

December 9, 2013

To: Placer County Planning Commission [via email]
cc: Michael Johnson, Paul Thompson, George Rosasco, Placer County Planning Services; Josh Huntsinger, Placer County Agricultural Commissioner [via email]

RE: Response to Staff Report: Proposed Update to the County Winery Ordinance (PCPT 20130151)

SUMMARY

A stated purpose of the revised Winery Ordinance is to "...protect the agricultural character and long-term agricultural production of agricultural lands."¹ Yet under the provisions of this proposal, anyone who labels a bottle of wine, even from grapes grown outside Placer County, can run a bar, a restaurant, and an event center in Agricultural Zoning. How does this Ordinance protect agricultural land from development?

Wine grapes were 1% of Placer County's agricultural crop production in 2012². Why do wineries merit these extraordinary privileges not accorded to any other agricultural producer or resident of Placer County? Must a cattle farmer or mandarin orchard sell wine to acquire the privileges granted by this Winery Ordinance?

Under current zoning regulations, "restaurants" and "bars" are prohibited uses in Placer Agricultural Zoning³, but adopting the permissive CA ABC Winegrower standards⁴, one stated intent of the revisions⁵, would allow a winery to serve unlimited wine by the glass or bottle^{4,5}, serve meals to customers (even children)⁴ and hold unlimited "events" at their tasting rooms⁶. Tasting rooms would be permitted on parcels as small as 4.6 acres⁷, on any roadway, even a shared private road⁸, and operate from 10 am to 10 pm on weekends and until 8 pm on weekdays⁹. Most wineries in Agricultural Zoning would receive a "Zoning Clearance"¹⁰, meaning they would get a permit to operate with no requirement to notify neighboring properties (even those with whom they share access), no public hearing, and no right of appeal¹¹. A "winery" doesn't even have to grow grapes. Under the "functional equivalent" provision, to be a winery the proprietor can simply put a label on a bottle of someone else's wine¹².

For the last six months, Placer County has been holding workshops to redefine "Community Centers" and "Event Centers" and develop regulations for their establishment in rural areas. Adoption of this Winery Ordinance as presently proposed will make the "Event Center" ordinance irrelevant, and permit *de facto* bars and restaurants and allow unlimited "events" in rural Placer County with no public notice or review. Unlimited wine consumption and closing at 10 pm will send drunk drivers down unfamiliar unlit rural roads after dark. Residents will have to cope with all the noise, traffic and undesirable behavior that accompany these businesses, which rightly belong in population centers, not farmland.

Please don't jeopardize rural Placer County's future for the current wine fad. When these businesses fail in rural areas, they leave behind huge buildings and parking lots, which can never be returned to agricultural production. Wineries have a place in Placer County, but not at the expense of all other growers and residents. If wineries and other ag businesses really need a few more events to promote their products, adjusting the TOE ordinance to allow a few more events per year and make the application process less cumbersome would be a more rational solution. Otherwise, they must be permitted as Agricultural Event Centers.

A detailed analysis of the Staff Report follows.



Carol Rubin

c_rubin@sbcglobal.net

Save Placer Farmlands

Newcastle

Footnotes:

1. Proposed update to the Placer County Winery Ordinance (Dec 12, 2013), Purpose, A., page 15.
2. Placer County Crop Report, 2012. Grand total all crops, \$73,197,000. Wine grapes: \$769,000.
3. Placer County Code (2011), Planning and zoning, Section 17.06.050, Land use and permit tables, page 64.
4. State of California, Department of Alcoholic Beverage Control: Common ABC license types and their basic privileges, No 2: **WINEGROWER** - (Winery) *Authorizes the sale of wine and brandy to any person holding a license authorizing the sale of wine and brandy, and to consumers for consumption off the premises where sold. Authorizes the sale of all wines and brandies, regardless of source, to consumers for consumption on the premises in a bona fide eating place that is located on the licensed premises or on premises owned by the licensee that are contiguous to the licensed premises and operated by and for the licensee. May possess wine and brandy for use in the preparation of food and beverage to be consumed at the bona fide eating place. May conduct winetastings under prescribed conditions (Section 23356.1; Rule 53). **Minors are allowed on the premises.***
5. Proposed update to the Placer County Winery Ordinance (Dec 12, 2013), Discussion of issues (1), page 4.
6. Proposed update to the Placer County Winery Ordinance (Dec 12, 2013), Development and Operational Standards D.4.a, page 18.
7. Proposed update to the Placer County Winery Ordinance (Dec 12, 2013), Development and Operational Standards D.1.c, page 18.
8. Proposed update to the Placer County Winery Ordinance (Dec 12, 2013), Development and Operational Standards D.3.c, page 18.
9. Proposed update to the Placer County Winery Ordinance (Dec 12, 2013), Development and Operational Standards D.5.a, page 19.
10. Proposed update to the Placer County Winery Ordinance (Dec 12, 2013), Wineries : Agricultural and Resource Districts (table) C, page 17.
11. Placer County Code (2011), Planning and zoning, Section 17.06.040, Zoning Clearance Procedure, page 58; also Proposed update to the Placer County Winery Ordinance (Dec 12, 2013), Noticing Requirements D.12, page 21.
12. Proposed update to the Placer County Winery Ordinance (Dec 12, 2013), Development and Operational Standards D.1.a, page 17.

