEIR)

How will MEA mitigation measures be implemented?

Response

The County has elected to not proceed with an MEA but generate a second stand-alone document (Program EIR) to evaluate the significant effects of wine industry growth. The mitigation measures that will be developed in this process will not have a direct relationship with the DWDO EIR.

Comment 474, page B-159 (FEIR)

Administrative nightmare -- how to select nine projects? Why nine? Implementation of measures such as Design Review and a grading Ordinance will take years. The resulting delays and uncertainties would have extremely adverse impacts on the planning efforts of vineyard and winery owners.

Response

Processing nine projects (under the amended Interim Measure) will not be an administrative nightmare, it will provide the County the opportunity to permit controlled growth, review the effectiveness of the ordinance, and evaluate the need for modification. The number nine was selected based on historical data supplied by the County of Napa Implementation of a Design Review Board, or developing additional ordinances, should not take years. The County need not "re-invent the wheel" but pull from existing programs to accommodate their need. Delays can also be reduced if all parties agree that resolution is essential to the health of the County and become proactive participants.

Comments 475 to 487 relate to mitigation measures in the MEA. The MEA is not being processed concurrently with the DWDO DEIR, so the comments become premature and are, therefore, not responded to in this document. In addition the MEA will now be processed as a Program EIR which will permit adequate time for consideration of comments received.

Comment 475, page B-160 (FEIR)

Mitigation Measure 1: no expansion of existing public visitor facilities. May adversely impact a winery with an existing permitted public visitors facility needing repair or modifications to handle existing visitor load.

Comment 476, page B-160 (FEIR)

Mitigation Measure 2: erosion control ordinance. An additional source would be the documents prepared by the Association of Bay Area Governments (ABAG) re: erosion and sediment control. Input should also come from the civil and geotechnical engineering professionals.

Comment 477, page B-160 (FEIR)

Mitigation Measure 1: Coordination between Napa County and the Regional Water Quality Control Board. Already being done.

Comment 478, page B-160 (FEIR)

Mitigation Measure 1: water conservation programs approved by the County Water Agency. More appropriate agency may be Environmental Managment, as they are responsible for well and water systems permits as well as wastewater permits.

Comment 479, page B-160 (FEIR)

Mitigation Measure 4: No vineyard irrigation in areas where groundwater is in short supply unless imported water is used. Irrigation water could also be provided from rainfall catchments.

Comment 480, page B-161 (FEIR)

Mitigation Measure 5: No vineyard irrigation if groundwater levels decline over three or more years. The reason for such a decline should be evaluated and all users of the groundwater assigned some sort of proportioned reduction of groundwater use until the decline is remedied.

Comment 481, page B-161 (FEIR)

Mitigation Measure 1: Design Review Board. Add civil engineers to the list of professionals. Do not make the Board too large or decisions will never be reached.

Comment 482, page B-161 (FEIR)

Mitigation Measure 5: develop and adopt winery design standards and guidelines for use in design review. Guidelines, yes; standards, no.

Comment 483, page B-161 (FEIR)

Mitigation Measure 1: no new or expanded public visitor facilities. See comment under land use.

Comment 484, page B-161 (FEIR)

Mitigation Measure 2: Development limitations and restrictions. Such as?

Comment 485, page B-161 (FEIR)

Mitigation Measure 3: Apply dust palliative and water twice daily. Twice daily watering excessive. Apply palliative and maintain as necessary to mitigate dust emissions from site.

Comment 486, page B-161 (FEIR)

Mitigation Measure 4: Contract with California Archaeological Inventory at Sonoma State University to provide project review. Qualified private archaeological firms are available for project review activities also.

Comment 487, page B-161 (FEIR)

Through what vehicle will mitigation measures be applied to a vineyard project, for example? Obviously, through the Use Permit process for a winery; but how would they be applied for a vineyard development?

Comment 488, page B-162 (FEIR)

The 20% limitation on winery development area may not be in the best interests of the industry and the County in the long run.

Response

We concur with the commenter that expansion of existing facilities is less environmentally damaging than generating new ones. One issue not addressed by the commenter, but directly related, is the 2400 gallon limitation. If a winery can, within its existing "development footprint" expand its capacity 20% why should production be limited? It is our opinion that the County should encourage expansion of existing wineries rather than new development. The Environmentally Superior Alternative has been amended to reflect this position.

Comment 489, page B-162 (FEIR)

What is the definition of production capacity? Gallons from grapes crushed, juice fermented, wine bottled, finished casegoods, tank volume?

Response

Production capacity is defined under Section 12419 of the DWD as gallons per year of wine.

Comments of Pauline Tofanelli

Comment 490, page B-162 (FEIR)

Most wineries have tours, tasting, selling other products besides wines, cooking lessons, concerts, weddings, auctions, art lessons, banquets, and much more. They are built with this purpose in mind. This is definite use of Ag land for commercialism. As the grand jury stated, these are all against the General Plan.

Response

See response to comments #165, 166.

Comments 491, 492, page B-163, B-164 (FEIR)

Wineries should not be allowed on parcels smaller than 40 acres. Also, where they are located should not affect neighbors as to intrusion on neighbors privacy, impact on water and traffic.

Response

Comment noted; no response required (position statement).

Comment 493, page B-165 (FEIR)

I believe a serious study has to be done even for a winery to be located on 40 acre parcels as to the effect it will have on surrounding properties.

Response

Comment noted; no response required (position statement).

Comments 494, 495, page B-165 (FEIR)

If implemented the Winery Definition Ordinance should do a good job if it is enforced and not changed or rezoned for certain wineries and follows the General Plan regarding these extra functions that are allowed now.

Response

Comment noted; no response required (position statement).

Vince and Nancy Tofanelli (November 9, 1989)

Comment 496, page B-166 (FEIR)

After reviewing the entire Draft EIR the only reasonable solution to the question of what a winery should be is to adopt the mitigated alternative.

Response

Comment noted; no response required (position statement).

George Vierra (October 24, 1989)

Comment 497, page B-167 (FEIR)

If you agree with the Draft EIR, it is important that you write your support of the "Environmentally Superior Alternative" to the Director of the Planning Commission, Jeffery Redding. It is important that you contact the Planning Commission, Board of Supervisors and your neighbors.

Response

Comment noted; no response required (position statement).

Norman C. Deleuze (ZD Wines) (November 10, 1989)

Comment 498, 499, page B-170 (FEIR)

Requiring all new wineries to comply with the General Plan criteria of 40 acres will have effects not discussed in this document. If the facility of an existing winery on a parcel less than 40 acres needs to expand it will be forced to purchase a second parcel of land, and operate from two facilities rather than one expanded winery. Why should the parcel size matter?

Response

The DWDO has provisions, with which we concur, for expansion of existing legal uses. Causing future wineries to adhere to a 40-acre minimum serves a two-fold purpose. First, it will protect prime agricultural soils from continuing encroachment, and second, it will serve to control future density. The commenter is referred to Response #212 for additional information.

Comment 500, page B-170 (FEIR)

The DEIR also suggests that public tasting rooms and other activities are inconsistent with the General Plan Land Use Element. If this is true, it must be true for established wineries as well as new ones. Visitor facilities should be allowed as part of both existing and new wineries. Perhaps a percentage of area allowed would help assure that the business is primarily a winery.

Response

Either new, or expansion of existing, visitor facilities should be allowed in the Agricultural Preserve. These uses should be confined to areas that facilitate the flow of traffic, and would not increase the existing problems.

Comments 501-506, page B-170, B-171 (FEIR)

A more reasonable conclusion from the information presented here is that the primary effect of increasing the number of wineries would be to spread the visitors over a broader area, reducing traffic density.

Response

Dan Jonas, Chairman of the Planning Commission

Comment 512, page B-176 (FEIR)

"If we recognize wineries as legal uses on parcels that already exist that are less than 40 acres, ..., then I presume that they are legal uses, you don't need to abate anything. Does that also extend to the public tours and tastings aspect?"

Response

If an existing winery or winery related use is legal, then it does not need to be abated.

John Mikolajcik, Supervisor

Comment 513, page B-176 (FEIR)

"What reason would there be that a winery can't be on less than 10 acres."

Response

A winery may be built on a parcel less than 10 acres. The 10-acre provision of the DWDO is an attempt to control density of wineries.

Comment 514, page B-176 (FEIR)

"If it's [the DWDO] sensible, if the County can survive, a good economy, employment for people in the County, I will support it. But if it hinders people, from making a living, or a good economy, I will not support it."

Response

Comment is on DWDO, not the EIR; no response required.

Bob White, Chairman of the Board of Supervisors

Comment 515, page B-176 (FEIR)

"In preparing this Draft, was our County Counsel ever contacted on some of his legal questions or concerns?"

Response

We spoke with Margaret Woodbury of the County Counsel's office regarding several issues, namely the grandfathering clause and General Plan consistency.

Bob Westmeyer, County Counsel

Comment 516, page B-177 (FEIR)

Commenter asks which of the uses permitted in the AW and AP zones in the DWDO would qualify under the definition of "non-agricultural" used in the Mitigation Measures.

Response

The following determinations were made using the definition of "non-agricultural", "marketing", "winery-related" developed in Response to Comment #114.

- | | |
|--------|--|
| AG | AP Zone, Section 12201, Uses Allowed without Use Permit. |
| NON-AG | AP Zone, Section 12202, Uses Permitted Upon Grant of Use Permit. |
| AG | (a) Farm labor housing |
| | (b) Facilities, other than wineries, for the processing of agricultural products grown or raised on the same parcels or contiguous parcels under the same ownership. |
| AG | (c) Kennels and veterinary facilities. |
| AG | (d) Feed lots |
| AG | (e) Non-commercial wind energy and conversion systems. |
| AG | (f) Wineries, as defined in Section 12047. |
| AG | (g) The following uses in connection with a winery: |
| AG | (1) Crushing of grapes outside or within a structure. |
| AG | (2) On-site disposal of waste generated by the winery. |
| AG | (3) Aging, processing and storage of wine in bulk. |
| AG | (4) Bottling and storage of bottled wine; shipping and receiving of bulk and bottled wine, provided the wine bottled or received does not exceed the permitted production capacity. |
| AG | (5) Any or all of the following uses provided that, in the aggregate, such uses are clearly incidental, related and subordinate to the primary operation of the winery as a production facility: |
| AG | (A) Office and laboratory uses. |
| AG | (B) Marketing of wine produced by the winery. |
| AG | (C) Retail sale ... |
| | (h) The following uses, when accessory to a winery: |

- NON-AG (1) Private tours and tastings, as defined in Section 12068.
 NON-AG (2) Private promotional activities (small) as defined in
 Section 12070(a).
 NON-AG (3) Display, but not sale, of art.
 AG (4) Display, but not sale, of items of historical, enological
 or viticultural significance to the wine industry.
 (i) The following uses when accessory to a winery that was
 established in conformance with all applicable County
 regulations prior to [effective date of this ordinance]
 provided that as to any winery not legally authorized to
 conduct w\such uses prior to [effective date of this ordinance]
 a use permit application shall have been on file on or before
 18 months after [effective date of this ordinance].
 NON-AG (1) Public tours and tastings
 NON-AG (2) Public promotional activities
 NON-AG (3) Picnic areas for winery guests
 NON-AG (4) Display and sale of wine-related items bearing the
 winery's name or logo, or the Napa Valley appellation
 or the appellation of a district lying in whole or in
 part in Napa County.

Bob White, Chairman of the Board of Supervisors

Comment 517, page B-177 (FEIR)

Are "golf courses going to be abated, ..., not be allowed?"

Response

No, golf courses are allowed in the AW Zone with a Use Permit under
 "(A) Outdoor parks and recreation facilities compatible with
 agriculture"; the DWDO has made no changes in this capacity.

John Mikolajcik, Supervisor

Comment 518, page B-178 (FEIR)

"Agricultural Watershed zoning now means recreational also."

Response

It still does; the DWDO has made no changes in this capacity.

Dan Jonas, Chairman of the Planning Commission

Comment 519, page B-179 (FEIR)

"The environmental document, I presume, analyzes the effects as not significant with the mitigations as proposed. The question is if the Ordinance is not adopted with the mitigations, in other words if for example, you want to leave Public Tours and Tastings in there as a permitted use, is the EIR then, does it need more work to adequately address that?"

Response

The EIR concludes that impacts of noise and traffic have not been reduced to a level of insignificance, even with mitigation measures. The County may find, if it chooses, that the benefits of the project outweigh the environmental impacts, and make a Statement of Overriding Considerations. If the County chooses not to do this, the DWDO, as prepared, could not be approved. The EIR would not require additional work.

Comments 520, 521, page B-179 (FEIR)

You make an assumption in the EIR that the 40 acres needs to be the minimum to be consistent with the General Plan. If this decision was, ..., it should be 20 or 5 or some other number, is the EIR still adequate, does it adequately address the impacts?" Would it require a Statement of Overriding Considerations?

Response

The EIR adequately addresses a minimum lot size of 5 acres or 20 acres, and any density less than 40 acres would not be consistent with the intent of the General Plan. The County's options are to (1) adopt the 40 acre density mitigation measure, (3) amend change the General Plan so that the General Plan and the DWDO are consistent.

Comment 522, page B-179 (FEIR)

The reviewer asks, is this because the economic model forecasts growth whether it occurs on 5 acre parcels or 40 acre parcels?

Response

No. Although the statement made is true, the issue addressed in the EIR which triggers the need for a mitigation measure is consistency with the County's General Plan.

Guy Kay, Planning Commissioner

Comment 523, page B-180 (FEIR)

Regarding Section 12202 (g)(5)(B), "Marketing of wine produced by the winery", the reviewer presumes this would be undesirable.

Response

Due to the narrow definition of "marketing" which has been included in the EIR, namely denoting sales and advertising only, this has been included as an "agricultural" use.

Dan Jonas, Chairman of Planning Commission

Comment 524, page B-180 (FEIR)

Commenter requests that uses not allowed be specifically mentioned as not allowed, rather than just deleting from the ordinance.

Response

The text has been amended to address this request.

Comment 525, page B-180 (FEIR)

Commenter asks, what is marketing? "Does it mean that somebody, the general public, can come in and buy it; I assume that it does because you talked about retail sales, and to me retail sales is the general public. But on the other hand, throughout the environmental document you say no public tours and tastings, signs on the winery that say "not open to the public" and I'm pretty confused by some level of inconsistency there."

Response

We agree this is inconsistent. The DEIR has been amended to prohibit new or expanded public or private visitor serving facilities and promotional events in the agricultural zones. Mitigation has been added to reflect the following signage to limit visitors to approved uses (see A-47 and A-86):

Wineries with approved public
visitor serving facilities

No signage regulation

Wineries with approved private
visitor serving facilities

"No public tours or tasting
facilities"

Wineries without any approved
visitor serving facilities

"No tours or tasting
facilities"

Mel Varrelman, Supervisor

Comment 526, page B-180 (FEIR)

Commenter recommends using the broadest possible definition of
"marketing" and using that as the basis for analysis in the EIR.

Response

Because all accessory or ancillary marketing-type uses are included
in other portions of the DWDO, namely Promotional Events or Uses
Allowed under a Use Permit, a strict or narrow definition of
"marketing" was developed so that there would be no overlap of
allowed uses between "marketing" and other sections of the DWDO.

Paul Battisti, Supervisor

Comment 527, page B-181 (FEIR)

Reviewer asks about the difference of 51,660 acres on page 21, second
paragraph, and 58,740 acres, last paragraph, of vineyard projected.

Response

Our research has found that 58,740 acres in the County are capable
of growing grapes, however only 51,660 are expected to be planted
before 2010.

John Mikolajcik, Supervisor

Comment 528, page B-182 (FEIR)

Commenter asks where will be the biggest growth in vineyards and
wineries?

Response

The largest number of wineries is expected in the Napa Valley: 39 wineries. The largest percent growth of wineries is expected in Jameson/American Canyon: 1400%.

Again, the largest acres of grapes is expected in the Napa Valley: 4,300 acres. The largest percent growth of vineyard is expected in Jameson/American Canyon: 4429%.

Robert Westmeyer, County Counsel

Comment 529, page B-182 (FEIR)

Commenter asks for a clarification of the limitation on new or expanded wineries under the Interim Measure.

Response

See response to comment #66.

Guy Kay, Planning Commission

Comment 530, page B-182 (FEIR)

Regarding the Interim Measure commenter asks how to choose between expansions or new wineries. Should choice of applicants be on the basis of capacity, or traffic, or other variable? The recommendation for limitation is based on environmental impacts, therefore, the method of choice should also be addressed in the EIR.

Response

The recommendation for an Interim Measure limiting new and expanded wineries applications per year is based on the historical growth rate in Napa County, not on the holding capacity of the Napa County environment. The trigger for this Interim Measure is the time requirement for implementing the mitigation measures, necessary to reduce the environmental effects. We recommend that the choice of procedures for accepting applications be based on environmental impacts.

Bob White, Chairman of the Board of Supervisors

Comment 531, page B-183 (FEIR)

Commenter discusses lack of groundwater available for vineyard plantings in the Carneros region, and the possibility that the Napa Sanitation District could provide water for vineyards since the type of processing the District uses may meet standards for such water uses.

