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Via E-Mail and Overnight Delivery

Galena West
Chief, Enforcement Division
California Fair Political Practices Commission
1102 Q Street, Suite 3000
Sacramento, CA 95811
E-Mail: complaint@fppc.ca.gov

Re: Political Reform Act Violations Regarding Napa County Measure C

Dear Ms. West:

I write with an urgent request for enforcement of the Political Reform Act. The Napa County Board of Supervisors ("Board"), as well as at least two individual Supervisors, are actively engaged in an unregistered and unreported campaign against the Napa County Watershed and Oak Woodland Protection Initiative of 2018, which has been placed on the June 5, 2018, ballot as Napa County Measure C.

To date, the Board, as well as Supervisors Ramos and Pedroza, have not only violated state law with respect to the unlawful use of public funds for campaign purposes, but there is every indication that they have violated numerous provisions of the Political Reform Act by: (1) failing to file the required independent expenditure verification; (2) failing to include any legally required disclaimers on certain campaign materials; and (3) failing to acknowledge their ongoing campaign finance reporting obligations.

INTRODUCTION

As detailed below and in the attached exhibits, on January 30, 2018, the Board directed its staff to prepare an objective report on the fiscal, land use, and other effects of Measure C pursuant to Elections Code section 9111. This statute authorizes preparation of reports to examine seven specified effects of County initiatives as well as any other matters the Board requests. Elec. Code § 9111. These reports are intended "to better *inform* the county electorate and the board of supervisors about proposed initiatives."

DeVita v. County of Napa, 9 Cal.4th 763, 777-78 (1995). They allow for an abbreviated environmental review "of a measure's effect[s]," in much the same way that an environmental impact report does under the California Environmental Quality Act ("CEQA"). *Id.* at 794; *see Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1041 (such reports "balance the right of initiative with the goal of informing voters and local officials *about the potential consequences of an initiative's enactment*").

As with all materials prepared at public expense, *such reports must be limited to "fair presentation" of "all relevant facts"* and cannot be used "to promote a partisan position in an election campaign." *Stanson v. Mott*, 17 Cal.3d 206, 209-10, 220 (1976). The Board Agenda Letter for the January 30th meeting at which the 9111 Report was ordered, as well as the public comment and direction from the Board, all indicated that the 9111 Report would address the eight enumerated factors set forth in Elections Code section 9111 and the potential effects of Measure C, both good and bad.[1]

However, sometime after that meeting, it appears that a Board member or other Napa County official directed preparation of a very different type of report by the law firm Miller Starr Regalia, which the County had retained to keep a prior version of Measure C off the ballot. The resultant report does not even purport to provide an objective assessment of the Initiative's environmental or other effects, let alone a "fair presentation" of "all relevant facts."

Instead, the 69-page report prepared by Miller Starr ("Miller Starr Report" or "Report") reads as if it were a legal hit piece prepared *for an opponent* of Measure C, with the sole purpose of cataloguing every conceivable ground—no matter how flimsy—for potentially challenging Measure C in court. (A copy of the Miller Starr Report is attached hereto as Exhibit 2.)

Indeed, it is a stretch to call the Miller Starr Report a "9111 report" at all. The document does not, for instance, ever identify the seven specific impacts and effects that the Legislature itemized as appropriate for consideration in a 9111 Report. Nor does it even purport to set forth an unbiased analysis of the impact of implementing Measure C. And, in contrast to *past* 9111 Reports prepared by the County, it contains no discussion

[1] The Board Agenda Letter for the January 30 meeting is attached hereto as Exhibit 1. A videotape of that meeting is available on the County's website at http://napa.granicus.com/MediaPlayer.php?view_id=2&clip_id=3975.

whatsoever of how and to what degree Measure C will further its stated goals of ensuring long-term protections for Napa County's oak woodlands, streams, and wetlands that are so essential to the County's future. Instead, the Miller Starr Report is replete with fundamentally misleading, biased, and inflammatory statements.

Since receiving the Report, and over the protest of Measure C's official proponents, the County and at least two Supervisors have used this catalogue of Measure C's alleged "legal infirmities" as campaign fodder to expressly advocate against the measure. For instance, shortly after the Report was "received" by the Board,[2] Supervisor Ramos published a link to the Report on her website. *See* Exhibit 3.

