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December 31, 2007

Brian Bordona  
Supervising Planner  
Napa County Conservation, Development, and Planning Department  
1195 Third Street, Suite 210  
Napa, California 94559

Re: EDEN's Comment Letter on the Draft Environmental Impact Report for Stagecoach Vineyards (Erosion Control Plan Application #P06-0042-ECPA)

Dear Mr. Bordona,

This office represents Earth Defense for the Environment Now ("EDEN") with respect to the proposed Stagecoach Vineyards Project and its associated Erosion Control Plan Application #P06-0042-ECPA (hereinafter referred to collectively as the "Project"). I am writing on EDEN's behalf to submit comment letter on the Draft Environmental Impact Report for this Project. These comments incorporate by reference the following exhibits that I submitted under separate cover:

- Exhibit 1: Stagecoach Vineyards, Erosion Control Plan #95374-ECPA
- Exhibit 2: Stagecoach Vineyards, Erosion Control Plan #96586-ECPA
- Exhibit 3: Stagecoach Vineyards, Erosion Control Plan #95024-ECPA
- Exhibit 4: "Cumulative Effects of Conversion of Upland Woodlands and Chaparral to Vineyards," December 24, 2000 Report by Dr. Robert Curry of Watershed Systems.
- Exhibit 5: Curriculum Vita for Dr. Robert R. Curry

and the following exhibit attached hereto:

- Exhibit 6: December 30, 2007 Letter Report by Dr. Robert Curry of Watershed Systems Re: Draft EIR for the Stagecoach Vineyard Expansion Erosion Control Plan Application # P06-0042-ECPA.

- 1. The DEIR's Assessment of the Significance of the Project's Erosion, Sediment Delivery and Peak Flow Effects is Flawed.**
  - a. The EIR fails to adequately identify and describe the environmental baseline.**

The DEIR claims the project will reduce net sediment delivery by implementing its proposed erosion repair and prevention measures for the existing vineyards and unpaved vineyards roads.

Brian Bordona, Supervising Planner  
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DEIR pp. 4.4-16 through 4.4-22. The existing vineyards and vineyard roads were approved in the 1990s. These three previous ECPs are:

- No. 95374, approved March 21, 1996, modification approved June 4, 1999) (Exhibit 1);
- No. 96586, approved June 10, 1997, modification approved November 9, 1998 (Exhibit 2); and
- No. 95024, approved August 16, 1995 (Exhibit 3).

ECP No. 96586 contains explicit requirements for maintaining its erosion control measures. See Exhibit 2, ECP Narrative page SP-6. Also, all three previous ECPs contain express provisions requiring maintenance of a permanent cover crop. See Exhibit 1, ECP Narrative page EC-4, ¶ 6(b)2; Exhibit 2, ECP Narrative dated 9/8/98, page 2, ¶ 4(b)2 and ECP Narrative dated 6/1/907, page 3, ¶ 6(b)2; Exhibit 3, ECP Narrative page EC-3, ¶ 6(b)1. In addition, all three previous ECPs contain express performance standards that each required erosion control measure is designed to achieve. See Exhibit 1, ECP Narrative page EC-43 ¶ 6(a) 1 through 8; Exhibit 2, ECP Narrative dated 9/8/98, page 2, ¶ 4(a)1 through 6 and ECP Narrative dated 6/1/907, pages 2-3, ¶ 6(a) 1 through 6; Exhibit 3, ECP Narrative page EC-2, ¶ 6(a) 1 through 3.

The DEIR fails to describe the extent to which any sources of existing erosion that the current ECP proposes to repair or prevent are caused by the failure of the landowner to (1) maintain any of the previous ECPs' erosion control measures or (2) achieve any of the performance standards specified in any of the three previous ECPs. A careful comparison of the current ECP with the prior ECPs, however, reveals many instances in which the current ECP proposes to "fix" problems that have arisen in connection with the performance of the prior ECPs. See Exhibit 6, pp. 8-9, ¶'s 19-24. The DEIR treats the existing sources of erosion as the environmental baseline against which to assess the project's impacts. Since the project includes measures to "fix" existing sources of erosion in the existing vineyard areas, the DEIR concludes the project will reduce net sediment delivery.