Response

We have contacted Mr. Erskine of the Napa Sanitation District who reported that currently, effluent water from their treatment plant does not meet standards for use on crops. However, the District has agreed to upgrade their treatment facilities to allow this use. This upgrade has not yet been funded, but is expected in the near future. Once this upgrade has been put in place, water from the NSD could be a significant source of water for new vineyards in the area.

Guy Kay, Planning Commissioner

Comment 532, page B-183 (FEIR)

The commenter inquires about the MEA mitigation measures mentioned in the Interim Measure.

Response

These mitigation measures were made available on about October 19, 1989. Subsequently, some measures have been incorporated into this EIR and the remaining ones may be included in the Wine Industry Growth Program EIR; they are no longer incorporated by reference.

Comment 533, page B-184 (FEIR)

How soon is the MEA going to be a published document.

Response

The MEA is now structured as the Wine Industry Growth Program EIR and we expect it to be published in draft form in January or February, 1990.

From Public Hearing before the Planning Commission, October 18, 1989

Andrew Beckstoffer

Comment 534, page B-194 (FEIR)

"We appreciate the concern that the consultant showed for agriculture and for protection of agriculture in the County."

Response

Comment noted; no response required (position statement).

Comment 535, page B-194 (FEIR)

"We must applaud his suggestion or the EIR's suggestion that we do adopt Alternative 2."

Response

Comment noted; no response required (position statement).

Comment 536, page B-194 (FEIR)

"There's a real positive impact rather than no impact with regard to both the 75% and the Ordinance would suggest no public tours and tastings for new wineries."

Response

See response to comment #131 regarding the impact of the 75% rule, and comment #155 regarding the impact of public tours and tastings as opposed to private tours and tastings. In addition, regarding the decrease in traffic congestion which the commenter expects to see caused by these two provisions of the DWDO, we have concluded that visitors, and therefore visitor traffic into the County, are not dependent on the number or types of new wineries built, but on larger market forces.

Comment 537, page B-194 (FEIR)

Commenter states there is a trend toward "zip code wineries" that would be eliminated by the DWDO, and that production of wine would change due to this.

Response

See response to comment #131.

Comment 538, page B-194 (FEIR)

"It is of major importance just who opinion of what is marketing holds sway here. It's important not only that we understand what's necessary to market or what is marketing, but also what is necessary and what is marketing of super-premium wine."

Response

See response to comment #114 for definition of marketing.

Comment 539, page B-195 (FEIR)

"The consultant, Mr. Cale, yesterday, made comment that I think needs some clarification, and he said that the cumulative effect of any new wineries would be significant. Now, I'm not sure whether we need to assume that his mitigation measures would thus be designed to eliminate any new wineries."

Response

Because some environmental factors, namely traffic, are already in an overloaded situation today over in portions of the County, we have concluded that the cumulative effect of any new wineries in these portions. The County has two options (1) to adopt mitigation measures to reduce such impacts to a level of insignificance as mandated by CEQA, and (2) make a statement of overriding considerations. Because of the predominant public opinion against major roadway improvements in the Napa Valley, we have not proposed any mitigation measures which could reduce impacts to a level of insignificance. Therefore, if the County is to approve new winery development in these areas, it will need to adopt the second option above.

Comments 540, 550, 551, page B-195, B-197 (FEIR)

We need more of the "right kind" of wineries. That "right" winery would first of all produce wines from Napa County grapes and it would do it in such a way as not to impact us negatively in terms of traffic, noise, or any of the environmental factors. ... It would no longer have public tours and tastings but would abide by the regulations and uses that are specific to the Winery Draft Ordinance. ... and the Draft Ordinance, I think eliminates public promotional activities in any significant form.

Response

The commenter indicates that the DWDO would only allow the "right kind" of winery. Indeed, new wineries would be required to use a minimum of 75% Napa County grapes; this rule however, does not apply to existing winery capacity or expansion of capacity within the Winery Development Area. New wineries would be prevented from having public tours and tastings; this rule however, does not apply to existing wineries or expansions, and furthermore, we project that private tours and tastings will have as many visitors and cover as much floor area as public tours and tastings if public visitors facilities are prohibited. On this basis, we do not project that the DWDO without mitigation will significantly decrease traffic, noise, or other environmental impacts. Finally, the DWDO rather than eliminating public promotional activities, allows them to be permanently granted to existing wineries through the Use Permit process, or allows them through an Administrative Permit for all wineries. A new maximum for promotional activities is set which is far beyond current activity, and therefore allows, and perhaps encourages, a substantial increase in promotional events.

Comment 541, page B-195 (FEIR)

The commenter inquires about the definition of impacts in the EIR.

Response

See amended text, page A-41.

Comment 542, page B-196 (FEIR)

Commenter disagrees with EIR conclusion that 10 acre minimum parcel size is inconsistent with the General Plan.

Response

See response to comment #212.

Comment 543, page B-196 (FEIR)

Commenter states that consultant implied that elimination of the small winery exemption would eliminate small wineries in the County. Commenter disagrees with this conclusion.

Response

We disagree also, and have made no such implication. See response to comment #414.

Comment 544, page B-196 (FEIR)

Commenter inquires about definitions for "non-agricultural" and "marketing."

Response

See response to comment #114.

Comment 545, page B-196 (FEIR)

"The Ordinance eliminates public tours and tastings for new wineries, not because they're non-agricultural uses, but because of the side effects of traffic, and noise, and other congestion and environmental impacts on the County."

Response

We understand that this was the intent of the DWDO, however, we did not find that it will be the result of the DWDO. See response to comment #536.

Comment 546, page B-196 (FEIR)

"The EIR states that we need to abate these uses [non-agricultural] for existing wineries. It's important we recognize that they are legal conforming uses today and that we must allow legal conforming uses to continue into the future."

Response

See response to comment #163.

Comment 547, page B-197 (FEIR)

"Certainly there was no attempt and I don't see any mechanism in the Draft Ordinance which would allow for the legalization of illegal uses."

Response

See response to comment #212.

Comment 548, page B-197 (FEIR)

"The EIR addresses visual impacts and suggest that we adopt a scenic highway ordinance. ... It seems something that is necessary, but is not necessary to do it with this Ordinance and certainly on a time table that we have with the moratorium, there's no time to do it today."

Response

The Board of Supervisors specifically included in our contract a request for evaluation of a Scenic Highways Element, and we concur that it is an appropriate and necessary measure to preserve the outstanding views from Napa's main roadways. Because the drafting of this Element (and other mitigation measures recommended in the EIR) will require some time, we have proposed the Interim Measure which will allow only limited winery development until this Element can be properly developed and adopted.

Comment 549, page B-197 (FEIR)

"It's extremely important that we pass the Ordinance on time; we don't have interim measures."

Response

Comment noted; no response required (position statement).

Comment 550, page B-197 (FEIR)

Refer to response #540.

Comment 551, page B-197 (FEIR)

Refer to response #540.

Dan Jonas, Chairman of Planning Commission

Comment 552, page B-198 (FEIR)

Commenter states that the DWDO allows public events four times a year and acknowledges this is a significant effect. "It's more the mitigated DWDO that is restricting to a level of insignificance the public events than it is the Draft Ordinance itself."

Response

The EIR concludes that traffic, due in part to public promotional events, will not be reduced to a level of insignificance. The DWDO, however, will tend to increase impacts from promotional events; the mitigations tend to decrease impacts.

George Vierra

Comment 553, page B-198 (FEIR)

Commenter agrees with the mitigated DWDO alternative.

Response

Comment noted; no response required (position statement).

Comment 554, page B-199 (FEIR)

Commenter suggests that "over time all public tours and tastings on AP lands be eliminated."

Response

Public tours and tastings existing prior to the Use Permit process are not subject to discretionary action for elimination. Additionally, public tours and tastings allowed by a duly processed Use Permit cannot be terminated unless it was established for a particular term. It is possible, however unlikely, for the County of Napa to declare public tours and tastings a "public nuisance", and thereby abate all such uses. It is possible, however to prohibit expansion of public visitor serving facilities, and we have recommended that through the mitigation measure eliminating the "grandfather clause."

Comment 555, page B-199 (FEIR)

Commenter suggests that "tours and tastings on AP land by appointment be allowed, that limits for the wineries should be considered, possibly ten visitors per day or whatever would be considered to be correct."

Response

The DWDO could be modified to accomodate such a use. However, there is insufficient time to accurately project the intensity of the associated impacts.

Comment 556, page B-199 (FEIR)

Commenter suggests the County attempt to set up complexes in properly zoned areas, such as Vintners Village.

Response

A new Alternative has been included discussing this concept.

Comment 557, page B-199 (FEIR)

Commenter suggests "that you do not limit the size of vineyards for wineries. I do believe the small, family wineries should be allowed on small vineyard parcels, I don't believe the County should try to get involved in making economic arguments for opening or not opening wineries. Again a winery ferments, ages, bottles, and ships wines and nothing else."

Response

The discussion regarding the 10 acre parcel minimum for a winery being inconsistent with the General Plan does not arise so much from a concern for the economies of a winery, but for a general density requirement which is intended for Agricultural Preserve or Agricultural Watershed lands, not only for the parcel concerned, but for surrounding parcels as well.

Comment 558, page B-200 (FEIR)

"I hope that you maintain zoning that preserves what I feel is Napa County's most valued asset which is our land."

Response

Comment noted; no response required (position statement).

Barbara Winiarski

Comment 559, page B-201 (FEIR)

"We are impressed by the concern or the intent of the General Plan shown in this report as a whole."

Response

Comment noted; no response required (position statement).

Joseph Peatment

Comment 560, page B-201 (FEIR)

Commenter is concerned regarding finding the DWDO is inconsistent with the General Plan.

Response

See response to comment #212.

Gregory Rodeno

Comment 561, page B-203 (FEIR)

Commenter's opinion is that the statements and conclusions found in the EIR are based on information in the MEA, and therefore it is not possible to evaluate the EIR properly.

Response

Projections of results of the DWDO are based on information in the economic model found in MEA, "Part II" and "Part III", which is currently available. The remainder of the MEA relates only the general industry growth and not to impacts resulting from DWDO. The MEA has been redesignated as a Program EIR, and will function as a stand-alone document.

Comments 562, 563, 564, 565, pages B-203, B-204 (FEIR)

Commenter asks for explanation of traffic statistics which appear to conflict: page 52 and page 63. Also, commenter asks what makes up the non-winery traffic.

Response

Page 52: "Daily traffic volumes throughout Napa County will significantly increase between 1989 and 2010. Volumes along the

major routes in north Napa will increase by approximately 33,500 daily trip ends, 30% of which are attributed to wineries."

Page 63: "Of the total trip ends expected in northern Napa County in 2010, 9,900 trip ends or 8.2% are due to winery growth."

Both statements are correct. The first statement on page 52 informs us that 30% of the increase in traffic between now and 2010 is due to wineries. The second statement on page 63 informs us that in 2010 8.2% of total trip ends will be due to wineries. See Table 2 on page (FEIR) for further information.

Analysis on non-winery related traffic is beyond the scope of this report.

Jeffrey Redding

Comment 564, page B-204 (FEIR)

See response to comment #562.

Dan Jonas, Chairman of Planning Commission

Comment 565, page B-204 (FEIR)

See response to comment #562.

Anne Kirlin

Comment 566, page B-205 (FEIR)

Commenter states that environmental effects of small wineries are neutral or innocuous. She also states that reinstatement of small winery exemption process would not require further evaluation in the EIR.

Response

Regarding the first point, see response to comment #156. Regarding the second point, we disagree; reinstatement of the small winery exemption would change projection of results under the DWDO, and would be a significant change.

Norma Tofanelli

Comment 567, page B-206 (FEIR)

Commenter contends that public events at wineries are not limited to "marketing" of wines, but include senior proms, wedding receptions, class reunions, and other non-wine and non-agricultural events.

Response

The commenters point is valid, but compliance would be unrealistic as the list could become longer than the DWDO. A generic heading should be used that provides a reasonable definition. As an example, it would be difficult to consider a senior prom as agricultural.

Comment 568, page B-206 (FEIR)

Commenter quotes from the 1987-88 Grand Jury report from the General Government Committee on Land Use, indicating a growth in non-agricultural events on agriculturally zoned land, including illegal uses. "It goes on to suggest the Board of Supervisors and the Planning Commission, the Planning Department and County Counsel's office have not been consistent in upholding the General Plan and perhaps are in violation by allowing these uses and by attempting to make legal what is illegal." Commenter requests Grand Jury report become part of the FEIR.

Response

Grand Jury report is included as Appendix E. Remainder of comment requires no response (informational point).

Comment 569, page B-206 (FEIR)

Commenter states that marketing activities of wineries near her home on Dunaweal Lane have caused excessive noise and disturbance and suggests that marketing activities be confined to non-agricultural zones, for example in tasting centers.

Response

See discussion under Alternatives, page A-107.

Commenter 570, page B-207 (FEIR)

"Allowing the spread of commercial activities hurts the Valley and may perhaps kill the goose that's laying the golden egg. We should concentrate, ..., these activities in the areas that are zoned for them."

Response

See discussion under Alternative, page A-107.

Diana Mitchell, Planning Commissioner

Comment 571, page B-207 (FEIR)

Commenter suggests that it would be valuable to have consultant at the Planning Commission's public hearing.

Response

Comment noted; no response required (procedural point).

Lester Hardy

Comment 572, page B-208 (FEIR)

Commenter agrees that the DWDO is inconsistent with the General Plan and urges the Planning Commission to adopt on DWDO which would be consistent with the current General Plan.

Response

Comment noted; no response required (position statement).

Celin Ramsey

Comment 573, page B-209 (FEIR)

Commenter believe "that destruction of the small winery exemption would be a terrible mistake and the impact would be very severe on the families that operate small wineries."

Response

Comment noted; no response required (position statement).

Dan Jonas, Chairman of Planning Commission

Comment 574, page B-210 (FEIR)

Commenter questions whether elimination of the small winery exemption is an impact or not.

Response

See response to comment #566.

Claire Vandendressche

Comment 575, page B-211 (FEIR)

"We do not feel threatened in any way by the limitation of the small winery exemption."

Response

Comment noted; no response required (position statement).

Stewart Smith

Comment 576, page B-211 (FEIR)

Commenter argues to allow placement of small wineries on parcels less than 10 acres because they would have no adverse impacts.

Response

On the contrary, wineries, even small ones, do have adverse impacts. See response to comment #557.

Dan Jonas, Chairman of Planning Commission

Comment 577, page B-212 (FEIR)

Commenter discusses 10 acre minimum parcel size for wineries in relation to the General Plan, and suggests changing the General Plan rather than increasing minimum parcel size to 40 acres.

Response

See response to comment #212.

Francine Davis

Comment 578, page B-212 (FEIR)

Commenter commends staff and consultant team for preparing a thorough, objective, draft EIR. Commenter agrees with Lester Hardy [comment #572], Andrew Beckstoffer [comment #543], and supports the mitigated DWDO Alternative.

Response

See response to comments #572 and 543.

Comment 579, page B-213 (FEIR)

Commenter states that paragraph 3 on page 14 of the DEIR, that wineries under the small winery exemption are not permitted to operate visitor-serving facilities, is true, but many small wineries advertise for tours and tasting facilities.

Response

Abatement of illegal uses is a policy decision for the County of Napa. Rigorous enforcement would no doubt reduce some of the existing impacts.

Comment 580, page B-213 (FEIR)

"I don't believe elimination of this exemption would diminish the number of small wineries starting up in the Napa Valley. ... The Napa Valley is known for its small, high-quality wineries, and there's no reason to think that this will stop just because they're required to take out a permit."

Response

Comment noted; no response required (position statement).

Carol Poole, NAPAC

Comment 581, page B-214 (FEIR)

Commenter asks for more information on how conclusion was reached that DWDO is in conflict with the General Plan.

Response

See responses to comment.

Dan Jonas, Chairman of the Planning Commission

Comment 582, page B-214 (FEIR)

Commenter notes that different conflicts of the DWDO with the General Plan may be handled differently: the 10 acre minimum parcel size may require a General Plan amendment, whereas the extension of promotional uses may be modified or deleted.

Response

Comment noted; no response required (procedural point).

Margaret Woodbury

Comment 583, page B-215 (FEIR)

"There is not a density requirement for acres per winery or acres per house, or anything of that sort in the General Plan and we are at sea to figure how he reached the conclusion that he did because this County has a great many smaller than 40-acre legal parcels in the agriculturally zoned land. ... I understand the general approach that he may be trying to reach, but that's not a matter of consistency, that's a matter of future planning."

Response

Correct, the 40 acre parcel size is not listed as a "density." However, the General Plan does state on page 39 for the Agricultural Resource Area: "(d) Maximum Building Intensity. One dwelling per parcel (except as specified in Housing Element). Non-residential building intensity is non-applicable; but where practical, buildings will be located off prime soils." The General Plan does not state one non-residential building (i.e., winery) per parcel, as it does for residential; it instead refers non-residential buildings to lands outside the zone. This section supports a conservative interpretation of the General Plan which does not allow wineries within the agricultural zones at all. We have not chosen this interpretation because there are several references in the General plan to processing facilities within the agricultural lands.

