

November 12, 2008

Board of Zoning Adjustments
Board of Supervisors
575 Administration Drive
Santa Rosa, CA 95403

Re: Comments on the Mitigated Negative Declaration UPE
07-0008; formerly UPE 03-0092; Henry Cornell Winery

Dear Board Members:

Thank you for the opportunity to comment on the above entitled mitigated negative declaration. I hereby incorporate by reference all documents submitted to and from federal, state, and local agencies on this project and the previous application, as well as all reports of consultants for these projects, all letters of comment, public testimony, exhibits, attachments, photos, complaints related in any manner to this project, CDs received from the public, and the Timber Harvest Plans submitted to convert these properties to vineyards (THP 1-00-411 SON & 1-01-215 SON; Conversion Permit 01-493).

I. Introduction

The proposed project is located in the headwaters of Mark West Creek. The upper Mark West Creek is undergoing dramatic development in the absence of cumulative impacts analysis by the lead land use agency. This proposed winery and its attendant processing and bottling facilities, timber conversion, extensive land clearing, grading, water demands and other destabilizing activities will likely make cumulative impacts in this area worse. Please see the comments of Dr. Stacy Li - retired fisheries biologist for the National Marine Fisheries Service, the comments of Ray Waldbaum, Certified Engineering Geologist, and Greg Kamman, P.E. and CHG of Kamman Hydrology and Engineering, Inc.

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II. Cumulative Impacts

A. General Failure to Identify and analyze Cumulative Impacts

The staff report and Mitigated Negative Declaration are narrow and vague. Instead of embracing the intent and letter of state law specifically the California Environmental Quality Act (CEQA) that requires decision makers to be informed of the cumulative impacts of projects before they approve or deny them, staff excludes many past, present, and future local impacts necessary to a proper cumulative impacts analysis.

For example, by reading the county's documents, no one including a decision maker would know that the site of the winery (at least 3-acres) was cleared and graded without benefit of any permits during the summer of 2005 under the guise of firebreak construction (Attachment A). Likewise one would not guess that a large landslide subsequently occurred at this property address and in close proximity to the proposed project site in January of 2006 (see Attachment B). The landslide appears to be linked to excessive water on a steep slope above a tributary to Mark West Creek's critical habitat area where a septic system was constructed. A large septic system and leach field are now nevertheless proposed in this same vicinity.

The staff report is curiously silent on the fact that water is very scarce in this area and is inadequate to support the projects already approved. Enormous quantities of water have been trucked into properties on this small private road for several years (Attachment C) Pride Vineyards is a large established vineyard with five wells that pump 24/7. Ground water is being used up, used in excess of its ability to recharge, and wells in the Mark West Watershed are having to be drilled deeper and deeper over time (Attachment D).

And finally, to read the staff report one would walk away thinking that the adverse impacts, on biological resources, posed by this project would be zero. The staff report ignores the impacts of development activities to date, all of which are related and which occurred prior to issuance of any use permit, including biological impacts of the extensive land clearing,

timber conversion, the landslide, the future winery, processing, and bottling facilities, parking lot, leach field system, and drainage alteration including piping runoff underground to be discharged into different watercourses. These impacts have not and apparently will not be subjected to a proper cumulative impacts analysis, environmental review, or mitigation. The county must not be a party to improper segmentation of a large project (discretionary winery plans have been on the table since 1-6-02). A full environmental review of the whole project is required before any consideration denying or approving of these high impact activities.

The landslide that occurred at 245 Wappo Road was likely the result of imprudent land use. A septic system was placed on a steep unstable slope. In addition, the run off patterns in the area were changed due to large scale clearing activities that have been demonstrated to be winery related but unpermitted, and the landslide repair involved pushing many thousands of cubic yards of soil into the creek and anchoring it with a culvert. The repair is wholly inadequate (See the comments of Waldbaum and Li), and the unstable slope continues to threaten the habitat of protected species of fish and downstream land owners. The impacts of the sediment release have not been considered or mitigated.

