

**Vineyard and Orchard Development and Agricultural Grading and Drainage (VESCO)  
Ordinance Modification**

**Comment Letters**

<b>Date</b>	<b>Name/Title/Agency</b>	<b>Page</b>
02/06/2020	Kimberly Burr, Volunteer Green Valley Creek Restoration Project .....	2
12/10/2019	Kimberly Burr, Volunteer Green Valley Creek Restoration Project .....	14
02/19/2020	Michael Napolitano, Engineering Geologist San Francisco Bay Area Regional Water Quality Control Board .....	20
02/05/2020	Nancy Richardson .....	23
06/11/2020	Wendy Smit, President Milo Baker Chapter of the California Native Plant Society .....	26
Undated	Laura Waldbaum .....	32
02/05/2020	Rachel Zierdt .....	34

February 6, 2020

Dear Agricultural Commissioner and Staff:

In December 2019, I submitted comments on the County's Chapter 36. The comments below support those previous comments. These comments are based upon my experience reviewing applications and observing vineyards in our fragile watersheds in the wet, dry, and frost seasons.

I reiterate that these comments do not change my position that much of the agricultural development - grading, clearing, tree removal, and drainage activities, regulated by Chapter 36 and related county codes and regulations, pose potentially significant impacts to the environment in Sonoma County and must be subject to the California Environmental Quality Act (CEQA).

CEQA was created to require informed decision making, avoid significant cumulative impacts where feasible, and to consider less damaging alternatives.

#### NEEDED CHANGES TO CHAPTER 36

Sonoma County Vineyards can only achieve environmental sustainability with meaningful changes to Chapter 36. This can be accomplished through simplification or streamlining where similar practices are -not treated as wholly different from each other, but rather similar and then a scientific and protective standard can be easily applied and there would be certainty for developers and consistent on the ground land use results. For example, ground disturbing activities would be "grading" an umbrella term that includes all grubbing, ripping, discing, etc....instead of them all having different definitions and rules.

In addition, the modern manner in which to manage business is to have the enterprise internalize its costs. Much of what is recommended below seeks to accomplish this goal.

Sec. 36.02.020. - Purpose.

As written, the stated purpose A-D are not being met. Unless meaningful

changes are made, the Chapter's Purpose greatly exaggerates its effectiveness and is misleading.

“This chapter is enacted for the purpose of regulating vineyard and orchard development and agricultural grading and drainage within the unincorporated area of the county, and to establish ministerial standards for those activities that:

A. Protect against erosion, and the pollution of watercourses with soil and other pollutants;

Maintain natural and existing drainage patterns;

Protect aquatic resources and wildlife habitat; and should

Promote water conservation and groundwater recharge. “

Sec. 36.02.070 – Legislative Intent.

REMOVE

“Ministerial system of regulation; automatic repeal. It is the intent of the board of supervisors in enacting this chapter to establish and maintain a ministerial system of regulation for vineyard and orchard development and agricultural grading and drainage, consistent with the strong policy direction in the general plan to expedite the processing of agricultural-related permits and not unduly complicate and discourage vineyard and orchard development and agricultural grading and drainage. “

REPLACE WITH

Should read. It is the intent of the board of supervisors representing all of their constituents to establish and maintain a system of regulation that supports agriculture specifically vineyards and orchards while ensuring the biological sustainability of the watersheds in which the proposed activities might occur.

## DEFINITIONS.

Many definitions in Chapter 36 undermine what might be considered the positive aspects of the ordinance.

For example, the definition of a “tree”. Fifteen feet is a highly unfair definition especially in the context of climate change. A tree is a tree. To the extent that a tiny tree is not yet sequestering carbon and not many years have been invested in its growth, a tree for the purposes of Chapter 36 might be defined as trees over two feet tall and for slow growing trees that should be lowered to one foot.

Likewise, the definition of “vegetation” needs to be changed as it relates to clearing and “preparing” the land to -- plants that are established as opposed to “natural” which might be interpreted purely as native plants. This is important for preserving riparian buffers, reducing sources of sediment, saving old trees that may have been planted by others, etc.

The definition of “best management practice” is inadequate. Best management is the utilization of the best available technology and practices that *avoid* erosion and sedimentation of watercourses not simply reducing that storm water pollution. Best management is the internalization of effects that in the past would have been externalized on to the environment.

Vineyard “replant” should be defined as - a vineyard that supports new vines, in the location of an old vineyard, that shall comply with and incorporate today’s best available science, supports the conservation of listed species, and incorporates current science related to impaired watercourses, critical

habitat, and recovery planning including repairing areas already cumulatively impacted, restoring healthy riparian areas, and utilizing setbacks that protect watercourses from operations, pesticides, fertilizers and other unnatural inputs, and measures that contribute to the recovery of species and critical habitat rather than continues past practices that may harm recovery efforts.

“Highly erodible soils” should be defined as - soils that are exposed to mediterranean storms, atmospheric rivers, and have been tilled, disced, deep ripped, or are on slopes greater than 5 percent.

Agricultural Drainage Should read: shall meet zero discharge of sediment to impaired watercourses, be sampled tested at discharge point, and discharge shall not increase peak flows, contribute to incision of creek bed, or erosion in creeks...

---

Sec. 36.04.010. – Vineyard and Orchard Development Permit Requirements.

Should read: Development including any soil disturbance, well development, lot line adjustments, or tree removal, shall not occur until all needed documentation, aerial photos, consultations, surveys, studies, site inspections, have been conducted and the permit is perfected. Permit perfection must include an analysis of water demand and water availability on site.

Level One. Must be updated to improve on the ground results of VESCO — Intent was to have less destructive activities be subjected to appropriate minor restrictions because by definition Level I encompass low impact activities.

