

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



FROM: Supervisor Jeff Stone

SUBMITTAL DATE: May 10, 2005

SUBJECT: Amendments / Additions in the Citrus/Vineyard/Rural Policy Area of the Southwest Area Community Plan.

RECOMMENDED MOTION: That the Board approve the recommended amendments / additions requested by the Temecula Valley Winegrowers Association to the C/V Zone Policy Area.

BACKGROUND: Third District staff has received a written request from the Temecula Valley Winegrowers Association to make the following changes to the Citrus/Vineyard Rural Policy: 1). request that any winery plan submitted for county approval must meet the true definition of a winery defined as "an agricultural facility designed and utilized to crush, ferment, and process grapes into wine"; 2). that any winery approved must be designed to produce a minimum of 5,000 gallons of wine annually; and 3) that any winery approved shall use a minimum of 75% Riverside County grapes in their wine production and retail wine sales.

Jeff Stone
Supervisor
Third District

JS:vc

MINUTES OF THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



3.32

On motion of Supervisor Buster, seconded by Supervisor Stone and duly carried, IT WAS ORDERED that the Amendments/Additions in the Citrus/Vineyard/Rural Policy Area of the Southwest Area Community Plan, is continued to June 14, 2005.

Roll Call:

Ayes: Buster, Stone and Wilson

Nays: None

Absent: Tavaglione and Ashley

I hereby certify that the foregoing is a full true, and correct copy of an order made and entered on
May 17, 2005 of Supervisors Minutes.

(seal)

WITNESS my hand and the seal of the Board of Supervisors

Dated: May 17, 2005
Nancy Romero, Clerk of the Board of Supervisors, in
and for the County of Riverside, State of California.

By: Sandra Schlemmer Deputy

AGENDA NO.
3.32

xc: Supv. Stone, COB
NR

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SALT LAKE CITY

TUCSON

June 6, 2005

Riverside County Board of Supervisors
4080 Lemon Street, 5th Floor
Riverside, California 92501

Re: Proposal to Amend Citrus/Vineyard Rural Policy Area Zoning Requirements

Dear Supervisors:

This firm represents Arthur H. Nelson and Nelson Land Company, LLC ("Nelson Land"). Nelson Land is an owner of the real property known as Tentative Parcel Map 31340, which is approximately 50 acres located on Rancho California Road near Anza Road, within the County's Citrus/Vineyard Rural Policy Area. We appreciate this opportunity to comment upon the proposed amendments to the Citrus/Vineyard policies. Please include this letter in the administrative record for this matter.

We understand that the County is considering a proposal (the "Subject Proposal") supported by the Temecula Valley Winegrowers Association ("TVWA") to amend either the zoning ordinance or the policies for the Citrus/Vineyard Rural Policy Area under the County's General Plan. Our understanding is that the Subject Proposal is to adopt three new policies and/or development standards as follows: (1) Any new winery plan submitted for approval and the actual buildings at final approval must meet the definition of a "winery" as defined as follows: "A winery is an agricultural facility designed and used to crush, ferment, and process grapes into wine." (2) A winery must be designed to produce a minimum of 5,000 gallons of wine annually. (3) Any new winery located outside of County commercial zones must use a minimum of 75% Riverside County grapes in wine production and retail wine sales.

Nelson Land opposes the Subject Proposal, and we respectfully request that you reject it for the following reasons:

1. The Subject Proposal Would Effectively Prevent New Winery Development and Hurt Local Property Values.

If approved, the Subject Proposal would make it impractical for landowners such as Nelson Land to convert their properties to wineries, because it will take ten or more years to grow a mature vineyard and produce and age quality wines from those grapes. Property owners

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cannot sustain such a prolonged period without revenue, and need the ability to sustain their wineries by producing wines from grapes grown outside the County. Purchasing grapes from within the County is not a feasible solution, because the County's market is too small to yield a reliable quantity and quality of grapes at competitive market prices. Additionally, as discussed in more detail below, the current membership of the TVWA has a monopoly on the current local grape market, and could refuse to sell quality grapes to local competitors, or it could offer them only at exorbitant prices. This would serve to benefit only the current wineries, stifle new competition, and serve no public benefit. Because of the significant obstacle that the Subject Proposal would place on new winery development, Nelson Land's and other property owners' real estate values may be hurt, while the existing wineries' values would rise.

2. The Subject Proposal is Calculated Solely to Protect Existing Wineries From Competition, and Bears No Rational Relationship to a Legitimate Public Purpose.