The problem with the lack of cumulative impacts analysis is perhaps best explained by staff's own words. The staff report merely states that **some** land in the surrounding headwaters area has been cleared for pasture and vineyard. Given the concern over surface and ground water depletion, water demand, erosion, recharge, peak flows, and summer flows, given the technology available to staff, and given the requirements set out in local and state regulations, a better cumulative impacts analysis and project description is required. Please review the comments of Paul Kieran, Dr. Li, Greg Kamman, Ray Waldbaum, and others in order to better understand the unmitigated cumulative impacts that have already been allowed to occur in this area, to understand the dramatic adverse impacts witnessed, and to better understand the potential impacts posed. (Attachment E and K).

When the application for this part of the project first was submitted. The public provided the county what it could find out about the extent of clearing and vineyard conversions up until that time. The County could no doubt do a superior job of

estimating the acreage converted in this small region. Not only does the county refuse to look at the percentages it does not even utilize the information provided to it as a starting place. (Attachment F). The Cumulative impacts should begin with the list of vineyards and wineries provided and should be updated to reflect the development that has occurred in at least the past three years. Failure to do so is a failure to proceed in a manner required by law.

B. Cumulative Impacts to Groundwater

The MND and initial study fail to consider the impacts of the vineyards and wineries that already pump many thousands of gallons of water from the "marginal" ground water supply in this area during the summer, during the crush, and throughout the year (see correspondence from the County. All of this has occurred in the past approximately five years. Nowhere does the MND tell decision makers that the large vineyard next door (80 acres) has recently set up five pumps that pump 24/7 during the dry summer months. At least four other landowners are currently clearing land or already have relatively new agricultural ventures in the immediate vicinity of the proposed winery in this marginal groundwater area. Local residents have informed the County as to the real situation. Residents are losing their domestic water supply and creeks are drying up unable to maintain a base flow or critical summertime pools.

The County, if it approves this project, would act inconsistent with the General Plan Policy RC-3h that states that developers must show proof of water availability for project **and** provide evidence that ground water supplies will not affect neighbors. Even the RGH firm that wrote the groundwater availability study for the developers never states that there is proof of ground water availability for the project and that neighbors will not be affected. On the contrary, the groundwater availability report is full of qualifications and disclaimers and in fact does the opposite of claiming adequate water availability. What the report did show is that after only one half hour of pumping, the depth of the water dropped 56 feet. The test did not include, what might be considered the most important element, how long it took the aquifer to recharge or fill up again. The second test performed made the aquifer drop between 100 and 180 feet (Attachment H). These tests were conducted in early April when

water should be plentiful. The heaviest pumping of the aquifer of course occurs in the hot dry months of June, July, August, September, and October. Again no recharge rate was looked for and no test was conducted when the aquifer is most heavily used. What the report demonstrates is that the study cannot, with any confidence, prove that impacts will not occur.

The Todd Engineering report takes a leap of faith and states that water is adequate and it does not think impacts will occur. Why Todd Engineers argues against obtaining local knowledge, against following county requirements, argues against satisfying the requirements for ground water availability set out by the Department of Water Resources the first time assertions about water availability were made by RGH in this case are questions with easy answers. Easily available and well documented water shortages have been experienced. The Todd Engineering and Kleinfelder opinions with respect to water availability and the value of speaking with knowledgeable people are disingenuous at best.

RGH conducted a one half hour airlift test with no monitoring wells to observe the draw down at any distance from the test well. According the California Department of Water Resources, an airlift test is meant to clean the column before the test can be performed and is not the test itself.

In addition to failing to adequately study groundwater availability and the affects of the proposed winery groundwater pumping, never mind the groundwater demands of the *whole* project, on adjacent wells, springs, and creeks, the County has thus far failed to take into consideration the observations of knowledgeable neighbors that have seen over the course of the past several years a dramatic decrease in creek flows. The Mark West Creek Research Associates published a report on Mark West Creek in 1973 that states, "During the summer, most of the steelhead, silver salmon, and other cool water anadromous fish stay in the upper reaches. That is exactly where the water is now disappearing as early as the end of April and where yet another project is proposed.

