



# **Preserving the Vineyards of Napa Valley**

## **Local Regulations and the Commitment of a Community**

### ***Introduction***

The vineyards of the Napa Valley comprise the foundation of a thriving wine industry dedicated to the production of wines of exceptional quality. This industry provides the economic foundation for our entire community both directly, in terms of vineyard and winery business activity, but also indirectly by attracting visitors that support a vibrant hospitality industry including tour companies, hotels, restaurants and more. Protecting the future of our vineyards is thus tantamount to protecting the future of our community. Such protection depends on strong local regulations and a community-wide commitment.

### ***Historical perspective***

The first commercial vineyards were planted in the Napa Valley in the early 19<sup>th</sup> century. By 1884, the local wine industry was prospering, with over one hundred wineries combining to make Napa the largest wine-producing county in California. Napa wines were also recognized for their high quality, winning the most awards at the 1888 state viticultural convention in San Francisco. Shortly thereafter, a small insect called *phylloxera* sent the industry into dramatic decline. Planted vineyards acres dropped from over 16,000 acres in the 1890s to just 2,000 acres in 1905. The early



20<sup>th</sup> century then brought Prohibition, making commercial wine production illegal from 1920 to 1933.

It was not until 1951 that we saw the first new winery built since Prohibition and, through the 1960s, local beef production was actually worth more than the grape crop. But change was afoot. During this period, a number of local growers and vintners came to believe that Napa could build an industry based on the production of high quality grapes and wines. Around the same time, the state and county governments were drafting new rules aimed at preserving agricultural land.

Other counties around San Francisco Bay had seen significant loss of farmland to residential and commercial development. The Santa Clara Valley, for example, once known as the “Valley of Hearts’ Delight” for its rich agricultural production went from having over 100,000 acres in fruit and nut orchards in 1940 to fewer than 40,000 in 1970 (and dropped further, to under 6,000 acres by 1990).

What did the governments propose doing to preserve farmland? In 1965, the state of California passed the Williamson Act, providing reduced property taxes for land kept in agriculture or open space. Today, the Act continues to support the preservation of vineyards and other agricultural lands throughout California with clear economic incentive.

On a local level, in 1968, the Napa County Board of Supervisors went further, passing a landmark zoning ordinance that created the first Agricultural Preserve in the United States. This ordinance reflected a commitment to agriculture as the “highest and best use” of most of the land outside of the local towns and the city of Napa. It was controversial at the time as some residents worried that it would reduce the long-term value of their properties. The ordinance dictated that the only commercial activity allowed in these areas was agriculture and, furthermore, set minimum lot sizes



that prevented further subdivision of parcels, limiting the potential for development. The 20-acre minimum in the Agricultural Preserve (AP) and 40-acre minimum in the Agricultural Watershed (AW) were later increased to 40 acres and 160 acres, respectively. In retrospect, it is clear that the agricultural zoning gave farmers the confidence to invest in vineyards, with Napa County vineyard acreage increasing from around 14,000 acres in 1968 to 24,000 acres by 1975. Furthermore, concern about land values plummeting proved unfounded as the price of land in Napa County - even with this restrictive zoning - escalated considerably.

### ***The Winery Definition Ordinance (WDO)***

By the late 1980s, the strength of the local industry had led to the establishment of many new wineries across Napa County. Wineries had been allowed in the Ag Preserve because of their connection to local agriculture - processing the grape crop. However, around this time it became clear that ensuring winery development was consistent with the protection of our agricultural land required creating specific definitions for what sorts of activities were allowed. For example, if the county allowed “wineries” that were really gift shops or restaurants, then how could the county deny applications for other gift shops and restaurants?

The issues were discussed among members of the industry and the community at large and, although it took literally years to work through, the county put the Winery Definition Ordinance (WDO) in place in 1989, going into effect in early 1990. So, what does the WDO say? You can find the full text here [[Winery Definition Ordinance](#)].