See response to comment #212.

Comment 584, page B-215 (FEIR)

Commenter notes there are other policies in the General Plan besides the Agricultural policies which may be in conflict.

Response

A review of industry growth would possibly confirm the commenter's conclusion. Because the scope of the DWDO is submitted, the focus is on appropriate land use.

George Davis

Comment 585, page B-216 (FEIR)

"Small wineries have nothing to fear for coming for a use permit. Everyone benefits from a future in which all businesses are subject to the same environment-enhancing standards. In conclusion, I would like to go on record for public support of the Draft Ordinance with proposed mitigations."

Response

Comment noted; no response required (position statement).

Andrea Anderson

Comment 586, page B-216 (FEIR)

"On page 15 of the EIR, ... Napa County is not an appellation; Napa Valley is." Also, the agency regulating appellations is the Bureau of Alcohol, Tobacco, and Firearms, known as BATF, not BAT as written in the DEIR.

Response

Both changes have been made in text, page A-26 (FEIR).

Richard Steltzner

Comments 587, 588, pages B-216, B-217 (FEIR)

"I think you should look very carefully at any restriction which slows the ability to process fruit. ... The ability to truck grapes to the Gallo facility produces a very high quality wine but never can produce the quality of wine that on-site processing can. We are talking about the last five percent of quality which we are selling and on which our market is based."

Response

Comment noted; no response required (informational point).

Dan Jonas, Chairman of the Planning Commission

Comment 589, page B-218 (FEIR)

Commenter notes that on page 56 on the DEIR, the Napa Sanitation District is listed as having 50.4 million gallons a day capacity, when it has about 15 million gallon per day capacity.

Response

Commenter is correct. NSD capacity is 15.4 million gallons a day; text has been changed.

Comment 590, page B-218 (FEIR)

Commenter discusses the MEA mitigation measure to limit growth for wine-related activities in the County.

Response

This measure has been deleted and will be considered for inclusion in the Wine Industry Growth Program EIR.

Comment 591, page B-218 (FEIR)

Commenter points out that 75% rule applies only to new wineries and expansion of wineries beyond the Winery Development Area. The result of this is that an existing winery can apply their current production capacity, plus any new production capacity contained within 120% of their current building area, to out-of-County grapes.

Response

Our projections were based on this same understanding.

Diana Mitchell, Planning Commissioner

Comment 592, page B-219 (FEIR)

Commenter requests that erosion control be specifically addressed.

Response

According to the Impact Identification Matrix supplied by County staff, impacts of the DWDO on erosion/sedimentation were insignificant, and were therefore not treated in this document. This topic, however, is treated at length in the Wine Industry Growth Program EIR since vineyards, especially hillside vineyards, have a major impact on erosion/sedimentation.

Comment 593, page B-219 (FEIR)

Commenter requests explanation of the Special District Augmentation Fund for fire protection.

Response

Refer to response #112.

Margaret Woodbury, Deputy County Counsel

Comment 594, page B-219 (FEIR)

Commenter questions whether County can collect revenue as described in the revenue/cost comparison due to the limits placed on the County by Proposition 13.

Response

The commenter is questioning the validity of a mitigation measure that suggests that the Special District Augmentation Fund be used as a method to offset impacts upon fire protection districts. Two problems are pointed out: 1) The County's authority to allocate Special District Augmentation Funds, and 2) the impact of the Gann Limit on the County or fire districts.

With regard to the first item, the County does have discretion regarding the distribution of the Special District Augmentation Funds. Whether the amount in the fund will be sufficient to address

the individual fire agency's needs or the Board is willing to effect a redistribution are matters beyond the scope of the EIR. The mitigation measure is offered as one feasible way of addressing the potential impact. It is clear that other mitigation measures, such as imposition of development impact fees and special taxes will also be needed.

With regard to the Gann Limit, the problem exists with or without the proposed project or the baseline growth of wineries. Unless changes are made at the state level, the County will very likely have to increase its Gann Limit via voter approval at some point in the future.

Diana Mitchell, Planning Commissioner

Comment 595, page B-220 (FEIR)

Commenter suggests replacing "possible" with "probable" on page 2c of the DEIR in relation to the increase of visitors due to promotional events.

Response

Text amended as suggested.

Comment 596, page B-220 (FEIR)

Commenter questions meaning of "winery-related" articles. "I would like a specific definition of what the consultant has in mind, why he feels that a wine glass and a cork screw would be necessary to sell a bottle of wine ... he leaves out T-shirts completely.

Response

See response to comment #114.

X. REPORT PREPARATION

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XII. APPENDICES

APPENDIX A
NOTICE OF PREPARATION -
DWDO/PROGRAM EIR

NAPA COUNTY
CONSERVATION, DEVELOPMENT AND PLANNING DEPARTMENT
1195 THIRD STREET, ROOM 210
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(707) 253-4416

JUN 30 1989
LSA

NOTICE OF PREPARATION
OF A DRAFT
ENVIRONMENTAL IMPACT REPORT

Project Title: Wine Industry Growth Analysis Project

Date Issued: June 28, 1989

Approximate Comment Period: June 30 - July 31, 1989

This notice is prepared pursuant to Section 702 of the Napa County CEQA Guidelines.

PROJECT DESCRIPTION: Development of the wine industry in Napa County over the next twenty (20) years under 1) existing regulations and 2) the new "winery definition" ordinance. Adoption of this ordinance would, among other things, do the following:

- 1) define a) winery, b) accessory use, 3) public & private tours/tasting, d) public & private promotional activities, e) event, and f) winery development area;
- 2) bring all winery promotional activities under permit control;
- 3) expand the range of promotional activities permitted;
- 4) limit the number of large private and public promotional events allowed per year;
- 5) prohibit public tours/tasting, picnic areas, and the sale of wine-related items at all new wineries;
- 6) allow public tours/tasting, picnic areas, and the sale of wine related items at all existing wineries if applied for within 18 months of this ordinance's adoption;
- 7) eliminate the County's small winery use permit exemption program;
- 8) establish minimum parcel sizes for new and existing wineries;
- 9) establish maximum winery construction area parcel coverage limits;
- 10) establish new minimum roadway setbacks for new and existing wineries;
- 11) establish a maximum allowable accessory use/production facility square footage ratio;
- 12) establish a new winery production capacity limits based on parcel size for new and existing wineries; **AND**
- 13) establish that 75% of the grapes used at new or existing expanded wineries (expanded means outside the winery development area as defined in the proposed ordinance per section 12423 and relates only to the expanded capacity) shall be grown in Napa County.

PROJECT LOCATION: Winery development is chiefly limited to agriculturally (i.e. AW and AP) zoned lands within the unincorporated portions of Napa County (see attached Study Area Map). However, the impacts resulting from existing wineries as well as the adoption of the new definition ordinance are expected to substantially effect the remaining non-agriculturally-zoned lands in the County plus the County's 4 incorporated communities. Therefore the area to be evaluated (i.e., the Study Area) includes all 800 square miles of incorporated and unincorporated land in Napa County.

PROBABLE EFFECTS: The potential long-term effects of present and future growth of the wine industry on Napa County include the entire range of environmental impacts. However, as noted in the attached Draft Impact Identification Matrix, many of these impacts can be minimized or eliminated through the imposition of mitigation measures regularly being applied by the County today on a case by case basis to all new wineries. The most important remaining impacts include the following:

- 1) traffic congestion increases
- 2) erosion/sedimentation increases
- 3) surface and ground water pollution
- 4) climatic changes
- 5) run-off/flooding intensification
- 6) water supply depletion
- 7) wildlife habitat destruction
- 8) view degradation
- 9) health hazard creation (particularly from wastewater and pesticides)
- 10) traffic safety degradation & hazard creation
- 11) social services demand increases
- 12) secondary growth induction
- 13) air pollution increases

Please note that only 6 of the 13 impacts listed above (i.e. Items 1), 6), 8), 10), 12), & 13)) are connected with the construction of wine production/sales facilities. All of the remaining are primarily related to associated vineyard development.

Napa County will be the Lead Agency for the project identified above. The County has determined that a significant effect on the environment may result and that an Environmental Impact Report (EIR) should be prepared. We invite your comment on the effects this project may have on the environment and ways that you believe the project could be revised to reduce or avoid significant environmental impacts. Your ideas will help the County decide what issues to analyze in the EIR on this project. Please note that your agency may be required by law to use this EIR in the future when considering winery related permits or other approvals.

Wine Industry Growth Analysis Project

Due to the time limits mandated by state law please send your comments to the address listed below at the earliest possible date but not later than 30 days after receipt of this notice.

NAPA COUNTY CONSERVATION, DEVELOPMENT AND PLANNING DEPARTMENT
ATTN: JAMES H. HICKEY, SPECIAL PROJECTS CO-ORDINATOR
c/o WILLIAM L. SELLECK
1195 - THIRD STREET - ROOM 210
NAPA, CALIFORNIA 94559

Please include with your comments the name of the contact person in your agency for this project.

If further information is needed, contact either Project Coordinator James H. Hickey or Environmental Analyst William L. Selleck at (707) 253-4416.

WS:MEA

DRAFT II
IMPACT IDENTIFICATION MATRIX
Wine Industry Growth Master EIR

<u>IMPACT</u>	<u>ACTIVITY</u>					
	<u>Wine Production</u>		<u>Grape Growing</u>		<u>Wine Sales</u>	
	<u>Primary</u> ¹	<u>Secondary</u> ²	<u>Primary</u>	<u>Secondary</u>	<u>Primary</u>	<u>Secondary</u>
1. Geologic Hazard Exposure (Checklist Item 1)	M ³	M	-	M	M	M
2. Geologic Hazard Intensification/ Creation (Checklist Item 2)	M	M	S ^M	M	M	M
3. Unique Geologic/Geomorphic Feature Damage (Checklist Item 3)						
(remove/coverage)	M	M	S ^M	M	M	M
(sedimentation)	M	M	S ^M	M	M	M
4. Micro-Climate Modification (Checklist Item 4)						
(wind blockage)	S	-	-	-	M	-
(mositure level increases)	S	S	S(resvr)	S	-	S
(mositure level decreases)	-	-	S	-	-	-
(temperature increases)	S	P	S	P	M	

- 1 Primary impacts are those impacts resulting directly from construction/operation of the facilities necessary to carry out the activity involved.
- 2 Secondary impacts are those impacts resulting from the growth induced (i.e., construction/operation of dwellings for the people employed, service commercial facilities and/or service industrial operations)
- 3 Symbols used:
- M significant effect that can readily be completely mitigated with standard mitigation measures identified by the Planning Division.
- P significant effect that can readily be at least partially mitigated with standard mitigation measures identified by the Planning Division.
- S significant effect that may not be mitigable. Superscripts indicate effects that could be completely mitigated (m) or partially mitigated (p) if a regulatory mechanism existed to control the underlying activity involved or a special ordinance dealing with the problem identified was in place.
- C effect that is only significant from a cumulative standpoint. Subscript "m" indicates that this effect could be reduced to complete insignificance with standard mitigation measures. Superscript "m" indicates that the effect involved could be reduced to complete insignificance with standard mitigation measures if a regulatory mechanism existed to control the underlying activity involved or a special ordinance dealing with the problem identified was in place.

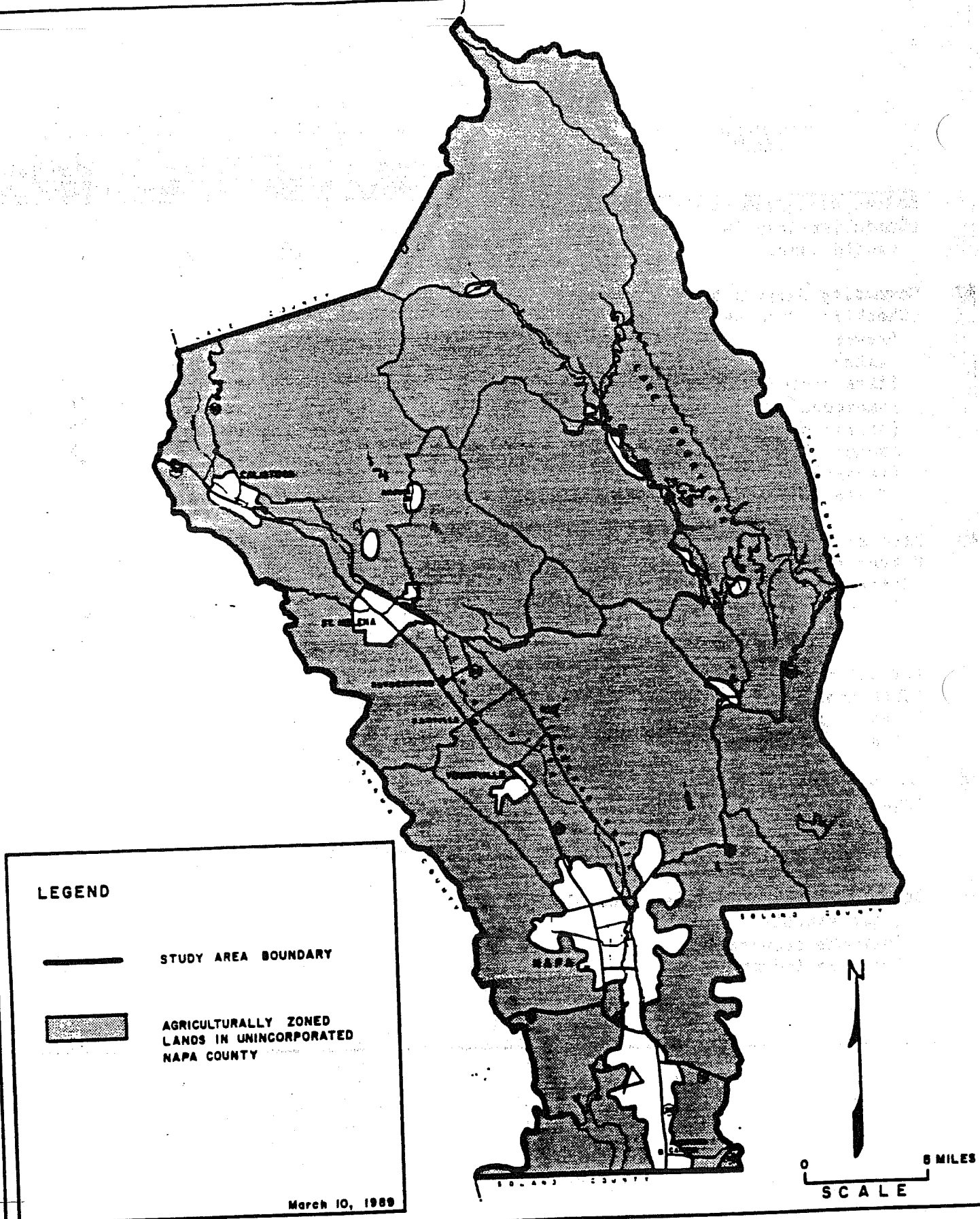
	<u>IMPACT</u>		<u>ACTIVITY</u>					
			<u>Wine Production</u>		<u>Grape Growing</u>		<u>Wine Sales</u>	
	Primary	Secondary ²	Primary	Secondary	Primary	Secondary	Primary	Secondary
5. Flooding Hazard Exposure (Checklist Item 5)	M	M	-	M	P(resvr)	M		
6. Stream Flow Regime Modification (use) (run-off increases)	P C _M	C ^M -	S ^P S ^P	C ^M -	P -	-	-	-
7. Flooding Hazard Intensification/ Creation (Checklist Item 6) (run-off increases) (sedimentation) (reservoir creation)	C _M M _M M	- - -	S ^P S ^P M	- - -	- M M	-	-	-
8. Erosion/Sedimentation Increases (Checklist Items 7 & 8) (construction) (operation)	M M	M -	S ^P S ^P	M -	M -	M	M	M
9. Groundwater Depletion/Recharge Interference (Checklist Item 9) (uses) (run-off increases) (sedimentation)	P C _M M	C ^M - -	S ^P S ^P S ^P	C ^M - -	P - -	-	C ^M -	-
10. Surface Water Pollution (Checklist Items 10 & 12) (waste products) (fertilizers/pesticides) (traffic pollutants) (construction sediment) (operational sediment)	M C _M S _M M M	- C ^M S M -	- S C _P S _P S _P	- C ^M S M -	M C _M S _M M -	-	- C ^M S M -	- C ^M S M -
11. Groundwater Pollution (Checklist Items 11 & 12) (waste products) (fertilizers/pesticides) (traffic pollutants)	M C _M S _M	- C ^M S	- S C	- C ^M S	M C _M S _M	-	- C ^M S	- C ^M S
12. Air Pollution Health Hazard Exposure (Checklist Item 13)	M	M	-	M	M	M	M	M
13. Air Pollution Creation (Checklist Items 14 & 15) (process) (buning) (traffic pollutants)	P - S	C - S	- S C	C - S	- - S	-	C - S	C - S

