



WINEGROWERS
of napa county

members

Black Stallion
Winery

Cakebread Cellars

Catlin Farm

Duckhorn
Vineyards

E. & J. Gallo
Winery

Far Niente Winery

HALL Wines

Harlan Estate
Winery

Joseph Phelps
Vineyards

Jackson Family
Wines

Michael Mondavi
Family Estate

Piña Vineyard
Management

Realm Cellars

Renteria Vineyard
Management

Round Pond
Estate

Rombauer
Vineyards

Silver Oak Cellars

Silverado
Premium
Properties

Trefethen Family
Vineyards

Trinchero Family
Estates

February 19, 2019

Napa County Planning Commission
1195 Third Street, Second Floor
Napa, California

RE: Draft Watershed Protection Ordinance

Dear Commissioners:

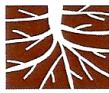
Winegrowers of Napa County is a non-profit organization whose principal mission is to promote policy that preserves sustainable agriculture as the highest and best use of the natural resources while protecting the ability of wineries to produce, market, and sell wine. Winegrowers submits this comment letter on the draft Watershed Protection Ordinance ("WPO") that was released just after 6:00 p.m. on February 8, 2019. Our initial concerns are detailed below. Due to the extremely aggressive timeline for consideration and adoption of the WPO, Winegrowers continues to review this re-writing of the Conservation Regulations. As this process moves forward, Winegrowers reserves the right to make additional comments.

The WPO's vegetation retention requirements should be current conditions, not pre-fire conditions.

The draft WPO imposes vegetation retention requirements based on vegetation existing on June 16, 2016. There are several problems with this date. First, the June 2016 date does not match the expressed intent of the Board of Supervisors, who on January 29, 2019 directed staff to move forward according to "the latest aerial photograph". Second, June 2016 pre-dates the 2017 Napa Fire Complex and subsequent clearing by PG&E. If the 2017 fires were a reason for the WPO, as stated in the WPO's recitals, there is no logic to a limitation based on pre-fire conditions. Lastly, the public has limited ability to evaluate the impact of the WPO. A landowner knows what vegetation is present today, but Napa County's residents do not have ready access to aerial photos of their property from 2016. Winegrowers understands that aerial imagery of current conditions is available and recommends that the benchmark date for vegetation retention date be current conditions, not past conditions.

Napa County has not provided adequate notice to property owners whose lands will be subject to new regulations under the WPO.

Winegrowers is concerned that the WPO is being rushed forward at a pace that prevents thoughtful legislation and risks of unintended consequences. The title "Watershed Protection Ordinance" in itself implies that it's focused on the hillside areas zoned Agricultural Watershed, and the idea of vegetation retention requirements throughout



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Napa County only arose on January 29, 2019. During the Board's workshop, Director Morrison confirmed that the "Decision Matrix" options would regulate all of Napa County, not only AW zoned lands. Winegrowers is concerned that inadequate notice and bypassing the CEQA process will result in legislation without input from the public that is difficult to amend.

Napa County Code requires mailed notice to property owners whose land is subject to proposed amendment to zoning.¹ Where the number of property owners exceeds one thousand, the County recognizes the how critical it is to notice such a mass audience "by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the county at least ten days prior to the hearing."² The notice for the Commission's February 20 hearing was not a display advertisement, but was only a legal notice in the classified section. Public notice and participation are especially important given that the draft WPO will impose new regulation onto all unincorporated areas of Napa County. The WPO will apply to the Airport Industrial Area, Silverado Country Club, and residentially zoned land in Napa County. These property owners have a due process right to notice compliant with County Code.

The use of CEQA exemptions is inappropriate.

The Staff Report published on February 12 provides a lengthy thirteen-page CEQA memorandum arguing that the County is exempting the WPO from environmental review. The CEQA Memorandum cites five exemptions from CEQA including "minor alterations in land use limitations" in areas of less than 20% slope and the "commonsense" exemption. Imposing a 70% vegetation retention requirement on all of Napa County would not seem to qualify as a minor change, and the alteration to land use limitations expressly applies to areas over 20% in slope. Furthermore, both these exemptions are intended to apply to specific projects, not County-wide legislation. Napa County cannot simply assume that measures intended to protect the environment are entirely benign.³ CEQA review could analyze the potential impacts from increased fire risk resulting from prohibiting vegetation management on roughly 70% of Napa County. Another possible impact is the displacement of development pressure from Napa County into incorporated areas or neighboring counties.⁴ Additionally, a thoughtful and orderly legislative process could consider consistency between the draft WPO and Napa County's General Plan and the Agricultural Preserve both of which state that agriculture is the primary or predominant use of Napa County lands.⁵ Lastly, Winegrowers notes that any future changes to the WPO likely will not qualify for these exemptions from CEQA. If the WPO needs to be amended to address an unintended consequence of this rushed process, that future change would be subject to CEQA review and possibly an EIR.

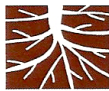
¹ Napa County Code §18.136.040(B)(1). The draft WPO imposes several of the regulations listed in California Government Code §65850 on lands that do not currently have those regulations. Therefore, the provisions of Chapter 18.136, including notice, apply to the WPO's consideration and adoption.

² Napa County Code §18.136.040(C).

³ *Dunn-Edwards Corp. v. Bay Area Air Quality Mgmt. Dist.* (1992) 9CA4th 644.

⁴ *Muzzy Ranch Co. v. Solano County Airport Land Use Comm.* (007) 41 CA4th 372, 382 (use of commonsense exemption upheld only because airport plan "simply incorporates existing general plan and zoning").

⁵ Napa County General Plan Policies AG/LU-1 and AG/LU-15; Napa County Code §18.16.010. Even the Agricultural Watershed zoning district provides that agriculture is the predominant use of the land. (NCC §18.20.010)



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The new stream definition should be clarified to exclude drainage ditches, culverts, and other constructed features.

It is important to remember that this definition will apply to all unincorporated areas of Napa County, not just rural areas in the hillsides. The definitions of Ephemeral and Intermittent Streams also should be clarified to clearly rule out artificially constructed features including drainage ditches, culverts, and stormwater drains. Winegrowers appreciates that the word “natural” is contained in the definition, and Winegrowers proposes the following additions to the current draft WPO:

“Ephemeral or intermittent stream” means any natural channel with bed and banks containing flowing water or showing evidence of having contained flowing water, such as deposit of rock, sand, gravel, or soil, that shows evidence of annual scour and sediment transfer to a “stream” as defined in this chapter but does not itself meet the definition of “stream” in this chapter. This definition does not include features that are the result of human activity including but not limited to drainage ditches, culverts, or stormwater drains.

Thank you for the opportunity to comment on this important matter.

Sincerely,

Michelle Benvenuto
Executive Director

cc: Board of Supervisors
Minh Tran, County CEO
Jeffrey Brax, County Counsel
David Morrison, PBES Director