



**MEMORANDUM**

**DATE:** August 26, 2008

**TO:** Honorable Board of Supervisors

**FROM:** Michael J. Johnson, AICP  
Director of Planning

**SUBJECT:** Proposed Amendment to the Placer County Code for the Creation of a Winery Ordinance – (ZTA 20050609)

**ACTION REQUESTED**

The Board is being asked to consider a Zoning Text Amendment to the Placer County Code for the creation of a Winery Ordinance as recommended by the Planning Commission.

**BACKGROUND**

Over the past several years, there have been many questions regarding the provisions that allow the County to regulate wineries. There are currently 10 approved wineries in Placer County's unincorporated area, with 230 acres of planted vineyard. It is important to note that there are existing requirements within the Zoning Ordinance that allow the County to regulate wineries, and several wineries have received approvals from the County to allow for a variety of functions on their properties, including wine tasting and private functions.

While the County has and continues to regulate wineries, some concerns have been raised by both winery owners and members of the public regarding the County's current process for this regulation. Based upon these concerns, staff was asked to prepare a winery-specific ordinance that clarified issues associated with the development of wineries and their accessory uses. One of the primary goals of the proposed winery ordinance is to provide certainty in what can and cannot be allowed in conjunction with winery uses, as well as to streamline the permit process.

To assure that there was adequate opportunity for public involvement, many public meetings have been held on this draft ordinance, and the draft ordinance has gone through a series of iterations and re-writes based upon comments received from the public and winery owners. After more than two years and more than 12 public meetings, the draft ordinance was presented to the Agricultural Commission and the Planning Commission for their review and comment. Each of these bodies has recommended the draft ordinance to the Board.

The proposed Zoning Text Amendment for the creation of a Winery Ordinance was presented to the Board of Supervisors at its July 8, 2008, meeting. Just prior to this hearing, staff received additional correspondences regarding the proposed Winery Ordinance. Because of the late receipt of correspondences, staff recommended that the Board receive public testimony, then continue formal action on the proposed Zoning Text Amendment to allow staff additional time to review and respond to the late correspondences. The Board concurred that it would be prudent to allow staff the additional time to review and respond to these late correspondences. However, the Board wanted to receive comments from the public on the proposed Zoning Text Amendment, and so the Board took public testimony on the proposed Winery Ordinance.

While many of the speakers supported the proposed ordinance as a streamlined process for the review of wineries, a recurring concern was raised regarding the use of private roadways by wineries, and impacts that may result from increased vehicle traffic on these private roadways. Some of the concerns raised included:

- o Possible liability issues associated with the added traffic from wineries on private roads;
- o Determining whether or not there were limitations on how (and in what manner) these private roads could be used by a business; and
- o Responsibility for the maintenance of the private roads.

At the same time, some of the winery owners expressed concern that the County has specific zoning districts (Agricultural Zoning District, Farm Zoning District, Residential Agricultural Zoning District) that allows for the development of agricultural uses (including wineries and their associated uses), and the County needs to continue working with property owners to encourage the long-term viability of these agricultural uses. The winery owners acknowledged that, while some may see certain aspects of winery operations (i.e., use of machinery, pesticides, noise, dust) as being a nuisance, these are some of the challenges that result when people choose to live in Farm and Agricultural zoning districts.

After receiving public testimony, the Board unanimously stated that the language included in the proposed Winery Ordinance was the result of an extensive public outreach program, and that the language of the proposed ordinance was an appropriate balance streamlining the discretionary review process for wineries and their accessory uses and protecting the public health and safety of residents living in proximity to wineries, as well as the public at-large. While it was the Board's desire to be able to approve the proposed Winery Ordinance at the July 8, 2008 meeting, the Board unanimously directed staff to review and consider the recently received correspondences, then return the ordinance to the Board at the earliest possible date for formal action.