The Courts have taken a dim view of a lead agency's inability to hear the concerns of the public when faced with the demands of developers. "The EIR does little more than dismiss project opponents' concerns about water supply. Water is too important to

receive such cursory treatment. Santa Clarita Organization for Planning the Environment v. County of Los Angeles, 106 Cal. App. 4th 715, 723(2003).

The public has made credible observations of the already significant impacts to their domestic wells and rare and sensitive aquatic habitat. These impacts have been directly correlated with increased forest conversion and intensified agricultural development over the past several years. The evidence of water availability for this project without impacts to neighbors, springs, and creeks is insubstantial. The RGH and Todd studies are far from conclusive. The on-the-ground impacts, on the other hand, cannot be denied. Based upon the evidence, the impacts from the winery alone may pose significant adverse impacts to groundwater supplies, domestic water supplies, springs, and creeks in the area.

The law requires that decision makers consider cumulative impacts in order to **avoid** the exact situation that exists on Mark West Creek today - significant adverse impacts. It is now up to the county to honor the spirit and letter of the law by demanding scientific evidence that no adverse impacts will occur or risk abusing the discretion with which it has been entrusted. The more impacted an area is the greater the need for evidence, understanding, mitigations, and strict compliance with the law.

III. An Environmental Impact Report (EIR) is Required

The public, as will be demonstrated, has made a fair argument based upon substantial evidence that significant impacts may occur. In addition, there is a debate among experts as to whether significant impacts may occur. Under either of these conditions, an EIR shall be prepared.

If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, the agency **shall** prepare a draft EIR. [I]n marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency **shall** treat the effect as significant and **shall**

prepare an EIR.
(CCR 15064(a)(1) & (g)).

Based upon the documented observations of knowledgeable residents, and the opinions of Dr. Li, Greg Kamman, and Raymond Waldbaum, among several others, the project must be reviewed by way of a legally adequate EIR.

A. Impacts of Sediment and Water Withdrawals

Dr. Li, an imminent salmon and steelhead ecologist, a retired Instream Flow Specialist and the Water Rights Specialist for the National Marine Fisheries Service Habitat Conservation Division of the South West Region (February 2001 to September 2008) with prior first hand knowledge of the upper watershed beginning prior to the catastrophic and tragic impacts to which the watershed has recently been subjected, states that he observed severe adverse impacts from deposited sediments from the Cornell property that has adversely affected federally threatened steelhead trout (*Oncorhynchus mykiss*) and their habitat in Mark West Creek.

This is not surprising to people who are, and should be, knowledgeable about the site to be developed. Dr. Li goes on to say, "I do not recommend any activity that would tend to make these slides active." With respect to flows in the critical spawning and rearing habitat of Mark West Creek, Dr. Li noted that, "[g]roundwater extraction can also reduce stream flow in streams. Streams with low base flows such as Mark West Creek would be particularly susceptible. The adverse effects are delayed because water percolation underground takes more time to show its effects, but groundwater is part of the hydrologic cycle." Given the failure of the ground water availability studies to adequately assess groundwater demands, recharge, and runoff volumes (see comments of Greg Kamman), Dr. Li's comments are momentous. The County must acknowledge significant ground water impacts are already occurring and protect and restore the public trust resources over which it presides from unmitigated present and future water withdrawals.

B. Hydrology

The supplemental water availability study prepared by Todd Engineering is inadequate. The previous water availability

study by RGH Consulting was found to be inadequate partially due to its unsupported conclusions that ground water on-site was adequate to support the winery and vineyards without impacts to neighbors or watercourses. The Department of Water Resources found the RGH analysis lacking. Specifically, it recommended draw down tests, timing of recharge, and monitoring of other wells in the area. Todd Engineering performed none of these.

The county's own policies for well development and ground water availability analysis requires such verification. In this case, the county is accepting conclusions regarding water availability in the absence of substantial evidence. Todd Engineering skipped necessary and mandatory analysis (See comments of Greg Kamman). This amounts to a failure on the part of the county to proceed in a manner required by law.