DETAILED ANALYSIS:

Page 4: The vintners have requested modifications to the current winery ordinance to:

1. Amend the sections in the Winery Ordinance that pertain to a winery's tasting room to conform to the current State law, which allows wine to be sold by the glass and by the bottle for consumption on the winery premises. Currently, the Winery Ordinance only allows a winery tasting room to provide samples of wine for on-premise consumption.

The CA ABC license 02 for "Winegrower" states:

WINEGROWER- (Winery) Authorizes the sale of wine and brandy to any person holding a license authorizing the sale of wine and brandy, and to consumers for consumption off the premises where sold. Authorizes the **sale of all wines and brandies, regardless of source, to consumers for consumption on the premises in a bona fide eating place that is located on the licensed premises or on premises owned by the licensee that are contiguous to the licensed premises and operated by and for the licensee. May possess wine and brandy for use in the preparation of food and beverage to be consumed at the bona fide eating place. May conduct winetastings under prescribed conditions (Section 23356.1; Rule 53). Minors are allowed on the premises.**

Note that under this definition a winery can operate both a bar and a restaurant. But bars and restaurants are not permitted uses in Agricultural Zones in Placer County. Wineries in Ag zoning must not be given a special allowance to evade the proscription of restaurants and bars.

Page 15: Event Definitions:

These proposed definitions allow wineries, and only wineries, to have unlimited events. The numbers of events and guests, and indoor/outdoor "components" specified cannot be practically verified or controlled.

Since June 2013, Placer County Planning Services, the Planning Commission, the Municipal Advisory Councils, and concerned citizens have expended a great deal of time, thought, and effort to revise the ordinances regulating Event Centers in rural Placer County. Adoption of the Event provisions of the proposed winery Ordinance would make all of the Event Center work irrelevant. Under the proposed Event Center regulations, permit requirements, parcel size, number of events, hours of events, and size of events are all more restrictive than those of the proposed Winery Ordinance. An Event Center developer would get a much better deal just by growing or bottling grapes and declaring himself a winery. Why do wineries deserve this special treatment?

A winery that wants to hold events in excess of those permitted under the TOE must be required to apply for an Event Center permit. If "events" are really a desirable revenue stream for Placer County agriculture, a more equitable solution would be to allow a few more (e.g., eight/year) events under the Temporary Outdoor Event ordinance and amend the TOE provisions to make it more user friendly.

Page 15: Definitions needed.

1. **Tasting Room** There is nothing in the winery ordinance that controls how large the winery buildings and "tasting" facilities can be. Under this proposal, a "winery" could consist solely of the bar/restaurant and associated parking by receiving all of its "production" from off-site growers under the "functional equivalent" determination (page 17 D.1.a).

Proposed definition: **Tasting rooms** shall be a maximum of 1500 sq ft with a maximum occupancy of 50 persons. Tasting rooms in Agricultural Zones may have small appliances necessary for preparing and serving snacks (e.g., microwave oven, hot plate, coffee maker, standard refrigerator) but may not contain a commercial kitchen unless the winery has obtained a permit to operate an Event Center. Tasting rooms may not serve meals unless associated with a declared event, e.g., "winemaker's dinner." At these events all alcoholic beverages served must be included in the price of the event; i.e., additional alcohol by the glass or bottle may not be purchased and consumed on site.

Tasting rooms may sell wine produced at the associated winery for consumption off site. They may also sell packaged food and promotional items.

2. Proposed definition: **Winetasting.** In Placer County, Tasting Rooms shall offer no more than six one-ounce samples of wine per customer per day. No alcoholic beverages shall be sold by the glass, or by the bottle for on-site consumption.