### **PROJECT DESCRIPTION**

Staff is proposing the creation of a new Section 17.56.330 (Wineries) for the development of a winery-specific ordinance. The purpose of the proposed ordinance is to provide for the orderly development of wineries, while at the same time encouraging the economic development of the local agricultural industry. As stated during the previous public hearing before the Board, the proposed ordinance identifies permitted and accessory uses associated with winery operations, as well as the development and operational standards that the wineries must comply with. Some of the important issues addressed in the Winery Ordinance include the following:

Promotional Events: The proposed ordinance includes a new definition for "promotional events" associated with wineries, and permit requirements and standards are proposed as part of the proposed ordinance. A promotional event would include events at the wineries that are intended to promote the sale of Placer County wines, including the sampling and direct marketing and sales of wines produced on the premises or produced elsewhere from grapes grown on site. As set forth in the proposed Ordinance, wineries could conduct up to six promotional events each calendar year, and these events would require a one-time processing of an Administrative Review Permit.

Development and Operational Standards: One of the concerns repeatedly voiced by members of the agricultural community was the need for standardized development and operational requirements for wineries and their accessory uses. In response to this concern, the proposed Winery Ordinance includes the following standards:

- **General:** The general standards require that the primary purpose of the winery to be the processing of wine grapes on the winery property or other local agricultural lands and that the winery property be at least 4.6 acres in size, with one acre of planted vineyard on site.
- **Parking:** Small wineries (under 20,000 case annual production) with public tasting are required to provide five permanent parking spaces. Large wineries are required to meet specified parking standards based on square footage of winery use areas.
- **Access:** Access roads, specifically for private roads that may serve wineries, must meet State and local Fire Safe Standards as determined by the serving fire agency, with alternative designs allowed on a case-by-case basis. If a winery is accessed by a private road, the applicant must provide reasonable proof of rights to use the private road for the winery/commercial use.
- **Water and Waste Disposal:** Consistent with State law, standards for potable water, solid waste and winery production waste disposal and on-site sewage disposal are provided.
- **Tasting Facilities:** The primary focus of the tasting area must be the marketing and sale of the wine produced at the winery. Incidental sales of wine-related merchandise and food are allowed.
- **Promotional Events:** As noted above, the proposed ordinance includes a definition for "promotional events". Development standards are provided for these promotional events, including application requirements, duration of events, minimum parking requirements, and noise standards.

Changes to Other Sections of the Zoning Code: Because of the overlapping nature of zoning issues, implementation of the proposed Winery Ordinance will necessitate changes to existing sections of the Zoning Code. Accordingly, amendments are proposed to various sections of the Placer County Code related to definitions, land use and permit requirements and parking lot surfacing requirements.

## ANALYSIS

As discussed at the July 8, 2008 Board of Supervisors hearing, the proposed Winery Ordinance represents a collaborative planning and public participation process that takes into account the County's current regulations for wineries, concerns that have been raised by winery owners and residents living in proximity to wineries, as well as regulations that have been adopted by other agencies in the region who regulate winery activities.

The Use of Private Roads for Wineries: As discussed above, one of the primary concerns raised at the previous Board meeting on the proposed Winery Ordinance centered around the use of private roads and the impact that wineries may have on these private roads. As the Board is aware, there are many private roads throughout the County, and it is not uncommon to have multiple property owners accessing their individual properties by the shared use of a private road. The concerns that have been raised include:

- the legal right for a winery (and, by implication, other types of commercial/agricultural operations) to utilize a private road;
- potential liability issues associated with use of a private road by the public to access a winery; and
- responsibility for increased maintenance responsibilities.

Because there are so many private roads throughout the County, it is not uncommon to have commercial-type activities similar to wineries utilizing a private road. From home occupations to mandarin orchards to equestrian centers to Christmas tree farms, there are many existing land use activities in Placer County that utilize private roads for public access. While some of these activities may have abbreviated seasons for sales, there are others that are year-round businesses.

Because Placer County is more than 150 years old, there are a myriad of varieties of roads within the County, of both a public and private nature, that have been established over a long period of time and in a number of different ways. In some cases, there may be a recorded easement document establishing the private road and detailing the rights of each property owner in its use, but more often the exact nature of the rights that each property owner may have in the private road is a very fact-dependent matter and is based upon the circumstances of the creation, use and land development pattern that has occurred over time the private road has been used.

A quick review of some of the private roads throughout the County indicates that many of the easements covering the roadway are non-exclusive easements; that is, limitations are not necessarily identified as to what level or type of use is allowed between the private user over the private road or, more specifically, whether or not a business-like activity would "over burden" the private road. As a result, there are frequently no readily recognizable limitations as to the extent to which a property owner may utilize a private road, and the County is not in a position to determine how a property owner may or may not utilize the private road.