Therefore, low impact is defined by  
**See. 36.04.010. D. 3.**

Exempt

D (3). “”Low-impact vineyard replanting. Vineyard replanting within the Santa Rosa Plain Groundwater Subbasin, where the replanting area has a natural slope of less than 5 percent, no deep ripping is conducted, and the existing underground vineyard infrastructure and trellis system end posts are kept intact. This exemption is a pilot program. This exemption shall remain in effect only until December 31, 2019, and as of that date is repealed. “”

For *new* vineyards the definition of Level I should be enhanced by adding .....where slopes to be developed do not exceed 5 percent and grading will not direct stormwater off site to a watercourse connected to critical habitat or an impaired watercourse, where no tree removal is proposed, and no sensitive species are likely to exist.

Sec. 36.04.010. b.2.

Level II. need plan prepared by civil engineer for Level II. over 5 percent or over ¼ acre tree removal in critical habitat watershed and where there are significant cumulative impacts on riparian zones, or development is proposed in water area 3 or 4. Application must be subjected to independent reviews by biologist and engineer/geologist. Water availability must be evaluated as it relates to stream flow.

---

Section 36-16

Sec. 36.16.020. – Agricultural Grading.

Current language..BIG EXEMPTION

Exemptions from permit requirements. The following agricultural grading activities are exempt from the provisions of this section and may be conducted without obtaining an agricultural grading permit, provided that these activities shall still be subject to the standards in Article 16 and the best management practices in the department’s best management practices for agricultural erosion and sediment control.

## Exempt

Agricultural grading for vineyard or orchard development. Where authorized by a valid vineyard and orchard development permit, agricultural grading for vineyard or orchard development.

Should read. where any grading is within critical habitat or an impaired watershed...it shall not create potential for any soil to be mobilized or deposited in a watercourse at any time. This includes any soil disturbing activities or routine or development activities. Runoff from a culvert or other crop related run off that increases flows or contributes to turbidity of watercourses, that slows down recovery efforts, or contributes to the reduction in the quality of the habitat for listed species including anadromous salmonids must be avoided.

## TERRACE DRAINAGE.

Should read: Like all grading and drainage, drainage from cultivated areas and access roads shall be retained on site, not discharged to creeks. Drainage design must take into account vegetation, soil perosity, slope and infiltration rates and settling times and volumes in order to properly manage runoff from agricultural operations. This includes SUBSURFACE drainage favilities.

---

“Sec. 36.16.110. - Setbacks for Streams. Current language —...grading shall be set back from streams in compliance with the requirements in Table 36-7, unless a greater setback is required by the general plan, local coastal plan, or zoning code. Setback areas for streams shall be managed in compliance with a biotic resource assessment or focused species assessment,

if applicable, and the department’s best management practices for agricultural erosion and sediment control.”

Should read. Setbacks for all new and all replants from all blue line streams and their tributaries in impaired or critical habitat areas shall be at least 200 feet to restore and protect adequate salmonid food, shade, and water levels. and protect critical rearing pools from becoming eliminated by soil and sediment. Riparian characteristics must be protected and restored. No motorized vehicles shall compromise the natural regeneration of the riparian areas at any time.

Vineyard and orchard development and agricultural

---

COMPARE SET BACKS.. 36.18.020

Removal of existing contiguous riparian vegetation. Vineyard and orchard development shall be prohibited from removing existing contiguous riparian vegetation within 200 feet of the higher bank of blue-line streams. AND Class II, III, and IV watercourses and where erosion and sedimentation threaten to enter watercourses.

Table 36-6 - Stream Setback Requirements

<p><b>1.Type of Stream</b></p>	<p><b>1.Setback for NewVineyard and Orchard Planting</b></p>	<p><b>1.Setback for Vineyardand Orchard Replanting</b></p>	<p><b>1.Setback for Agricultural Grading</b></p>
--------------------------------	--	--	--

1. Blue-line Stream	1. Setback required by the zoning code, unless a biotic resource assessment recommends a greater setback	1. Existing setback from the top of the higher bank or 25 feet from the top of the higher bank, whichever is greater, unless a focused species assessment recommends a greater setback	1.25 feet from the top of the higher bank
1. All other Streams	1.25 feet from the top of the higher bank, unless a biotic resource assessment recommends a greater setback	1. 25 feet from the top of the higher bank, unless a focused species assessment recommends a greater setback	1. 25 feet from the top of the higher bank

Remove the word “control”

Sec. 36.16.130. - Soil and other pollutant discharges.

During the work. Vineyard and orchard development and agricultural grading and drainage shall prevent or *control* soil and other pollutant discharges during the work through the use of best management practices referenced or detailed in the department’s best management practices for agricultural erosion and sediment control.

During qualifying rain events. Vineyard and orchard development and agricultural grading and drainage shall prevent or *control* soil and other pollutant discharges during qualifying rain events by implementing erosion prevention or control measures referenced or detailed in the department's best management practices for agricultural erosion and sediment control at least 48 hours prior to any qualifying rain event, unless the site has been winterized pursuant to Section 36.16.150.

Change "limit" to avoid

Post-development. Vineyard and orchard development and agricultural grading and drainage shall be designed to *limit* post-development soil and other pollutant discharges in compliance with the department's best management practices for agricultural erosion and sediment control.

---

Se c. 36.18.020. - Prohibited Vineyard and Orchard Development.

Natural slopes greater than 50 percent. New vineyard and orchard planting shall be prohibited on natural slopes greater than 50 percent. Change to 30 percent

Removal of existing contiguous riparian vegetation. Vineyard and orchard development shall be prohibited from removing existing contiguous riparian vegetation within 200 feet of the higher bank of blue-line streams. AND tributaries.

Removal of trees. New vineyard and orchard planting shall be prohibited from removing trees on natural slopes greater than 40 percent with non-cohesive soil. 5 percent or the application becomes subject to discretionary review.

Sec.36.18.030.-Prohibited agricultural grading.

Agricultural grading to prepare new cropland shall be prohibited on natural slopes greater than 50 percent. change to 30 percent

During the work. Vineyard and orchard development and agricultural grading and drainage shall prevent or control soil and other pollutant discharges during the work through the use of best management practices referenced or detailed in the department's best management practices for agricultural erosion and sediment control. remove word control

Standard for Level I vineyards...

