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Napa County Planning, Building  
& Environmental Services

**Statement:**

Information on the amount of grapes Napa County grows versus the post-WDO production capacity has been provided in every staff report APAC has received thus far. The last staff report has shown that we have more than enough grapes to supply our post-WDO approved capacity, yet proposals have been submitted that will limit or stop winery development (regardless of site specific conditions) via minimum parcel size increase, elimination of variances, and blanket limits and rules based on parcel size. We've also discussed requiring estate grapes for new or expanded wineries. However, this is only looking at one side of the supply/demand equation, and does not address the difficulty in getting approval for new vineyard development.

Agriculture is the highest and best use of Napa County land, and the General Plan defines agriculture as "the raising of crops, trees, and livestock; the production and processing of agricultural products; and related marketing, sales and other accessory uses. Agriculture also includes farm management businesses and farm worker housing". As the Agricultural Protection Advisory Committee, we must protect agriculture as defined above. Yet, to date, much of our committee discussion has focused on wineries rather than on also facilitating the complementary process of growing grapes. Grapes that will become the Napa Valley wine that insures land is held in agriculture and associated open space. We cannot protect agriculture without discussing the barriers for farming, especially when reducing these barriers have been identified in an action item in our General Plan. While not on our specific list of tasks, these two issues cannot be unbundled.

**Proposal:**

I propose that in the course of our recommendations for clarifying and consistently applying rules related to winery development on parcels of any size – that the APAC recommend to the Planning Commission that the County implement General Plan Policy CON-27 Action Item Con NR-1 to "Amend the Conservation Regulations to offer incentives such as a streamlined review process for new vineyard development and other projects that incorporate environmentally sustainable practices that avoid or mitigate significant environmental impacts." While it is not in our purview to go into detail on such a program, I have attached Mitigation Measure 4.11. from the Draft environmental Report on the General Plan as a starting point to move that discussion forward within the appropriate forum.



Service, and other coordinating resource agencies that identify essential stream and stream reaches necessary for the health of populations of native fisheries and other sensitive aquatic organisms within the County's watersheds.

Where avoidance of impacts to riparian habitat is infeasible along stream reaches, appropriate measures will be undertaken to ensure that protection, restoration, and enhancement activities will occur within these identified stream reaches that support or could support native fisheries and other sensitive aquatic organisms to ensure a no net loss of aquatic habitat functions and values within the county's watersheds.

Policy CON-27: The County shall enforce compliance and continued implementation of the intermittent and perennial stream setback requirements set forth in existing stream setback regulations, provide education and information regarding the importance of stream setbacks and the active management and enhancement/restoration of native vegetation within setbacks, and develop incentives to encourage greater stream setbacks where appropriate.

Incentives shall include streamlined permitting for certain vineyard proposals on slopes between 5 and 30 percent and flexibility regarding yard and road setbacks for other proposals.

[Implemented by Action Item CON NR-1]

Policy CON-28: To offset possible additional losses of riparian woodland due to discretionary development projects and conversions, developers shall provide and maintain similar quality and quantity of replacement habitat or in-kind funds to an approved riparian woodland habitat improvement and acquisition fund in Napa County. While on-site replacement is preferred where feasible, replacement habitat may be either on-site or off-site as approved by the County.

Policy CON-29: The County shall coordinate its efforts with other agencies and districts such as the Resource Conservation District and share a leading role in developing and providing outreach and education related to stream setbacks and other best management practices that protect and enhance the County's natural resources. [Implemented by Action Item CON NR-5]

Policy CON-30: All public and private projects shall avoid impacts to wetlands to the extent feasible. If avoidance is not feasible, projects shall mitigate impacts to wetlands consistent with state and federal policies providing for no net loss of wetland function.