A decision making body cannot fail to proceed in a manner required by law. In addition, substantial evidence must support a decision to approve a project. Substantial evidence is by definition a somewhat subjective call. Given the conditions of the environment in which this project is located, i.e over draft (Attachment D, E, and F), the burden to bring substantial evidence to show that potential adverse impacts are not likely, is increased.

"There is a clear trend of increasing average well depths over time. This is evident in each of the three Study Areas. The average depth of wells drilled in the Joy Road Study Area has increased from about 50 feet in 1955 to over 140 feet in 1990 (Figure 6). In the Mark West Study Area the average depth of new wells has increased from about 120 feet in 1950 to about 300 feet in 1997 (Figure 7). The average depth of Bennett Valley wells has increased from about 150 feet in 1940 to about 350 in 1990." (Attachment D).

A reasonable person can easily, and unfortunately more easily as areas are degraded and habitats obliterated, find that substantial evidence does not exist to support such a finding. The burden on the concerned public, to show that significant adverse impacts are likely, is decreased.

The impacts of the water diversions and ground water pumping by projects already approved in this small region have not been

mitigated. The water situation is dire. The impacts of even small vineyard operations is dramatic and lethal to protected fish, in the Russian River. "Impacts of diversion for human water needs may thus be greatest on stream hydrology and aquatic ecosystems during the spring and summer growing season: naturally low flows may be further depressed by diversions for agricultural uses such as frost protection, heat protection, and irrigation." (Attachment I).

Changes in flows are reduced substantially within hours of heat protection and frost protection activities. "Other uses, such as springtime frost protection and summer heat protection, require high volumes of water over a short duration. Groundwater pumping may not yield sufficient water volumes (especially from low-yield aquifers common in the region) so surface water in the form of streamflow may be especially attractive for meeting such water needs." (Attachment I).

Also see the expert comments of Dr. Li. Groundwater is related to stream flows. "During base flow periods, streamflow may be derived from headwater drainages and adjacent shallow aquifers alike; the water level in the stream is often interpreted as the surface exposure of the shallow groundwater table (Dunne and Leopold, 1978; Ward and Trimble, 2004)." (Attachment G).

The very activities that are being recommended for approval have contributed in very significant ways to the demise of the fishery in the headwaters region and more such development is strongly counter indicated by the facts.

C. Geology

"A geologic site investigation by RGH Consultants, Inc. acknowledges the presence of numerous landslides on the site but fails to perform a stability analysis of the proposed building site. This omission renders the RGJ findings of project feasibility meaningless..." (Comments of Waldbaum, CEG)

The inadequacy of the supplemental geologic report, as explained by Ray Waldbaum, a highly qualified California certified engineering geologist with experience as a county reviewer and as consultant, is partially reflective of the geologic challenges of this site. The county must require investigations supported by

scientifically sufficient documentation of feasibility in order to protect the public and the environment. Worse case conditions must be presumed and massive corrective grading would thus be indicated. Massive corrective grading would increase the impacts of the project, would likely be infeasible, and would involve high risk hopefully temporary instability of the site.

Such grading has not been analyzed for its impacts to the unstable slopes, natural vegetation, drainage, or biologically critical watercourses that lie in close proximity to this very steep project site. The project sits above a very steep descending slope that is most accurately described as a cliff. The very steep slope is essentially the bank of the North Fork of Mark West Creek. The site plans, however do not disclose this geologic feature and fail to acknowledge the serious potential limiting factors associated with developing this site. Mark West Creek, including the North Fork, is critical habitat. Adult Steelhead were observed in the North Fork as late as last winter. The creeks are already severely impacted by sediment and the proposed project as written will increase the likelihood that additional sediment inputs will occur (see comments of Dr. Li). Where the environment is already cumulatively impacted, the threshold for determining what additional impacts may or may not be significant is very low.

Failure to conduct stability analysis, as indicated in the Waldbaum report, will likely lead to the same disastrous results as it did [large landslide] at the 245 Wappo Road residence site. Significant impacts, based upon what is known about the project site and what must be presumed, will occur.