Not surprisingly, the Miller Starr Report also ended up featuring prominently in both the direct Ballot Argument Against Measure C, which Supervisor Ramos signed as the lead signatory, and the Rebuttal to the Argument in Favor of Measure C, which Supervisor Pedroza signed. *See* Exhibits 4-5 hereto. These official Ballot Arguments against Measure C quoted some of the most inflammatory and demonstrably untrue conclusions set forth in the Report. This includes the Report's statement that Measure C could "subject property owners to enforcement actions and criminal penalties who, through no fault of their own, lose trees due to wildfire." As detailed below, this unfounded and inflammatory statement is directly contradicted by the plain text of Measure C, the County Counsel's impartial analysis of the measure, and other statements buried deep within the Miller Starr Report itself.

The Supreme Court has long recognized that spending public funds on informational materials that fail to provide fair and accurate information about a proposed ballot measure can constitute impermissible advocacy even where they do not use words of express advocacy. *Stanson,* 17 Cal.3d 209-10, 220; *Vargas v. City of Salinas* (2009) 46 Cal.4th 1, 40 ("argumentative or inflammatory rhetoric" in informational materials prepared by a public agency is an indicator of improper and unconstitutional advocacy).

FPPC regulations and advice letters acknowledge as much, imposing reporting and disclosure requirements for any "payment of public moneys" by local agencies that are "made in connection with a communication to the public that … unambiguously urges a particular result in an election." Regulation § 18420.1(a). "A communication unambiguously urges a particular result in an election if … [w]hen *considering the style,*

[2] Napa County – Board of Supervisors Meeting (Feb. 27, 2018), *available at* http://napa.granicus.com/MediaPlayer.php?view_id=2&clip_id=4004.

tenor, and timing of the communication, it can be reasonably characterized as campaign material *and is not a fair presentation of facts serving only an informational purpose*." Regulation 18420.1(b) (emphasis added).

As detailed below, taking into account "the style, tenor, and timing" of the Miller Starr Report, the County's use of public funds for this report constitutes an "independent expenditure" under Gov. Code § 82031, triggering the reporting and disclosure requirements set forth in Gov. Code § 85500. The County's failure to comply with these reporting and disclosure requirements violates the Political Reform Act.

SUMMARY OF MEASURE C

The stated purpose of Measure C is to "protect the water quality, biological productivity, and economic and environmental value of Napa County's streams, watersheds, wetlands and forests, and to safeguard the public health, safety and welfare of the County's residents." Measure C at page 1, § 2A (attached hereto as Exhibit 6). Measure C achieves this goal by adopting policies for the Agricultural Watershed zoning district to protect forests and tree canopy near streams and wetlands and to ensure the long-term preservation of Napa's oak woodlands. *Id.*, § 2B. A central component of Measure C is the establishment of a limit on the number of additional acres of oak woodlands that can be removed ("Oak Removal Limit" or "Limit"). If that Limit is reached, further removal of oak trees in Napa's Agricultural Watershed zoning district would require a permit. *Id.* at 9; *see also* Exhibit 7 (Napa County Counsel's Impartial Analysis of Measure C).

DISCUSSION

I. The style, tenor and timing of the Miller Starr Report, taken as a whole and in context, show that it "unambiguously urges a particular result" in the election on Measure C.

A communication "unambiguously urges a particular result in an election" pursuant to Regulation 18420.1(b), if the communication meets either of the following criteria:

> "(1) It is clearly campaign material or campaign activity such as bumper stickers, billboards, door-to-door canvassing, or other mass media advertising including, but not limited to, television or radio spots.

(2) When considering the style, tenor, and timing of the communication, it can be reasonably characterized as campaign material and is not a fair presentation of facts serving only an informational purpose."

Here, the style, tenor, and content of the Miller Starr Report leave little doubt that its authors were directed by the Board or its agents to prepare a legal "hit piece" against Measure C and that it does not "serv[e] *only* an informational purpose." As noted above, the Report does not identify any of the seven specific factors that Elections Code section 9111 designates as appropriate information for consideration. *See* Elec. Code § 9111(a)(1)-(7). Instead, it commences with an Executive Summary that purports to summarize Measure C's dozens of alleged legal infirmities before concluding "[t]here is a significant likelihood the Initiative could be challenged on some or all of these grounds." Miller Starr Report at 3 (emphasis in original).