Policy CON-31: The County shall maintain and improve marshland habitat in the southern part of the county through a variety of appropriate measures, including:

- a) Utilize reclaimed wastewater for salinity control and management of marshlands, meadows, and salt ponds.
- b) Establish County Policy for promoting wildlife habitat use within marshland areas such as Coon Island, Fly Bay, Devil's Slough, North Slough, the area between Napa Slough and South Slough, Fagan Slough Peninsula, (Cargill) Napa Plant Restoration



*Note to the Reader: Please see the Agricultural Preservation and Land Use Element for additional policies related to timber resources.*

- Policy CON-37: The County shall identify, improve, and conserve mineral and aggregate resources and ensure the long-term production and supply as follows:
- a) The County shall request that the State Department of Conservation conduct a countywide study to assess the location and value of mineral and aggregate resources.
  - b) Identify known mineral resources on the General Plan Land Use Map or in the Baseline Data Report, based on mapping prepared by the State of California.
  - c) Apply zoning for mineral resource areas and appropriate surrounding areas to allow for resource management and future resource availability.
  - d) Fulfill the County's responsibilities under the Surface Mining and Reclamation Act (SMARA).
  - e) Encourage compatible use of resource areas such as low density recreation, wildlife habitat, or agriculture and protect resource areas from incompatible uses.
  - f) Continue to enforce established policy on geothermal energy exploration and development (Napa County Code Title 16), considering the potential adverse environmental effects such as noise pollution, air pollution, water pollution, and poorly located transmission lines that can accompany improper geothermal development.
- Policy CON-38: The County shall identify, improve, and conserve Napa County's sand and gravel resources, preventing removal of streambed sand and gravel in any manner that would cause adverse effects on water quality, fisheries, riparian vegetation, or flooding.
- Policy CON-39: Resource extraction activities (e.g., mining and geothermal development) shall fully address environmental implications, such as air pollution, visual distractions, siltation of nearby streams, increase in surface runoff, removal of underground water by pumping, increase in erosion or landslide hazard, disposal of chemical wastes, creation of impervious layers and surface compaction, extent of vegetation removal, and site rehabilitation procedures.
- Policy CON-40: Encourage the ongoing reclamation of sand and gravel mining areas through the implementation of reclamation plans. In conformance with state law, all mining operations shall have up-to-date reclamation plans and adequate financial assurances to the satisfaction of the County.

## NATURAL RESOURCES GOALS/POLICIES ACTION ITEMS

- Action Item CON NR-1: Amend the Conservation Regulations to offer incentives such as a streamlined review process for new vineyard development and other projects that incorporate environmentally sustainable practices that avoid or mitigate significant environmental impacts. [Implements Policy 27]

Under Alternatives B and C, the proposed General Plan Update would include policies resulting in modifications to the County's Conservation Regulations (County Code Chapter 18.108) to provide a ministerial process for environmentally superior vineyard development projects that would not require environmental review under CEQA. This process has been proposed in order to meet the proposed General Plan Update's policy provisions for the continued promotion of agricultural activities in the County that are protective of the environment. These projects would be required to go beyond current regulatory requirements and meet performance criteria demonstrating no significant adverse effects to the environment in order to qualify for the streamlined process. However, no such performance criteria have been developed as part of the preparation of the General Plan Update. This impact is considered **significant and mitigable** with the implementation of the mitigation measures below.

### Mitigation Measures

The following mitigation measure would apply to Alternative B and C.

**MM 4.11.4** The County shall include the following into the General Plan and/or County Code Chapter 18.108, which will allow new vineyard development projects meeting criteria below to participate in a streamlined permitting process. The permit process shall require that an erosion control plan be developed and implemented for all disturbed lands where new cultivation is proposed. This permit process will require only County determination of "completeness," and no discretionary review. Conditions for participation in this ministerial permit process are described below.

#### **APPLICATION REQUIREMENTS**

The following application requirements will be mandatory:

- Erosion control plan
- Geotechnical report
- Hydrologic report
- Water quality report
- Groundwater report
- Biological resources report
- Cultural resources report

These reports must demonstrate compliance with applicable Napa County Conservation Regulations and compliance with the conditions as described below. The specific detailed requirements for these submissions and the completeness determination process shall be defined by Napa County in a subsequent formal amendment to the Conservation Regulations.