D. Biology

The Courts have held that "[a]n agency must provide the information it used to reach its conclusions and that a checklist unsupported by data and facts is not sufficient for an adequate Initial Study (Sundstrom v. Mendocino (1988) 202 Cal. App. 3d 296). The county does not address biological impacts in its mitigated negative declaration. This is especially disturbing. It is likely the blatant piecemeal nature of this development, of which the county is a part, that gives staff a sense of security about omitting such an obvious concern.

Construction of the winery has started even as the Use Permit is being considered. Not only did the county witness, **during** the CEQA review of this project, land clearing activities occur at this site in complete disregard for any species of low mobility or rare plants, it failed to stop it. It did not even require the developer to obtain permits for the activity. At least three-acres of land were cleared of mature vegetation under the guise of a fire break and surveying. When well over 50 cubic yards of boulders were placed on-site in a large cleared staging area, the county inspected and concluded that the activity was not improper. When the Regional Water Board staff was asked to inspect they came to a far different conclusion (Attachment I). Now staff proclaims that no biological impacts will occur because the site was previously grubbed. Grubbing is an agricultural term that does not match the statements made by even the landowner when the clearing was on-going.

If these issues weren't compelling enough, the clearing activities, like all removal of mature vegetation on hillsides, increased run off and changed peak flows in the North Fork of Mark West Creek that went unabated. In such an unstable landslide ridden area, such stream changes have wide ranging impacts on bank and slope stability. It is no surprise then that a large landslide did occur in the area downstream of the clearing that dumped 10,000 cubic yards of sediment into headwaters and critical habitat of Mark West Creek.

Placement of impervious surfaces, large buildings, roads, and major drainage structures will further impact biological resources and those impacts must be evaluated as a whole.

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IV. Mitigated Negative Declaration is Inadequate

Even if a mitigated negative declaration (MND) were the proper environmental review document in this case, this MND is inadequate.

The county does not know how much wastewater will be produced by the winery facilities or how much wastewater, domestic and

process water, will have to be applied to the ground. These facts are essential to a proper evaluation of the impacts to the unstable slopes. In the past, wastewater has badly polluted Mark West Creek (Attachment I). Specific analysis of soils and quantification of discharge must be evaluated prior to concluding that the project is feasible.

The county does not know whether the winery and bottling facility will import grapes from off site. The likelihood, given the number of cases involved and the acreage planted by the project proponent on site, is that it will. Todd Engineers speaks about a Phase II of this project that involves the doubling of production. What is the true potential impacts of this project? The impacts have not been identified, evaluated, or mitigated. One cannot even guess as to the impacts on water supplies, traffic, and air quality if additional water trucks and grape trucks are not even disclosed.

The Architectural drawings do not show the winery properly located on the slopes. The orientation is off by at least 25 percent rendering the project description confusing at best.

The site plan by Atterbury and Associates provides for only 10 parking spaces where double that amount is going to be required. The documents supporting this mitigated negative declaration are confusing, contradictory, and difficult to review. The project is inconsistent with the Franz Valley Area Plan and the Sonoma County General Plan.

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V. Improper Segmentation has Occurred

"All phases of project planning, implementation, and operation must be considered in the Initial Study of the project." (15063(a) (1)). When a project is proposed under the California Environmental Quality Act (CEQA) **all** phases of development must be considered for their potential impacts to the human and natural environment.

In Antioch v. Pittsburg (1986) 187 Cal. App. 3d 1325, the court cited City of Carmel-by-the-Sea v. Board of Supervisors of

Monterey County 183 Cal. App. 3d 229 to emphasize the importance of considering in the initial study all the activities and impacts involved in planning, implementation, and operation of a project.

Recent development activities must be added to the many past phases of this project (Attachment J). Clearing road building and stock piling of large amounts of boulders have occurred at this site during the pendency of the discretionary permit process. Although all the activities that have occurred on this landowner's property are related to a discretionary project—an estate vineyard, winery, and bottling plant, the county has turned a blind eye to the over all impacts of such a project. It has to date rewarded this developer for its less and less clever efforts to break a large project into many smaller projects.

The regrettable result is that the county will not evaluate the cumulative impacts of these activities or mitigate for them. The staff has glossed over the high impact activities, called a major construction activity "grubbing" and offered vague statements as to the extent of water demands, the current environmental conditions including what amount of acreage has already been cleared in this biologically important headwaters area, and completely ignored biological impacts.

