

**SANTA BARBARA COUNTY
BOARD AGENDA LETTER**



Clerk of the Board of Supervisors
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Agenda Number:
Prepared on: 4/29/03
Department Name: 3rd District
Department No.: 011
Agenda Date: 5/13/03
Placement: Administrative
Estimate Time: 1 Hr. on 6/3/03
Continued Item: NO
If Yes, date from:

TO: Board of Supervisors

FROM: Gail Marshall
3rd District Supervisor
and
Joni Gray
4th District Supervisor

STAFF John Buttny Susan Warnstrom
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SUBJECT: White Hawk Winery and Definition of "premises" in Uniform Rules #9, paragraph 4

Recommendation(s):

That the Board of Supervisors:

1. Set a hearing on June 3, 2003 to review and clarify the definition of "premises" as used in the Santa Barbara County Agricultural Preserve Program Uniform Rules, Rule #9, paragraph #4, as applied to the White Hawk Winery Application.

Alignment with Board Strategic Plan:

The recommendation(s) are primarily aligned with:

Goal No. 1. An Efficient Government Able to Respond Effectively to the Needs of the Community; and
Goal No. 3. A Strong, Professionally Managed County Organization; and
Goal No. 4. A Community that is Economically Vital and Sustainable.

Executive Summary and Discussion:

INTRODUCTION:

This hearing is about how the term “premises” has been applied to the application of the White Hawk Winery. The Board is not being asked to consider a new definition of “premises”. That issue will be discussed as part of the Uniform Rules update that was initiated recently by the Board.

As the following discussion shows, **“premises” has meant, until recently, all the land under a single ag preserve contract.** Rule #9, part 4. of the Uniform Rules says that “wineries are deemed compatible within Agricultural preserves, provided that...a vineyard has been planted on the **premises** prior to county approval of the winery...” When the White Hawk Winery project went to the Agricultural Preserve Advisory Committee (APAC) in November of 2002, it was deemed inconsistent with the Uniform Rules because the winery was on a **parcel** with no grapes, although another parcel under the same ag preserve contract does have a 70 acre vineyard. **“Premises’ in this case was defined as “parcel”.** This is a clear departure from the historical use of “premises” by the APAC.

Therefore, the Board is being asked to review the following information, which traces the history of the term “premises” in the Uniform Rules, and decide how it should be applied to the White Hawk Winery project. This project has been in the county planning process for one year. It would not be fair, as suggested by the APAC, for the White Hawk Winery proponents to have to wait another 1 or 2 years for the completion of the Uniform Rules update before the project could move to completion.

In addition, there are other winery projects in the county planning process pipeline right now and the existing ambiguity over the definition of “premises” must be cleared up now.

BACKGROUND:

On November 1, 2002 the White Hawk Winery project was heard at the Agricultural Preserve Advisory Committee. There was no decision at that time and the item was continued to 12/6/002, at which time the Committee ruled that the project was inconsistent with Uniform Rule #9, paragraph 4 because there were no grapes planted on the premises. “Premises” in this instance was defined to mean “parcel.” Following this decision, White Hawk Winery agent Tish Beltranena wrote a letter that was sent to all members of the Board of Supervisors, calling attention to this action and explaining why she thought it was a change in the application of “premises”. (Please see Attachment A for the full text of Ms. Beltranena’s letter).

Because this decision has impacts for all of the wine industry, the 3rd District office contacted Ms. Beltranena and the Agricultural Commissioner to gain a better understanding of the issue. These discussions did not answer the basic question about the definition of “premises” as used in the Uniform Rules. In fact, County Planner Lisa Plowman sent the 3rd District a copy of a 12/5/02 memo to the Agricultural Preserve Advisory Committee Attachment A-1), the subject of which is “Definition of ‘Premises’”. It states, “I have reviewed the APAC’s actions on LLA or DP’s for wineries since 1998 and found that the committee’s actions provide no clear precedent.” In other words, it was impossible to tell from the committee’s actions, how “premises” was being applied to wineries.

White Hawk Winery had a third hearing at the Agricultural Preserve Advisory Committee in mid March to discuss this issue further. The 3rd District attended this meeting at which time the Committee reaffirmed it’s

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earlier action but agreed that the issue should go to the Board of Supervisors for review and clarification. The 3rd District agreed to take on that task, and together with the 4th District, brings this item to the Board for consideration.

LEGISLATIVE HISTORY:

1. Uniform Rule #9 was originally adopted by Resolution No. 77-157 of the Board of Supervisors on March 28, 1977. It was amended by Resolution No.77-320 (Attachment B) of the Board of Supervisors on June 27, 1977. At that time Paragraph #4 was added to Rule #9 to address wineries. The new Paragraph stated:

Due to the unique qualities and desirability of processing premium table wines near the vineyard, wineries are deemed compatible within Agricultural preserves, when built and operated under the applicable zoning ordinances. (Attachment B-1)

2. Uniform Rule #9 was further amended by Resolution No. 84-464 (Attachment C) of the Board of Supervisors on October 8, 1984. The stated purpose of this Resolution was “to make amendments to Agricultural Preserve Uniform Rules Nos. 3, 4, 5, 6, 7, 8, 9, 11 and 12 to reflect changes which have recently been made in the County Zoning Ordinance...” This amendment changed Paragraph 4 to read – changes underlined:

Due to the unique qualities and desirability of processing premium table wines near the vineyard, wineries are deemed compatible within Agricultural Preserves, provided that (a) a vineyard(s) has been planted on the premises prior to County approval of the winery, (b) the primary purpose of the winery is to process wine grapes grown on the premises, and (c) other applicable provisions of this Uniform Rule 9 are met. (Attachment C-1)

This is the action that introduced “premises” as part of the rule and it was done to make the Uniform Rules consistent with Article III. At that time, 10/8/84, “premises” was defined in the Article III Zoning Ordinance definitions as “The area of land in one ownership surrounding a house or building.” (Attachment D). Important for this discussion is that “premises” was not tied to a specific, individual parcel. It clearly refers to all the land under one ownership. And the action by the Board in this Resolution was to make Paragraph 4 of Rule #9 consistent with the County Zoning Ordinance. As the **PRACTICE** discussion below shows, “premises” was applied to mean all the land under one preserve contract.