The proposals from the TVWA are calculated merely to protect the TVWA's current membership from competition, and bear no rational relationship to a legitimate public purpose. Although the TVWA promotes the Subject Proposal as a means of preserving or improving the reputation of Temecula Valley wines, we see no evidence that the proposal would accomplish that objective. We are unaware of any studies or precedent to support any contention that the Subject Proposal would achieve its stated objectives.

TVWA cites a 75% requirement in Napa County, but that requirement is not the same. The Napa requirement is found in California Business and Professions Code section 25241. That section provides, in general terms, that no wine produced or marketed in California may use a brand name or have a label bearing the word "Napa" (or the name of any federally recognized viticultural region within Napa County) unless at least 75% of the grapes from which the wine was made were grown in Napa County.¹ Thus, the Napa County 75% requirement is merely a labeling and advertising regulation. The legislature's intent in enacting section 25241 was to protect consumers from being misled.² The Napa County 75% requirement does not prohibit wineries from operating in Napa County if they use more than 25% of grapes from outside that County.

Moreover, the TVWA's own membership does not follow the 75% requirement that they now seek to impose upon new wineries. Some of the TVWA members appear to use far more than 25% of grapes imported from outside the County. Thus, the practices of the TVWA's own membership belie any suggestion that the proposed 75% requirement is necessary to preserve or improve the reputation of Temecula Valley wines.

¹ Cal. Bus. & Prof. Code, §25241; *see also*, *Bronco Wine Company v. Jolly* (2004) 33 Cal.4th 933.

² *Bronco Wine Company*, *supra*, 33 Cal.4th at 952.

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Finally, statements from the TVWA's membership demonstrate that their support for the Subject Proposals is borne entirely out of their fear of competition from Mr. Hunt and others who may follow, rather than any genuine concern for the area's reputation.

Because the proposed amendments bear no substantial or rational relationship to the general public welfare and are clearly calculated to protect the TVWA's membership from competition, if approved they would constitute an unconstitutional exercise of the County's police power.³

3. The Subject Proposal Would Effectively "Grandfather In" Existing Wineries, Creating and Uneven and Unfair Playing Field.

At the May 17, 2005, Board of Supervisor's meeting, Supervisor Stone stated his intent that any measure ultimately adopted would have to apply to all property owners equally, and create an even playing field for both existing wineries and new wineries. But if the County imposes the proposed standards as land use policies under the General Plan, and/or as development standards under the zoning ordinance, the County would effectively be "grandfathering in" existing wineries. Land use policies under the General Plan and development standards under the zoning ordinance do not affect existing uses unless or until the current property owner applies for a new permit or entitlement. Thus, adopting the Subject Proposal as an amendment to the zoning ordinance or General Plan would create an uneven and unfair playing field between those who are currently growing grapes and operating wineries, such as the TVWA's membership, and those who wish to develop their properties into wineries, such as Nelson Land. The proposed standards would unfairly discriminate between new wineries, which would be bound to use 75% of locally grown grapes, and existing wineries, which would be free to use as much of whatever grapes they choose. The existing wineries already have a competitive advantage by virtue of their longstanding presence as established wineries. There is no need to lock out prospective neighboring competitors.

4. The Subject Proposal Would Defeat Local Property Owners' Expectations.

Art Nelson purchased his property in the Citrus/Vineyard area in 2003. He and Nelson Land support the current policies and objectives of the General Plan for the Citrus/Vineyard Rural Policy Area, as well as the development standards for the C/V zone. But Nelson bought his property with the expectation that he could convert them to use as wineries subject to approval of a plot plan. It would be unfair and unjust to change the rules at this time in a manner that effectively precludes Nelson and other local property owners from converting their

³ See e.g., *Arnel Development Co. v. City of Costa Mesa* (1981) 126 Cal.App.3d 330; *In re White* (1925) 195 Cal. 516, 518-519; *Pacific Palisades Assoc. v. City of Huntington Beach* (1925) 196 Cal. 211, 217-218; *Wickham v. Becker* (1929) 96 Cal.App. 443, 448; see also, *Ross v. City of Yorba Linda* (1991) 1 Cal.App.4th 954, 960 n. 1.

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properties to wineries, for the sake of protecting existing wineries from competition, and without a corresponding public benefit. If approved, the Subject Proposal could lead to an unconstitutional "taking" of real property without just compensation.⁴

5. It is Unclear Precisely What Action the Board is Considering.

It is unclear precisely what action the Board is considering – i.e., is it a new or amended ordinance that would directly impose additional development standards within the C/V zone, or is it an amendment to the County's General Plan that would add new policies within the Citrus/Vineyard Rural Policy Area, or is it something else? In either case, if the Board passes the Subject Proposal, the Board's action will have the direct or indirect effect of imposing new development standards on properties not already developed as wineries.