With some important qualifications, the WDO defines a winery as a business that makes wine. Specifically, it says a winery is an “agricultural processing facility” for “the fermenting and processing of grape juice into wine.” That language makes it pretty clear that a gift shop cannot



be considered a “winery”. The WDO does allow for wineries to sell and market wine, not just produce it, but such marketing activity must be “accessory” and subordinate to production. And all accessory uses must be contained in less than 40% of the winery’s footprint.

The WDO also includes restrictions on grape sourcing. With the goal of preserving Napa County’s agricultural lands, it occurred to some local growers that ensuring that a winery was a place that made wine did not go far enough. They believed that the only way a winery could be consistent with supporting *local* agriculture was if it was processing *local* grapes. It was this thinking that led the Napa Valley Grapegrowers to propose the “75% rule”. This rule dictates that wineries must use at least 75% grapes from Napa County. Here is one of many Napa Valley Register articles from the time [“Shocking Idea from Grapegrowers” 11.19.87](#).

The proposal certainly met with some resistance. There were already over 200 wineries in the valley and, while many depended entirely on Napa Valley grapes, there were some that had been using grapes from outside the county. Thus, the inclusion of the 75% rule in the final WDO was only possible with two compromises. Firstly, it was a 75% rule, not a 100% rule, which therefore allowed for up to 25% out-of-county sourcing. This was consistent with federal labeling regulations that allow the “Napa County” appellation on wines that have at least 75% Napa grapes and provided wineries with some flexibility for blending. Secondly, existing production levels at existing wineries were “grandfathered” in without any sourcing restrictions. The rule as adopted stated that all new wineries, as well as expansions at pre-existing wineries, must use at least 75% Napa County grapes in their wine production.

There was one important caveat: expansions at pre-WDO wineries that did not require expanding the winery’s footprint were not to be subject to the 75% rule. This exception related to the fact that the justification for the 75% rule was tying any new consumption of agricultural land to processing the local crop, and if the footprint was not changing, then no new land was consumed.



Another significant aspect of the WDO related to winery visitation. To limit the impact of such visitation on neighbors, agricultural operations and the environment, winery use permits issued by the County began to include limits on the total number of visitors allowed per day or per week. Realizing that a winery that is open to the public would find it difficult to control the number of visitors, it was decided that the WDO should include language making visits possible only with prior appointment. As with the grape sourcing requirement, there was some resistance from existing wineries, which were in business prior to the WDO, and a similar “grandfathering” approach was taken which meant this “appointment only” language applied only to new use permits issued after the adoption of the ordinance.

The impact of winery development on neighbors, the environment and the preservation of agricultural land was also addressed by minimum lot sizes prescribed in the WDO. All new wineries needed to be on parcels at least 10 acres in size thus limiting the density of wineries across the landscape. Language was also included to prescribe specific setbacks from county roads.

### ***Measures J and P***

Another important event in 1990 was the successful passage of Measure J, providing further support for the preservation of Napa Valley agriculture. This initiative, written by local citizens and placed on the ballot by petition, strengthened the Agricultural Preserve and Agricultural Watershed zoning by creating a requirement that any re-zoning of Napa County agricultural land had to be approved by local voters on a countywide ballot.

As with the creation of the Ag Preserve in 1968, the WDO and Measure J gave growers confidence that the local community supported agriculture and led to further development of our grape and



wine industry. Napa County vineyard acreage had reached 35,000 acres by 1991 and then grew further, reaching 45,000 acres by 2005. It is worth noting that the number has since remained around 45,000 acres as the obvious valley floor locations have already been planted and new hillside plantings have been limited by environmental and economic concerns.

Eighteen years later, in 2008, the voters of Napa County approved Measure P, extending the sunset of Measure J conditions from 2030 all the way out to 2058, providing further evidence that the community supports agriculture as the foundation of our local economy.

With the support from the local community and the regulations that keep our land in agriculture, the growers and wineries of Napa County have built the Napa Valley into one of the world's premiere winegrowing regions. Our success is reflected in our reputation but also in our wine prices, grape prices and land prices, and in the strength of our local hospitality industry and our community at large.