Where the submitted application material does not demonstrate compliance with the conditions below, the application shall be denied. Where the submitted application material is incomplete, the County shall identify the information necessary to complete the application. Where the information submitted leaves uncertainty as to the ability of the project to comply with any one of the conditions below, and the applicant does not submit information that resolves the uncertainty, the application shall be denied.

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### PROJECT CONDITIONS

The following conditions must all be met, without exception, to qualify for a ministerial permit process:

#### A. Project Area

- The project footprint must be less than 15 acres; or
- The project must be less than 20 acre and include a net reduction of anthropogenic sedimentation by 50% (e.g. may include landslide repair/stabilization, restoration of roads or other legacy effects) or more per parcel.

#### B. Slope

- The project shall not occur or disturb in areas with a slope of 30 percent or greater.

#### C. Surface Hydrology

- The project and associated improvements (i.e., access roads, vineyard avenues, water supply developments and accessory uses) shall not result in any increase to peak flow discharges downstream of the project site or at the subbasin outlet. Peak discharges for 2-, 10-, 50-, 100- year recurrences under project conditions shall be compared to baseline (pre-project) conditions.

#### D. Groundwater Use

- The project shall not lower groundwater levels offsite and shall not be located in the MST.
- The project shall not result in any reduction in summer baseflow contributions to either the groundwater aquifer or receiving waters (creeks, ponds, etc.) downstream of the site.

#### E. Water Diversion/Water Transfers

- The project shall not require a new appropriative surface water diversion.
- The project shall not require water transfer between existing subbasin (post-project water allocations in subbasin must be unchanged from pre-project subbasin condition).

#### F. Soil Loss/Productivity

- The project shall not lead to an increase in soil loss.

#### G. Water Quality

- The project shall not result in an increase in downstream sedimentation.
- The project application shall specifically identify BMP measures intended to treat water quality pollutants associated with fertilizers, pesticides, herbicides, petroleum-based pollutants and other pollutants anticipated to occur. It shall be demonstrated that these BMPs will mitigate potential water quality impacts to either (at a minimum) pre-development conditions or in compliance with the Basin Plan requirements and are protective to municipal water supply watersheds prior to construction commencing.

### H. Stream Setbacks

- All projects shall provide for stream setbacks in excess of those required by Napa County's Conservation Regulations.
- If the stream setback areas are currently disturbed/denuded, the entire width of the required setback area shall be restored/revegetated with native vegetation adjacent to the waterway so as to provide a continuous riparian corridor within the setback area.

### I. Biological Resources

- A biological report prepared by a qualified biologist shall determine that none of following species or their habitat are found on the project site: special-status plant species (as defined in Table 4.5-1 in this DEIR); special-status mammals (other than bats), amphibian, reptile, or invertebrate species (as defined in Table 4.5-2 in this DEIR); threatened or endangered birds (as defined by Table 4.5-2); or threatened or endangered species not listed in DEIR Table 4.5-1 or 4.5-2 that may be subsequently listed as such under the California or federal Endangered Species Acts. If the biological report determines that non-listed special-status bird or bat species are present on the site, the requirements noted below for nesting bats and birds shall be followed.
- The project shall not require conversion or loss of any of the communities identified as "communities of limited distribution" or "sensitive natural communities" in the DEIR and BDR.
- The project shall not be located in core areas identified in adopted recovery plans for vernal pools, serpentine soil plants, and tiburon paintbrush or other core areas that may be identified by USFWS.
- The project shall not require fill in stream, wetland, or other waterbody within the jurisdiction of the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act, the California Department of Fish and Game under Section 1602 of the California Fish and Game Code, the Regional Water Quality Control Board under the Porter-Cologne Water Quality Control Act. (NOTE: The state permits noted herein are

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discretionary and thus require CEQA compliance and thus projects that involve such permits are *in toto* no longer consider "ministerial".)