Low-impact vineyard replanting. Vineyard replanting within the Santa Rosa Plain Groundwater Subbasin, where the replanting area has a natural slope of less than 5 percent, no deep ripping is conducted, and the existing underground vineyard infrastructure and trellis system end posts are kept intact. This exemption is a pilot program. This exemption shall remain in effect only until December 31, 2019, and as of that date is repealed.

## ENFORCEMENT AND INSPECTIONS

The Agricultural Commissioner's office and any agency that might have jurisdiction over an area may enter the property on 12 hours notice, for the

life of the project, for the purpose of preventing and protecting public trust resources.

## G L O S S A R Y

Remove reduces and controls

Best Management Practice. A program, technology, process, siting criteria, operational method, or engineered system, which when implemented prevents, *controls*, removes, or *reduces* pollution or other adverse environmental effects.

Grading. An excavation or fill or combination thereof. Grading does not include routine farming practices, such as soil preparation, planting, seeding, and other similar activities.

Soil Pre preparation. Deep ripping, chisel plowing, field cultivating, disking, plowing, harrowing, cultivating, roto tilling, application of soil amendment and fertilizing materials, and other similar activities.

Highly Erodible Soils. Soils in the Diablo, Dibble, Goldridge, Laughlin, Los Osos, Steinbeck, and Suther soil series as mapped by the U.S. Department of Agriculture. CHANGE see above.

Tree. A woody perennial plant, typically large with a well-defined stem carrying a definite crown, with a minimum diameter at breast height of five inches, and a minimum height of 15 feet. CHANGE see above

Vegetation. All natural, non-cultivated plant life, including the root system, stem, trunk, crown, branches, leaves, and blades CHANGE see above

Vineyard Replanting. The replanting of an existing vineyard where the vineyard is under active cultivation, no grapevines are removed prior to the

issuance of a vineyard and orchard development permit, unless the replanting is exempt from permit requirements, and the footprint of the vineyard is not increased. CHANGE see above

Please accept these recommendations in the spirit of moving the County agricultural community toward true environmental sustainability. My apologies for the inconsistent formatting. If you have any questions or ideas, please do not hesitate to contact me.

Kimberly Burr  
Green Valley Creek

887-7433

December 10, 2019

Dear Commissioner Linegar:

Please make these partial comments a part of the administrative record in the *Vineyard and Orchard Development and Agricultural Grading and Drainage Ordinance* modification Process commonly referred to as VESCO. (Chater 36 and the Best Management Practices Manual modification).

These comments are meant to provide a framework into which policies like VESCO should fit.

My comments below do not condone this ordinance modification process or waive my right to challenge the modification of the above "ministerial" land use ordinance that governs high impact development on thousands of acres in our shared impaired watersheds.

MINISTERIAL PERMITTING CONTINUES TO SACRIFICE and  
CONSIGN OUR WATERSHEDS TO IMPAIRED and CRITICAL HABITAT  
STATUS

My comments are founded on the legal interpretation of "ministerial" permitting found in the Guidelines to the California Environmental Quality Act.

Fortunately, the state uses examples of ministerial permits to clarify its legislative intent.

**COMMON EXAMPLES OF MINISTERIAL PERMITS INCLUDE:**

- automobile registrations
- dog licenses
- marriage licenses

**ACTIONS PRESUMED TO BE MINISTERIAL INCLUDE:**

- issuance of building permits
- issuance of business licenses
- approval of final subdivision maps
- approval on individual utility service connections and disconnections
- See [CEQA Guidelines §15268](#)

Unfortunately despite the lessons of the past, previous County administrations have sought to run around the unambiguous substantive intent of CEQA. The state, after experiencing sprawling growth and destruction of natural areas and resources we all need, sought to properly avoid or minimize environmental impacts in a fair public process. CEQA was passed to correct the inherent problems of uniformed decision-making and one-sided development that has already caused so much harm to vulnerable people and the environment. The County must embrace CEQA in order to gradually slow down this environmental train wreck.

All can agree, vineyard and orchard development are associated with clearing, logging, grubbing, deep ripping, water demand, alteration of drainage patterns, massive re-grading of hillsides and low lands, the application of chemicals, diversions of water supply, repetitive discing, encroachment on highly sensitive waterways, etc. and, therefore pose *potentially* significant adverse environmental impacts. As such, they need to be a part of an open process. Based on

these facts, I make the following general recommendations.

## RECOMMENDATIONS

### DUE DILIGENCE

The following activities shall trigger an Initial Study under CEQA:

Applications to convert lands that have not been under cultivation for a year or more;

Applications to cultivate lands on slopes exceeding 5 percent;

Applications seeking to remove over  $\frac{1}{2}$  acre of native trees (any tree species over two feet in height except oaks that are defined by 6 inches in height)\* and vegetation over  $\frac{1}{2}$  acre in size;

Applications that will inherently pose potential additional adverse impacts on stream flows, water temperature, nutrient concentrations, environmental flows in impaired watersheds; and

Applications that will inherently pose potential additional adverse impacts on stream flows, water temperature, nutrient concentrations, environmental flows in designated critical habitat areas.

Qualified independent scientists must peer review the biological, hydrological, grading, drainage, and geologic reports submitted to advance a project on slopes over 5 percent, in impaired watersheds and sub

watersheds, in critical habitat, or where over  $\frac{1}{2}$  acres of native vegetation are proposed for removal;

Averaging of slopes, water use, run off, etc. must be eliminated, and the most environmentally protective approach must be the standard in impaired watersheds and critical habitat.

## SEGMENTATION

It is and always has been improper to segment a larger activity into phases, or segments, primarily because it ties the hands of planners to effectively and properly plan, avoid impacts, and mitigate the impacts of related activities in order to avoid harm to the community and listed species.

All activities related to development including well development, sheet flow capture proposals, repetitive discing of the soil, impoundments, diversions, potential water demand on impaired streams, appropriation of spring water, covering over of wetlands, destruction of small drainages, climate change, erosion, nutrient delivery to the watercourses, and the like must be disclosed and evaluated in one document prior to the occurrence of any development related activity and subjected to independent peer review.