Of course, like “The Goose that Laid the Golden Eggs”, we are at risk of becoming the victims of our own success. The rise to prominence of the Napa Valley has only increased the interest in local commercial and residential development. It is critical that all development is consistent with our zoning regulations and the Napa County General Plan. The number of wineries in Napa County has more than doubled since 1990. We must ensure that such growth is consistent with the continued preservation of our vineyards and, specifically, that it is consistent with the language and intent of the WDO and the Ag Preserve.

***Recent perspective: 2009-2010***



In recent years, the industry, the county government and the community have had opportunities to discuss the WDO and its interpretation and enforcement. These discussions serve to educate the industry and the community and have resulted in some minor changes to the ordinance.

In late 2009, some members of the local community urged the Board of Supervisors to re-consider a few specific aspects of the WDO. The global economy was lagging and business had slowed considerably for many local wineries and the associated hospitality industry. Proponents of the changes suggested that loosening some of the restrictions in the WDO would provide economic stimulus to the local economy.

Specifically, the proposal called for broadening the events allowed at wineries to go beyond wine marketing events and include both business meetings and social gatherings such as weddings. They asked that permitted retail sales at wineries include art and other non-wine items. They requested that the “appointment-only” condition be removed from winery visitation limits. They also suggested allowing wine sales beyond tastings to include by-the-glass sales for on-site consumption.

As the Supervisors began to evaluate the proposed changes, they sought feedback from the local industry and then responded by appointing a task force with representatives from the local industry organizations including the Napa Valley Grapegrowers (NVG), the Napa County Farm Bureau (NCFB), the Napa Valley Vintners (NVV) and the Winegrowers of Napa County (WGNC). The representatives of the NVG entered the task force meetings with the understanding that any attempt to provide local economic stimulus must not jeopardize the integrity of the Ag Preserve and the WDO.

After numerous meetings, in February of 2010, the industry task force presented the Board of Supervisors with a joint [Statement of Principals](#) and some proposed changes to the language of the



WDO. Although there were diverse viewpoints presented in the task force meetings, including some support for items such as the expansion of social and business meetings, the resulting joint proposal reflected that all four groups understood that the sustainability of the local economy depends on our vineyards and that the vineyards, in turn, depend on our carefully crafted local regulations.

The joint statement also showed that the groups concurred that consumer-direct sales of wines and consumer visitation had increased in importance since 1990 and that the global economic recession created the need to evaluate potential changes to the ordinance as long as they did not jeopardize the integrity of the WDO and the Ag Preserve. The statement also indicated that the groups agreed that the County's enforcement of WDO restrictions had been inadequate and needed to be strengthened.

As for any specific changes to the WDO, the groups were open to reconsidering the "appointment only" restriction but stressed that an appropriate review of the environmental and other impacts of such a change should be undertaken. The draft changes that the group did suggest were as follows: increased recognition of the importance of marketing, specific allowance for wine-food pairing via the discretionary use permit process, and allowance for the sale of wine-related merchandise. Although the group also suggested modifying some of the language related to events, they did not propose expanding the scope to include pure business and social gatherings but instead maintained the restriction that events had to be related to wine marketing. Regarding the sale of wine by the glass or bottle for on-premise consumption, the group did not address this issue because the passage of AB 1470 at the state level meant that as of January 1<sup>st</sup>, 2010, the county made this option available to wineries via the use permit modification process.

After the submission of these documents by the task force, the information was considered by County planning staff, recommendations were made to the Planning Commission and they in turn



made recommendations to the Board of Supervisors, which took action in early May 2010. The final approved changes to the WDO were very much in line with the suggestions of the task force. That said; there was some additional language added to provide specific allowance for “business” meetings as long as they maintained significant wine marketing aspects and the County staff added some extensive interpretative guidance. [Click here for the 2010 revised WDO language](#). The Board of Supervisors did not make any changes to the “appointment only” regulation, agreeing with County staff and the industry representatives that any change would require a thorough review of the environmental impacts.