Because of the concerns that have been raised regarding the use of private roads for winery-related activities, staff has included language in the proposed Winery Ordinance that requires applicants to provide evidence to the County that the applicant has access rights over the road in question, but staff is not in the position of adjudicating between competing property owners over

the exact legal scope of those rights. (Refer to Section 17.56.330(D)(3)(C) [Access – Non-County Maintained Roads] which states: “If a winery is accessed by a private road, the applicant shall provide reasonable proof of access rights as determined by the Engineering and Surveying Department”.) This evidence could be a copy of an easement, a copy of the deed for the property which references to access rights, or any other type of proof that shows the applicant/property owner is allowed to use the private road.

#### AB 2004

Since the previous Board hearing on the proposed Winery Ordinance, questions have been raised as to the effect of AB 2004 on the proposed ordinance. AB 2004, which was approved by the Governor and filed with the Secretary of State on July 16, 2008, amended Section 23558 of the Business and Professions Code. This section deals with the on- and off-premises sale of wines.

Prior to the adoption of AB 2004, Section 23558 of the Business and Professions Code listed a number of activities involving the sale of wine and other alcoholic beverages that a winegrower could undertake, but seemed to imply the sale of wine for on premises consumption was limited to those places which had an “eating place”. It appears that AB 2004 was created, in part, to clarify the ability of winegrowers to sell their product for on-premises consumption without needing to be associated with an eating place. Section 223558 was also amended to add a provision stating that the section was not intended to alter, diminish, replace, or eliminate the authority of a county from exercising land use regulatory authority by law to restrict, but not eliminate, the privilege to sell wine on and off premises.

It is important to note that Business and Professions Code Section 23556.1, not Section 23358, is the statute that allows a winegrower to conduct wine tasting on premises, and Section 23556.1 was not changed by AB 2004. In its analysis of AB 2004, staff could not identify any provision of State law that would restrict the ability of the County to regulate tasting or promotional events as is currently proposed with this Winery Ordinance.

#### Review Processes with the Proposed Winery Ordinance

Because of the ambiguities associated with the current review processes for wineries and their associated activities, the Board originally directed staff to create a streamlined review process that provided some certainty to both winery owners and the public. Through the public review process, which has now been going for almost two years and has included more than 12 community meetings, staff has concluded, and the Agricultural Commission and the Planning Commission have concurred, that the proposed Winery Ordinance does in fact create a streamlined review process, while at the same time provides certainty to both winery owners and the public.

While staff and the Planning Commission have worked to streamline the review process for wineries and their associated activities, it is important to note that the ability for the public to participate in the process has not been diminished. As discussed at the previous Board meeting, it was the desire of the Planning Commission to provide the opportunity for more Administrative Review Permits – a discretionary review that is approved by the Planning Director/Zoning Administrator. However, Administrative Review Permits still require that notification be sent to all property owners within 300 feet of a project site. The public has the opportunity to provide

comments to the Planning Director/Zoning Administrator prior to a formal action being taken and, just as the Planning Commission and Board of Supervisors do, the Planning Director/Zoning Administrator will take these comments into consideration when rendering a decision. In addition, should a member of the public (or an applicant, for that matter) does not agree with the action taken by the Planning Director/Zoning Administrator, the public also has the ability to appeal any action of the Planning Director/Zoning Administrator, and that appeal would be heard by the Planning Commission.

As shown in the proposed Winery Ordinance (Attachment A), while wineries and wine tasting activities are now identified as permitted uses within Commercial, Industrial, Agricultural and Farm zoning districts, these same uses/activities require the approval of an Administrative Review Permit in the Residential Agricultural and Residential Forest zoning districts (where the potential for conflicts with adjacent neighbors/property owners is greatest). This level of review and notification is similar to that currently required for equestrian facilities in similar zoning districts (although, in some instances, a Minor Use Permit and public hearing may be required).

Based upon the comments received at the July 8, 2008 Board meeting, staff has concluded the concerns for adequate notification to adjoining property owners, especially those within Residential Agricultural and Residential Forest zoning districts, are addressed with the proposed Winery Ordinance, and the opportunity for the public to provide comments and/or appeal an Administrative Review Permit approval have not been diminished or eliminated.