## REPLANTS

As the science has taught us, the practices of the past have not always been protective enough of vital resources including riparian areas, stream flow, climate change, soils, rare species, etc.

All proposed replants over  $\frac{1}{2}$  acre that involve sites that are located in impaired watersheds or sub-watersheds must be subject to an Initial Study.

Given the recovery efforts needed to succeed, the historic and modern set backs from water courses must be based upon today's best available independent science. To do less is to slow recovery efforts and to contribute to continued harm to listed species.

Fencing, roads, grading, wells, ponds, reservoirs, etc. must be managed to avoid harm to the community, sensitive areas, and species.

## RUNOFF AND EROSION

No soil or nutrients must be deposited off site in wet weather conditions. During dry weather, off site deposit of contaminated soils must not pose any threats to riparian areas or water quality any time during the year. Developers must contain their operations and not allow the impacts of development operations and their associated long term activities to adversely effect the environment or others.

The Agricultural Commissioner's office shall be responsible for the operation of all past and present vineyard and orchard activities. Agencies with overlapping duties must be notified of applications as they are presented to the County for review.

## CROPS

The county code cannot be less protective than state law. The spirit and intent of the laws must be upheld.

Crops can be either low impact or potentially high impact. A sophisticated county looking to the current

conditions – which we have created and in which we live, must incorporate lessons from the past and incorporate new independent information. Treating all crops as they have historically been treated as necessary and harmless ventures to feed a hungry world, is outdated as best.

Resisting efforts to continue the practices of the past – instead of learning from them, is to be a modern county. Some local industry interests have already reaped the benefits of real positive outcomes associated with positively engaged businesses.

Please continue to exercise leadership, logic, and creativity to move Sonoma County toward a more environmentally sustainable future as quickly as possible. Development activities of all types eventually mature, but sometimes it takes good examples so folks will be reassured that they will all be treated fairly and equally.

Thank you for taking time to consider the above and for your efforts to protect our watersheds and community while supporting sound agricultural practices.

Kimberly  
Green Valley Creek Restoration Volunteer

\* Trees are currently defined by the ordinance as. “ A woody perennial plant, typically large with a well-defined stem carrying a definite crown, with a minimum diameter at breast height of five inches, and a minimum height of 15 feet. “ This is of course a highly permissive definition that allows for the destruction of trees that are many years old and which are providing the next generation of woodlands and forests we need.

**From:** [Andy Casarez](#)  
**To:** [John Bishop](#); [Shelley Janek](#)  
**Subject:** FW: Comments regarding potential changes to VESCO  
**Date:** Thursday, February 20, 2020 7:21:17 AM  
**Attachments:** [BattanyNapa2000a.pdf](#)  
[086\\_SoilConservationService1985.pdf](#)

---

---

**From:** Napolitano, Michael@Waterboards <Michael.Napolitano@waterboards.ca.gov>  
**Sent:** Wednesday, February 19, 2020 4:40 PM  
**To:** Andy Casarez <Andy.Casarez@sonoma-county.org>  
**Cc:** Ponton, James@Waterboards <James.Ponton@waterboards.ca.gov>  
**Subject:** Comments regarding potential changes to VESCO

## EXTERNAL

Hello Andy (CC: Jim),

Thank you for organizing the stakeholder meeting on February 6, 2020 to provide interested parties with the opportunity to learn more about exemptions to VESCO that have been proposed by the Ad-Hoc Committee, and to provide us with the ability to propose other potential changes for the Board of Supervisors to consider. Our comments are as follows.

Our understanding of exemptions being recommended by the Ad-Hoc committee is as follows:

-

- 1) Replants on an average slope < 5 percent would be exempt from permit requirements (this would apply to about 34,000 acres of grapes currently planted in Sonoma County, or about ½ the total);
- 2) Replants on average slopes > 5 percent completed using “a plug and plant method” (suggested to result in a much lower level of ground disturbance and not involve deep ripping) would be exempt from permit requirements;
- 3) Where there is a conversion to vineyard from another type of pre-existing agriculture (in-place continuously for at least 5 years prior), the vineyard would be exempt from permit requirements; and
- 4) Vineyard that currently planted closer to an unstable area than the minimum setback specified by VESCO, would be allowed to maintain their current footprint during a replant (provided there is no evidence that the vineyard is contributing to instability?).

Comments/questions per potential exemptions proposed by the Ad-Hoc committee:

- 1) For all of the above proposed exemptions, would the Agricultural Commissioner’s Office retain the authority to: a) require notification of planting/replanting; b) perform an inspection following completion of planting/replanting; and c) require/confirm compliance with Articles 2, 16, 18, 20, 22, and 24 (General, Standards, Prohibited Activities, Appeals, Public Hearings, and Enforcement) of VESCO?

- 2) What is the projected impact of these exemptions if approved, on the annual budget for Agricultural Commissioner's Office for staff/operations to provide oversight under VESCO? Would the proposed exemptions result in a significant reduction in revenue from permitting? If so, what might be the effect on overall staff level to ensure compliance with VESCO?
- 3) On average over the past several years, how many acres of planting and replanting per year have been permitted under VESCO? What has been the average permitting revenue? What are the typical times from receipt of a complete application to permit approval for a Level I or Level II permit?
- 4) Assuming that the requirements specified in VESCO Articles 2, 16, 18, 20, and 22 would be maintained for vineyard and orchard development projects as specified in VESCO, if the permit requirements were exempted as described above, what types of challenges might result for the Agricultural Commissioner's Office staff in trying to determine compliance with Articles 2, 16, 18, 20, and 22?

For example, at a minimum you would have to retain the authority to perform an inspection. During an inspection, if no plans are required (because these are only specified as permit requirements), how much more difficult/time consuming might it be to confirm compliance with grading, drainage, setback, etc. requirements?