The balance of the Report consists of page after page of dense and inaccessible legalese. Buried deep within the Report—but nowhere mentioned in the Executive Summary—are a series of difficult to access concessions that despite the allegedly "significant likelihood" of litigation, any challenges to Measure C based on the claims outlined in the Report are in fact highly unlikely to succeed.

A. The Report's Executive Summary uses inflammatory rhetoric that is belied by Measure C's plain text and Napa County Counsel's official Impartial Analysis.

The Report's lack of objectivity is seen in multiple ways. Perhaps the most egregious is its treatment of Napa's recent horrific wildfires, which it uses to incite baseless fears about the Initiative's effects. For instance, the Report's Executive Summary asserts that Measure C "could, on its face, subject property owners to enforcement actions and criminal penalties who, *through no fault of their own, lose trees due to wildfire*." Miller Starr Report at 3 (emphasis added).

This statement is not only inflammatory, but also demonstrably incorrect. It is directly contradicted by the plain text of Measure C, which requires a permit only for the removal of oak trees caused by "*intentional* burning."[3] Under the measure's plain

[3] Measure C at 10, § 18.20.060(F)(3) (emphasis added). This section reads in full as follows: "'Remove' or 'removal' means *causing a tree to die or be removed* as a result of human activity by cutting, dislodging, poisoning, *intentional burning*, topping or

definition of tree "removal," only a human being that "intentional[ly]" sets a wildfire could even potentially be subject to penalties or enforcement action by the County. Indeed, despite the inflammatory rhetoric featured in the Report's Executive Summary, the body of the Report effectively acknowledges that this inflammatory statement is unsupported by the text of Measure C. But that acknowledgement is buried in paragraphs of dense legalese that are unlikely to be read by the average voter. *See, e.g.*, Miller Starr Report at 17-18.

In stark contrast to the Miller Starr Report, County Counsel's Impartial Analysis forthrightly acknowledges that "[o]ak tree removal is defined [in Measure C] to include 'intentional burning' [and thus] Oaks destroyed by fires caused by natural phenomena, by backfires set by state or federal agencies, or removed at the direction of CalFire would not count towards this limit" and would *not* be subject to Measure C's permit or enforcement provisions. *See* Exhibit 7 (Impartial Analysis).

B. The Report's inflammatory statements feature prominently in the official ballot arguments signed by the Supervisors who oppose Measure C.

This inflammatory statement in the Miller Starr Report was one of several objectively false and misleading statements reproduced in the ballot arguments against Measure C signed by Supervisors Ramos and Pedroza. *See* Exhibits 4 & 5. However, because the ballot argument authors accurately quote the Miller Starr Report, they were effectively able to insulate those unfounded statements from any legal challenge. Thus, although a Measure C supporter was able to secure a court order deleting five other false statements in the two ballot arguments signed by Supervisors Ramos and Pedroza, the statements from the Miller Starr Report—which was prepared entirely with public funds—could not be challenged under the Elections Code so long as they were accurately quoted.[4] Those statements from the Report will now appear in the official ballot arguments that expressly urge a "No" vote on Measure C.

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damaging of roots, but does not include removal or harvest of incidental vegetation such as berries, ferns, greenery, mistletoe, herbs, shrubs, or poison oak."

[4] The undersigned represented the Measure C supporter who successfully challenged the ballot arguments. *See Apallas v. Tuteur*, Napa County Superior Court Case No. 18CV000425, Notice of Entry of Judgment at page 8-5 to 8-6 (quoting

The official ballot arguments against Measure C similarly quote—and thus insulate from judicial review—the Miller Starr Report's one-sided advocacy statement that certain terms in Measure C are "unlawfully vague and misleading" and thus "create a significant likelihood of litigation" against the County. *See* Exhibits 4 & 5 (Direct and Rebuttal Arguments Against Measure C) (quoting Miller Starr Report).