Page 17: Permit requirements, Agricultural and Resource Districts. The proposed revisions would allow all except the largest wineries to receive a permit by "Zoning Clearance" (Placer County Code (2011), Planning and zoning, Section 17.06.040 page 58). A Zoning Clearance has no provisions for public notice, even to neighbors who may share access with the winery property, and no provision for public hearing or appeal. **Allowing a Zoning Clearance gives the winery a special privilege and subordinates the property rights of all surrounding parcels to that privilege.** A winery is too intrusive a usage to inflict upon the neighbors with no notice or opportunity to appeal. All wineries in Ag zones must be permitted by MUP.

Page 17: D. Development and Operational Standards. The phrases "with flexibility" and "afforded maximum flexibility" are so vague that they make adherence to any standards practically unenforceable. This vague language was specifically objectionable to the Placer County Grand Jury in their 2012-2013 review of the Winery Ordinance. (copy attached).

Page 17: D.1.a. The vague "functional equivalent" means essentially that anyone in Placer County who has 4.6 acres can be a "winery" as long as they receive "production" from "locally produced vineyards." By this criterion anyone can buy bottles of wine, not even necessarily grown in Placer County, and resell the wine to be a "winery". This provision is wholly unacceptable and must be removed.

Page 18: D.1.c. The minimum parcel size for a winery should be increased to match the minimum parcel size for an Event Center, 10 acres.

Page 18: D.2. Parking. Add a specific prohibition against parking on any public or private road.

Page 18: D.3. c. No access from shared private roadways should be permitted. Allowing access from shared, privately maintained roads promotes dissention among the residents and may cause coercion of smaller landowners by larger ones.

Page 18: D.4.a. All winery events must be TOEs or conform to the Event Center ordinance. There is no justification for giving wineries special privileges not available to other Placer County citizens. If more events are desirable, an equitable solution would be to amend the TOE ordinance.

Page 19: D.5.a. Roads in agricultural zones are narrow, winding, poorly lit and often unsigned. It is dangerous to the safety and welfare of the winery customers and rural residents to have drivers, who may be impaired, attempting to navigate unfamiliar country roads after dark. Closing time for tasting rooms should be 7:30 pm on all days. If a winery wishes a later time, it may apply for an Event Center permit.

Page 19: D.8.a. Food regulations. The prohibition of restaurant usage is meaningless if the full CA ABC Winegrower definition is adopted. Restaurants are not a permitted use in Placer County Ag zoning.

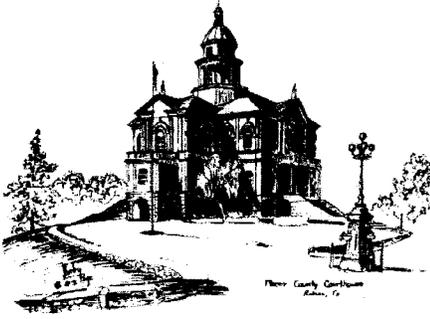
Winery tasting rooms in Agricultural Zones may have small appliances necessary for preparing and serving snacks (e.g., microwave oven, hot plate, coffee maker, standard refrigerator) but may not contain a commercial kitchen unless the winery has obtained a permit to operate an Event Center.

Page 19: D.9.a. Tasting facilities. Bars are not a permitted use in Placer County Ag zoning. Liquor sales by the glass or bottle for on-site consumption must be prohibited. Limit tastings to 6 one-ounce servings per person per day. See the suggested definition of "winetasting" above.

Both the proposed and current Winery Ordinances specify notice to adjacent property owners who share access **but only if an ARP is required**. However, as shown above (P 17, Permit Requirements) under the proposed amendments nearly all wineries in Ag zoning would be granted a "Zoning Clearance" which contains no noticing requirements or appeal provisions at all. This provision is a severe infringement of the rights of neighboring property owners, who will be greatly negatively impacted by the noise, traffic and nuisance potential of a winery sharing access.

Please correct this section by:

1. Prohibiting access to a winery from a shared private roadway and
2. Requiring an MUP for winery applications in Agricultural Zoning; **no Zoning Clearances**.