The Napa Valley Grapegrowers and the Napa County Farm Bureau followed with a letter on May 15, 2010 re-iterating the need for greater enforcement and offering suggestions related to improving the winery audit process [[NVG/NCFB letter to the Board of Supervisors 5.15.10](#)]. Indeed, the audit process and the investigation of complaints are the two main tools the County uses to enforce WDO regulations and other use permit restrictions. After this 2009-2010 discussion, the County did expand the scope of the random winery audits to include evaluation of two important topics: merchandise sales and winery visitation. Prior to this time, the main focus had been on production volume in light of permitted capacity.

### ***Recent perspective: 2012-2013***

In the summer of 2012, the staff of the Napa County Planning Division raised a few questions for the industry to consider [[WDO meeting agenda 7.19.12](#)]. The department had been processing a number of requests for major winery production expansions and was considering the cumulative impact of such expansions on the potential for compliance with the 75% rule. They were also considering the interpretation of 75% rule compliance for expansions at grandfathered wineries. Once again, the industry task force was assembled to discuss the WDO and respond to the



questions outlined. During the process, the Planning Director also asked for industry opinion on the applicability of the 75% rule in the Airport/Industrial area and other areas with non-agricultural zoning.

The industry task force met many times over the months that followed. There was clear agreement on most, but not all, of the issues. In the meetings, it was clear that the four groups continued to support the WDO and shared the understanding that protecting our vineyards was critical to supporting our industry and our community. Failing to reach agreement on all aspects of the discussion, we were unable to provide the County with one cohesive response. That said, the Napa Valley Grapegrowers and the Farm Bureau did provide a detailed joint response in January of 2013 [[NVG/NCFB letter to the Planning Director 1.17.13](#)] and the differences with the other groups were later resolved.

The first topic that the industry representatives considered was the basic question regarding the applicability of the 75% rule in areas with non-agricultural zoning such as the Airport/Industrial area. Members of the task force agreed that the WDO, and the 75% rule contained therein, applied exclusively to the areas zoned for agriculture. The justification being that any use of agricultural land had to be tied to local agriculture. The WDO itself simply does not apply in areas with other zoning. That said, some areas, such as the towns of St. Helena and Calistoga have drafted their own winery rules with their own regulations on grape sourcing. The NVG perspective on the airport area in particular is that the area is well-suited to support the grape and wine industry with commercial functions that do not need to be in the Ag Preserve, functions related to wine production that do not need to be in proximity to the grapes. Examples of these functions include barrel construction, label printing and wine bottling and storage.

In our NVG/NCFB response, we also revisited the important role of enforcement. We offered support for the County's recent move to include 75% rule compliance in the winery audit program.



We also confirmed our support for the County's increased attention to potential 75% rule compliance at the time of application for new or expanded use permits. Given the important role of the 75% rule in connecting winery development to the preservation of Napa Valley agriculture, we believe that it is critical that this rule is well understood by all use permit applicants and that it is actively enforced by the County. While it may be difficult to provide evidence of grape sourcing at the time of application, the County has already embraced a functional approach that can include providing evidence of compliance, at a later date, before further incremental expansions are permitted.

Next, we considered whether the total *permitted* capacity subject to the 75% rule may be approaching or exceeding the total supply of Napa Valley grapes. The importance of this question is highlighted by the tapering off in net growth of vineyard acres, as presented above. That is, if the Napa County grape supply is finite, winery growth cannot be infinite. Doing the math to answer this question is quite difficult. For example, there are no data available that reflect how many tons of Napa fruit are crushed at Napa wineries that are not subject to the 75% rule, tons that are thus not available to source-restricted wineries. Another issue is that although the total countywide permitted capacity equals the total *potential* production, the functional capacity of local wineries is surely less. For example, a winery that has a 100,000 gallon permit may only have the infrastructure to process 60,000 gallons. Considering other factors including that there continue to be some Napa grapes available on the open market each year, we at NVG concluded that the greatest risk in this regard was the approval of very large-scale wineries, or expansions that did not have clear and reasonable plans for sourcing Napa grapes. We suggested that the County approach the issue as discussed above – by requiring all applicants to explain where their grapes will come from.

