

## County Can Establish Winery Uses By Right Despite Environmental Impacts

San Diego County's decision to permit visitor-serving wineries by right has survived CEQA and general plan challenges. *San Diego Citizenry Group v. County of San Diego*, 219 Cal. App. 4th 1 (2013). Deferring to the county's decision to encourage such wineries – despite their unavoidable environmental impacts – by eliminating use permit requirements, the court upheld the EIR that analyzed the change. The court also approved an accompanying general plan amendment, which prioritized development of wineries over protection of "environmentally constrained areas." *The Ordinance*. As of 2006, all visitor-serving wineries in two county agricultural zones required discretionary conditional use permits. The county board of supervisors decided to encourage winery development. After a four-year process, the county adopted zoning ordinance and general plan amendments allowing boutique wineries by right, without a discretionary zoning permit, and thus without environmental review unless the winery activity necessitated some other type of discretionary approval. The ordinance imposed many restrictions on the wineries, including minimum local grape requirements, parking requirements, and prohibitions on parties and amplified music. Despite these restrictions, the county's EIR identified 22 significant unavoidable environmental impacts of the change to air quality, biological resources, cultural resources, hydrology and water quality, noise, transportation and water supply/groundwater supply.

*CEQA Claims*. The petitioner's first argument was that the county board of supervisors had not made a "preliminary policy determination" regarding the project's objectives at the beginning of the CEQA process, and therefore the drafters of the EIR could not rely on the EIR's stated project objectives. The court rejected this argument, noting that the board of supervisors had in fact specifically directed staff to develop an ordinance that would include, among other uses, "By-Right Boutique Wineries." Focusing on this project objective, the court dismissed the petitioner's challenges to the EIR's discussion of mitigation measures and alternatives, holding that the EIR was not required to examine any mitigation or alternative that would defeat the objective of encouraging the wine industry by streamlining the approval process and permitting boutique wineries by right. The court also upheld the adequacy of the EIR's analysis of traffic and water supply impacts. Ruling that an EIR for a large-scale zoning amendment need not be as specific as an EIR for a particular development project, the court found that the EIR's effort to predict future winery growth based on survey data was adequate, as was the EIR's projection of traffic generation from wineries, which was based on data from three existing wineries in the region. As for water supply, the court rejected the argument that the EIR's analysis did not meet the standard set by the California Supreme Court in *Vineyard Area Citizens for Reasonable Growth v. City of Rancho Cordova*. A "conceptual" EIR, such as for a general plan amendment or a county-wide zoning amendment, the court held, "meets *Vineyard's* requirements by identifying the likely source of water for new development, noting the uncertainties involved, and discussing measures being taken to address the situation in the foreseeable future." Citing the EIR's reliance on water source data, water use information from existing wineries in the county, a project goal to encourage crops such as grapes that use less water than other crops, and water use information from other counties with wine industries, the court held that the EIR's inability to predict how many by-right wineries might develop was not fatal, even though unmitigated significant impacts to water supplies might result.

*General Plan Claim*. Through a general plan amendment, the county exempted by-right wineries from a general plan provision requiring environmental review for projects within "environmentally constrained areas." Citing the great deference courts afford to an agency's determination that a project is consistent with its own general plan, and case law holding that agencies must be allowed to weigh and balance their general plan policies, the court held the petitioner did not show the county's amendment created a general plan inconsistency.

*Costs of Hearing Transcripts*. Some lead agencies facing CEQA litigation prepare transcripts of numerous

public hearings on the project and include those transcripts in the administrative record for the convenience of the court and the parties. In this case, the court held that transcripts of hearings held prior to the final hearing on the project need not be included in the record, under Public Resources Code section 21167.6(e)(4), because the transcripts were not presented to the board of supervisors prior to that body's decision. Accordingly, the court held that the county could not recover from the petitioner the cost of preparing those transcripts. The *San Diego Citizenry* case confirms a city or county's ability, with adequate CEQA documentation, to establish uses by right as a matter of policy, despite significant, and not entirely predictable, environmental impacts of implementing the new policy.

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