- 5) Please provide a complete description of "the plug and plant method," and if possible, an assessment of the potential impacts of this approach (assuming a requirement to install erosion control BMPs and County staff inspection) on potential sediment discharge from replanted vineyards.

#### Additional Input

-

- 1) VESCO was adopted to regulate vineyard and orchard development as needed to protect natural watercourses from erosion, sedimentation, and other impacts to aquatic habitat. On average, we estimate that about 1-in-16 acres of land in Sonoma County is currently planted in wine grapes. Previous local studies have documented that the extent of soil cover is the primary factor controlling soil erosion in vineyards and that cover is more important overall than slope as an influence on erosion rate (Battany and Grismer, 2000);
- 2) Studies conducted locally in Sonoma and Napa counties the 1980s documented an average of approximately 50 tons/acre of soil erosion from hillslope vineyards where cover was poor (USDA Soil Conservation Service, 1985).
- 3) The Russian River and Sonoma Creek watersheds both are listed as impaired by sedimentation. The source analysis for the Sonoma Creek watershed impairment documents that vineyard properties are a significant land-use related source of fine sediment discharge to Sonoma Creek and its tributaries. The source analysis for the Napa

River watershed sediment impairment also documents the significance of vineyard properties. Considering the similarity of vineyard development practices in these three watersheds, and the fact that the Napa River and Sonoma Creek watersheds span the range of geology and climate conditions found in the Russian River watershed, it is reasonable to conclude that vineyards also are a significant source of land-use related sediment discharge to the Russian River and its tributaries.

- 4) Considering points 1 through 3 above, we recommend that the Board continue to require Level I permits for vineyard replants on slopes less than 5 percent.
- 5) For other categories of vineyard replanting or planting proposed for exemption from permitting by the Ad-Hoc committee, we recommend at a minimum these types of vineyards should be subject instead to the requirement to obtain a Level I permit and to demonstrate compliance with winterization requirements (Article 16) consistent with the County's adopted best management practices.
- 6) Additionally, all projects subject to VESCO Article 16 (Standards) should be required to meet the County's performance standards for winterization every year as long as the vineyard remains in operation. Under this proposed revision to VESCO, a much greater level of environmental protection could be established and maintained at the same overall cost to landowners.

Please feel free to call if you have any questions. Thanks very much for the opportunity to comment.

Sincerely,

Mike Napolitano  
Engineering Geologist  
San Francisco Bay Regional Water Quality Control Board  
510-622-2397

**THIS EMAIL ORIGINATED OUTSIDE OF THE SONOMA COUNTY EMAIL SYSTEM.**

**Warning:** If you don't know this email sender or the email is unexpected, **do not** click any web links, attachments, and **never** give out your user ID or password.

**From:** [Nancy Richardson](#)  
**To:** [Shelley Janek](#)  
**Subject:** Re: REVISING VESCO - MEETING ON 2/6  
**Date:** Wednesday, February 5, 2020 4:50:15 PM

---

**EXTERNAL**

Ms. Janek, We had rather hoped our input would be considered before the draft is written, options listed and document ready to be presented to the BOS. Too late then. Slam dunk. N. and B. R.

Sent from my iPhone

On Feb 5, 2020, at 1:46 PM, Shelley Janek <[Shelley.Janek@sonoma-county.org](mailto:Shelley.Janek@sonoma-county.org)> wrote:

Thank you.

I will include your comments with those generated tomorrow for the future Board presentation.

Regards,

*Shelley Janek*

Environmental Specialist  
Land Stewardship Division  
Sonoma County Agriculture Department

---

**From:** Nancy and Brantly Richardson <[nrchrdn@sonic.net](mailto:nrchrdn@sonic.net)>  
**Sent:** Wednesday, February 5, 2020 1:14 PM  
**To:** Shelley Janek <[Shelley.Janek@sonoma-county.org](mailto:Shelley.Janek@sonoma-county.org)>  
**Cc:** David Rabbitt <[David.Rabbitt@sonoma-county.org](mailto:David.Rabbitt@sonoma-county.org)>; Lynda Hopkins <[Lynda.Hopkins@sonoma-county.org](mailto:Lynda.Hopkins@sonoma-county.org)>; Tony Linegar <[Tony.Linegar@sonoma-county.org](mailto:Tony.Linegar@sonoma-county.org)>  
**Subject:** REVISING VESCO - MEETING ON 2/6

**EXTERNAL**

Ms. Janek,

Please add our comments to the file on revisions to VESCO. My husband and I are unable to attend the meeting tomorrow at the Ag Commissioner's office which we understand will be the only

opportunity the public and environmentalists will have to provide input. We also understand the other “stakeholders” have already had a seat at the table. Apparently, much of this discussion has been held behind closed doors.

Protecting the impaired watersheds in Sonoma County is long overdue. We support the effort to protect stream flow in the County’s five designated “impaired flow” watersheds. We have pledged to our Supervisor, Susan Gorin, that our group will do everything necessary to support her leadership in this matter. She is very concerned about the Mark West Watershed and the new Regional Park in her district. Supervisor Gore has opined about his concern for the Palmer Creek Watershed in his district. The other Supervisors need to be aware that this matter is of great importance to the entire county and should not be viewed from the parochial perspective of supervisorial district. Our watersheds provide water for our designated aquifers which are already in overdraft status.

It is beyond belief that we would choose to continue down this path of overdraft until we have a crisis. It is important to act to prevent a catastrophe rather than wait until the worst occurs as the County has done with the homeless problem. We support the “net water use” that the Planning Staff is examining. It is long overdue.

It’s time to wake up to the new realities. It is time to stop kicking the can down the road.

Nancy Richardson  
4350 Raymonde Way  
Santa Rosa, Ca. 95404

THIS EMAIL ORIGINATED OUTSIDE OF THE SONOMA COUNTY EMAIL SYSTEM.

**Warning:** If you don’t know this email sender or the email is unexpected, **do not** click any web links, attachments, and **never** give out your user ID or password.

THIS EMAIL ORIGINATED OUTSIDE OF THE SONOMA COUNTY EMAIL SYSTEM.