PLACER COUNTY GRAND JURY

Placer County Winery Ordinance Enforcement Review

Placer County Winery Ordinance Enforcement Review

Summary

The Placer County Winery Ordinance (Placer County Code 17.56.330 Wineries) was enacted in 2008. Citizens have raised concerns regarding the enforcement of the provisions of this ordinance. The Grand Jury found many factors that have led to confusion, misinterpretation, and have left the ordinance unenforceable. The factors are:

1. Vague and confusing definitions of terms such as "Promotional Events", "Temporary Outdoor Events", and "Tasting Rooms".
2. The Grand Jury identified two categories of Placer County Wineries. First, are Pre-Ordinance wineries that existed prior to the adoption of Placer County Code 17.56.330 on wineries. These wineries are allowed to operate under their existing Multiple Use Permits (MUP) until such time they want to add additional uses which must conform to the Winery Ordinance. Second are the Post-Ordinance wineries which must conform to this code. The vagueness which concerns the Grand Jury is the terminology of paragraph D of the ordinance, which states:

"Development and Operational Standards. The following development and operational standards shall apply to all wineries. These standards will be applied with flexibility to encourage wine grape growing, consistent with the agricultural use of the property. For wineries on commercially and industrially-zoned parcels, commercial standards will apply. Wineries established prior to the adoption date of this ordinance will be afforded maximum flexibility in establishing reasonable standards when adding new uses."

How does CDRA quantify, for enforcement purposes, the phrases "applied with flexibility" and "will be afforded maximum flexibility"?

3. Noise and traffic standards are not addressed directly in the Wineries Ordinance. The ordinance refers to other standards in the Placer County Code therefore these are not violations of the Wineries Ordinance.

The Grand Jury found indicators that Placer County wants to establish and nourish a winery industry in Placer County. This report identifies our findings and makes recommendations to support this objective.

Background

The 2012-13 Grand Jury received a complaint from a Placer County citizen alleging that provisions of the Placer County Winery Ordinance were not being enforced. Specifically, the complaint concerned both outdoor and special events that either exceeded the number of events allowed on an annual basis or were not permitted by specific statute.

Investigation Methods

Interviews were conducted with:

- A citizen that authored the complaint.
- County officials in the Code Enforcement Division of the Placer County Community Development Resource Agency (CDRA).

Documents reviewed include:

- Placer County Code 17.56.330 Wineries
- Placer County Code 17.58.120 Minor Use Permits
- The CDRA Code Enforcement Services Procedure Manual (2012)
- County Winery Ordinances for El Dorado County, San Joaquin County, San Luis Obispo County and Santa Barbara County.

Facts:

- The investigation of code violation complaints filed by Placer County citizens are handled by the Community Development Resource Agency (CDRA). The complaints must be in written format and presented to the CDRA receptionist. This office is open Monday through Friday 8:00am to 4:00pm.

- The Code Enforcement Services Procedure Manual details the process for complaint investigation.
- All Code Enforcement actions are reviewed by the Supervisor of the Code Enforcement team as well as the Chief Building Official.
- The Code Enforcement Division tracks all open complaints until closure on the County's land use system computer program.
- The Wineries Ordinance paragraph D states that wineries established prior to the adoption of the wineries ordinance will be afforded maximum flexibility in establishing reasonable standards when adding new uses. Among these uses are retail sales and tasting rooms.
- The Wineries Ordinance paragraph E addresses the "Continuing Applicability of Minor Use Permits" states that the conditions of the minor use permit shall continue to apply in full force and effect. Any proposed new or additional use shall be subject to compliance with the provisions of this zoning ordinance in accordance with 17.01.030 of the Placer County Code.
- County CDRA staff is in the process of updating their recommendations to the Planning Commission to rewrite the existing Wineries Ordinance to better reflect the requirements for wineries.

Findings

- F1 The existing winery ordinance contains vague definitions which make enforcement difficult.
- F2 The current position of the County is to promote the establishment of a wine related industry in Placer County.
- F3 CDRA's Code Enforcement has no mandated timelines for follow through of Code Enforcement complaints. The goal is to work with the violator to gain voluntary compliance
- F4. One winery has been approved to operate as a "Community Center".

- F5: Most winery events occur on the weekends or evenings.
- F6: Many complaints refer to excessive noise and traffic. These conditions exist only at the time of the event. After the fact investigations by CDRA do not reflect the conditions at the time of the complaint.
- F7 Written complaints after the fact for non-permanent violations such as noise, traffic, and special events have no residual evidence other than accusations.

Recommendations

The Grand Jury recommends

- R1 The County rewrites the Wineries Ordinance eliminating the vague terminology and conflicting standards. It is recommended that the new ordinance be applicable to all wineries in Placer County and eliminate the distinction between pre and post ordinance wineries. This allows for consistent application of the ordinance and eases enforcement.
- R2 The Planning Commission and the CDRA staff review ordinances of other counties that have an established wine related industry in their efforts to update ordinances. This may identify best practices.
- R3 A process be established by CDRA code enforcement in partnership with the Placer County Sheriff to receive and investigate complaints as they occur.