As with the alleged risk of criminal penalties to innocent property owners that suffer the misfortune of wildfires, the Executive Summary of the Miller Starr Report highlights Measure C's alleged unconstitutional vagueness. *Id.* at 2-3. The body of the report then spends nearly 20 pages reviewing the allegedly vague terms, before ultimately conceding—again buried deep within paragraphs of dense and inaccessible legalese—that ***the likelihood of any such challenge succeeding is actually "most unlikely" or "very low."***[5]

Of course, as the Report says about the terms of Measure C, any term in any law *"might* be deemed impermissibly vague." *See* Report at 9; *id.* at 2-3, 6, 8 (same). However, what makes the Miller Starr Report particularly troubling in terms of the requirement to provide "a fair presentation of facts serving only an informational purpose," is that ***each of the Measure C terms it highlights as potentially so vague as to be unconstitutional appears in the County's own existing land use regulations***, some of them hundreds of times and several of them in the very existing policy that is amended by Measure C.[6]

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challenged ballot argument statements); *id.* at page 8-17 (ordering five of the six challenged statements replaced) (attached hereto as Exhibit 8).

[5] *See, e.g.*, Miller Starr Report at 11 ("most unlikely" that the term "feasible" would be held unconstitutionally vague); *id.* at 13 ("low risk" that "oak woodland" is unconstitutionally vague); *id.* ("very low" risk regarding "canopy"); *id.* 14 ("canons of construction" would uphold County interpretation of "wetland").

[6] *See, e.g.*, February 26, 2018 Ltr from Robert "Perl" Perlmutter to Napa County Board of Supervisors at 8-9 (attached hereto as Exhibit 9; listing some examples of these terms used in the County's laws); *see also* Exhibit 10 (listing other County Code and General Plan provisions using the same allegedly unconstitutional terms as Measure C). For example, Measure C amends the County's existing General Plan Policy CON-24 to require additional mitigation except "when retention of existing vegetation is found to be *infeasible*." Measure C at 4, amending subdivision (c) Policy CON-24. As shown on the

But the Miller Starr Report largely ignores these facts. Nor does the Report mention that, despite the allegedly "significant likelihood" of litigation challenging these terms (Report at 3, emphasis in original), none of these identical terms in the County's existing legislation have *ever* been challenged as unconstitutionally vague.

C. The Report is one-sided and does not provide a "fair presentation" of relevant facts.

At the very least, a "fair presentation" of the facts would point out that each of Measure C's allegedly unconstitutional terms repeatedly appear in the County's existing Code (as well as in the Codes of virtually every other jurisdiction in California). A fair presentation of the facts would also point out that none of these terms in the County's existing laws have ever been challenged in any court, and in fact are applied by Napa County on a routine basis to virtually every land use decision it makes.

More fundamentally, if the Miller Starr Report were truly meant to "serv[e] only an informational purpose"—as required by Regulation 18420.1(b)(2)—then there would be no reason to repeatedly state that these terms "**might** be deemed impermissibly vague," only to bury in the depths of the Report that such an outcome is "most unlikely." *See supra* note 5.

The Miller Starr Report occasionally seeks to justify this differential treatment of the County's own existing ordinances and General Plan by asserting, for instance, that these terms as "presently used" by the County are "not vague because the County, as the adopter of this legislation, has a unique competence to interpret it." Miller Starr Report at 11. However, an unbroken line of cases has expressly held that the County *has the same exact discretion to interpret* its legislation regardless of whether its provisions have

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same pages of Measure C, *the existing subdivision (c) of that existing County Policy uses the identical term "infeasible*," and subdivisions (a), (b), and (e) each use the phrase "to the extent infeasible." "Feasible" and "infeasible" are also well-established terms of art used in many land use and environmental statutes, including CEQA, the state's pre-eminent environmental statute. *See, e.g.*, Pub. Res. Code § 21061.1; *City of Marina v. Board of Trustees of Cal. State Univ.*, 39 Cal.4th 341, 367 (2006). However, from the hundreds of published decisions involving CEQA claims interpreting the terms "feasible" and "infeasible," the authors of the Miller Starr Report are not able to point to a single instance in which a court even suggested, let alone held, that this term is impermissibly vague.

been adopted by initiative. *See, e.g., San Francisco Tomorrow v. City and County of San Francisco* (2014) 229 Cal.App.4th 498, 514-16. And, of course, it is also black letter law that the Courts have a heightened duty to uphold initiatives wherever possible, which includes the duty to "construe enactments to give specific content to terms that might otherwise be unconstitutionally vague." *See Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 598.

The truth of the matter, of course, is that the Miller Starr Report was never intended to serve "only an informational purpose," as required by law, but instead to serve as fodder for the campaign against Measure C.

