

George Caloyannidis, Architect PhD
2202 Diamond Mountain Road
Calistoga, CA 94515
Tel: (707) 942-0904
calti@comcast.net

September 9, 2015

ADDENDUM "A" TO THE COMPLAINT

**NAPA COUNTY GRAND JURY 2014-2015
MAY 12, 2015**

FINAL REPORT

ARE NAPA COUNTY WINERIES FOLLOWING THE RULES?

DISCUSSION OF USE PERMITS

The Grand Jury failed to acknowledge County policy and its effects whereby a winery which has been found to have been in violation of its use permit, is allowed to file for a use permit modification. The current spotty and inadequate in frequency "auditing" program accommodates long term violations before they are uncovered or voluntarily admitted to.

This policy of legalizing past use permit violations - even after the imposition of monetary penalties or other mitigations - has significant impacts which were not discussed by the Grand Jury.

CEQA RAMIFICATIONS

Case Law: *Center for Biological Diversity v. Department of Fish and Wildlife* (2015) 234 Cal.App.4th 214, 250-51 (holding that "the baseline must include existing conditions, even when those conditions have never been reviewed and are unlawful"); *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 370 (existing playground built in violation of code was nevertheless part of the CEQA baseline). As a result, no meaningful CEQA analysis can be performed where the landowner seeks the County to recognize an existing illegal use.

All use permits undergo CEQA review and impose mitigations for the extent of the authorized uses. Any violation therefore involves the circumvention of CEQA and its appropriate mitigations.

Accordingly, where the local government fails to identify illegal uses in a timely manner and instead approves them retroactively, it facilitates a period of time in which violations have skirted CEQA review and is thereby complicit in moving the CEQA baseline. Furthermore, when penalties are insignificant (in the overwhelming number of cases), simply requiring the applicant to comply with the terms of a use permit modification, encourages more violators to violate their use permits, skirt CEQA review and be subject to CEQA review only from a post violation baseline.

In the absence of independent corroboration, the applicant's claims become the new baseline for CEQA analysis and paradoxically encourages landowners to exaggerate the extent of those illegal uses.

The fact that winery use permit violations are rampant (40%) in Napa County, is proof that the honor system of enforcement the County relies on is being abused in a systemic way. As a result, Napa County's consistent pattern of after-the-fact approval of violations, violates the very spirit of the CEQA process as mandated by the state law to safeguard the environment and the public interest.

WINERY AUDITS AS CORROBORATING TOOLS

As explained above, corroboration of an applicant's claims of the extent of violations sought to be legalized is crucial in the process because the lack of effective penalties and the culture of legalizing unauthorized after-the-fact activities aided by the applicable case law, not only encourages more violators but also encourages them to overstate the extent of their violations in order to benefit from the forward move of the CEQA baseline. Audits are therefore essential tools of corroboration.

However, the so-called use permit compliance "audits" as conducted by the County, are not audits in the full sense of the term. They rely solely on winery record keeping with no independent verification. In essence they mirror the applicants' statements which may be true, false or overstated and have no value in safeguarding the CEQA process. Worse yet, current type County "audits" serve as false corroborating instruments provided by the government itself.

Beyond the obvious value of an independent auditing system for the reliability of the overall County database on winery activity, its absence fails to provide the essential corroboration.

VISITORS

Though the County regulates the number of visitors through the use permit process, it has not defined who a "visitor" is. While one would exclude anyone associated with the daily operations of a winery, is a "visitor" anyone who enters a winery but does not pay to taste wine? is it anyone who tastes or buys wine at a winery? Is it anyone who buys other merchandise? And what kind of visitation records are wineries required to keep? Yet these are the records County "auditors" rely on assessing use permit compliance.

RECOMMENDATIONS

In addition to the ones suggested by the Grand Jury, I recommend the following:

R1. By June 30, 2016, the County shall conduct 100 audits per year without excluding any winery from a subsequent audit within a specified period of time whether it has been found in compliance or not.

R6. By June 30, 2016, the County shall have defined who is a "visitor" it wishes to regulate through the use permit process.

R7. By June 30, 2016, the County shall have in place a system by which it can verify use permit compliance through independent audits.

R8. By June 30, 2016, the County shall mandate a 3-prior-year use permit compliance through an audit before any winery may apply for a use permit modification.

R9. By June 30, 2016, the County shall require that every winery owner or CEO shall submit a sworn affidavit certifying that their winery is in compliance with its use permit. Any winery whose owner or CEO fails to submit such affidavit, shall be deemed out of compliance

R10. By June 30, 2016, the County shall impose penalties in in-kind and in-time reductions equal to the use permit violation on production and visitations.