	IMPACT	ACTIVITY					
		Wine Production		Grape Growing		Wine Sales	
		Primary	Secondary	Primary	Secondary	Primary	Secondary
14.	Dust Production (Checklist Item 16) (construction dust) (operational dust)	M - M	M -	S ^M S ^P	M -	M M	M -
15.	Oder Production (Checklist Item 16) (process) (waste disposal)	P M	- -	S ^P S ^M	- -	- M	- -
16.	Noise Health Hazard Exposure (Checklist Item 17)	M	M	-	M	M	M
17.	Noise Pollution Creation/ Intensification (Checklist Items 18, 19 & 20) (construction) (process) (traffic)	P P S	P - S	S ^P - C	P - S	P P(fstvl's) S	P - S
18.	Rare/Endangered Animal/Plant Destruction (Checklist Item 21) (coverage)	M	M	S ^M	M	M	M
19.	Critical Habitat Damage (Checklist Item 22) (removal) (sedimentation) (stream flow reduction) (water pollution)	M M P S	S ^M M C ^M S	S ^P S ^P S ^P S	S ^M M C ^M S	M M P S	S ^M M C ^M S
20.	Other Habitat Destruction (Checklist Item 23) (removal/coverage)	C _M	-	S	-	-	-
21.	Plant/Animal Diversity Modification (Checklist Item 24) (removal/coverage)	C _M	-	S	-	-	-
22.	Fish/Wildlife Movement Interference (Checklist Item 25) (fencing) (sedimentation) (stream flow reduction) (water pollution)	- M P S	- M C _M S	S ^P S ^P S ^P S	- M C _M S	- M P S	- M C _M S
23.	Community Disruption (Checklist Item 26)	S	-	S	-	S	-

	IMPACT	ACTIVITY					
		Wine Production		Grape Growing		Wine Sales	
		Primary	Secondary	Primary	Secondary	Primary	Secondary
24.	Inhabitant Displacement (Checklist Item 27)	-	-	-	-	-	-
25.	Job Creation						
	(construction)	S	S	S	-	-	C
	(operation)	S	S	C	S	C	S
26.	View Modification						
	(Checklist Item 28)						
	(blockage)	P	P	-	P	P	P
	(degradation)	M	M	-	M	M	M
	(character modification)	S	S	S	S	S	S
27.	Night-Time Light Level Increases						
	(Checklist Item 29)	C ^P	C ^M	-	-	C ^P	-
28.	Glare Increases						
	(Checklist Item 29)	M	-	-	-	M	-
29.	Litter Increases						
	(Checklist Item 30)	-	-	-	-	M	-
30.	Archaeological Site Damage						
	(Checklist Item 31)						
	(removal/disruption/coverage)	M	S ^M	S ^M	S ^M	M	S ^M
31.	Historical Site Damage						
	(Checklist Item 32)						
	(removal/disruption)	M	-	-	-	M	-
32.	Recreation/Education/Etc						
	Use Elimination						
	(Checklist Item 33)						
	(direct destruction)	-	-	S ^P	-	-	-
	(sedimentation)	M	M	S ^P	M	M	M
33.	Traffic Safety Hazard Exposure						
	(Checklist Item 34)	M	M	S ^M	M	M	M
34.	Traffic Safety Hazard Creation/ Intensification						
	(Checklist Item 35)	P	S ^M	S ^P	S ^M	P	S ^M
35.	Traffic Congestion Increases						
	(Checklist Items 36 & 37)						
	(operation)	P	S	S ^P	S	-	C
	(employees)	P	-	S ^P	-	P	-
	(visitors)	-	-	-	-	P	-

IMPACT	ACTIVITY					
	Wine Production		Grape Growing		Wine Sales	
	Primary	Secondary	Primary	Secondary	Primary	Secondary
36. Parking Problem Creation (Checklist Item 38)	M	-	S ^M	-	M	-
37. Energy Use Increases (Checklist Item 39) (operation) (transportation)	P S	S S	- C	S C	C ^P S ^P	C C
38. Wasteful Energy Use (Checklist Item 40) (operation) (transportation)	M -	S ^M -	- -	S ^M -	M -	S -
39. Health Hazard Exposure (Checklist Item 42) (process waste) (domestic waste) (pesticides)	M M -	- ^M C ^M C ^M	- ^M S ^M S ^M	- ^M S ^M -	M M -	- ^M C ^M C ^M
40. Health Hazard Intensification/ Creation (Checklist Item 43) (direct) (surface water pollution) (groundwater pollution) (insects)	M S S M	C ^M S S -	S ^M S C ^M S ^M	S ^M S S -	M S S M	C ^M S S -
41. Fire Hazard Exposure (Checklist Item 44)	M	M	-	M	M	M
42. Fire Hazard Intensification (Checklist Item 45) (direct) (increased service demand)	- C ^M	- ^M C ^M	S ^M -	- -	- C ^M	- -
43. Air Crash Hazard Exposure (Checklist Item 46)	M	M	-	M	M	M
44. Air Hazard Intensification/ Creation (Checklist Item 47)	M	-	-	-	M	-
45. Insect Pest Problem Creation (Checklist Item 48) (ponds) (solid waste)	M M	- C ^M	- ^M S ^M	- C ^M	M M	- -

	IMPACT	ACTIVITY					
		Wine Production		Grape Growing		Wine Sales	
		Primary	Secondary	Primary	Secondary	Primary	Secondary
46. Rodent Pest Problem Creation (Checklist Item 48) (solid waste)		M	C _M	S ^M	C _M	M	-
47. Community Service Demand Increases- (Checklist Item 49)							
(sewer)		-	C _M	-	-	-	-
(water)		-	C _M	-	C _M	-	-
(fire protection)		C _M	C _M	-	-	C _M	-
(emergency medical aid)		-	C _M	-	-	C _M	-
(police protection)		-	C _M	-	C _M	C _M	-
(schools)		-	C _M	-	-	-	-
(garbage collection)		C _M	C _M	-	C _M	-	-
(social services)		C _M	-	-	S	-	-
48. Mineral/Building Material Extraction Interference/Perclulsion (Checklist Item 50)							
(coverage)		M	-	S	-	M	-
(use incompatibility)		S	-	S	-	S	-
49. Agricultural Land Loss (Checklist Item 51)							
(coverage)		C	-	-	-	-	-
(use incompatibility)		-	-	-	-	-	-
50. Net Public Cost Increases (Checklist Item 52)							
(administrative)		S	-	-	-	S	-
(service)		-	C _M	-	C _M	-	-
51. Growth Induced (Checklist Item 53)							
(residential)		C	-	-	-	-	-
(service commercial)		-	-	-	-	S	-
(service industrial)		S	-	S	-	-	-



SOURCE: Napa County

FIGURE 1: Study Area

APPENDIX B

IMPACT IDENTIFICATION MATRIX - DWDO ALONE

INITIAL IMPACT IDENTIFICATION MATRIX
Draft Winery Definition Ordinance Adoption

<u>IMPACT</u>	<u>Wine Production</u>	<u>ACTIVITY</u>	<u>Wine Sales</u>
1. Geologic Hazard Exposure (Checklist Item 1)	-		M ¹
2. Geologic Hazard Intensification/ Creation (Checklist Item 2)	-		-
3. Unique Geologic/Geomorphic Feature Damage (Checklist Item 3) (removal/coverage) (sedimentation)	- - -		- - -
4. Micro-Climate Modification (Checklist Item 4) (wind blockage) (moisture level increases) (moisture level decreases) (temperature increases)	- - - - -		- - - - -

¹ Symbols:

- M significant effect that can readily be completely mitigated with standard mitigation measures identified by the Planning Division.
- P significant effect that can readily be at least partially mitigated with standard mitigation measures identified by the Planning Division.
- S significant effect that may not be mitigable. Superscripts indicate effects that could be completely mitigated (m) or partially mitigated (p) if a regulatory mechanism existed to control the underlying activity involved or a special ordinance dealing with the problem identified was in place.
- C effect that is only significant from a cumulative standpoint. Subscript "m" indicates that this effect could be reduced to complete insignificance with standard mitigation measures. Superscript "m" indicates that the effect involved could be reduced to complete insignificance with standard mitigation measures if a regulatory mechanism existed to control the underlying activity involved or a special ordinance dealing with the problem identified was in place.
- B. beneficial effect. ~~Subscript "c" indicates that this effect is only significant from a cumulative standpoint.~~

	<u>IMPACT</u>	<u>ACTIVITY</u>	
		<u>Wine Production</u>	<u>Wine Sales</u>
5.	Flooding Hazard Exposure (Checklist Item 5)	-	-
6.	Stream Flow Regime Modification		
	(use)	-	-
	(run-off increases)	-	-
7.	Flooding Hazard Intensification/ Creation (Checklist Item 6)		
	(run-off increases)	-	-
	(sedimentation)	-	-
	(reservoir creation)	-	-
8.	Erosion/Sedimentation Increases (Checklist Items 7 & 8)		
	(construction)	-	-
	(operation)	-	-
9.	Groundwater Depletion/Recharge Interference (Checklist Item 9)		
	(uses)	-	-
	(run-off increases)	-	-
	(sedimentation)	-	-
10.	Surface Water Pollution (Checklist Items 10 & 12)		
	(waste products)	-	P
	(fertilizers/pesticides)	-	-
	(traffic pollutants)	-	S
	(construction sediment)	-	-
	(operational sediment)	-	-
11.	Groundwater Pollution (Checklist Items 11 & 12)		
	(waste products)	-	P
	(fertilizers/pesticides)	-	-
	(traffic pollutants)	-	S
12.	Air Pollution Health Hazard Exposure (Checklist Item 13)	-	-
13.	Air Pollution Creation (Checklist Items 14 & 15)		
	(process)	-	-
	(burning)	-	-
	(traffic pollutants)	-	S

IMPACT	Wine Production	ACTIVITY	Wine Sales
14. Dust Production (Checklist Item 16) (construction dust) (operational dust)	- -		- -
15. Odor Production (Checklist Item 16) (process) (waste disposal)	- -		- -
16. Noise Health Hazard Exposure (Checklist Item 17)	-		M
17. Noise Pollution Creation/ Intensification (Checklist Items 18, 19 & 20) (construction) (process) (traffic)	- - -		- - S
18. Rare/Endangered Animal/Plant Destruction (Checklist Item 21) (coverage)	-		-
19. Critical Habitat Damage (Checklist Item 22) (removal) (sedimentation) (stream flow reduction) (water pollution)	- - - -		- - - S
20. Other Habitat Destruction (Checklist Item 23) (removal/coverage)	-		-
21. Plant/Animal Diversity Modification (Checklist Item 24) (removal/coverage)	-		-
22. Fish/Wildlife Movement Interference (Checklist Item 25) (fencing) (sedimentation) (stream flow reduction) (water pollution)	- - - -		- - - S
23. Community Disruption (Checklist Item 26)	-		S

	<u>IMPACT</u>	<u>ACTIVITY</u>	
		<u>Wine Production</u>	<u>Wine Sales</u>
24.	Inhabitant Displacement (Checklist Item 27)	-	-
25.	Job Creation (construction)	-	-
	(operation)	-	B
26.	View Modification (Checklist Item 28)		
	(blockage)	-	-
	(degradation)	-	-
	(character modification)	-	-
27.	Night-Time Light Level Increases (Checklist Item 29)	-	P
28.	Glare Increases (Checklist Item 29)	-	M
29.	Litter Increases (Checklist Item 30)	-	-
30.	Archaeological Site Damage (Checklist Item 31)		-
	(removal/disruption/coverage)	-	-
31.	Historical Site Damage (Checklist Item 32)		
	(removal/disruption)	-	-
32.	Recreation/Education/Etc Use Elimination (Checklist Item 33)		
	(direct destruction)	-	-
	(sedimentation)	-	-
33.	Traffic Safety Hazard Exposure (Checklist Item 34)	-	S
34.	Traffic Safety Hazard Creation/ Intensification (Checklist Item 35)	B	S
35.	Traffic Congestion Increases (Checklist Items 36 & 37)		
	(operation)	B	S
	(employees)	-C	S
	(visitors)	-	S

IMPACT		ACTIVITY		Wine Sales
		Wine Production		
36.	Parking Problem Creation (Checklist Item 38)	-		
37.	Energy Use Increases (Checklist Item 39) (operation) (transportation)	- - -		
38.	Wasteful Energy Use (Checklist Item 40) (operation) (transportation)	- - -		
39.	Health Hazard Exposure (Checklist Item 42) (process waste) (domestic waste) (pesticides)	- - -		P
40.	Health Hazard Intensification/ Creation (Checklist Item 43) (direct) (surface water pollution) (groundwater pollution) (insects)	- - - -		S S
41.	Fire Hazard Exposure (Checklist Item 44)	-		M
42.	Fire Hazard Intensification (Checklist Item 45) (direct) (increased service demand)	- - -		M
43.	Air Crash Hazard Exposure (Checklist Item 46)	-		M
44.	Air Hazard Intensification/ Creation (Checklist Item 47)	-		M
45.	Insect Pest Problem Creation (Checklist Item 48) (ponds) (solid waste)	- - -		

	<u>IMPACT</u>	<u>ACTIVITY</u>	
		<u>Wine Production</u>	<u>Wine Sales</u>
46.	Rodent Pest Problem Creation (Checklist Item 48) (solid waste)	-	-
47.	Community Service Demand Increases (Checklist Item 49)		
	(sewer)	-	-
	(water)	-	-
	(fire protection)	-	-
	(emergency medical aid)	-	M
	(police protection)	-	-
	(schools)	-	-
	(garbage collection)	-	-
	(social services)	-	-
48.	Mineral/Building Material Extraction Interference/Perclulsion (Checklist Item 50)		
	(coverage)	-	-
	(use incompatibility)	B C	S
49.	Agricultural Land Loss (Checklist Item 51)		
	(coverage)	-	-
	(use incompatibility)	-	S
50.	Net Public Cost Increases (Checklist Item 52)		
	(administrative)	-	S
	(service)	-	B
51.	Growth Induced (Checklist Item 53)		
	(residential)	-	S
	(service commercial)	-	S
	(service industrial)	-	-

APPENDIX C
DRAFT WINERY DEFINITION ORDINANCE (DWDO)

DRAFT
"WINERY DEFINITION" ORDINANCE

ORDINANCE NO. _____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE
COUNTY OF NAPA, STATE OF CALIFORNIA, AMENDING
TITLE XII OF THE NAPA COUNTY CODE PERTAINING TO
WINERIES, ACCESSORY USES, ACCESSORY STRUCTURES,
AND REPEALING CHAPTERS 2 AND 3 OF ARTICLE 4 OF
TITLE XII RELATING TO THE AP-I AND AP-E ZONING
DISTRICTS.

The Board of Supervisors of the County of Napa ordains as follows:

SECTION 1. Findings of fact

- (a) Napa County now enjoys worldwide acclaim for the quality of the wine produced within the County.
- (b) The vineyards and wineries, together with their support services, constitute the largest segment of the County's economy.
- (c) The unique combination of geography, climate, micro-climates, and soils makes possible the production of excellent quality wine grapes.
- (d) The preservation of agricultural land requires a reliable market to justify the investment required to acquire, develop and maintain vineyards capable of producing high quality fruit.
- (e) Napa County is one of the smallest counties in California and within the County areas suitable for quality vineyards are limited and irreplaceable. Any project that directly or indirectly results in the removal of existing or potential vineyard land from use depletes the inventory of such land forever.
- (f) The cumulative effect of such projects is far greater than the sum of individual projects. The interspersing of non-agricultural structures and activities throughout agricultural areas in excess of what already exists will result in a significant increase in the problems and costs of maintaining vineyards and discourage the continued use of the land for agricultural purposes.

SECTION 2. Findings relating to recognizing existing wineries as legal uses.

It is recognized that wineries that were established in the past and conduct activities that were lawful when established should be recognized as legal uses because the Board recognizes they have become an integral part of the Napa Valley economy. One of the purposes of this ordinance is to recognize the legal existence of such wineries while at the same time prohibiting the approval of any additional wineries or the expansion of existing wineries into viable agricultural lands unless the winery is constructed or expanded for the purpose of processing grapes.

SECTION 3. Findings relating to increased parcel size.

The Board of Supervisors specifically finds that requiring new wineries to meet larger minimum lot sizes than have been required previously, while at the same time recognizing existing wineries on smaller parcels as legal uses, is not discriminatory because the existing wineries are limited in their right to expand. New wineries would have similar rights to expand. The basis for requiring new wineries to have larger minimum parcels is that the limited road system within the county and the physical and practical impossibility of substantially increasing that road system, with the resulting traffic problems and air pollution, the concern regarding the depletion of the underground water table and the pollution of that water table, make it necessary to limit the growth of wineries within the county.

SECTION 4. Statement of Legislative Intent

(a) The Findings of Fact establish that Napa County is unique in its dependence upon a single agricultural commodity and the associated support systems, activities, and business.