Numerous other examples of the Miller Starr Reports biased and one-sided treatment of Measure C are detailed in the attached February 26, 2018, letter to the Board (Exhibit 9), which urged the Board not to accept or publish the Miller Starr Report but to instead correct the Report's many inaccuracies and to provide the public with the fair presentation of Measure C's impacts that the law requires.

In short, the pervasive tenor and approach of the Miller Starr Report seems specifically intended to give the public the inaccurate, one-sided, and erroneous impression that the Initiative is legally flawed when in reality Measure C uses the same terms in the same manner as the County's existing laws. Moreover, in stark contrast to prior 9111 reports and similar documents prepared by the County, the Report provides virtually no information about Measure C's effects and serves no legitimate informational purpose for County voters.

Ultimately, the Report's conclusion that there "is a <u>significant likelihood</u> the Initiative could be challenged" (Report at 3) says nothing about the Initiative's likely effects—or even about its validity. Even if this statement is correct, it simply describes the litigation strategy of those opposed to efforts to protect Napa's watershed and oak woodlands. After all, any County land use policy *could be challenged.* But that does mean the challenge will succeed. In the case of an adopted initiative, it merely means the litigants have the resources to try to stop the initiative's policies from being implemented, despite the fact that a majority of County voters support them. And the legal standard for succeeding in such a challenge is very high. Under California law, it is the duty of the courts to "jealously guard" the initiative power, and initiatives "'must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears.'" *Rossi v. Brown* (1995) 9 Cal.4th 688, 711.

II. All four factors identified in Regulation 18420.1(d) support a finding that the Miller Starr Report constitutes "campaign material and is not a fair presentation of facts serving only an informational purpose."

Regulation 18420.1(d) identifies four factors to help determine whether the style, tenor, and timing of the communication supports a finding that it is "campaign material and not a fair presentation of facts serving only an informational purpose." These factors include whether the communication (1) is funded from a special (as opposed to general) appropriation; (2) is "consistent with the normal communication pattern for the agency;" (3) is "consistent with the style of other communications issued by the agency;" and (4) "uses inflammatory or argumentative language." FPPC Regulation 18420.1(d). Each of these factors support a finding that the 9111 report prepared by Miller Starr are an independent expenditure under Section 82031.

A. The Miller Starr Report was paid for from a special appropriation.

As the Board's January 30, 2018 Agenda Letter states, the 9111 Report was not funded from the County's existing budget but instead required a special appropriation of $20,000 to $30,000. *See* Ex. 1 at 2 (Fiscal Impact: "Is [the Report] currently budgeted? No."). This factor weighs in favor of a finding that the Miller Starr Report is campaign material.

B. The style of the Miller Starr Report is not consistent with the normal communication pattern and style of other communications issued by the County.

This firm drafted Measure C. We have also drafted many dozens of other land use initiatives, including Napa County's Measure J and Measure P, and reviewed or consulted regarding hundreds of others. And we have prepared, helped prepare, or reviewed many dozens of Section 9111 reports, including past 9111 reports prepared by Napa County such as the one the County prepared in 2008 for the Save Measure J Initiative ("Measure P") (A copy of this Report is attached as Exhibit 11). But we have never seen or reviewed a Section 9111 Report as one-sided, biased, and wholly unrelated to the statutory purposes of section 9111 as the one prepared by Miller Starr.

Likewise, we have reviewed dozens of Napa County land use applications and proposed changes to the County's zoning and General Plan and the associated environmental review under CEQA that the Supreme Court has explained serves the same function as an Elections Code 9111 Report. *See DeVita*, 9 Cal.4th at 793-94. But

we have never seen or reviewed a County analysis of such applications or changes that was as one-sided, biased, or wholly unrelated to the purposes of CEQA.

Even a cursory comparison with the 9111 report the County prepared for Measure P—which the entire Board supported in 2008—shows how fundamentally inconsistent the Miller Starr Report is with the County's normal communication pattern and style in analogous circumstances.