#### **PUBLIC PARTICIPATION**

As has been discussed previously, the preparation of the proposed Winery Ordinance has included an extensive public outreach effort. The preparation of the proposed ordinance has extended over a two-year period, and during those two years, more than 12 community/public meetings have been held to allow the public to review and comment on the proposed ordinance. Based upon comments received from both winery owners and concerned residents, the language in the proposed Winery Ordinance has been significantly modified on several occasions.

The proposed project has also been presented to the Agricultural Commission on several occasions, and the comments and concerns of the Agricultural Commission have been incorporated into the proposed Winery Ordinance. As discussed below, the proposed ordinance has also been reviewed by the Planning Commission at three separate meetings.

#### **PLANNING COMMISSION HEARING**

In January 2008, the Planning Commission held a workshop on the proposed Winery Ordinance. After receiving comments from the public, the Planning Commission provided direction to staff on possible changes to the text of the proposed ordinance.

The Planning Commission conducted a public hearing to consider the Winery Ordinance at its May 8, 2008 meeting. Placer County Agricultural Commissioner Christine Turner and several other people spoke in favor of the Ordinance and recommended its adoption. One speaker expressed concerns about the current form of the Ordinance compared with earlier versions. His concern was the elimination of the Minor Use Permit requirement for wineries and tasting rooms, providing minimal opportunity for neighbors to review and comment on proposals. He

also indicated he did not believe public safety issues were adequately addressed. The Planning Commission asked questions about the Ordinance and made suggestions for staff to make minor clarifying changes to the text of the Ordinance. The Planning Commission unanimously adopted a motion (5:0, with Commissioner Brentnall absent) to recommend that the Board of Supervisors adopt the Negative Declaration and adopt the Winery Ordinance.

### **FISCAL IMPACT**

Implementation of the proposed Winery Ordinance would have a minimal fiscal impact on the County. Whereas Minor Use Permit fees are currently required for all winery proposals, under the Winery Ordinance, only an Administrative Review Permit or Zoning Clearance would be required in most cases. The fees for Zoning Clearance, Administrative Review Permits, Minor Use Permits and Appeals are established by the County's Fee Ordinance, and are intended to cover the staff time necessary to process the requisite application.

### **ENVIRONMENTAL REVIEW**

A Negative Declaration was prepared and filed with the County Clerk's Office for a 20-day review period which ended on April 23, 2008. Although the proposed Winery Ordinance may result in the establishment of additional wineries in Placer County by streamlining the regulatory process and addressing accessory uses, the Initial Study did not identify any potentially significant impacts that would result from the implementation of the proposed ordinance. This can be summarized as follows:

- 1) The scope of the Placer County vineyard and winery industry is limited in nature. Currently, there are only 10 approved wineries in Placer County, and because of the lack of identified impacts for those activities, each was approved under a categorical exemption. According to the Agricultural Commissioner, there are only 230 acres of planted vineyards in Placer County and the rate of growth in vineyard activities has been slow. Even a streamlining of the approval process is not expected to result in significant new levels of winery activities.
- 2) Small wineries (under 20,000 annual case production) are anticipated to have limited impacts due to their small size and limited number of visitors during regular tasting room hours.
- 3) Promotional events have the greatest chance to creating impacts, although temporary. The Winery Ordinance allows only six promotional events per year and requires the approval of an Administrative Review Permit which will allow an evaluation of safe ingress and egress, parking, noise, and sanitation (as well as provide an opportunity for public review and appeal rights).
- 4) Large wineries will continue to be subject to a Minor Use Permit requirement and environmental review which will provide the opportunity for the County to identify and mitigate potential site specific environmental impacts.

As discussed at the July 8, 2008 meeting, the County has received several comment letters on the proposed environmental document (Attachment B). Because some of these comments were received late, the Board directed staff to review the letters to determine if there was a need to amend the environmental document in any way. Staff has prepared a Supplemental Report to accompany the previously-released Negative Declaration, and this report supports the conclusions in the Negative Declaration. After an extensive review, staff has concluded the Negative Declaration prepared for the proposed Winery Ordinance properly addresses all environmental issues that may be associated with the implementation of the ordinance. Staff recommends the Board approve the Negative Declaration, with the supplemental Report, as attached to this memorandum.