(b) It is the intent of this Board, as expressed in the current general plan, to protect agriculture and open space as the primary land use in Napa County. Therefore, the language of this ordinance is to be interpreted to achieve that goal. Commercial, industrial and residential uses shall be confined to appropriate areas as set forth in the Napa County General Plan. The conversion or use of agricultural land for non-agricultural purposes and the depletion of open space land shall be prohibited except to the extent expressly permitted by the Napa County General Plan and any ordinance adopted to implement the General Plan.

SECTION 5. Section 12047 of the Napa County Code is amended to read in full as follows:

Sec. 12047. "Winery."

"Winery" shall mean an agricultural processing facility used for:

- (1) The fermenting and processing grape juice into wine; or
- (2) The refermenting of still wine into sparkling wine.

SECTION 6. Section 12048 of the Napa County Code is repealed.

SECTION 7. New Sections 12067 through 12071 are hereby added to Title XII of the Napa County Code to read in full as follows:

Sec. 12067. "Accessory Use".

"Accessory Use" shall mean any use subordinate to the main use and customarily a part thereof. An accessory use must be clearly incidental, related and subordinate to the main use, reasonably compatible with the other principal uses in the zoning district and with the intent of the zoning district, and cannot change the character of the main use. Unless provided otherwise in this Title, accessory uses may be conducted in the primary structure or in structures other than the primary structure. Where the zoning regulations applicable to a zoning district specifically identify the accessory uses which are permitted in conjunction with a primary use in that zoning district, no other accessory uses will be permitted in that zoning district. Accessory structures relating to specific uses are further limited to the extent provided by Section 12421.

Sec. 12068. "Private Tours and Tastings".

"Private Tours and Tastings" shall mean tours of the winery and/or tastings of wine, where such tours and tasting are limited to members of the wine trade, persons invited by a winery who have pre-established business or personal relationships with the winery or its owners and persons who have made unsolicited prior appointments for tours or tastings. Any tour or tasting that is in fact open to the general public or advertised as such shall not constitute a private tour or tasting. Where a winery has a sign identifying the winery as such at any entrance to or from a public roadway, and where the winery further has no public tours or tastings authorized by use permit or established as a legal non-conforming use, any tour or tasting at the winery shall be unlawful and shall not be permitted unless the sign includes the words "Appointment required for Tours and Tastings" and the sign conforms to standards adopted by the Commission by resolution as to size, placement, materials, legibility and maintenance.

Sec. 12069. "Public Tours and Tastings".

"Public Tours and Tastings" shall mean an accessory use of a winery involving tours of the winery and/or tastings of wine that are open to the general public.

Sec. 12070. "Private Promotional Activities".

"Private Promotional Activities" shall mean any promotional activity of a winery in connection with the marketing of its wine which is limited to members of the wine trade, persons who have pre-established business or personal relationships with the winery or its owners, or members of a particular group for which the activity is being conducted on a pre-arranged basis. Any promotional activity that is in fact open to the general public or is advertised as open to the general public shall not constitute a private promotional activity. Private promotional activities include, but are not limited to, food service, seminars, and cultural and social events. Private promotional activities are categorized as follows:

- (a) "Private promotional activities (Small)" shall mean any private promotional activity not to exceed 200 persons where all of the persons participating can be accommodated by parking on the premises.
- (b) "Private promotional activities (Large)" shall mean any private promotional activity where the number of persons participating exceeds 200, and shall be subject to the provisions of Section 12202.5.

Sec. 12071. "Public Promotional Activities".

"Public Promotional Activities" shall mean promotional activities which are an accessory use of a winery conducted in connection with a winery's marketing of its wines that are open to the general public or activities conducted at a winery for charity or to benefit the community that are open to the general public. Public promotional activities are limited to food service, seminars, and cultural and social events.

Sec. 12072. "Event".

As used in Sections 12202.5(a) and 12232.5(a), "event" means an activity that takes place in twenty-four consecutive hours or less. As used in Sections 12202.5(b) and 12232.5(b), "event" means an activity, which will occur over a period of not more than three consecutive days.

SECTION 8. Section 12201 of the Napa County Code is hereby amended to read in full as follows:

Sec. 12201. Uses Allowed without Use Permit.

The following uses shall be allowed in all AP districts without use permits:

- (a) Agriculture.
- (b) One single family dwelling unit per legal lot.
- (c) Residential Care Facilities (Small).
- (d) Family Day Care Homes (Small).
- (e) Family Day Care Homes (Large), subject to Section 12413.
- (f) One guest cottage, provided that all of the conditions set forth in Section 12415 are met.

SECTION 9. Section 12202 of the Napa County Code is amended to read

in full as follows:

Sec. 12202. Uses Permitted Upon Grant of Use Permit.

The following uses may be permitted in all AP districts, but only upon grant of a use permit pursuant to Section 12800:

- (a) Farm labor housing.
- (b) Facilities, other than wineries, for the processing of agricultural products grown or raised on the same parcels or contiguous parcels under the same ownership.
- (c) Kennels and veterinary facilities.
- (d) Feed lots.
- (e) Non-Commercial Wind Energy and Conversion Systems.
- (f) Wineries, as defined in Section 12047.
- (g) The following uses in connection with a winery:
 - (1) Crushing of grapes outside or within a structure.
 - (2) On-site disposal of waste generated by the winery.
 - (3) Aging, processing and storage of wine in bulk.
 - (4) Bottling and storage of bottled wine; shipping and receiving of bulk and bottled wine, provided the wine bottled or received does not exceed the permitted production capacity.

- (5) Any or all of the following uses provided that, in the aggregate, such uses are clearly incidental, related and subordinate to the primary operation of the winery as a production facility:
- (A) Office and laboratory uses.
 - (B) Marketing of wine produced by the winery.
 - (C) Retail sale of (i) wine fermented or refermented and bottled at the winery, irrespective of the county of origin of the grapes from which the wine was made, providing nothing herein shall excuse the application of paragraphs (b) and (c) of Section 12419 regulating the source of grapes; (ii) wine produced by or for the winery from grapes grown in Napa County; and (iii) brandy, port, sherry or other wine or wine-based product with alcohol of 14% or more, that is produced by or for the winery, irrespective of the county of origin of the grapes from which the wine or wine-based product was made.
- (h) The following uses, when accessory to a winery:
- (1) Private Tours and Tastings, as defined in Section 12068.
 - (2) Private Promotional Activities (Small), as defined in Section 12070(a).
 - (3) Display, but not sale, of art.
 - (4) Display, but not sale, of items of historical, enological or viticultural significance to the wine industry.
- (i) The following uses when accessory to a winery that was established in conformance with all applicable County regulations prior to [effective date of this ordinance] provided that as to any winery not legally authorized to conduct such uses prior to [effective date of this ordinance] a use permit application shall have been on file on or before 18 months after [effective date of this ordinance].
- (1) Public Tours and Tastings.
 - (2) Public Promotional Activities.
 - (3) Picnic areas for winery guests.
 - (4) Display and sale of wine-related items bearing the winery's name or logo, or the Napa Valley appellation or the appellation of a district lying in whole or in part in Napa County.

SECTION 10. A new Section 12202.5 is added to the Napa County Code to read in full as follows:

Sec. 12202.5. Uses Permitted upon grant of Administrative Permit for Private or Public Promotional Activities.

Wineries may engage in the following uses if they are located within the AP Zoning District providing the winery first obtains an Administrative Permit pursuant to Section 12881 for Private Promotional Activities (Large) or any Public Promotional Activity so long as not more than four such events are approved for any winery in a calendar year:

- (a) Private Promotional Activities (Large.)
- (b) Public Promotional Activities not otherwise authorized by a use permit.

SECTION 11. Chapters 2 and 3 of Article 4 of Title XII of the Napa County Code are hereby repealed.

SECTION 12. Section 12231 of the Napa County Code is amended to read in full as follows:

Sec. 12231. Uses allowed without Use Permit.

The following uses shall be allowed in all AW districts without use permits:

- (a) Agriculture.
- (b) One single family dwelling unit per legal lot.
- (c) A second unit attached to an existing legal residential dwelling unit providing that all of the conditions set forth in Section 12412 are met.
- (d) Residential Care Facilities (Small).
- (e) Family Day Care Homes (Small).
- (f) Family Day Care Homes (Large), subject to Section 12413.
- (g) One guest cottage, provided that all of the conditions set forth in Section 12415 are met.

SECTION 13. Section 12232 of the Napa County Code is amended to read

in full as follows:

Sec. 12232. Uses Permitted Upon Grant of Use Permit.

The following uses may be permitted in all AW districts, but only upon grant of a use permit pursuant to Section 12800:

- (a) Outdoor parks and recreation facilities compatible with agriculture.
- (b) Farm labor housing.
- (c) Facilities, other than wineries, for the processing of agricultural products grown or raised on the same parcels or contiguous parcels under the same ownership.
- (d) Kennels and veterinary facilities.
- (e) Feed lots.
- (f) Sanitary land fill sites.
- (g) Non-Commercial Wind Energy and Conversion Systems.
- (h) Wineries, as defined in Section 12047.
- (i) The following uses in connection with a winery:
 - (1) Crushing of grapes outside or within a structure.
 - (2) On-site disposal of waste generated by the winery.
 - (3) Aging, processing and storage of wine in bulk.
 - (4) Bottling and storage of bottled wine; shipping and receiving of bulk and bottled wine, provided the wine bottled or received does not exceed the permitted production capacity.

(5) Any or all of the following uses provided that, in the aggregate, such uses are clearly incidental, related and subordinate to the primary operation of the winery as a production facility:

(A) Office and laboratory uses.

(B) Marketing of wine produced by the winery.

(C) Retail sale of (i) wine fermented or refermented and bottled at the winery, irrespective of the county of origin of the grapes from which the wine was made, providing nothing herein shall excuse the application of paragraphs (b) and (c) of Section 12419 regulating the source of grapes; (ii) wine produced by or for the winery from grapes grown in Napa County; and (iii) brandy, port, sherry or other wine or wine-based product with alcohol of 14% or more, that is produced by or for the winery, irrespective of the county of origin of the grapes from which the wine or wine-based product was made.

(j) The following uses, when accessory to a winery:

(1) Private Tours and Tastings, as defined in Section 12068.

(2) Private Promotional Activities (Small), as defined in Section 12070(a).

(3) Display, but not sale, of art.

(4) Display, but not sale, of items of historical, enological or viticultural significance to the wine industry.

(k) The following uses when accessory to a winery that was established in conformance with all applicable County regulations prior to [effective date of this ordinance] provided that as to any winery not legally authorized to conduct such uses prior to [effective date of this ordinance] a use permit application shall have been on file on or before 18 months after [effective date of this ordinance].

(1) Public Tours and Tastings.

(2) Public Promotional Activities.

(3) Picnic areas for winery guests.

(4) Display and sale of wine-related items bearing the winery's name or logo, or the Napa Valley appellation or the appellation of a district lying in whole or in part in Napa County.

SECTION 14. A new Section 12232.5 is added to the Napa County Code to read in full as follows:

Sec. 12232.5. Uses Permitted upon grant of Administrative Permit for Private or Public Promotional Activities.

Wineries may engage in the following uses if they are located within the AW Zoning District providing the winery first obtains an Administrative Permit pursuant to Section 12881 for Private Promotional Activities (Large) or any Public Promotional Activity so long as not more than four such events are approved for any winery in a calendar year:

- (a) Private Promotional Activities (Large.)
- (b) Public Promotional Activities not otherwise authorized by a use permit.

SECTION 15. A new Section 12423 is added to the Napa County Code to read in full as follows:

Sec. 12423. Winery Development Area.

(a) The winery development area of a winery shall be contiguous to and shall not exceed 120% of the winery area calculated according to subparagraph (b) herein.

(b) The winery area shall be the aggregate paved or impervious ground surface areas of the production facility, storage areas (except caves), offices, laboratories, kitchens, tasting rooms, paved areas, and access roads to public roads.

(c) Unless the winery area for a winery existing as of [effective date of ordinance] exceeds 25% of the area of the single parcel upon which the winery is located, the winery development area shall not exceed twenty-five percent of the area of the single parcel upon which the winery is located. In no event shall the winery development area exceed fifteen acres.

(d) Construction of additional facilities beyond the existing winery development area may be permitted only if required by the Director of Environmental Management to correct emergency health and safety conditions not related to expansion of production.

SECTION 16. A new Article 9.5 is added to Title XII of the Napa County Code to read in full as follows:

Article 9.5

ADMINISTRATIVE PERMITS

Sec. 12881. Administrative Permit for Public or Private Promotional Activities (Large)

Sec. 12881. Administrative Permit for Public or Private Promotional Activities (Large).

(a) A winery that wishes to conduct public promotional activities or private promotional activities (Large) shall obtain an Administrative Permit from the Director of the Department for each such activity.

(b) Each application for an Administrative Permit shall contain the following information:

- (1) The name, address, and telephone number of the applicant.
- (2) The nature, duration and date of the proposed activity, and the hours the activity is to be conducted.
- (3) An estimate of the maximum number of persons expected to attend or participate in the activity.
- (4) If off-site parking area(s) are proposed or required, a description of the provisions made for traffic control at such areas by trained personnel and for shuttle service, if any, from the off-site parking area(s) to the winery if not within walking distance.
- (5) A description of any anticipated adverse impact on neighboring property owners and the measures that will be taken to minimize such impact.

- (6) Applicant must furnish the names and addresses of property owners within three hundred feet of the subject parcel.
- (7) Any other information requested by the Director as he deems necessary to regulate the permit.

(c) Except as provided in subparagraph (d), when the Director has determined that an application is complete, he may issue an Administrative Permit for the proposed activity, subject to the following conditions:

- (1) Temporary directional signs shall be located on the site and shall be removed by 5:00 p.m. the day following the event.
- (2) Adequate restroom facilities shall be provided.
- (3) Adequate on-site refuse disposal facilities shall be provided.
- (4) Adequate traffic control by trained personnel shall be provided.
- (5) The California Highway Patrol shall be notified not less than thirty days prior to the event.
- (6) The California Department of Forestry shall be notified not less than thirty days prior to the event.
- (7) Use of any off-site parking area(s) located on a state highway shall be approved in writing by the State Department of Transportation not less than thirty days prior to the event.
- (8) If adequate parking is not available on-site, off-site parking area(s) sufficient to handle the projected number of vehicles shall be provided.
- (9) Any other reasonable conditions specified in the Administrative Permit which the Director determines are necessary to minimize any adverse impact of the proposed activity on the neighboring property owners or the general public.

(d) The Director shall deny issuance of the Administrative Permit if he determines that the number of private promotional activities (Large) or public promotional activities regardless of size that have already been conducted during the same calendar year on the parcel or on a contiguous parcel under the same ownership equals four.

(e) The denial of an Administrative Permit or the imposition of any conditions of approval imposed by the Director pursuant to subparagraph (c) may be appealed by the applicant to the Board of Supervisors in the same manner as a use permit.

(f) Upon issuance of the administrative permit the Director shall notify all property owners, at the addresses furnished, of the permit issuance and the right to appeal.

SECTION 17. A new section 12418 is added to the Napa County Code to read in full as follows:

Sec. 12418. Wineries Located In Open Space Areas - Minimum Parcel Size

Wineries are permitted to be located or operated on parcels zoned AP or AW only if the single parcel on which it is located meets the following minimum parcel size:

- (1) Wineries that were established in conformance with all applicable county regulations prior to [the effective date of this ordinance]—1 acres.
- (2) Wineries that were established after [the effective date of this ordinance]—10 acres.

SECTION 18. A new section 12419 is added to the Napa County Code to read in full as follows:

Sec. 12419. Wineries Located In Open Space Areas - Production Capacity.

(a) Wineries located or operated on parcels zoned AP or AW are subject to the following maximum annual production capacities:

- (1) Wineries that were established subsequent to 1974 without the requirement that a use permit be issued, and in conformance with all applicable county regulations prior to [the effective date of this ordinance]—the production limit established as a part of the issuance of the winery's certificate of exemption (commonly known as "small wineries," the rules and regulations relating thereto having been adopted by the Board by Resolution No. 80-21) or 20,000 gallons per year, whichever is less. Any expansion shall be prohibited unless the expansion meets the maximum production limitations set forth in subparagraph (c)(3).

- (2) Wineries that were established prior to 1974 without the requirement that a use permit be issued because a use permit was not required, and which have not subsequently been issued a use permit specifying maximum annual production capacity — the production existing as of _____ 1, 1974. Any additional expansion outside of the winery development area shall be prohibited unless the expansion meets the maximum production limitations set forth in the grape source limitations of subparagraph (c) of this section.
- (3) Wineries or a single parcel which do not qualify under subparagraph (a)(1) or (a)(2), but were established only after the issuance of a use permit, and in conformance with all applicable county regulations prior to [the effective date of this ordinance]—the production capacity authorized by the appropriate use permit. Any additional expansion outside of the winery development area shall be prohibited unless the expansion meets the maximum production limitations set forth in subparagraph (c)(3).
- (4) Wineries that were established after [the effective date of this ordinance]:
- (A) Wineries located on a single parcel of less than forty, but ten or more acres in size—Two thousand four hundred gallons per acre of the parcel. Acreage shall be calculated as the area of the legal parcel on which the winery is to be located, less the winery area referred to in §12423(b) and waste water ponds.
 - (B) Wineries located on a single parcel forty acres or larger—maximum production capacity shall be as established by the applicable use permit.
- (b) All wineries first established subsequent to [the effective date of this ordinance]: at least seventy-five percent of the grapes used to make the winery's still wine, or the still wine used by the winery to make sparkling wine, shall be grown within the County of Napa.
- (c) All existing wineries which expand beyond their winery development area as it existed on the [effective date of this ordinance]:
- (1) At least seventy-five percent of the grapes used to make that portion of the winery's still wine which is produced as a result of the expansion shall be grown within the County of Napa.