As was indicated above, a winery was the underlying discretionary use permit for this project as far back as January of 2002. The construction of a winery, processing, and bottling plant were never considered by the County when it was reviewing the first phase of this project - the grading and forest conversion. Given the developers' specialties - vineyard development and winemaking and given the records already on file with the County, the County did **not** do all that it reasonably could to ascertain the extent of the project. With a small amount of research, even in the absence of full disclosure by the developers, it was discovered by this writer that a winery had been on the books over eight months before the completion of the permit to clear-cut the forest for the vineyard. Breaking a larger project into smaller projects, which has the effect of minimizing the appearance of impacts, has been recognized by the Courts as antithetical to the intent of CEQA, and it is not permitted. The experienced developers did not disclose, and the County did not do all that it reasonably could to discover the true extent of the developers project and this has resulted in an

inadequate piecemeal review of a larger high impact project.

For guidance on this issue, please see the Arviy case wherein a developer piecemealed a large project, like in this case, and when the project was appealed to the Board of Supervisors, the Board recognized it as one large project and required an EIR. The developer challenged this requirement and **lost**.

In summary, throughout the review of the first phase of this project, the developers failed to disclose the extent of the development planned. The winery now under consideration has been planned since at least as early as January 6, 2002. The conversion permit for the first phase of the project was not approved until August of 2002. There is no mention of the planned winery in the County's review of the conversion permit. The project description during review of the conversion was misleading at best. The logging plan by Mr. Edwards affirmatively states, "No future buildings or improvements are planned in connection with conversion." The developers were very involved in the writing of the logging plan and conversion permit and they attended the pre-harvest inspections with the lead, trustee and responsible agencies. And although the responsible and trustee agencies would have been very interested in such an analysis, cumulative impacts analysis of the whole project could not be performed due to the improper withholding of information by the developers.

The Court's have held that an agency is required to forecast only to the extent that an activity could be reasonably expected under the circumstances. An agency cannot be expected to predict the future course of governmental regulation or exactly what information scientific advances may ultimately reveal. Laurel Heights Improvement Association v. Regents of the University of California (1988) 47 Cal.3d 376. In the instant case, new regulations or scientific advances are not implicated. What is obvious from a quick review of the record is that known vineyard and winery developers engaged in less than professional behavior with respect to development activities on the exact site that is under consideration now and has planned for a winery many months prior to the clear cutting of forests and two years prior to finally coming to the County for a permit. This is nothing more than one large project being phased in over a short time period.

Forecasting, as it pertains to whether a project shall be reviewed by way of a thorough environmental impact report or a truncated review like a mitigated negative declaration, is meant to cover that which could be reasonably expected under the circumstances. It is reasonable to expect the County to ask developers of vineyards and wineries the extent of plans associated with a project application. Furthermore, it is incumbent upon developers to be forthright. It is also reasonable to expect that the County will look at its **own** files to learn what it can about the project, projects in close proximity to the proposed development, and do basic confirmation of what a developer is asserting. In this case, the developer already had been cited for grading violation of road building and major earth moving. It had also applied for a conversion permit through the County that was fraught with problems. Again, not only was the developer less than forthcoming, it was reasonable under the circumstances for the County to do some basic fact checking, which it failed to do, with respect to the extent of the project, the geology, and the groundwater impacts.

Although very experienced in these matters, the developers shepherding the current project through the process, failed to comply with the law in several instances. For instance, phase one of this project first emerged as a grading violation in the fall of 2000 on steep slopes above Mark West Creek. The property owner was cited for "bull dozing a road and major earth movement". These activities were fortunately discovered before the winter rains began.

The grading violation occurred while a logging plan and permit to clear-cut forests for grapes was making its way through environmental review. With a small amount of research, the credentials of the forester selected by the developers to prepare the logging plan was found by this writer to have previously been suspended by his professional licensing board. The Board found that Mr. Edwards displayed "a pattern of gross negligence and material misstatement of fact on numerous occasions". He was put on suspension and probation for a period of 18 months as reported in the professional foresters' journal of May 2000.