**Warning:** If you don't know this email sender or the email is unexpected,  
**do not** click any web links, attachments, and **never** give out your user ID or password.



June 11, 2020

To: Agricultural Commissioner  
133 Aviation Blvd., Suite 110  
Santa Rosa, CA 95403-1077

**Re: Milo Baker California Native Plant Society comments on the public review of the Vineyard Erosion and Sediment Control Ordinance (VESCO)**

On behalf of the Milo Baker Chapter (Sonoma County) of the California Native Plant Society, thank you for the opportunity to share our comments on the Vineyard Erosion and Sediment Control Ordinance (VESCO). The Milo Baker Chapter is dedicated to protecting native plants and their habitats in Sonoma County. Many of these habitats are imperiled from development including native grass prairies, valley oak woodland, vernal pools and other wetlands.

We are in favor of the ordinance scope and intent, but have provided some comments in an effort to better achieve the purpose of the ordinance (Sec. 36.02.020). In particular our comments promote subsection A "Protect the public health, safety, and welfare of the county;" subsection C "Protect against erosion, and the pollution of watercourses with soil and other pollutants;" subsection E "protect aquatic resources and wildlife habitat."

**Overall Concerns:**

Overall, Sonoma County should be the lead agency in development, including agriculture, in Sonoma County. The Agriculture Commissioner is mandated to promote and protect agriculture, the environment and public welfare through enforcement of local, state and federal laws and regulations. One of those state laws is the California Environmental Quality Act (CEQA). CEQA Guidelines section 15051, subdivision (b)(1) states: "The Lead Agency will normally be the agency with general governmental powers, such as a city or county, rather than an agency with a single or limited purpose..." such as the US Fish and Wildlife Service (USFS) or the California Department of Fish and Wildlife (CDFW) As such, the County is best equipped to act as lead agency to protect the environment and work with other environmental agencies, such as USFWS and CDFW, when listed species and their habitat are an issue.

The implementation of the VESCO has created an opportunity for some level of environmental review, but in practice the ordinance has not adequately protected native trees, wetlands, or other sensitive biological resources. In practice many of these permits are ministerial, not

discretionary. Ministerial permits have minimal review and protections. In a County as diverse as Sonoma County many projects have unique site characteristics that would benefit from discretionary review where site specific parameters could help the VESCO applicant protect the environment while developing their agricultural property.

As described in Section 36.02.070 - Legislative Intent, Section C, “It is the intent of the board of supervisors in enacting this chapter to establish and maintain a ministerial system of regulation for vineyard and orchard development and agricultural grading and drainage, consistent with the strong policy direction in the general plan to expedite the processing of agricultural-related permits and not unduly complicate and discourage vineyard and orchard development and agricultural grading and drainage.”

A ministerial project is one that requires only conformance with a fixed standard or objective measurement and requires little or no personal judgement by a public official as to the wisdom or manner of carrying out the project. Unfortunately, with the diversity of vegetation communities and other special status biological resources there are no standards to protect those resources on a large scale. Each site has to be evaluated on a site by site basis. In addition, there are no estimations of existing acreages of native vegetation communities within Sonoma County that can be compared when analyzing the effects of vineyard and orchard development. Generally, ministerial permits require a public official to determine only that the project conforms to the applicable zoning and building code requirements and that applicable fees have been paid. With a lack of known acreages of what is being developed, the ministerial permits do not protect aquatic resources and wildlife habitat.

This ordinance should only apply to properties zoned as Agriculture. There should be no ministerial permits allowed on properties zoned Resource and Rural Development (RRD) or other non-agriculture zoned parcels. This would require that additional review of the impact and the incremental impacts of developing more properties into agricultural properties than the general plan envisioned or accounted for in its programmatic EIR. Many properties have been zoned RRD because of the steep slopes, special site conditions, or other conditions that make the property impractical to develop into a standard agricultural operation. Applying over the counter ministerial permits for agriculture outside of agricultural zones is inappropriate and could lead to loss of critical habitat, further impacts to already degraded streams and a decrease in stored carbon throughout our county, further exacerbating the impacts of climate change.

The focus of this document appears to be on listed species rather than special status species. Section B Physical and Biological Setting and Section D Results refer only to listed species that are protected under the California Endangered Species Act (CESA) and the Federal Endangered Species Act (FESA). Of the 127 plant species listed for Sonoma County on the California Natural Diversity Data Base only 26 species are actually listed by the USFWS and or the CDFW. The remainder are listed by Rank by the California Native Plant Society (CNPS) in order to prevent future listings under FESA and CESA.

Besides CESA, there is also the California Environmental Quality Act (CEQA). CEQA is a law that requires public agencies to analyze and publicly disclose the environmental impacts from projects they approve and adopt feasible alternatives and mitigation measures to mitigate for the significant impacts they identify. During CEQA review, public agencies must evaluate and disclose impacts to the 220 plant species protected under CESA and the Native Plant Protections Act (NPPA), and in most cases must mitigate all significant impacts to these species to a level of less than significance. In addition, during the CEQA process, public agencies must also address plant species that may not be listed under CESA or the NPPA, but

that may nevertheless meet the definition of rare or endangered provided in CEQA. For example, the CNPS, which works closely with CDFW, has several plant rankings that include the following:

- 1A. Presumed extirpated in California and either rare or extinct elsewhere
- 1B. Rare or Endangered in California and elsewhere
- 2A. Presumed extirpated in California, but more common elsewhere
- 2B. Rare or Endangered in California, but more common elsewhere.
3. Plants for which we need more information - Review list
4. Plants of limited distribution - Watch list

Species of special concern should be used in the entire document, not just listed species as they pertain to FESA and CESA. A more inclusive definition that is typically used is Special Status Species, as described below by the University of California Cooperative Extension, Sonoma County ([http://cesonoma.ucanr.edu/New\\_to\\_Sonoma\\_County\\_Ag/Special\\_Status\\_Species/](http://cesonoma.ucanr.edu/New_to_Sonoma_County_Ag/Special_Status_Species/)):

- Designated (rare, threatened, or endangered) and candidate species for listing by CDFW.
- Designated (threatened or endangered) and candidate species for listing by USFW.
- Species considered to be rare or endangered under the conditions of Section 15380 of the California Environmental Quality Act Guidelines, such as those identified on lists 1A, 1B, and 2 in the 2020 *Inventory of Rare and Endangered Plants of California* by the CNPS.
- And possibly other species which are considered sensitive or of special concern due to limited distribution or lack of adequate information to permit listing or rejection for state or federal status, such as those included on list 3 in the CNPS Inventory or identified as animal “California Special Concern” (CSC) species by the CDFW. Species designated as CSC have no legal protective status under the California Endangered Species Act but are of concern to the CDFW.

