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December 3, 2018

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Napa County Board of Supervisors  
County Administration Building  
1195 Third Street  
Suite 310  
Napa, CA 94559

Re: December 4, 2018 Agenda, Item 10A: County Code Compliance Program

Honorable Supervisors:

On behalf of Friends of the Napa County Agricultural Preserve, we submit these comments on the County's proposed revisions to the County's code compliance program for wineries (the "Resolution"). The proposed Resolution is intended to provide direction to County staff regarding the County code compliance program, annual winery production and grape source reports and regulation of temporary events. However, we have grave concerns that instead of addressing the serious impacts experienced in the County due to numerous wineries operating outside of permit requirements, the Resolution will do nothing more than grandfather in years of illegal activities. This fails to address the traffic, noise, water supply, biological and other impacts that have and will further impact Napa County residents and the environment. Wineries that have chosen to operate outside of the law should not be rewarded for such actions. Moreover, the Resolution further disenfranchises the impacted community by failing to ensure transparency through public participation and a public appeal process.

**I. Benefits Should Not Be Provided To Wineries That Have Chosen To Operate In An Illegal Manner.**

As an initial matter, it is unclear to Friends of the Napa County Agricultural Preserve why the County is considering a program to provide benefits to those wineries that have for years profited from operating in an illegal manner. Under the existing code, wineries operating out of compliance are required to halt illegal and unpermitted activities. If these wineries seek to re-engage in those activities, they are required to

apply for a new or modified permit and abide by the conditions set forth in that permit before continuing with the previously illegal operations. To provide a special process, one that does not require these wineries to halt illegal activities or provide a public process for consideration of impacts and conditions of approval, improperly puts those wineries that have chosen to comply with existing laws at a disadvantage.

**II. The County Should Not Pre-commit To The Approval Of Illegal Activities Prior To The Adoption of Environmental Review.**

It appears the Resolution is intended to provide a path for the grandfathering of illegal and non-compliant activities at wineries. Without this Resolution, those activities are required to be immediately halted under existing County law, whereas under the Resolution wineries that submit timely applications can continue illegal activities. Thus, the Resolution would result in a physical impact on the environment and is the first step in approving additional activities at wineries and allows for the continuing operation of illegal and non-compliant activities. As such, the discretionary approval of the Resolution should be considered a project under the California Environmental Quality Act (CEQA) and the approval of the Resolution should require environmental review under CEQA. By allowing ongoing illegal activities to continue, the County pre-commits itself to the approval and legalization of these activities without an adequate analysis of the impacts to the environment. (*John R. Lawson Rock & Oil, Inc. v. State Air Resources Bd.* (2018) 20 Cal.App.5th 77, 98.) Further, allowing these illegal activities to continue while wineries seek new or modified permits improperly manipulates the baseline for environmental review of those illegal activities.

**III. The Resolution Allows For Improper Segmentation of Environmental Review For Ongoing Illegal Activities.**

CEQA prohibits the segmenting of the environmental review for an overarching project by dividing it into smaller pieces and asserting that each individual smaller piece will not have significant environmental consequences. (*See, e.g., Bozung v. Local Agency Formation Com.* (1975), 13 Cal.3d 263, 284; *Citizens for Sensible Dev. of Bishop v. County of Inyo* (1985) 172 Cal.App.3d 151.) Here, the County's overarching project is providing a path to allow for the continuation of existing illegal and non-compliant activities at wineries. The County improperly segments the environmental review into each individual winery that may seek a permit for its illegal activities in the future when it is the Resolution's overarching policy change allowing for these continued illegal activities that would allow these activities to continue. By segmenting the environmental review, the County fails to analyze the cumulative impact of its action.

**IV. The Resolution Should Clarify Activities That May Be Grandfathered.**

The County's current Winery Definition Ordinance (WDO) very clearly establishes that the only activities in the County that may be grandfathered are those uses and production levels that were in existence prior to July 31, 1974:

The following uses shall be allowed in all AP districts without use permits:

1. Wineries and related accessory uses and structures which legally existed prior to July 31, 1974 without the requirement that a use permit be issued, and which have not been abandoned; provided, that the extent of such uses and structures have been determined in accordance with the procedure set forth in Section 18.132.050. ***No expansion beyond those which existed prior to July 31, 1974 may occur unless specifically authorized by use permit, issued in conformance with the applicable provisions of this title;***

(Napa County Code 18.16.020.) The WDO also addresses the requirements for wineries established after July 31, 1974:

The Board finds that wineries that were established after July 31, 1974, after securing the required use permit, and whose activities were lawful when established are an integral part of the Napa Valley economy. ***One of the purposes of enacting Sections 12201 (i) and 12231 (j) is to recognize the legal existence of such wineries and to permit their continued right to operate within the conditions of their approved use permits; provided, however, that expansion above and beyond that allowed by the approved use permit may only be permitted upon securing a modification of said use permit in accordance with the provisions of this ordinance.***

(County Ordinance 947.)

The Resolution would conflict with the County Code requirements and the WDO because it does not halt unpermitted activities that were established after July 31, 1974 until a new or modified use permit is considered by the County. The WDO was adopted after lengthy and careful consideration and the process that it establishes for allowing new or expanded uses should not be ignored.

Additionally, in recent proposals before the County, including the proposed minor modification for Clos Pegase, discussions by County staff have included confusing and inconsistent statements regarding what activities can be grandfathered without the need for a new or modified permit. The Resolution must demonstrate consistency with the County's WDO and clarify that activities established at wineries after July 31, 1974 require new or modified use permits.

**V. The Resolution Should Set Forth Findings That Will Be Considered By the County.**

The Resolution should be amended to clearly delineate the criteria that will be considered and findings that would be required to approve permits and permit modifications for existing illegal and non-compliant activities. Without these being set forth clearly, decisions by County staff could be arbitrary and inconsistent.

**VI. Public Notice and Appeal Process Must Be Established.**

Public input is necessary to determine the extent of the harm caused by ongoing illegal activities. As proposed, the Resolution lacks the necessary transparency; instead, it allows decisions regarding the legalization of ongoing non-compliance to be determined at the County Planning Director's discretion without a clear process for public notice or input. The Resolution should establish a clear process to provide the public notice of wineries that are seeking a status determination and for wineries that have ongoing illegal activities and non-compliant operations. An opportunity for public comment regarding the legality of existing operations and before consideration of new permits or permit modifications for these wineries must be provided.

The Resolution should set forth a clear appeal process. While section (b) of the Resolution states that an appeal to the Board of Supervisors is allowed, clear deadlines and a process for public notice must be established to ensure the public an adequate opportunity to participate in an appeal process.

**Conclusion**

For all of these reasons, we urge the County to prepare environmental review for the Resolution and to revise the Resolution based on comments we have provided and the analysis contained in the environmental review before any further consideration of this proposal.

Sincerely,



Amy Minter

Napa County Board of Supervisors

December 3, 2018

Page 5 of 5

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