- The project shall maintain/preserve at least 60% of the tree canopy cover and 40% of the shrubby and herbaceous cover present as of 1993 as part of land uses. If sensitive natural communities (as defined by the BDR), other than communities of limited distribution, are found on the site, the on-site preservation to meet the 60/40 requirements shall be biased towards preservation of the sensitive natural communities over other communities that may be present. Habitat to be maintained/preserved shall be contiguous.
- The project proponent shall implement the following elements to avoid disturbance to the roosts of special-status bats during the breeding season:
  - For ground disturbing activities occurring during the breeding season (March 1 through August 31), a qualified bat biologist shall conduct preconstruction surveys of all potential bat breeding habitat within 200 feet of grading or earthmoving activities. If active roosts are identified during preconstruction surveys, a no-disturbance buffer acceptable in size to the California Department of Fish and Game (CDFG) would be created around active bat roosts during the breeding season. Preconstruction surveys shall be conducted no greater than 2 weeks prior to the commencement of any earthmoving activities and/or vegetation removal.
  - If preconstruction surveys indicate that roosts are inactive or potential habitat is unoccupied during the earthmoving period, no further mitigation is required. Trees and shrubs that have been determined to be unoccupied by special-status bats or that are located more than 200 feet from active roosts may be removed. This buffer may be modified in coordination with CDFG.
- The project proponent shall implement the following elements to avoid disturbing special-status bird nests:
  - For ground disturbing activities occurring during the breeding season (March 1 through July 31)[1], a qualified wildlife biologist shall conduct preconstruction surveys of all potential nesting habitat for birds within 500 feet of earthmoving activities. Preconstruction surveys shall be conducted no greater than 2 weeks prior to the commencement of any grading and vegetation removal.
  - If active bird nests are found during preconstruction surveys, a 500-foot no-disturbance buffer shall be created around active raptor nests during the breeding season or until it is determined that all young have fledged. A 250-foot buffer zone would be created around the nests of other special-status birds. These buffer zones are consistent with CDFG avoidance guidelines, however, they

may be modified in coordination with CDFG based on existing conditions at the project site.

- If preconstruction surveys indicate that nests are inactive or potential habitat is unoccupied during the construction period, no further mitigation is required. Trees and shrubs that have been determined to be unoccupied by special status birds or that are located 500 feet from active nests may be removed.

- All wildlife exclusion fencing on the parcel shall be limited to the vineyard block areas only to minimize the effect on wildlife movement. In cases where wildlife exclusion fencing exists on the parcel, such fencing shall be removed to reestablish adequate wildlife movement.

### **J. Cultural Resources**

- A cultural resource report prepared by a qualified cultural resource specialist (as determined by Napa County) shall demonstrate that no significant cultural resources are present on the site and the potential to encounter buried cultural resources is low.
- "Significant cultural resources" are defined as those resources meeting the definition under CEQA as "significant" including, but not limited to resources considered eligible for the California Register of Historic Resources and the National Register of Historic Places.
- If a cultural resource is discovered during project construction or operation, the project applicant shall cease all activity within the vicinity of the resource, shall contact Napa County immediately, and shall apply for and obtain authorization for vineyard activity through the non-ministerial permit process applicable at the time, including any and all CEQA processing.

### **K. Construction timing**

- All project staging and grading shall be conducted between April 1 and September 1.
- All best management practices shall be installed by September 30.

### **L. Monitoring**

- Project applicants shall agree to allow field monitoring by Napa County (and their agents) of their vineyard and adjacent areas under their control in order to verify compliance with project conditions and to support ecosystem management goals in Napa County. Monitoring for assessment of baseline project conditions may occur prior to acceptance of project into ministerial permit process. Monitoring for project compliance with terms and conditions of the ministerial process may occur during construction or following construction.



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- Project applications shall agree to monitor their ground water levels annually at the beginning and end of each water year (October 1st of one year and September 30th of the next) and provide the County with annual well logs documenting these on-site water levels for the duration of vineyard operations authorized by the ministerial permit.

### **M. Limitations**

- A ministerial permit may only be used for one project per parcel.
- Applications for ministerial permits wherein subdivision of land in 2007 or after has been pursued for the sole purpose of qualifying multiple projects for ministerial permits shall be denied.
- Ministerial permits may not be used for any parcel wherein a discretionary vineyard project has been approved in 2007 or after.