- (2) At least seventy-five percent of the grapes used to make the still wine used to make the sparkling wine that is produced as a result of the expansion shall be grown within the County of Napa.
- (3) If the winery is located on a single parcel of land that is less than forty acres in size, the maximum annual production capacity shall be the greater of (aa) the amount authorized by the existing use permit, or (bb) the product obtained by multiplying the area of the parcel, excluding the winery area referred to in §12423(b) and waste water ponds of the winery, by 2400 gallons of wine per acre.

SECTION 19. A new section 12420 is added to the Napa County Code to read in full as follows:

Sec. 12420. Wineries Located In Open Space Areas - Setbacks.

(a) The minimum setback for wineries shall be one hundred fifty feet as measured from the centerline of the public right-of-way for a twenty-five-foot high structure. To the extent the structure exceeds twenty-five feet in height, the setback shall be increased at the rate of two feet of additional setback for each additional foot of building height.

(b) An existing winery (as of the effective date of this ordinance) may expand within the minimum setback providing no new structure shall be placed closer to the centerline of the public right-of-way than the existing structure.

SECTION 20. A new section 12421 is added to the Napa County Code to read in full as follows:

Sec. 12421. Accessory Structures related to Wineries in AP/AW.

The maximum square footage of structures used for accessory uses that are related to a winery shall not exceed forty percent of the area of the production facility. "Production Facility" for the purpose of this section means crushing, fermenting, bottling, bulk and bottle storage, shipping, receiving, laboratory equipment storage and maintenance facilities but shall not include wastewater ponds.

SECTION 21. A new section 12422 is added to the Napa County Code to read in full as follows:

Sec. 12422. Single Parcel

"Single Parcel" shall mean a single legal parcel. Parcels designated by the Napa County Assessor may or may not be a single legal parcel.

SECTION 22. This ordinance shall take effect thirty days after its passage.

SECTION 23. A summary of this ordinance shall be published at least once five days prior to adoption and at least once before the expiration of fifteen days after its passage in the _____, a newspaper of general circulation, printed and published in the County of Napa, together with the names of the members voting for and against the same.

The foregoing ordinance was introduced and read at a regular meeting of the Board of Supervisors of the County of Napa, State of California, held on the _____ day of _____, 1989, and passed at a regular meeting of

the Board of Supervisors of the County of Napa, State of California, held on
the _____ day of _____, 1989, by the following vote:

AYES: SUPERVISORS _____

NOES: SUPERVISORS _____

ABSENT: SUPERVISORS _____

BOB WHITE, Chairman
Board of Supervisors

ATTEST:

AGNES DEL ZOMPO,
Clerk of the Board

APPENDIX D
SITE/DEVELOPMENT-SPECIFIC MITIGATION MEASURES

SITE/DEVELOPMENT-SPECIFIC MITIGATION MEASURES

1. Odors

- a. Install mechanical aeration systems in all new and expanded wastewater ponds and all existing wastewater ponds to which additional amounts of wastewater are discharged, except that proposed multi-cell installation ponds which do not need mechanical aeration shall have this verified through analysis.
- b. Remove wastewater pond residue approximately once every 10 years to avoid odor problems. There shall be no stockpiling once removed.
- c. Provide an adequate buffer between any occupied dwelling not located on the winery property and any new wastewater ponds installed. Where possible a separation of a half a mile should be provided. The minimum acceptable separation is one-quarter mile whenever feasible.
- d. Prohibit stockpiling of pomace and other waste materials on-site within 500 feet of any occupied dwelling not located on the winery property. If field application of waste materials is utilized and the disposal area is within 500 feet of any occupied off-site residence, said material shall be mixed into the soil within 2 days of application. Stockpiling of waste materials shall be kept at a minimum in any case.

2. Construction Dust

- a. Implement for all winery development/expansion projects where any grading or construction work will take place within 500 feet of an occupied dwelling a dust control plan that will limit the amount of dust produced to the minimum possible. Such a plan shall also be implemented when sections of unpaved road or accessway that lie within 500 feet of an occupied residence are used. In this latter case the plan need only cover the roadway section(s) involved. The dust control plan employed shall be acceptable to and approved by the Napa County Conservation Development and Planning Department prior to the commence of any work on-site. At a minimum it shall include the following provisions:
 - 1) designation of a on-site compliance officer responsible for fugitive dust control and mitigation measure implementation;
 - 2) scheduling of all construction activities so that congestion on access roadways will be minimized;

- 3) immediate removal of any mud, dirt or construction materials that are carried onto any paved surface, either public or private;
- 4) pre-watering of the site before grading begins;
- 5) continuous watering of the site while construction is underway (all exposed soil areas shall be maintained in a moistened condition when wind speeds exceed 15 mph);
- 6) application of a dust palliative after soil compaction and thereafter watering the area involved at least twice a day;
- 7) paving of all access roads, sidewalks and parking areas and pouring of all foundations as early in the construction process as possible; AND
- 8) planting of landscaping and revegetation of the site as soon as possible after construction is complete.

3. Operation Dust

- a. Surface all driveways providing access to all new/expanded wineries, all travelways around said wineries, all loading/unloading areas, outdoor work areas, and parking areas with pavement or sealed rolled rock.

4. Construction Noise

- a. Require that prior to the initiation of any work on-site an on-site compliance officer be designated who is responsibly for noise control and mitigation measure implementation. The person designated shall be indicated on the plans submitted.
- b. Limit outdoor noise-producing construction activities within 1,300 ft of any off-site residence to weekdays between 7:00 AM and 5:00 PM except upon a showing of extreme unforeseeable hardship. In that case outdoor noise-producing work may be permitted between 7:00 AM and 3:30 PM within 1,300 feet of an off-site residence on no more than three(3) Saturdays. Said Saturday work shall not commence until approval have been received from the Napa County Conservation Development and Planning Department.
- c. Require use of construction techniques, staging plans, and equipment designed to produce a minimum amount of noise.
- d. Require that all construction equipment be properly and adequately muffled at all times.

- e. Require that all noisy stationary construction equipment be placed as distant as possible from nearby residences. Where said distance is less than 1,300 ft, effective acoustical shields shall be provided.

5. Operation Noise

- a. Maintain existing residential densities in those areas designated as "Agricultural Resource" and "Agricultural Watershed" in the Napa County General Plan.
- b. Limit outdoor noise producing wine production activities including loading/unloading operations at all new/expanded wineries within 4500 ft(direct view)/2200 ft(shielded view) of any pre-existing off-site residence to weekdays and Saturdays between 7:30 AM and 5:30 PM except while the crush is underway. During this period, outdoor noise producing activities associated with wine production may take place as late as 10:00 at night and start as early as 6:00 in the morning. Sunday work is also permitted during this period.
- c. Locate access driveways to all new/expanded wineries at least 750 feet from any pre-existing residence. Where attainment of such a separation is impossible, truck/gondola traffic shall be limited to between 7:30 in the morning and 5:30 at night; OR noise walls/berms and/or vegetative screens of sufficient height, length, and density to reduce peak outdoor noise levels from traffic on the driveway at the nearest point on any residence to under 62 dBA shall be installed prior to commencement of wine-making operations on-site or the next crush, whichever comes first. The design of any noise wall/barrier or vegetative screen proposed shall be evaluated by a qualified acoustical engineer and a report of his findings submitted to the Napa County Conservation Development and Planning Department for review and approval at least thirty(30) days prior to the start of wall/berm/vegetative screen installation.
- d. Locate/design any new/modified crush areas henceforth proposed in such a manner as to limit the projected peak outdoor noise levels at any pre-existing residence from work there to under 62 dBA. When said crush area lies closer than 750 ft(direct view)/300 ft(shielded view) from any pre-existing residence, the location/design of said facility shall be evaluated by a qualified acoustical engineer and a report of his findings submitted to the Napa County Conservation Development and Planning Department for review and approval at least thirty(30) days prior to submission of any building plans.

- e. Place all compressors, pumps, and other noisy equipment at all new/expanded wineries located within 2200 ft(direct view)/500 ft(shielded view) of any pre-existing residence inside a well-insulated machinery room or install effective acoustic barriers around said equipment.

6. Surface Water Quality Degradation

- a. Limit all winery-related ground disturbing activities within 100 feet of the top of the bank of any stream or drainageway to the dry season(ie, April 15 to October 1).
- b. Prohibit all work within the channel of any stream or waterway prior to May 15th and require that all work within the channel including temporary sediment control measure removal and channel restoration be completed by October 15th of the year in which the work was started.
- c. Install temporary diversion dams, settlement pools, or other measures prior to the start of any work within the channel of any stream or waterway. At least ten(10) working days prior to installation of these facilities, approval of their design shall be obtained from the State Dept of Fish & Game. Immediately following completion of the work involved, all sediment caught will be removed from the channel and spread on the ground at least 100 feet from the top of the bank of any waterway. Immediately thereafter all temporary sediment control measures shall be removed from the channel and the channel shall be returned to its pre-construction state.
- d. Reseed with rye or equivalent grass acceptable to the Napa County Resource Conservation District prior to October 15 of each construction year all areas disturbed by project construction that year.
- e. Install those improvements needed to keep any concentrated run-off discharged from eroding the banks and bed of the drainageway involved. Their design shall be acceptable to and approved by both the Napa County Public Works Department and the Napa County Resource Conservation District. Said improvements shall be inspected each year before the first winter rains and properly maintained.
- f. Require that all runoff from parking areas, outdoor storage and work areas, and driveways be discharged to detention basins for removal of oils, heavy metals and other pollutants. After pollutant removal, this water plus any water from the roofs shall be used to augment water supplies for landscape irrigation.

7. Light

- a. Install shields on all new lights standards put in or old light standards replaced to direct the illumination produced downward and away from all nearby public roads, residences, and the path used by aircraft landing or taking off from any air or heliport located within 10,000 ft of the facility involved. Shields installation shall be completed prior to building occupancy or within 120 days of use permit approval, whichever comes latter.

8. Fire Hazards

- a. Install a water supply system acceptable to and approved by the Napa County Fire Chief. Said system, which must be operational prior to building occupancy or within 120 days of use permit approval, whichever occurs latter, shall provide adequate fire flows at 20 psi dynamic to serve at least one streamer fire hydrant (additional hydrants and larger flows may be required in the case of larger facilities). Included shall be facilities to store exclusively for fire protection the amount of water that the fire flow calculations indicate is necessary.
- b. Install at least one(1) steamer fire hydrant capable of supplying 200 gpm prior to building occupancy or within 120 days of use permit approval, whichever occurs latter (additional hydrants with greater flows may be required in the case of larger facilities). The location of said hydrant(s) shall be acceptable to and approved by the Napa County Fire Chief.
- c. Install monitored smoke detector systems acceptable to and approved by the Napa County Fire Chief prior to building occupancy or within 120 days of use permit approval, whichever occurs latter. In processing areas, monitored heat detectors may be substituted for the smoke detectors required.
- d. Install a lock box system(s) acceptable to and approved by the Napa County Fire Chief at an acceptable location(s) at the new or expanded winery prior to building occupancy or within 120 days of use permit approval, whichever occurs latter. A copy of the required business plan shall be placed therein.
- e. Provide a copy of a business plan meeting Napa County Environmental Management Department guidelines to the Napa County Fire Chief prior to building occupancy or within 120 days of use permit approval, whichever occurs latter.

- f. Require that the driveway installed be at least 20 feet wide along its entire length and that it be completed prior to commencement of wine making operations on-site or 120 days of use permit approval, whichever comes latter. A lesser width roadway may be permitted where peak traffic volumes are less than 20 vehicles per day or visitor and service vehicle traffic are separated. In no case, however, shall the width of the driveway(s) involved be less than 10 feet.
- g. Require that the first 300 feet of driveway off the pubic or common private roadway involved be paved.
- h. Require that the driveway to all new/expanded wineries have a year-round, all-weather surface and be capable of supporting heavy fire-engines and other emergency equipment. Said driveway, which shall extend from the new/expanded winery to the nearest public road, shall at a minimum meet the Napa County Fire Chief's standards for access roads to residential building sites with respect to paved width, grade, curve radius, clearance, etc. Its design must be acceptable to and approved by the Fire Chief. Completion of this driveway shall occur prior to building occupancy or within 120 days of use permit approval, whichever occurs latter.
- i. Provide fire truck access that is acceptable to and approved by the Napa County Fire Chief to at least 3 sides of all new structures and 2 sides of all existing structures.
- j. Prohibit the parking of vehicles along roadways off-site. "No Parking" signs shall be installed where necessary and maintained.
- k. Prohibit the parking of vehicles along the driveway to all new/expanded wineries unless the roadway has been widened to provide on-street parking. Appropriate signs shall be installed and maintained.

9. Insects

- a. see Mitigation Measure 1(e) above
- b. Construct a 10-foot wide graded year-round access road acceptable to the Napa County Mosquito Abatement District(hereafter referred to as the District) to all new and expanded wastewater ponds, decorative ponds, and irrigation/frost protection reservoirs installed.
- c. Provide to the District a key to each lock, or a place for a District lock, on each gate along the required access road.

- d. Require all new levees, cross levees, dikes and dams to have a minimum crest width of 12 feet. Said crest shall be kept clear of all obstructions (ie, pipes, pumps, electrical boxes, fuel tanks, etc).
- e. Provide a 12-foot wide unobstructed accessway for vehicles along the entirety of the shoreline of each pond and reservoir.
- f. Place any fences installed around the ponds and reservoirs constructed a minimum of 1-foot outside the outer edge of the required accessway.
- g. Require the property owner and his successors-in-interest to furnish soil sterilant annually for application by the District.

APPENDIX E
GRAND JURY REPORT

GENERAL GOVERNMENT COMMITTEE

LAND USE

BACKGROUND:

Napa County has been characterized as a unique and fragile geophysical environment possessing special conditions of soil, water and climate favoring the raising and production of quality agricultural crops and produce. "Napa County's 513,000 acres of land and water consist mostly of mountain ridges and narrow valleys stretching across the County on a northerly-southerly axis."* Scarcely one third is level enough for conventional development. For these reasons "Napa County still retains much of its rural character and agricultural productivity."

In 1954-55, Napa County adopted the Napa County General Plan. The establishment of the Napa Valley Agricultural Preserve in 1968 was a bold and visionary step toward permanent preservation of Napa Valley soil for agricultural use. At a time when agricultural land in the seven-county Bay Area was being displaced at the rate of 24,000 acres per year, the Ag

*Unless otherwise noted, all quotes are from the Napa County General Plan.

Preserve placed 25,000 acres of valley floor agricultural land under protective agricultural zoning. The Ag Preserve served to halt urban sprawl, and created the promise that valley soil would forever serve agricultural purposes and preserve the rural character and quality of Valley life. In 1973-75 the land use, conservation and open space elements of the General Plan were adopted, and they were revised in 1982-83.

As required by State laws, the General Plan defines and delineates the management of Napa County's physical resources. The plan is "in a sense a constitution for the county's future," ... "a program for the protection and development of the unincorporated area of Napa County" . . . "a guide which enables citizens to anticipate the County's reaction to individual development programs or projects." And "While the plan is flexible it is nevertheless legally binding; development proposals such as land subdivisions and use permits must, by State law, be considered in the light of its contents." Subordinate ordinances and regulations must conform to and support the General Plan.

The essence of the General Plan is to: "ensure the long term protection and integrity of those areas identified in the General Plan as agricultural, open-space and undevelopable . . . (as well as to) stimulate the development of those areas in the General Plan for residential, commercial, and industrial (uses)." In short, the intent of the Plan is to: "PRESERVE AGRICULTURE, and CONCENTRATE URBAN USES IN EXISTING URBAN AREAS."

In its intent to preserve agriculture, the General Plan is explicit, repetitive, and direct regarding the distinction and separation between agricultural and urban functions and use.

Webster's Dictionary defines agriculture as "the science and art of farming; tillage; the cultivation of the ground for the purpose of producing vegetables, and fruits; the art of preparing the soil, saving and planting seeds, caring for the plants and harvesting the crops. In a broad sense the word includes gardening, or horticulture, and also the raising of livestock."

The Napa County General Plan defines that: "AGRICULTURE WILL BE CONSIDERED THE PRODUCTION OF FOOD AND FIBER, THE GROWING OF CROPS, PRODUCE AND FEED AND THE RAISING OF LIVESTOCK AND ANIMALS."