### Specific Concerns:

**Section 36.02.060 - Best Management Practices** - “The agricultural commissioner may adopt, amend, or rescind best management practices for this chapter ....The best management practices adopted or amended pursuant to this section shall be compiled by the agricultural commissioner and made available to the public.”

In an effort of having transparency in the discretionary alterations to the best management practices, we suggest that the language in the ordinance provide specific public information requirements for the agricultural commissioner. We would like to see the information published on the Agriculture Commission’s website in advance of the amended best management practices being implemented. This will allow both other applicants and the general public to understand what exemptions are being provided and to whom.

**Article 04. -Vineyard and Orchard Development Permits, Sec. 36.04.010. - Vineyard and Orchard Development Permit Requirements; Subsection C. Biotic resource and focused species assessments.**

1. Biotic resource assessment.

## 2. Focused species assessment

These two analyses should be required on all properties regardless of exemptions outlined in Subsection D (see below). Four federally and state protected plants that live in the Santa Rosa Plain live exclusively in vernal pools that are often less than 0.1 acre. Without a requirement that all development have some level of review would mean that many small parcels that would not be evaluated and/or protected by this ordinance. Hobby orchards can be a major threat to the preservation of these species. We believe that a biotic resource assessment and focused species assessment should be required on all properties prior to development.

### Table 36-1 Vineyard and Orchard Development Designation

This table differentiates between Level 1 and Level 2 Vineyard and Orchard Development. Level 1 development allows the application to be submitted by an applicant and Level 2 requires the plans and specifications be submitted by a civil engineer. Level 2 allows for development on slopes up to 50%. This is much too steep for proper sediment control and could result in long-term scars upon the landscape. These slopes are dangerous, expensive to maintain and are often abandoned without any remediation. We suggest that new orchards and vineyards not be allowed on slopes greater than 30% and replants on nothing greater than 50%.

**Subsection D. Exemptions from permit requirements** - “Hobby vineyards and orchards. New planting and replanting of hobby vineyards and orchards, where the hobby vineyard or orchard is less than one-half acre in size. This exemption may only be used for one hobby vineyard or orchard per legal parcel.”

Even development within 0.5 acres there could be loss of special status vegetation communities and/or plants. Currently, there is no estimation of overall acreages of vegetation communities within Sonoma County. As a result, the cumulative loss is unknown and is not being tracked.

**Sec. 36.12.020 Permit Approval and Issuance** - A.2. Discretionary permit application. A discretionary permit application may be approved and a discretionary vineyard and orchard development or agricultural grading or drainage permit issued when the agricultural commissioner determines that:

b. The proposed vineyard or orchard development or agricultural grading or drainage is consistent with the purpose and intent of the standards in Article 16, (*which identifies development of vineyards and orchards*) and does not diminish the .... environmental protection benefits that would be obtained from the strict application of those standards;

The strict applications of standards in Article 16 are for development of vineyards and orchards and do not identify environmental protection benefits. There are setbacks for slope stability, water courses, lakes, reservoirs and wetlands, but there are no setbacks for special status species or vegetation communities. As stated above, special status species include those that are considered rare as identified by CNPS. Adherence of the Section 16 standards do not provide environmental protection of special status species.

**Article 16. -Standards - Sec. 36.16.110 - Setbacks for Streams:** “Setback areas for streams shall be managed in compliance with a biotic resource assessment or focused species assessment, if applicable, and the department’s best management practices for agricultural erosion and sediment control”.

Table 36-7 (6) - Stream Setback Requirements identifies that setbacks should be 25 feet from the top of the higher bank, whether it’s a blue-line stream or other stream.

All creek setbacks should be a minimum of 100 feet from top of bank and up to 200 feet from the top of bank along mainstem of the Russian River. Orchard and vineyard maintenance often requires pesticide sprays throughout the year. This can occur with significant amount of spray drift, which declines dramatically with distance. The EPA estimates that 70 million pounds of pesticides are lost to drift each year. It is imperative that these pesticides be kept out of our local waterways and healthy riparian buffers could provide that protection. Twenty five feet wide is not enough in most waterways to have a functioning riparian habitat to reliably provide that buffer capacity, furthermore, the vineyard operator is allowed to have turnaround areas within this buffer which further degrades the functionality of a buffer zone. At a minimum, stream setbacks should be based on a sliding scale directly correlated to the slope of the land adjacent to the stream or waterway. These setbacks should be intended to protect water quality, aquatic habitats, and special status fish species, but they also provide for significant terrestrial habitat preservation and wildlife movement.

**Article 18. -Prohibited Activities - Sec. 36.18.030. - Prohibited agricultural grading:**  
**B. Natural slopes greater than 50%.** New Vineyard and orchard planting shall be prohibited on slopes greater than 50 percent.

In general, grading on all slopes should be cast in terms of soil erodibility and slope. New vineyard and orchard planting should be prohibited on slopes greater than 30%, and appropriateness of soil erodibility on slopes up to 30 percent should be restricted to those soils with the appropriate soil erodibility factors.

We suggest that this section be changed to read:

**B. Natural slopes greater than 30%.** New Vineyard and orchard planting shall be prohibited on slopes greater than 30 percent, and appropriateness of soil erodibility on slopes up to 30 percent shall be restricted to those with appropriate soil erodibility factors.