Lastly, we considered the interpretation of the 75% rule as it applies to expansions at grandfathered wineries. During the task force meetings, this was the main area of difference among the industry



organizations. The question was whether or not a pre-WDO winery should be able to count existing Napa grapes for compliance with a 75% rule restriction on their expanded volume.

As presented in the background above, the 75% rule does not apply to the approved pre-WDO capacity at grandfathered wineries but does apply to most post-WDO expansion. So, for example, if a 50,000 gallon pre-WDO winery was crushing all Napa fruit and received an expansion permit for another 50,000 gallons, could it satisfy compliance by shifting its Napa gallons into the expansion and then make another 50,000 gallons of wine out of newly contracted out-of-county fruit? As detailed in the NVG/NCFB letter, our initial reaction was that this should *not* be acceptable as it seemed contrary to the spirit of the 75% rule, which deliberately tied consumption of Napa agricultural land to the creation of new demand for Napa grapes.

During the weeks that our NVG/NCFB letter was being considered by County Planning staff, we continued to research this question and to ponder the alternative position that such source shifting was not actually prohibited. The County staff had been implicitly allowing for the possibility of such shifting in how they processed expansion applications but there was not an explicit County policy that we could reference. Our evaluation took a dramatic turn when we were provided copies of the transcripts from the WDO hearings before the Planning Commission in late 1989. These transcripts are literally hundreds of pages long but there are a couple sections that clearly cover the 75% rule and indicate that such source shifting was discussed at that time. Reconstructing the conversation, it appears that the Chair of the Commission did not like the idea of source shifting but also that the decision was made that prohibitive language would *not* be included in the ordinance. We also looked at County records regarding winery expansions approved since 1990 and realized that half of the pre-WDO wineries already had approved expansions by 2013, representing two-thirds of the total capacity that could be subject to source shifting – and these were all processed without conditions prohibiting shifting.



So, when the County staff presented the Planning Commission their [report](#) on February 20<sup>th</sup>, 2013, suggesting that the County continue interpreting the WDO to allow shifting, we did not object. Considering the number of expansions already approved, we saw that, to some extent, the ship had already sailed. Furthermore, this interpretation did not affect the total amount of non-Napa fruit that pre-WDO wineries may process. Whether they apply for expansion or not, such grandfathered wineries are not subject to sourcing restrictions on their pre-WDO capacities.

That same staff report did support all other aspects of our joint NVG/NCFB letter. The Commissioners committed to taking the cumulative impact of their use permit decisions into account given that the Napa County grape supply is finite in nature. They agreed to step up enforcement of the 75% rule in both the audit and use permit application processes. Staff was directed to draft standard conditions for permit applicants covering two points – the 75% rule applies to actual gallons produced (i.e., one cannot just produce the 25% out-of-county portion) and permit approval did not in any way constitute authorization for making non-Napa wine should Napa grapes prove difficult to secure. Furthermore, staff confirmed their plans to utilize approaches such as incremental increases with compliance check-ins when grape supply cannot be substantiated at the time of application.

### ***The future: 2014 and beyond***

As we move forward, the WDO will continue to play a central role in shaping winery development and expansions in Napa County. The fundamental aspects of the ordinance, including the 75% rule, must remain intact. We should consider that the total number of wineries may someday be limited by the environmental and agricultural carrying capacity of the Napa Valley. In the near term, with the evolution of winery sales and marketing and the growth of small wineries, in



particular, we should expect continued dialogue on winery marketing activity and its impacts on agricultural preservation.

For instance, many wineries have embraced the option to include food and wine pairings in their marketing plans, but some examples seem to approach full meal service. It would be helpful to define exactly what can be included in food and wine pairing to ensure that all winery commercial activity is consistent with the intent of the WDO and the Ag Preserve. It is important to note that the framework that keeps the restaurants and hotels out of the agriculturally zoned areas is not just critical to the preservation of our vineyards but has also led to the desirable development of thriving centers of hospitality like Yountville and, more recently, downtown Napa.