### **N. Unique Circumstances**

- Ministerial permits may not be used for projects that include any of the following unique circumstances:
  - The project is located in a designated Mineral Resource Area
  - The project includes any new visitor-serving uses (tasting rooms, etc.)

#### *Effectiveness of the Above Mitigation Measure*

##### *Hydrology*

Vineyard development projects that qualify for the ministerial permit process would not result in an increase in peak flow downstream, would not lower groundwater levels, and would not reduce summer baseflow. Projects would need to demonstrate how they would meet these standards, likely through the presentation of pre- and post-project water balances, hydrologic modeling, and/or well pump tests that would be presented in the required hydrologic and groundwater reports. Projects would be required to monitor their well water levels and provide the monitoring results to Napa County so that water use over the project lifetime can be monitored for compliance with the hydrologic standards in the permit process. Thus, ministerial vineyard projects would not have a significant impact on hydrology.

##### *Water Quality*

Vineyard development projects that qualify for the ministerial permit process would not occur on slopes greater than 30 percent, would not lead to an increase in soil loss, would not result in an increase in downstream sedimentation and would not substantially alter temperature, nutrient, or other water quality parameters downstream. As noted, above ministerial vineyard projects would not alter peak flows downstream and thus would avoid any sediment-related effects due to peak flow alteration. Further, all projects will comply with the stream setback requirements in the Conservation Regulations. The extensive scientific literature has demonstrated the water quality benefits of providing buffers along streams in terms of controlling off-site sedimentation, nutrient loading, stream temperatures, and attenuation of other constituent concentrations

(such as those of pesticides and herbicides) prior to entry into waterbodies. All projects will comply with the timing restrictions noted above, which avoids construction during the wet season and provides for the establishment of appropriate controls prior to the wet season.

In order to demonstrate compliance with these performance measures, the projects will have to be controlled through an erosion control plan that would need to contain many of the site preparation, cover crop, slope protection, runoff control, sediment retention, and roadway BMPs described in **Appendix I**. As described in **Appendix I**, these BMP measures have been shown to be effective for vineyard projects far larger than would be allowed under the ministerial permit process. Thus, ministerial vineyard projects would not have a significant impact on water quality.

### *Water Supply*

Vineyard development projects that qualify for the ministerial permit process would not require new surface water diversions, would not require water transfer between sub-basins, would not lower groundwater levels off-site or be located in the MST, and would not reduce summer baseflow downstream. Thus, ministerial vineyard projects would not have a significant impact on water supply.

### *Biological and Fisheries Resources*

Vineyard development projects that qualify for the ministerial permit process would not affect special-status species (other than potentially non-listed nesting bats and birds), would not affect core habitat for recovery of certain species, would not affect biotic communities of limited distribution, and would not require fill of streams, wetlands or waterbodies. Projects will preserve at least 60% of the tree canopy cover and 40% of the shrubby and herbaceous cover. Stream setbacks will be provided in accordance with the Conservation Regulations. Significant nesting impacts to non-listed special-status bird and bat species would be avoided through the use of timing and buffers for construction. Fencing would be limited to vineyard blocks, riparian corridors are preserved, vegetation cover is retained (through the 60/40 rule), and the project size is limited which avoid significant impacts to wildlife movement. The setbacks and the requirements above concerning avoidance of hydrologic and water quality effects would avoid direct impacts to streams and their associated aquatic resources/fisheries and would also avoid significant indirect impacts. Thus, ministerial vineyard projects would not have a significant impact on biological and fisheries resources.

### *Cultural Resources*

Ministerial vineyard projects would not occur on sites with significant cultural resources as defined by CEQA and as demonstrated through the required cultural resource report. In the event of discovery of significant buried cultural resources not anticipated in the cultural resource report, projects will be required to cease all activity affecting such a resource and comply with the routine permit review and approval process. Thus, ministerial vineyard projects would not have a significant impact on cultural resources.

Thus, implementation of the above mitigation measures would reduce this impact for Alternative B and C to **less than significant**.