The Plan defines Urbanizing to include "the subdivision, use or development of any parcel of land that is not needed for the agricultural use of that parcel," for "THE IMPACTS OF URBANIZATION ARE FOR ALL PRACTICAL PURPOSES IRREVERSIBLE. PRODUCTIVE FARMLAND AND URBANIZATION ARE NOT COMPATIBLE."

FINDING:

In recent years there has been an increase in the number of commercial, promotional, cultural, and entertainment activities occurring in wineries and other facilities located on agriculturally zoned land outside of city limits. These activities include concerts, cooking classes, art shows, benefits, and non-agricultural meetings and seminars. These activities are urban uses and by definition are not needed for the "production of food and fiber, the growing of crops, produce and feed and the raising of livestock and animals."

The increase in these urban activities underscores the growth of wineries and other facilities as cultural and community centers, and raises

questions as to their urbanizing influence when they are located outside of cities and towns or industrial parks. The movement of people from populated urban areas to less populated rural areas opposes the major intent of the Plan and creates problems of traffic, sanitation, and other services, and requires solutions associated with the urban environment.

The occurrence of these activities is a threat to the permanent preservation of agricultural soil and are illegal as defined by the current Napa County General Plan.

The Board of Supervisors, Planning Commission, Conservation, Development and Planning Department, and the County Counsel's Office have not consistently coordinated their efforts to prevent the occurrence of activities on Ag zoned land which violate the General Plan.

The Board of Supervisors, Planning Commission, Conservation, Development and Planning Department, and County Counsel's Office are legally bound to uphold and enforce conformance with the General Plan.

RECOMMENDATION:

In order to protect, in fact, its unique and fragile agricultural soil and watershed resource, the Napa County Board of Supervisors, the Napa County Planning Commission, the Conservation, Development and Planning Department, and the Napa County Counsel's Office must:

1. Support and enforce the intent, content and specific goals of the General Plan.
2. Confine urban uses to urban areas.
3. Direct an examination of existing ordinances and use permit procedures.

4. Repeal or amend ordinances which do not conform to and support the General Plan.

5. Cooperate to ensure inter-department review of land use recommendations prior to Board of Supervisors' approval.

FINDING:

The Webster's Dictionary definition of a winery is "a place where wine is made."

The current process of redefining a winery is the third time in the 1980's that the issue of "what is a winery" has been raised. By General Plan definition, wineries are an industrial use. They are allowed on agriculturally zoned land as agricultural processing facilities. The current Napa County zoning ordinance definition of a winery states:

"Winery"

"Winery" means a building or portion thereof used for the crushing of grapes, the fermenting and processing of grape juice, or the aging, processing and storage of wines. It may include on-site disposal of winery waste generated on the site, bottling of wine, the warehousing and shipping of wine, plus related office and laboratory activities as accessory uses. Retail and wholesale activities conducted within the winery shall be limited to wines produced on the site or wines produced by the winery at other locations. Sec. 12047. (Ord. 629, 3-11-80)

The proliferation of non-conforming and accessory uses, and the participation of the Board of Supervisors, the Planning Commission, and the Conservation and Planning Department in the current further redefinition of a winery appears to accede to the very commercial and urbanizing pressures the County General Plan has committed to avoid and keep separate from agriculturally zoned land.

The danger is that each redefinition allows a new level of commer-

cial, cultural, or promotional activity occurring on Agricultural Preserve or Agricultural Watershed land which in turn establishes precedent and legal foundation for expanding future non-agricultural uses.

The allowance of an industrial use on agricultural land has created urbanizing influences not confined to urban areas. The containment of urban uses in urban areas depends upon strict government enforcement as well as private industry cooperation and willingness to support the General Plan.

Failure to enforce the General Plan can only lead to the erosion and ultimate demise of the Ag Preserve because the uniqueness and international reputation of the Napa Valley will continue to invite development and activities conducive to further blurring of the agricultural/industrial and urban separations.

RECOMMENDATION:

In order for Napa County to maintain an Agricultural Preserve, the continuing process of redefining a winery based upon non-conforming accessory uses should cease.

Further, the Board of Supervisors, Planning Commission, and the Conservation, Development and Planning Department should consider the placement of future primary and secondary industrial and commercial uses in the County's industrial or commercial zoned developments.

FINDING:

"The General Plan is a policy document for the entire community and it may only be amended in the public interest." "The Plan should only be amended when the ...County, with the support of a broad consensus, determines a change is necessary." (State of California General Plan Guidelines, 1987, p. 63)

RECOMMENDATION:

In the absence of the demonstration of such a broad consensus for a change in the General Plan, the County should not accommodate continuing requests for non-conforming uses on agriculturally zoned land.

1987-88 GRAND JURY
GENERAL GOVERNMENT COMMITTEE

Jack Jensen DDS William Blanchfield
Jack Jensen, DDS, Chairman William Blanchfield

David C. Dunlap Hope Lugo
David Dunlap Hope Lugo

Elissa Miller Barbara M. Pacey
Elissa Miller Barbara M. Pacey

Angela Pieper Ron Rhyno
Angela Pieper Ron Rhyno

GENERAL GOVERNMENT

LAND USE

MINORITY REPORT

BACKGROUND

This minority report is made to augment the committee's report on land use. It is offered as an alternative which should be considered because of the age of the General Plan's Land Use Element and the controversy surrounding it.

FINDING:

The Land Use Element of the General Plan has not been changed substantially since 1972. Applications for amendments to the General Plan occurring more than twice a year indicate basic changes are needed in its content. Sixteen such amendments are pending at this time in Napa County. This vacillation by the County creates uncertainty for applicants and can be very costly.

"The State Office of Planning and Research in its General Plan guidelines (1987 edition) and most communities in California recommend a five year review process. The intent of the Napa County General Plan is to limit major reviews to every 10 years. In today's rapidly changing

society, this will likely lead to numerous requests for individual amendments which may prove difficult to handle on a piecemeal basis."

(p. 114 Zucker Report July 1987)

RECOMMENDATION:

Rather than continuing the practice of numerous amendments which the County has allowed and cognizant of the fact that many inconsistencies in the General Plan and Zoning Ordinance exist, the Committee minority report strongly recommends that the County undertake a comprehensive revision of the General Plan. This process should begin immediately and a full time consultant should be hired to expedite the review. Public meetings in all areas of the County would give citizens the opportunity to voice their opinions as to present values, attitudes and goals. After the required public hearings at the Commission and the Board levels a new General Plan would be adopted by majority resolution. This would be the "constitution" that would govern the County for the next five to ten years.

FINDING:

"There are inconsistencies between the General Plan and Zoning Ordinances both of which are in need of updating." (p. 22 Zucker Report July 1987)

RECOMMENDATION:

If Napa County chooses to continue allowing urban uses on agriculture lands then changes need to be made in the General Plan so that all similar applications are treated equally.

If Napa County determines to uphold the General Plan as adopted in 1973-75 and revised in 1982-83 then commercial (urban related) activities should, henceforth, be denied. Ordinances which do not conform to the General Plan should be repealed or amended.

Angela Pieper
Angela Pieper

APPENDIX F

MEMO FROM COUNTY COUNSEL REGARDING DWDO

INTER-OFFICE MEMO



TO: Board of Supervisors
FROM: Robert Westmeyer, County Counsel
RE: What is a Winery Ordinance -- General Plan Amendments
DATE: Nov. 13, 1989 OUR FILE NO. 180.031

The current definition of a winery provides in part that existing wineries are given eighteen months to establish by use permit certain uses to be denied to all new wineries. The uses consist of public tours and tastings, public promotional activities, picnic areas for winery guests, and the display and sale of wine-related items bearing the winery's name, logo or Napa Valley appellations (hereafter "eighteen-month uses"). The Board has requested that this office provide it with an analysis as to whether or not this approach is lawful. You will find attached a memorandum to the Board of Supervisors from Margaret Woodbury regarding this subject (see pages 2 and 3 of the memo). The conclusion of the memo is that such a procedure is not lawful because it violates that portion of the federal constitution which requires that all parties be treated equally under the law.

It is possible for the Board to allow all wineries to engage in the "eighteen-month uses" through the use permit process since this does not treat new and old wineries differently. Alternatively, the Board could permit no one to apply for such "eighteen-month uses". If the Board permits no one to apply for "eighteen-month uses", no additional General Plan language is needed. If, on the other hand, the Board wishes to allow both existing and new wineries to apply for the "eighteen-month uses", additional General Plan language will be required to enable a finding of General Plan consistency to be made.

You will also note that it is the recommendation of this office that Sections 12202(g)(5)(iii) and 12232(g)(5)(iii) also be deleted since they will adversely affect the ability of the County to defend the seventy-five percent rule.

The draft EIR contains some language that might be interpreted as meaning that the EIR consultant believes that tours and tastings are not consistent with the existing General Plan. If that is the case, I do not agree with the consultant's conclusion and believe that current language exists in the General Plan that authorizes

tours and tastings as well as the rest of the activities identified in the What is a Winery ordinance. However, the General Plan language admittedly is somewhat general in nature and therefore subject to varying interpretations. Therefore, revising the General Plan language to clarify those ambiguities is desirable since public hearings need to be held on the ordinance anyway. I have asked the Planning Director to provide the Board with possible changes to the text of the Land Use Element of the Napa County General Plan which, in his view, will clarify that all of the activities that will be permitted in the Definition of a Winery ordinance are also permitted by the General Plan (excepting the "eighteen-month uses" described above).

The remaining issue involving Mr. Peatman's request that has not been withdrawn relates to small wineries. The Board may wish to consider whether it wishes to amend the What is a Winery ordinance to continue to allow small wineries as permitted uses. If this is the Board's direction, it is recommended that the Board direct the Planning Department to review existing small winery standards and to prepare any necessary revisions (such as minimum lot size, separation between wineries, etc.) to ensure that future small wineries are consistent with the intent of the Winery Definition. Note that the proposed language within the ordinance limits wineries to ten-acre parcels, using 75% Napa County grapes. If it does not do so, more likely than not all small wineries will become legal nonconforming uses upon adoption of the ordinance.

RW:plg
S:1240

INTER-OFFICE MEMO



DATE: October 16, 1989

TO: Board of Supervisors
FROM: Margaret L. Woodbury, Chief Deputy County Counsel
RE: Proposed Winery Definition Ordinance -- Legal Issues

Based upon a review of the proposed winery definition ordinance and research into the legal issues raised by its provisions, it is my opinion that the following portions of the proposed ordinance are most likely to stimulate legal challenge based upon federal or state constitutional or statutory issues. In this memorandum, the relevant text of each provision of concern is summarized, followed by a brief summation of the legal problems, and an assessment of the likelihood of successful legal challenge. Legal problems arising from environmental concerns are not addressed.

1. Unrestricted Retail Sales of Wine-Based Products of 14% or Greater Alcohol Content: §§12202(g)(5)(iii) and 12232(g)(5)(iii)

Summary of Provisions. These two subparagraphs (iii) would allow in the AP and AW zoning districts with a use permit the retail sale of brandy, port, sherry or other wine or wine-based product with an alcohol content of 14% or more produced by or for the winery irrespective of the place where the product is manufactured or the county of origin of the grapes from which the wine or wine-based product was made. By contrast, subparagraphs (i) and (ii) of these same provisions permit retail sales of wine with a use permit in these two zones only if the products soled are fermented, refermented or bottled at the winery or, if produced by or for the winery elsewhere, are made from grapes grown in Napa County.

Summary of Legal Issues.

- a. U.S. Constitution, Article XIV, clause 2 ("No state shall...deny to any person within its jurisdiction the equal protection of the laws")
- b. Calif. Constitution, Article 1, §7(a) ("A person may not be...denied equal protection of the laws...")
- c. Calif. Constitution, Article 1, §7(b) ("A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens...")

Assessment of Likelihood of Successful Legal Challenge. The likelihood of successful legal challenge on all or a combination of the above grounds is high. Although the proposed regulation is merely an "economic" regulation as opposed to one affecting "fundamental rights", it can still withstand legal challenge on any of the above constitutional grounds only if it bears some rational relationship to a conceivable and legitimate state purpose [*Hibernia Bank v. State Board of Equalization*, (1st District, 1985) 166 Cal.App.3d 393]; 62 Ops.Cal.Atty.Gen. 180 (1979)]. Since the County has adequate commercially-

zoned acreage where generic or non-locale specific winegrape products can be sold successfully, the sole justification for permitting retail sales of wine under (i) or (ii) on agriculturally-zoned land is the demonstrable marketing tie-in between premium wine products and the site, either specific or by appellation, of production of the source material. With the fall of generic wine prices in recent years and the continuing high price of County agricultural land it is becoming increasingly the case that premium winegrape production provides one of the few remaining economically-viable agricultural uses of the County's agriculturally-zoned land. This marketing advantage thus promotes continued use of agricultural lands within the County for agricultural purposes. Such promotion is legitimate since the preservation of agricultural land is a declared interest of the State of California (Williamson Act, Government Code §51220). However, this tie-in does not exist where the product is neither made locally nor utilizes local agricultural products, so there does not appear to be any rational relationship between (iii) and any legitimate state purpose.

2. Allowing Existing Wineries 18 Months to Establish by Use Permit Certain Uses to be Denied Immediately to all New Wineries: §§ 12202(i), 12232(k)

Summary of Provisions. These two provisions grandfather-in public tours, public promotional activities, winery guest picnic areas, and display and sale of wine-related items with the winery or appellation logo in AP and AW zoning districts if engaged in by existing wineries who established those uses either before the uses were prohibited or by obtaining authorization pursuant to use permit during a time when permitted by local ordinances. By doing so these provisions recognize the legal nonconforming status of these prior uses (although not calling it by that name) and confer upon that status protection from the usual "phase-out" rules of the County's present regulations pertaining to legal non-conforming uses. Granting such protection from involuntary loss of legal status is probably within the leeway which the courts permit local agencies when dealing with regulation of legal nonconforming uses.

The problem is with the second half of the first sentence of both provisions. This would give all existing wineries which have not heretofore legally engaged in these uses 18 months to request and be granted use permits for these uses, even though identical new wineries would not be entitled to request authorization for such uses. Since these uses would not exist at the time of adoption of the winery definition ordinance, they would never qualify as legal nonconforming uses.

Summary of Legal Issues.

- a. See (a), (b), and (c), in (1), above.
- b. Government Code section 65852 (all zoning regulations "shall be uniform for each class or kind of building or use of land throughout each zone...)
- c. 15 USCA §2 (Sherman Anti-Trust Act): (It is a felony to

"monopolize, or attempt to monopolize or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States or with foreign nations...")

Assessment of Likelihood of Successful Legal Challenge. The likelihood of successful legal challenge on the basis of the constitutional grounds set forth in (a), above, to this difference in the treatment of existing wineries who have not presently established on a legal basis any of these public accessory uses and new wineries which will not be permitted to engage in these uses is extremely high. While the courts grant counties and cities wide leeway as to existing uses due to constitutional constraints because immediate abolition of all or part of a viable non-nuisance businesses may give rise to claims of inverse condemnation under the federal and state constitutions, no such differential protection can be granted to uses established illegally or not yet established at all.

In addition, this provision may well be successfully challenged under (b), above, since state law does not permit local agencies to adopt discriminatory rules for the same types of future uses (wineries) on essentially similar properties within the same zoning districts.

While this provision certainly would promote monopolization of these public use activities by existing wineries as opposed to new wineries, successful challenge under §2 of the Sherman Anti-Trust Act is unlikely unless the County adopts this provision with statements such as "this is what the industry wants, we should not change what the industry wants, this is to protect existing businesses and discourage new businesses, etc.". This is because §2 requires a conspiracy between the regulating county and the regulated (and benefitted) industry which then results in monopolization of economic activities. Mere unilateral adoption by a governmental entity of a regulation which has monopolistic results within the regulated industry will not give rise to a §2 violation (Fisher v. Berkeley, 475 U.S. 260 (1986)).

3. Restricting Winery Production Capacity Expansions to Projects Utilizing at least 75% Napa County-Grown Grapes: §§12419; 12423

Summary of Provisions. While the application of these two provisions to the various types of wineries is rather complicated, the basic idea (§12419) is that whenever an existing winery expands beyond its presently authorized or legally-established capacity or beyond its present "winery development area", the expansion capacity must obtain no less than 75% of its winegrape source material from grapes grown within Napa County. The winery development area is defined as 120% of the presently-developed area of an existing winery or 15 acres, whichever is greater (§12423).

Summary of Legal Issues.

- a. (a), (b), and (c) of (1), above.
- b. (b) and (c) of (2), above.
- c. U.S. Constitution, Article 1, §8 ("The Congress shall Power...to

regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes"--and, by implication, the states cannot do so unless expressly permitted by the Congress)

- d. U.S. Constitution, Article I, §10 ("No State shall...pass any... Law impairing the obligation of Contracts")
- e. U.S. Constitution, Article 4, §2 ("The Citizens of each State shall be entitled to the Privileges and Immunities of Citizens in the several States.")
- f. 15 USCA §1 (Sherman Anti-Trust Act) ("Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations is declared to be illegal...")