As our local industry has matured, we have seen an increased focus on wines that come from individual vineyards. In addition, many growers have decided to launch wine brands with their own grapes. These growers often choose to custom crush their fruit at existing wineries rather than build their own facilities. In both cases, brick and mortar wineries with single vineyard wines and grower-producers that lack physical wineries, inviting consumer and trade guests to visit the actual vineyards sounds like smart marketing. However, approved marketing plans (as contained in use permits) are typically tied to a winery's physical footprint and do not provide any guidance on vineyard visitation. Given that these enterprises, with their focus on wines that showcase local vineyards, are surely consistent with the spirit of agricultural preservation, we should consider the legal framework for marketing activity that includes limited vineyard visitation.

As for the general idea that marketing plans should be in scale with production levels - the intuitive approach that smaller wineries should have fewer visitors (because they have less wine to sell) should be balanced by the fact that these small wineries often depend more heavily on consumer direct sales. That said, the 2012 audit program found a winery that produced only 749 gallons (out of 20,000 gallons permitted) yet exceeded their permitted visitation almost every week



of the year (hosting as many as 128 people in one week). In all, the audit found seven out of twenty wineries out-of-compliance with regards to visitation [[2012 Marketing Audit](#)]. We maintain that use permit approvals must come with visitation conditions appropriate for the site and production level of the winery and that these conditions must be strictly enforced.

On another note, we understand that wineries in the agricultural areas are allowed to bring in bulk wine. The quantity counts toward their permitted capacity and is subject to the same sourcing restrictions. While some portion as bulk-to-bottle can be a functional aspect of winery business, a winery that opts to avoid crushing fruit altogether could hardly be seen as supporting local agriculture. As County staff and the Planning Commission examine individual use permit applications, they should consider this issue and ensure all applicants are planning actual functional wineries, including the infrastructure necessary for grape processing. And wineries should expect to provide evidence of actual wine production during the audit process.

### ***Conclusion***

It is important to remember that our agricultural zoning and the WDO are just two tools supporting the community's shared goal of preserving our vineyards. All county development decisions must also be in line with the Napa County General Plan [[Napa County General Plan](#)]. The General Plan states clearly that agriculture is our primary land use and that the protection of our vineyards is critical to the future of our community. The County government also bears responsibility for implementation of many state laws, including some environmental regulations. Implementation of some laws, such as California AB32 (the "Global Warming Solutions Act"), is left to the county and regional agencies so that local conditions can be considered when devising solutions. Currently, the Napa County Transportation and Planning Agency is conducting a new study of travel behavior throughout the County. Among other goals, the results will help inform a



community discussion about the traffic impacts of winery visitation. This study is just one example of the broad responsibility carried by the local government and how all the policy decisions connect to supporting a thriving community that is rooted in agriculture.

Of course, there are also many threats to our vineyards that were not discussed in this document. In this age of global travel and trade, the risk of invasive pests and diseases has never been greater. The threat of the European Grapevine Moth is now under control but who knows what will arrive next? We are also aware that the global climate is changing and we must consider this as we design vineyards for the future. Right now, we are entering a period of succession with many growers and vintners reaching retirement. Who will helm these businesses going forward? And how about the wine market? As the Baby Boomers age, will younger generations embrace our story and our wines?

How can the Napa Valley Grapegrowers be optimistic about our future in light of all these challenges? The marketing message has often been that Napa Valley grapes and wines are special because of our diverse soils and unique climate. Those factors are important but the real difference here is in the people. That obviously includes the big names, too numerous to mention, but also includes every vineyard worker, every cellar worker and every visitor in the tasting rooms, hotels and restaurants. It includes our elected officials and government staff. It includes everyone in our community. It even includes the guests who visit this valley once, fall in love and become fans of Napa Valley for life. There is a culture of excellence that permeates our community – a culture dedicated to crafting superlative wine but also striving for excellence in everything from hospitality to health care, from education to governance. People working together for a common goal can achieve amazing things. We all love this place – so let's keep working together to protect it for generations to come.