That same forester was identified and hired by the experienced developers. As might be expected, numerous misclassifications and inaccuracies were discovered by the

Department of Fish and Game and the North Coast Regional Water Quality Control Board (NCRWQCB) in the first logging plan he prepared for this project, and the plan did not get approved. Very few plans are denied by the Department of Forestry. A plan must be of very poor quality or accuracy to be rejected.

One of the many inaccuracies in watercourse classifications was the tilling of a Class III watercourse above Mark West Creek. NCRWQCB discovered the watercourse tilled for vineyard and recommended the landowner restore it. A new logging plan was submitted in June of 2001. On the pre-logging inspection of this new plan, the NCRWQCB **again** observed illegal activities on the part of the developers. The developers' forest conversion and vineyard development activities had **already** commenced in the **absence** of either a logging plan or a conversion permit. Trees were cut down making it difficult to assess environmental impacts, and it was recommended by the Regional Board that a violation be issued by CDF.

Furthermore, the developers improperly withheld from the County the true extent of their project. The project includes forest conversion, road building, well development, vineyard planting, construction of large caves, a winery, and a library. The developers improperly "piecemealed" this project in contradiction to the law. It is up to the County to recognize the combined activities as one large project and to conduct a proper environmental review of the entire project and its potential impacts.

VI. Conclusion

The project will contribute to an already adversely cumulatively impacted condition including dramatic reductions in summertime flows (Attachment A-North Coast Regional Water Quality Control Board memo) over approximately the past five years, lethal deposits of sediment from unstable slopes and erosion (see comments of Dr. Stacy Li, Retired NOAA Fisheries Biologist). In addition, the staff report, Water Availability Supplement, and Geologic Supplement do not demonstrate project feasibility or the propriety of adopting a mitigated negative declaration in this case.

The winery proposed is only one phase of a larger project for

which no meaningful environmental analysis has been possible. The cumulative impacts, above and beyond the project level impacts, to the protected fish species of Steelhead Trout in addition to the cumulative impacts on the domestic water supply of long-time residents have not been considered. To the extent that the County believes that it has considered cumulative impacts, there is no supporting documentation to credibly show significant impacts will not occur. And finally, the public has raised a fair argument that impacts may occur by providing the County with evidence. There are disagreements among experts based upon substantial evidence over whether or not impacts may occur. The fair argument threshold, which is a low one, has been easily crossed and the necessity for the preparation of an EIR triggered.

On behalf of the NOWWE organization, and others who have expressed concerns over the superficial environmental review to which this project has been subjected, I request that the county deny this application until such time as the ecosystem is returned to a healthy state including sufficient perennial flows to support a thriving fishery and including the return of pools and springs necessary for summer rearing of juvenile Steelhead Trout.

Respectfully submitted,

KIMBERLY BURR
Attorney at Law

cc: NOWWE Organization

A. Geology

The result of this error on the part of the County is that potentially significant impacts may occur. The hazards to visitors, residents, and the sensitive spawning habitat below the project have thus far not been identified and have not been properly mitigated. The County's error has, unnecessarily put the cart before the horse. Because the project is on and surrounded by mapped landslides (Geology for Planning in Sonoma County and landslide map located at Permit and Resource Management Department survey counter), the feasibility of the project must be re-evaluated and mitigation measures considered. A more thorough geologic study of the area is required, and it must be made available for review by the public. The County's conclusion supported by conclusory comments of a local retained geotechnical firm does not constitute substantial evidence.

The decision to prepare a MND in lieu of an EIR given the debate between experts and the unsupported conclusions of staff, RGH Consulting, and Todd Engineering will not withstand scrutiny. If there is disagreement among experts based upon facts over the significance of an effect on the environment, the Lead Agency **shall** treat the effect as significant and **shall** prepare an EIR. At this stage in the review process, it is not the County's job to weigh the evidence. The debate triggers the need for an EIR precisely to resolve the debate in a fair and thorough manner.

V. Conclusion

cc: Sigrid Swedenborg, PRMD