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January 18, 2005

Mary Doyle
Principal Planner
Office of Conservation, Development and Planning
Napa County
1195 Third St., Suite 210
Napa, California 94559

Re: Napa Canyon LLC Vineyard Conversion Project, ECPA #02253 and Mitigated Negative Declaration

Dear Ms. Doyle:

This office represents Earth Defense for the Environment Now ("EDEN") with respect to the above entitled project. I am writing on EDEN's behalf to comment on and object to adoption of the proposed Mitigated Negative Declaration ("MND") and to comment on and object to approval of the ECPA for the Project.

Enclosed herewith please find a comment letter and CV from Dennis Jackson, a hydrologist, regarding the hydrologic, geologic and biological effects of this project. Also enclosed herewith please find a comment letter and CV from Dr. Marc P. Hayes, a herpetologist, regarding the effects of this project on California Red-Legged Frog ("CRLF"). Also, submitted under separate cover are 18 exhibits that are referenced in this letter.

The information in the file for this project, as supplemented by the Jackson and Hayes letters and the exhibits submitted herewith, demonstrate that substantial evidence supports a fair argument that this project will cause or contribute to significant individual and cumulative impacts on a number of environmental values and resources, even after adoption of the recommend mitigation measures. Therefore, the County must prepare and certify an Environmental Impact Report ("EIR") for the project under the California Environmental Quality Act ("CEQA") before approving this project.

The project will likely increase sediment in American Canyon Creek, which may significantly and adversely effect steelhead populations and habitat, as a result of increasing peak runoff and increasing landsliding. See Jackson letter. Exhibit 2, 3, 4, 5, 6 and 18 provide greater detail regarding the status of steelhead in the Napa River and the ways in which land use changes such as this vineyard conversion cause significant, cumulative and adverse effects on this species. The MND does not discuss impacts on steelhead at all, much less from these mechanisms of impact.

Mary Doyle
ECPA # 02253 and MND
January 18, 2005
Page 2

The project will likely cause decreased subsurface flow to existing CRLF habitat, thereby decreasing their available habitat and increasing this species' susceptibility to extirpation from the site. The project will likely create new areas of perennial surface water. This is likely to attract CRLF to new areas that are more exposed to predators (i.e., "predator traps") and to provide habitat for CRLF predators such as bullfrogs. See Hayes letter. The MND does not discuss these mechanisms of impact.

In addition, the MND concedes that the vineyard involves pesticide and fertilizer use, but does not evaluate the potential for these chemicals to adversely effect steelhead and CRLF. Exhibits Exhibit 6 and 8 -17 provide greater detail regarding the effects of chemical pesticides on these and other aquatic species.

Mitigation Measures HWQ-6 and HWQ-7 defer the development of the specific measures to reduce peak runoff until after post-approval studies are conducted in violation of CEQA. *Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 307. Mitigation Measures BR-1, BR-2 and BR-3 also unlawfully defer until after project approval the development of specific measures to reduce impacts.

Also, to avoid significant effects, the MND relies heavily on mitigation measures that involve either maintenance activities to be performed after project construction (see e.g., HWQ-1-5, BR-1) or post-approval site determinations such as surveys that will trigger specific mitigation actions (see e.g., HWQ-1, HWQ-2, HWQ-3, HWQ-4, HWQ-5 and BR-1). Yet the MND does not include a Mitigation Monitoring Plan ("MMP") to ensure that these mitigation measures are implemented as designed. This is another reason an EIR, which must include an MMP where mitigation measures are adopted to reduce significant effects, is required.

Finally, there have been literally hundreds, possibly thousands, of hillside vineyard conversion projects in the Napa Valley basin since the Hillside Ordinance was adopted in 1991. All of these projects are "closely related" in terms of their hydrological, geological, and biological impacts. (See CEQA Guideline 15355 defining "cumulative impacts"). There are already significant adverse impacts on the aquatic environment, especially on populations and habitat of steelhead and CRLF. This project will contribute to those significant impacts. Even if this contribution may be characterized as "minor," its cumulative impacts when considered with other past, present and probable future projects in the County, are significant. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 719-722. The CEQA document for this project County must describe the closely related past, present and future projects whose impacts may combine with this project. The MND does not do so.

EDEN requests that the County prepare a programmatic EIR under CEQA analyzing the County's program of approving ECPs for hillside vineyard conversion projects in the County. A programmatic EIR is the only practical way to adequately analyze the cumulative impacts of this

Mary Doyle
ECPA # 02253 and MND
January 18, 2005
Page 3

ongoing program.

Thank you for your attention to this.

Very Truly Yours,

Thomas N. Lippe

cc: Client

C003 Comm Ltr re MND.wpd