The Measure P Report, for instance, commences with a summary of the four specific items under section 9111 that the measure implicates. It then systematically examines the impacts and effects of Measure P, including both the potentially positive or beneficial impacts, and the potential negative consequences. And while it briefly mentions some potential legal concerns, it does not engage in dozens of pages of conjecture about how terms that appear in Measure P (as well as throughout the County Code and in the present Initiative), "might" be subject to litigation. *See e.g.*, Measure P 9111 Report (Exhibit 11) at 1, 7; *see also Vargas*, 46 Cal.4th at 9-10 (noting that the report prepared in that case under Elections Code section 9212—the municipal analogue to section 9111—contained a "study of the measure's potential impact on each of the respective [city] departments")

By contrast, as noted above, the Miller Starr Report never provides any meaningful information about Measure C's impacts that the Legislature "designed" section 9111 to provide. *See DeVita*, 9 Cal.4th at 777. Instead, it contains page after page of analysis claiming that Measure C *might* be unconstitutionally vague—often stretching to come up with potential legal claims that find no support in existing case law.

Many of the terms that the Miller Starr firm found to raise a "significant likelihood" of litigation against Measure C appeared in a nearly identical context in Measure P and in the County's existing General Plan and zoning code.[7] Yet the Measure

[7] For instance, Measure P repeatedly uses the terms "where necessary to comply" with various statutes or "applicable State law." Measure P at 5 (paragraph (c)); *id.* at 6 (paragraph (f)). Measure P is attached as Appendix A to the 9111 Report for Measure P attached to this letter as Exhibit 11. Measure P also repeatedly uses the term "feasible" in just the same manner as Measure C. *See* Measure P at 7 (subparagraphs (iii) and (vi)). Aware that such terms routinely appear in local statutes and regulations, the authors of the Measure P Report properly refrained from speculating about potential legal challenges to them. By contrast, the Miller Starr Report repeatedly claims both terms

P 9111 Report did not engage in any of the spurious conjecture about potential litigation that these terms allegedly would raise. And despite the allegedly significant likelihood of litigation these terms create, no such litigation as ever filed over Measure P.

Another striking example is the Miller Starr Report's claim that one sentence in Measure C allegedly violates a prohibition against "indirect" legislation. Miller Starr Report at 3. In fact, identical language was considered and *expressly upheld* by an appellate court in a challenge to a different initiative. *Pala Band of Mission Indians v. Bd. of Supervisors* (1997) 54 Cal.App.4th 565. Even though no other appellate decision has *ever* questioned *Pala Band's* holding, the Miller Report nevertheless opines that the holding is "highly questionable" and that the language is vulnerable to legal attack. Report at 45. No fair and unbiased analysis could come to this conclusion and it serves no legitimate informational purpose.

Again, a comparison to the 9111 Report the County prepared for Measure P is particularly telling. Measure P contained the identical language that the Miller Starr Report contends is unconstitutional. *See* Measure P at 9 (Section 3(D)). However, the 9111 Report for Measure P never suggests that this provision is unconstitutional. Nor, despite the allegedly significant risk of litigation that Miller Starr claims this language creates, did any party challenge this provision after County voters enacted Measure P—with the express support of this Board.

The Miller Starr Report also differs in a more foundational way from how the County has analyzed proposed initiative measures (and other proposed legislative changes) in the past. Typically, the impacts of such changes are analyzed by economic and planning consultant teams with expertise in analyzing the fiscal, land use, and other impacts of such proposals. For instance, the 9111 Report for Measure P was prepared by Seifel Consulting, Inc., an economic and planning consultant firm of the type used by most public agencies in California to prepare these types of reports and that has the expertise necessary to analyze the factors set forth in Elections Code section 9111.

"might be deemed unlawfully vague," before ultimately conceding that such claims are highly unlikely to succeed. Miller Starr Report at 8-11. Such statements do not serve a meaningful "informational purpose," as required by FPPC regulations, and the contrast between the 9111 Reports for Measure C and Measure P dramatically underscore this point.

Similarly, the County's General Plan—which both Measure C and Measure P amend—was analyzed by a host of planning and economic consultants.[8]

By contrast, the Miller Starr Report was prepared by the law firm the County had previously hired to keep a prior version of Measure C off the ballot and it focusses exclusively on the alleged legal grounds for challenging Measure P.[9] As several parties commented at the Board's February 27, 2018, hearing to receive the 9111 Report, these factors not only create a stark appearance of bias and impropriety, but also stand in stark contrast to how the County typically analyzes its own legislative proposals or those proposed by other parties through the standard legislative process. *See* Napa County – Board of Supervisors Meeting (Feb. 27, 2018), *available at* http://napa.granicus.com/MediaPlayer.php?view_id=2&clip_id=4004.