Rule #9 has not been amended since then, although it is included as one of Rules to be modified in the update of the Uniform Rules that was just initiated by the Board of Supervisors at its 4/8/03 meeting. The recommendation from the Wine Industry Task Force and the Cattlemen’s Association is to replace “premises” with “preserve”, which would bring the Rule in conformance with what has been the practice of the Committee until very recently.

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RULE 9, ¶4 IN PRACTICE:

For this part of the discussion, minutes of the Agricultural Preserve Advisory Committee were reviewed, going back to 1998.

1. APAC meeting of 7/10/98, Agenda Item #2 (Attachment E):

Although “premise” is not used, Part 3 of the Action clearly distinguishes between “agricultural preserve contracts” and “parcels”. They are not used interchangeably.

2. APAC meeting of 11/5/99, Agenda Item #11 (Attachment F):

The Action on this item states that the “preliminary proposed facility is not consistent with the Uniform Rules because there are **no vineyards (i.e. on the premises) in the Ag Preserve.**”

This language clearly equates “premises” with the ag preserve. Restated it says that to be consistent with the Uniform Rules vineyards must be planted on the preserve.

3. APAC meeting of 12/3/99, Agenda Item #7 (Attachment G):

This item is a continuation of the item from #2 above. It is important because it states the following as part of the Action - “**(Premise is defined as the land under individual contract)**”. What could be more clear?

This definition of “premises” is as close as the Uniform Rules get to the definition of ‘premises’ as it appears in the Article III Zoning Ord. (Attachment D).

4. APAC meeting of 11/3/00, Agenda Item #3 (Attachment H):

This item addresses a replacement contract that was required to combine two contracts to comply with Rule 9. The Cushman Winery, aka Zaca Mesa, was required to “combine contracts so that the **vineyard and the winery are within the same contract**” in order to be consistent with the Uniform Rules.

No mention here of “parcels”, only contracts. The 505 acre property was comprised of two parcels, each with its own contract. To comply with the Rules, both parcels had to be put under one contract.

5. APAC meeting of 2/2/01, Agenda Item 2 under NEW ITEMS (Attachment I):

There is no mention here of premises, preserve contracts or parcels, but “grapes grown on-site” without further clarification.

6. APAC meeting of 4/6/01, Agenda Item #1 under CONTINUED ITEMS (Attachment J):

Here the Action discusses “**grapes grown on the preserve**”. No mention of parcels; and

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Agenda Item #5 again states that the “winery is consistent with Uniform Rule #9 based on the fact that over half the grapes processed at the facility must be grown on the preserve.”

7. APAC meeting of 7/12/02, Agenda Item #4 (Attachment K):

This is the first time a distinction is made between “premises” and “parcel”. The NOTES on the ACTION state “The issue is that the applicant does not have a sufficient amount of grapes planted on the **premises**, so that 51% of the grapes that are processed at the winery are currently grown on another **parcel.**” One of the suggested remedies reads “Plant more grapes on the premises (or on the lot that the winery is located on).”

Where did this come from? First “premises” and “parcel” seem to be used interchangeably, and then “premise” is sort of defined as a “lot”.

This certainly appears to contradict the clear definition of premises as put forth in the minutes of the 12/3/99 meeting – “Premise is defined as the land under individual contract”. It also contradicts the action taken on the Cushman Winery where the property owner was required to put all lands under one contract to meet the requirements of Rule 9.

Now we have a break in the interpretation of “premises”. Now “premises” is being interpreted to mean “lot” and/or “parcel”.

WHITE HAWK WINERY

This brings us to the case of the White Hawk Winery. Ms. Beltranena describes this case very clearly in her 11/6/02 letter to the Board (Attachment A). In summary, the White Hawk Winery shares the same facts as the Cushman Winery, except that there is already one preserve covering the White Hawk property. The contract covers three parcels. The vineyard is 70 acres and more than enough to meet the requirements of the Uniform Rules regarding the source of grapes for a winery in a preserve. The winery is proposed for a parcel with no grapes. This is the same plan that was approved for the Cushman Winery.

However, the White Hawk Winery was turned down because the winery was proposed for a “parcel” with no grapes, even though the land under the preserve contract had plenty of grapes. In this case, again, “premises” has been used interchangeably with “parcel”. And this is clearly inconsistent with the previous APAC actions as outlined above.

It is clear from the record of the APAC meeting minutes that if this project had come in before the change in interpretation that took place at the 7/12/02 APAC, it would have been approved because it was consistent with all the previous applications, at least back to 1998.

CONCLUSION

It is clear from the legislative history and the APAC minutes that “premises” was defined as the land under one contract. Some time in 2002 “premises” was reinterpreted to mean “parcel”.

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As Ms. Beltranena shows in her 11/6/02 letter, this change has put her client at a severe disadvantage. Having already invested many thousands of dollars to complete his vineyard and winery project, he finds the rules changed.

The issue for the Board of Supervisors is that only they have the authority to change the interpretation of “premises”. Such changes in the Uniform Rules require a public hearing process and that has not happened, until now.

The Board of Supervisors is thus requested to clear up this ambiguity so that the wine industry has a clear understanding of the rules.

Mandates and Service Levels: None

Fiscal and Facilities Impacts: None

Special Instructions: None

Concurrence: N/A