Assessment of Likelihood of Successful Legal Challenge. Despite the long list of issues raised by this proposal, it is actually the most likely of the three areas to withstand legal challenge, particularly if "winery development area" is limited to existing developed areas, eliminating the 20% unrestricted expansion area for existing wineries. Without this modification of §12423, the state law against non-uniform regulations within a given zone might support on its own a successful challenge to this provision.

The reason for this optimism is that there appears at least in concept to be a rational relationship between the 75% rule and the promotion of the preservation of Napa County agricultural land. This is because of such land is primarily used for premium winegrape production and that type of product is highly dependent both for actual quality and consumer acceptance upon its identification with the geographically-unique production areas of its source material. This rational relationship may be sufficient to overcome the equal protection arguments and, combined with the rather minimal effect on interstate commerce (there is by nature of the product very little interstate importation of grapes for this premium market), may overcome the privileges and immunities arguments since the latter comes into play only when local regulations will have a profound effect on interstate harmony [72 Ops. Cal. Atty. Gen. 86 (1989)].

This minimal effect and the inherent geographic identification of the County's premium product may also overcome arguments based upon the Commerce Clause, especially since the federal and state governments have already recognized the special area-specific nature of these products through their various appellation regulations. A good discussion of this is contained in a legal opinion in the possession of our office which was prepared by the legal firm of Townsend & Townsend.

Section 1 of the Sherman Anti-Trust Act applies to local agencies only if the activities regulated are not ones in which the relevant State has expressed an interest in state or local control (Community Communications Company v. City of Boulder 455 U.S.40 (1982) and the many subsequent cases which expanded on the state action concept). However, in this instance, the proposed rule promotes in a rational way the preservation of agricultural

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lands, a purpose which the Legislature of the State of California has declared to be of paramount importance in the preface to the Williamson Act and the state planning agency has found to be of such importance in the CEQA Guidelines, that it has listed (Appendix G, §y) impairment of agricultural lands as a significant adverse environmental impact which must be considered whenever a local agency is considering approval of a discretionary permit. For this reason, challenge to this provision based solely on §2 is unlikely to be successful.

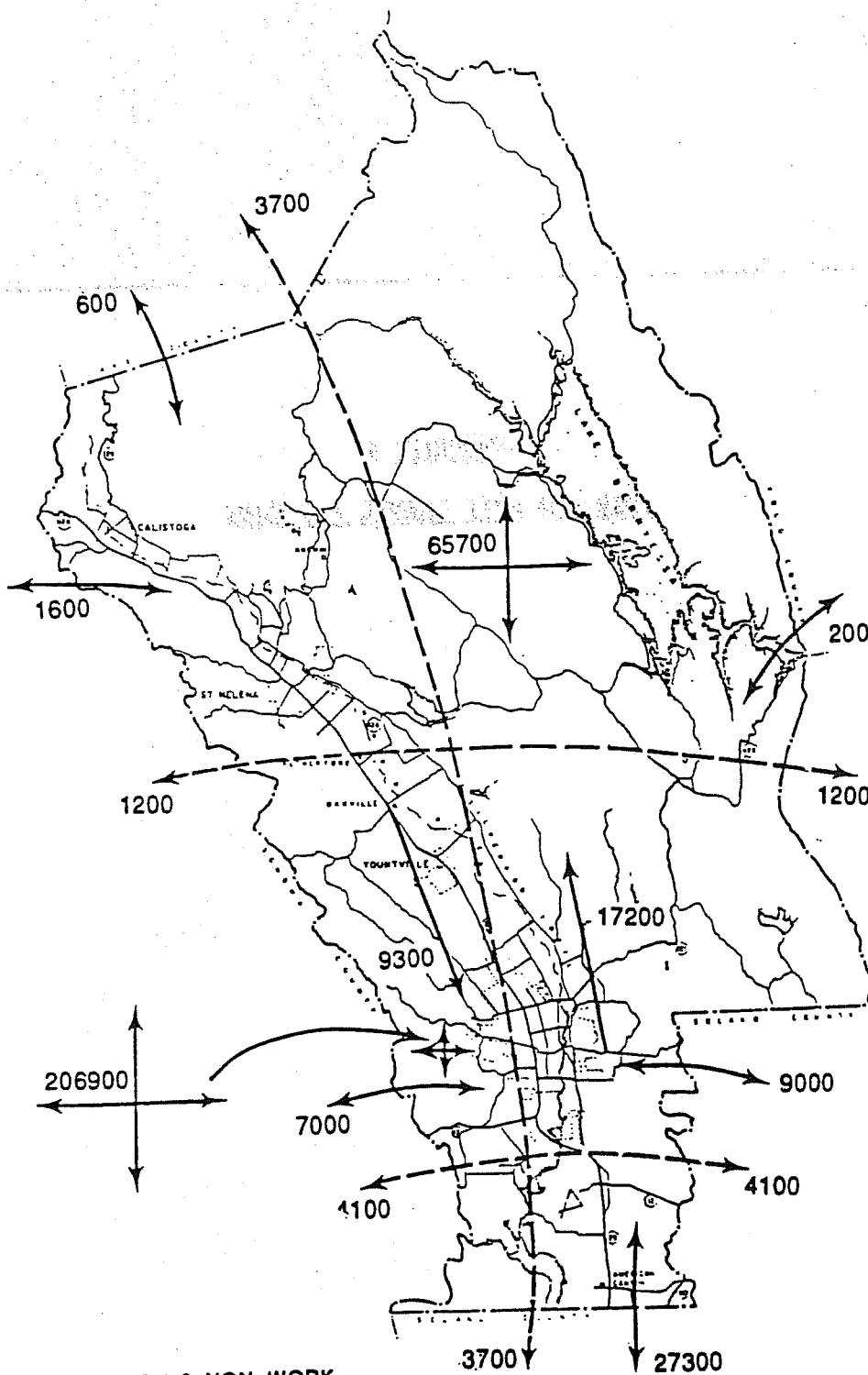
As discussed above, because this provision may have some mildly monopolistic effects in favor of existing wineries, §2 of the Sherman Anti-Trust Act may be a problem, but only if the 20% expansion area is not deleted and that action is explained with the sort of statements indicative of county-industry collusion described in (2), above. Without this provision, the rule would apply evenly to all owners within the zone except those grandfathered-in as to existing legal capacity for independent constitutional reasons (to avoid inverse condemnation) and it is unlikely that anyone could, under these circumstances, show either a significant monopolistic effect or intent to create such an effect on either a local or interstate basis.

Finally, the constitutional prohibition against the local adoption of laws or regulations which impair existing contracts should not by itself support a successful legal challenge. While it is common in the industry for wineries to enter into long-term contracts with growers for grapes, it is unlikely that a court would feel particularly sympathetic towards persons who entered into purely speculative contracts to buy grapes in future years for production capacity for which they had not obtained discretionary approval at the time of execution of the contracts. Since the proposed ordinance grandfathers-in all legally-authorized or legally-established capacity, the 75% rule would not impair any long-term contracts supplying only that capacity.

Margaret L. Wulley

APPENDIX G

1989 AND 2010 TRAVEL PATTERNS



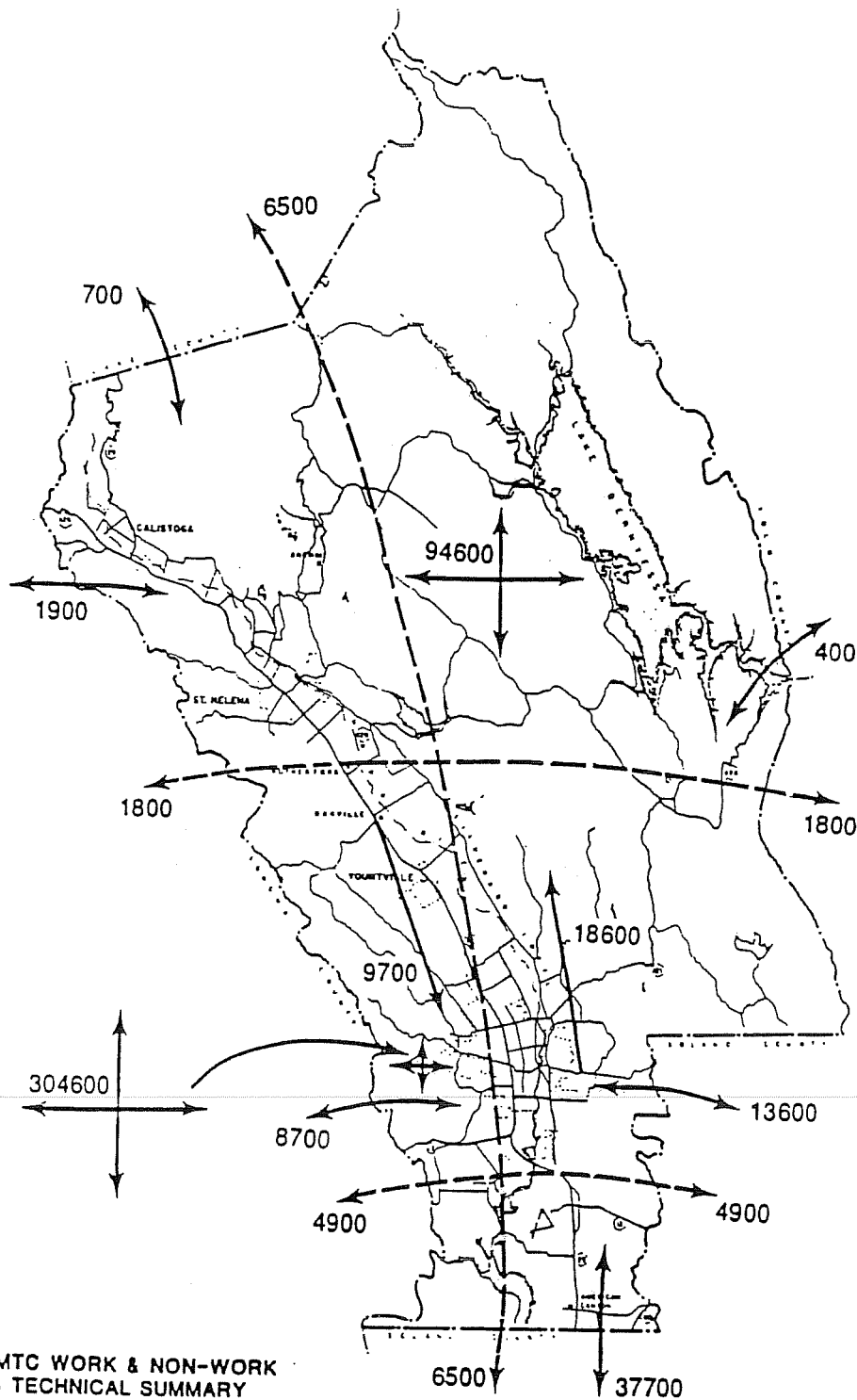
Source: LSA, MTC WORK & NON-WORK

FIGURE 19

SCALE IN MILES



1989 TRAVEL PATTERN



Source: LSA, MTC WORK & NON-WORK TRIPS TECHNICAL SUMMARY

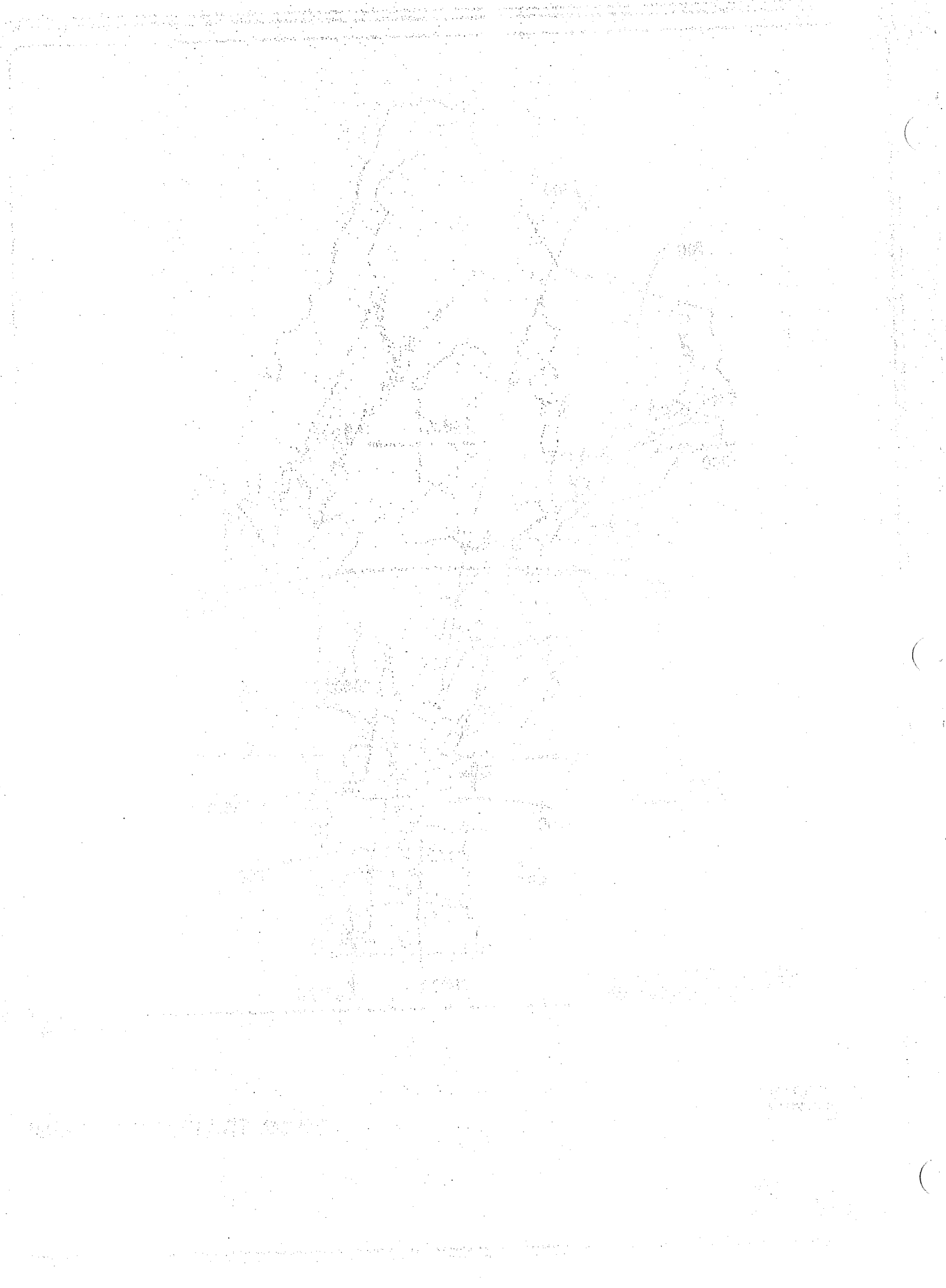
FIGURE 20

SCALE IN MILES



2010 TRAVEL PATTERN





APPENDIX H
FEDERAL REGULATIONS REGARDING "TAKE" OF ENDANGERED SPECIES

"TAKE" OF ENDANGERED SPECIES

Section 9 of the Endangered Species Act of 1973, as amended (Act), prohibits the "take" of a federally listed endangered species by any person. As defined in the Act, take means ". . .to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." "Harm" is further defined as an act that actually kills or injures an endangered species. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or shelter (50 CFR § 17.3). The term person is defined to mean "an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government; any State, municipality, or political subdivision of a State, or any entity subject to the jurisdiction of the United States." Section 10 of the Act prohibits the "incidental take" (defined as taking that is incidental to, but not the primary purpose of, an otherwise lawful activity) of a listed species without a permit.

If a Federal agency is involved with the permitting, funding, or carrying out of this project, then initiation of formal consultation between that agency and this office pursuant to Section 7 of the Act would be required. Such consultation would result in a biological opinion rendered by the Service that addresses anticipated effects of the project to listed and proposed species and could authorize a limited level of incidental take.

If a Federal agency is not involved with the project, and federally listed species may be taken as part of the project, then an "incidental take" permit pursuant to Section 10(a) of the Act should be obtained. The issuance of a Section 10(a) permit by the Service is contingent upon development by the applicant of a satisfactory conservation plan for the listed species that would be affected by the subject project or action. Such a conservation plan must specify: (1) the anticipated impacts of the project resulting from the proposed taking of listed wildlife species, (2) the mitigation and monitoring the project proponent will take to alleviate the impacts of the taking, (3) alternative actions to such taking that were considered, (4) why these alternatives were not employed, (5) funding that will be provided to implement the mitigation measures and attendant conservation plan, and (6) additional measures that the Service may require as necessary or appropriate. The Service may issue an incidental take permit if it determines that: (1) the taking will be incidental, (2) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking, (3) the applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided, (4) the taking will not appreciably reduce the likelihood of the survival and recovery of the subject species in the wild, (5) the applicant will ensure that other measures required by the Service will be provided, and (6) the plan will be implemented. All affected property owners or lessees that are party to an approved conservation plan would be authorized, upon the issuance and pursuant to the terms and conditions of the Section 10(a) permit, to take the designated threatened or endangered species incidental to otherwise lawful activities.