**C. Removal of existing contiguous riparian vegetation.** Vineyard and orchard development shall be prohibited from removing existing contiguous riparian vegetation within 200 feet of the higher bank of blue-line streams.

This should be clarified as new vineyard and orchard development. Table 36-7 shows a 25-foot setback from the top of the higher bank for replants and agricultural grading and should be corrected to reflect this language.

**D. Removal of trees.** New vineyard and orchard planting shall be prohibited from removing trees on natural slopes greater than 40 percent with non-cohesive soil.

This section allows for the removal of almost all non-riparian trees on most agricultural properties. We believe that trees should be protected through prohibitions. Here are some examples of additional prohibitions:

1. There should be no removal of heritage trees through this permit process. Heritage trees, as identified in the Sonoma County General Plan, have often lived for hundreds of years and are often seed source for local plant populations and habitat for local wildlife.
2. It should be stated that no more than 15% of a site's native tree canopy can be removed through this permit process. This would protect native woodlands on properties that are being regulated through the ministerial permit. This will be an easily enforced regulation in that an aerial survey of the site can be done remotely and accurately.

**Article 26. -Glossary** - "Tree. A woody perennial plant, typically large with a well-defined stem carrying a definite crown, with a minimum diameter at breast height of five inches, and a minimum height of 15 feet."

This is a restrictive definition of what a tree is. In Sonoma County we have many different trees that could be old mature individuals that are less than 15 feet. We suggest modifying this definition by removing the minimum height. The 5" diameter requirement should adequately prevent shrubs from inadvertently be protected by this definition.

We feel with these modifications to the VESCO language our vegetation communities within Sonoma County will be better protected. Thank you for your consideration.

Best Regards,

Wendy Smit, President of Milo Baker Chapter of California Native Plant Society

Tony and Staff,

I am sending this letter as a follow up to my previous submission as well as my comments at the informal meeting held in your office February 6, 2020. In my previous comment letter I outlined the need to protect our most valuable natural resource, water. I provided your office with documentation from scientists and regulatory agencies emphasizing the critical nature of immediate action to protect the five critically impaired watersheds in Sonoma County from being further depleted by water intensive land uses. As I mentioned, all land uses currently allowed in Sonoma County have some water use restrictions which are applied during the permitting process at permit Sonoma. Only one water use remains unrestricted – agricultural water use.

In the meeting you indicated that you did not believe VESCO is the place to regulate vineyard water use. You described VESCO as strictly a sediment control ordinance. I disagree for the following reasons:

1. VESCO was developed originally as a way for vineyard developers to avoid environmental review. While I do not believe that all vineyard development should be subject to CEQA, there are many proposed projects which would “cause significant environmental effects”. These projects are shielded from discretionary review and public scrutiny BECAUSE of VESCO. Project’s water use is not considered and mitigation of water withdrawal effects on threatened species is blocked because of the ministerial permitting route that VESCO provides. Therefore, either projects in the five watersheds should be excluded from VESCO or VESCO must put protections in place for these areas.
2. Despite its name acronym, the whole title includes the all-inclusive terms “Vineyard and Orchard Site Development Ordinance”. Water supply would clearly fit under this umbrella.
3. The **purpose** also is inclusive of environmental impacts and water uses as outlined in the highlighted excerpt below.

**Sec. 11.02.010. Title.**

This chapter is and may be cited as the Sonoma County Grading, Drainage, and Vineyard and Orchard Site Development Ordinance.

(Ord. No. 5988, § I, 5-15-2012)

**Sec. 11.02.020. Purpose.**

This chapter is enacted for the purpose of regulating grading, drainage improvement, and vineyard and orchard site development within the unincorporated area of the county, and to establish ministerial standards for those activities that:

- A. Minimize hazards to life and property;
- B. Protect against soil loss, and the pollution of watercourses with soil and other pollutants;
- C. Protect the safety, use, and stability of public rights-of-way and watercourses;
- D. Protect watercourses from obstruction, and protect life and property from the deleterious effects of flooding;
- E. Protect against the destruction of human remains and archaeological resources;
- F. Protect streams, lakes, ponds, and wetlands; and
- G. Promote water conservation.

(Ord. No. 5988, § I, 5-15-2012)

## **Specific Requests**

I can think of no scientific or practical reason to avoid tackling the problem of vineyard water use and its effects on the critical watersheds in the only ordinance we have which regulates vineyard and orchard development.

The nuts and bolts are easy and I have put them in bold type. There are two options.

Either we can **amend Chapter 16 to include a section on water availability requiring proof that vineyard development will not deplete streamflow in the 5 watersheds. To be consistent with other requirements in the County, the cannabis water use language or the ADU language which I sent with my previous letter could serve as a template. The water availability studies could become part of "Level II project review"**.

The other option is even simpler. **Under Section 11.12.010 A 2 add to discretionary review all projects in the critical reaches of the 5 watersheds** (mapped in my previous letter). This eliminates the need for the Agricultural Commissioner's office to deal with complex water issues and allows for the CEQA review which should take place for these types of projects.

This small step forward would have huge implications for the watersheds and for the future sustainability of agriculture and water resources. Be bold!

Laura Waldbaum

**From:** [Rachel Zierdt](#)  
**To:** [Shelley Janek](#); [Lynda Hopkins](#)  
**Subject:** Water shed protection  
**Date:** Wednesday, February 5, 2020 1:00:42 PM

---

**EXTERNAL**

Please protect our impairedflow watersheds. We need net zero water use for the 5 watersheds....regardless of the ag use...It is surprising that this is even an issue and has not been county policy. I am hoping that the Board of Supervisors will see their way clear to make this happen.

Rachel Zierdt

THIS EMAIL ORIGINATED OUTSIDE OF THE SONOMA COUNTY EMAIL SYSTEM.

**Warning:** If you don't know this email sender or the email is unexpected, **do not** click any web links, attachments, and **never** give out your user ID or password.