But the DEIR's choice of this environmental baseline is legally flawed. An EIR cannot use a misleading or speculative environmental baseline for assessing the significance of environmental impacts. See *e.g. Fairview Neighbors v. County of Ventura* (1999) 70 Cal.App.4th 238, 243 ("Discussing the possible environmental effects of the project based on actual traffic counts would have been misleading and illusory under the facts here."). The EIR cannot use a baseline to avoid identifying reasonably foreseeable adverse environmental effects of a project.

Here, since the landowner has a legal obligation to maintain the existing vineyard and achieve the performance standards set forth in the previous ECPs, the DEIR cannot use the existing physical environment - to the extent its condition is the result of the landowner's failure to maintain the existing vineyards or achieve the previous ECPs' performance standards - as the environmental baseline. Instead, the DEIR must assume County enforcement of and landowner compliance with

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these legal obligations and use the resulting condition of the physical environment as the environmental baseline.

Indeed, the current choice of baseline so overwhelmingly favors the landowner by understating the impact of the project, it throws into serious question whether the County has exercised its independent judgement in issuing this DEIR for public review and comment.

Further, the DEIR fails to provide enough information for the reader to discern the extent to which the existing sources of erosion that the current ECP proposes to fix are the result of the landowner's failure to maintain the existing vineyards or achieve the previous ECPs' performance standards.

Similarly, the DEIR claims the project will not increase peak flows under any precipitation conditions. DEIR pp. 4.6-20 through 4.6-27. But the DEIR fails to provide enough information for the reader to discern the extent to which this conclusion is based on implementation of the current ECPs' proposed erosion repair or prevention measures. Thus, again, critical information regarding the proper environmental baseline is lacking.

Without this information, the DEIR is "so fundamentally and basically inadequate or conclusory in nature that public comment was in effect meaningless"- necessitating recirculation with the missing information. See *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1130.

**b. The DEIR fails to adequately describe the environmental setting or the project.**

The proposed erosion repair and prevention measures for the existing vineyards and unpaved vineyards roads and the existing sources of erosion are not described with enough specificity to determine the extent to which the existing sources of erosion that the current ECP proposes to fix are the result of the landowner's failure to maintain the existing vineyards or to achieve the previous ECPs' performance standards.

**c. The DEIR's fails to assess a principal mechanism of impact.**

As explained by Dr. Curry (Exhibits 4 and 6), the DEIR's analysis of project's erosion, sediment delivery and peak flow effects is flawed because it wrongly assumes that the project will not change the runoff and erosion characteristics of the soils subject to conversion from chaparral to vineyard. As shown by Dr. Curry, removing the stones decreases the rainfall infiltration capacity of the soils, which increases peak runoff and surface erosion and downstream sedimentation. Therefore, the DEIR's analysis must be redone to account for these mechanisms of impact.

**2. The DEIR's Discussion of Project Alternatives is Flawed.**

**a. The No Project alternative is incorrectly described.**

The DEIR's description of the No Project alternative assumes that existing sources of erosion on the property will not be fixed absent this project. For the reasons discussed in section 1.a above, this assumption is unsupported and legally incorrect.

**b. The DEIR's discussions of the Reduced Intensity Alternatives A and B and the Phased Alternative are based on the same flawed assumptions.**

The DEIR's discussions of the environmental effects of Reduced Intensity Alternatives A and B are based on the assumption that "sediment yield is greater for chaparral than vineyard." Somehow, Mr. Trso's conclusion that the Project, by fixing existing erosion sources associated with the existing vineyards, will result in a net reduction in sediment yield, has been twisted beyond recognition into a ridiculous assertion that "sediment yield is greater for chaparral than vineyard." Mr. Trso's study does not support this assertion, nor does any other data in the EIR. As shown by Dr. Curry, this assertion is false.

The DEIR's discussions of the environmental effects of Reduced Intensity Alternatives A and B and the Phased Alternative are apparently based on the unstated assumption that a "maintenance program for graveling the vineyard avenues" is not required pursuant to the owner's legal obligations to maintain and achieve the performance standards set forth in the prior ECPs and therefore is not part of the environmental baseline. As discussed in section 1.a above, this assumption is unsupported and legally incorrect.

Thank you for your attention to these comments.

Respectfully submitted,



Thomas N. Lippe  
Attorney for Earth Defense for the  
Environment Now