### **RECOMMENDATION**

Staff brings forward the Planning Commission's recommendation that the Board of Supervisors (1) Adopt the Negative Declaration and, (2) Adopt the Winery Ordinance as set forth in Attachment A, attached to this memorandum, based upon the following findings:

### **FINDINGS**

#### **CEQA**

1. The Negative Declaration has been prepared as required by law.
2. There is no substantial evidence in the record as a whole that the Project may have a significant impact on the environment. The adoption of the Winery Ordinance is not expected to cause any significant adverse environmental impacts. This is based on the entirety of the analysis set forth in the Negative Declaration, the Supplemental Report, this staff report, including the following factors:
  - a) The scope of the Placer County vineyard and winery industry is limited in nature. Currently, there are only 10 approved wineries in Placer County, and because of the lack of identified impacts for those activities, each was approved under a categorical exemption. According to the Agricultural Commissioner, there are only 230 acres of planted vineyards in Placer County and the rate of growth in vineyard activities has been slow. Even a streamlining of the approval process is not expected to result in significant new levels of winery activities.
  - b) Small wineries (under 20,000 annual case production) are anticipated to have limited impacts due to their small size and limited number of visitors during regular tasting room hours.
  - c) Promotional events have the greatest chance to creating impacts, although temporary. The Winery Ordinance allows only six promotional events per year and requires the approval of an Administrative Review Permit which will allow an evaluation of safe ingress and egress, parking, noise, and sanitation (as well as provide an opportunity for public review and appeal rights).

- d) Large wineries will be subject to a Minor Use Permit requirement and environmental review which will provide the opportunity for the County to identify and mitigate potential site specific environmental impacts.
3. The Negative Declaration as adopted for the Project reflects the independent judgment and analysis of Placer County, which has exercised overall control and direction of its preparation.
4. The custodian of records for the Project is the Placer County Planning Director, 3091 County Center Drive, Suite 140, Auburn, CA 95603.

**Zoning Text Amendment**

The proposed Zoning Text Amendment amending the Placer County Zoning Ordinance as set forth in Attachment A amending various sections of Placer County Code Chapter 17 and adding Section 17.56.330 relating to wineries is consistent with the Placer County General Plan and implements the following General Plan policies:

7.A.3. The County shall encourage continued and, where possible, increased agricultural activities on lands suited to agricultural uses.

7.B.4. The County shall continue to enforce the provisions of its Right-to-Farm Ordinance and of the existing state nuisance law.

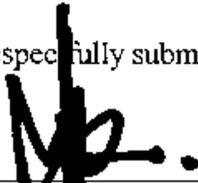
7.C.1. The County shall attempt to improve the financial viability of the agricultural sector of Placer County's economy through actions that have the potential to reduce costs and increase profits.

7.C.4. The County shall permit a wide variety of promotional and marketing activities for county-grown products in all agricultural zone districts.

7.C.5. The County shall permit on-farm product handling and selling. The County shall permit stands for the sale of agricultural products in any agricultural land use designation to promote and market those agricultural products grown or processed in Placer County. Secondary and incidental sales of agricultural products grown elsewhere may be permitted subject to appropriate approvals.

7.C.6. The County shall ensure that land use regulations do not arbitrarily restrict potential agricultural-related enterprises which could provide supplemental sources of income for farm operators.

Respectfully submitted,

  
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MICHAEL J. JOHNSON, AICP  
Director of Planning

## **ATTACHMENTS**

Attachment A – Wineries Ordinance

Attachment B – Correspondence Related to the Negative Declaration

Attachment C – Correspondence Related to Earlier Versions of the Draft Winery Ordinance

Attachment D - Correspondence Related to the Current Version of the Winery Ordinance

Attachment E – Minutes from the June 21 and 27, 2007 Public Workshops

Attachment F - Negative Declaration and Supplemental Report, dated August 15, 2008

cc: Richard Eiri - Engineering and Surveying Division  
Sharon Boswell – Engineering and Surveying Division  
Leslie Lindbo - Environmental Health Services  
Christine Turner – Agricultural Commissioner  
Bob Martino – Chief Building Official  
Bob Eicholtz - Emergency Services  
Scott Finley- County Counsel  
Holly Heinzen – Assistant County Executive Officer  
John Marin – CDRA Director  
Michael Johnson - Planning Director  
Board of Supervisors  
All MAC's  
Winery Ordinance Mailing List  
Subject/chrono files