Merely adopting the Subject Proposal as a "policy" under the General Plan, rather than a development standard under the zoning ordinance, does not alleviate the problems discussed above. Under the California Environmental Quality Act ("CEQA"), an Environmental Impact Report ("EIR") is required for any project that conflicts with or is inconsistent with the County's General Plan or other local land use plans or policies.⁵ The EIR cannot be approved without implementation of mitigation measures, findings of infeasibility of alternatives, and findings of overriding considerations.⁶ Thus, as a practical matter, adopting the Subject Proposal as a policy under the General Plan would have the same effect as adopting it as a development standard under the zoning ordinance.

6. The Subject Proposal is Subject to CEQA Review.

If the County is considering these proposed new standards by amendment to either the zoning ordinance or the General Plan (including the Southwest Area Plan and the Citrus/Vineyard Rural Policy Area policies prescribed therein), the County must comply with the California Environmental Quality Act ("CEQA"). Amending a General Plan or adopting or amending a zoning ordinance is subject to CEQA review when, as here, the amendment has a potential to result in a reasonably foreseeable indirect physical change in the environment. 14 Cal. Code Regs., §§15378(a)(1), 15060(c). The proposed standards, if approved, have the potential to result in a reasonably foreseeable indirect physical change in the environment. These standards will indisputably affect whether properties are converted from citrus groves and

⁴ See U.S. Const., 5th Amend.; Cal. Const., art. I, §19; see also, *Action Apartment Association v. Santa Monica Rent Control Board* (2001) 94 Cal.App.4th 587, 601; *Penn Central Transportation Co. v. New York City* (1978) 438 U.S. 104. *Lingle v. Chevron, U.S.A.* 2005 U.S. LEXIS [*17-*22] (United States Supreme Court May 23, 2005)(discussing application of per se and regulatory takings law).

⁵ 14 Cal. Code Regs. §15063(d)(5); see also, County of Riverside Initial Study Checklist.

⁶ See e.g., *Families Unafraid v. County of El Dorado* (1998) 62 Cal.App.4th 1332 (project must satisfy mandatory general plan policy that is fundamental and unambiguous and does not allow discretion in interpretation and application).

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other existing uses to vineyards and wineries. These decisions have the potential to affect local employment, public services, local agriculture, transportation and traffic, air quality, water and other utility consumption, and possibly other environmental issues. We are unaware of any efforts to comply with CEQA in considering the proposed standards. Despite owning property affected by the proposed standards, Nelson Land has not received any public notices under CEQA.

7. Additional Public Input Is Needed.

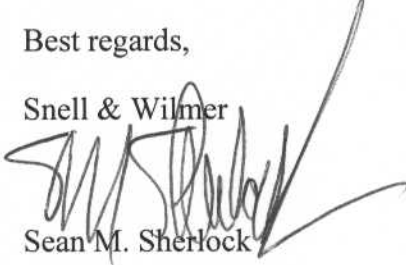
We are concerned that this matter is being pushed by the TVWA for hasty approval, without meaningful public participation. The matter was first considered by the Board of Supervisors at its May 17 meeting, but neither Nelson Land nor, to our knowledge, any other property owners in the Citrus/Vineyard Rural Policy Area received notice that the matter would be on the Board's May 17 agenda. Although the Supervisors directed the interested parties to try to resolve their differences prior to the continuation of the agenda item at the June 14 meeting, the TVWA has not engaged Nelson Land in any such discussions. We understand that other property owners in the area were unaware of the proposal, and are opposed to it. Nelson Land and others are submitting a petition to the Board, urging it to reject the Subject Proposal. We are confident that opposition to the Subject Proposal will grow as members of the community learn of it. As such, we urge you to seek further public input.

In conclusion, we hope that the Board will see the unfairness, injustice, and illegality in what the TVWA is urging it to do, and will reject the Subject Proposal. At a minimum, if the Board is inclined to consider the Subject Proposal further, we urge the Board to commission a study of the economic and environmental impacts the proposed standards would have on local property owners within the Citrus/Vineyard Rural Policy Area, as well as the practices of existing wineries in the Citrus/Vineyard area, and to seek further input from the community.

Once again, we appreciate this opportunity to express our clients' opposition to the Subject Proposal, and we thank you for your attention to their concerns.

Best regards,

Snell & Wilmer


Sean M. Sherlock

cc: Mr. Arthur H. Nelson