C. The 9111 Report uses inflammatory and argumentative language that has since featured prominently in the ballot arguments and campaign against Measure C and in negative press coverage.

As detailed in Part I above, the 9111 Report is replete with inflammatory and argumentative language of the type that the County has not used in past 9111 reports and never uses to describe the County's own proposed amendments to its General Plan and Zoning Ordinance. The danger of allowing the undisclosed use of public funds to disseminate such statements has been amply illustrated by the ways in which the 9111 Report's inflammatory and argumentative statements have been used in the campaign against Measure C and in the media.

For instance, these statements were prominently featured in the local press coverage that immediately followed release of the Miller Starr Report and the Board's receipt of that Report the following week. *See, e.g.*, Barry Eberling, "Napa County report looks for flaws in the planned watershed and oak initiative*," Napa Valley Register* (Feb. 22, 2018) (attached as Exhibit 12); *see also* Exhibit 13. This article quotes the Miller

[8] *See* Napa County General Plan Draft Environmental Impact Report (2007), *available at* https://www.countyofnapa.org/DocumentCenter (last visited April 20, 2018).

[9] *See Wilson v. County of Napa*, 9 Cal.App.5th 178 (2015). The County also used the Miller Starr firm to analyze two other measures proposed for the 2018 ballot. But, again, these reports stand in stark contrast to how the County analyzed and communicated to the public the impacts of Measure P and other proposed legislative changes.

Starr Report's statement that "'the initiative could subject the county to lawsuits, and could be partially invalidated.'" Yet, as discussed previously, the Report is repeatedly forced to concede that the Initiative would likely be *upheld* against any such challenges—concessions it buries deep in the text where they might be easily overlooked. *See, e.g., supra* notes 5-6.

The same article also cited the report to say that some parts of the Measure are "unlawfully vague or misleading." However, as explained above and shown in Exhibits 9 & 10, each of the terms that the Report contends are potentially vague or otherwise unconstitutional appear repeatedly in nearly identical contexts throughout the County's existing Code and General Plan.

These statements also featured prominently in the ballot arguments against Measure C signed by two of the Board members who authorized the expenditure of public funds to prepare the Miller Starr Report. *See supra* Part I; Exhibits 4-5.

In short, all four factors set forth in Regulation 18420.1(d) support a finding that the Miller Starr Report constitutes "campaign material and is not a fair presentation of facts serving only an informational purpose."

III. None of the exceptions in FPPC Regulation § 18420.1(e) are applicable here.

Subdivision (e) of Regulation § 18420.1 specifies five exceptions in which a payment for a communication that unambiguously urges a particular result in an election nonetheless "shall not be considered a contribution or an independent expenditure." None of these exceptions applies here.

First, the 9111 Report is not "[a]n agency report providing the agency's *internal* evaluation of a measure made available to a member of the public upon the individual's request." *See* FPPC Regulation 18420.1(e)(1). By statute, a 9111 Report is not an "internal evaluation," but is instead specifically intended to be a public document that is "presented to the board of supervisors" at a public meeting. *See* Elections Code § 9111(b); *Tuolumne Jobs*, 59 Cal.4th at 1041 (explaining that the "goal" of such reports is "*informing voters and* local officials about the potential consequences of an initiative's enactment"). That is exactly what happened here; and the Report was also promptly made available and distributed to the public—not just "upon the individual's request"—but on the County's website and the website for Supervisors Ramos.

Similarly, the Miller Starr Report did not consist of the "[a]nnouncement of an agency's position at a public meeting or within the agenda or hearing minutes for the meeting." *See* FPPC Regulation 18420.1(e)(2). Indeed, although two Supervisors later signed the ballot arguments against Measure C, the Board as a whole did not take a position on the report and, in fact, several members of the Board seemed to initially acknowledge that the Report was inappropriately one-sided and biased at the February 27, 2018, hearing at which the Report was received.[10]

The Report itself also was not a "written argument filed by the agency for publishing in the voter information pamphlet." *See* FPPC Regulation 18420.1(e)(3). While the Board as whole—and individual Board members—have the right to file such arguments, they do not have the right to use public funds to hire a law firm to provide the fodder for such arguments. *See Vargas*, 46 Cal.4th at 36-37.

Nor is the Report a "departmental view presented by an agency employee upon request by a public or private organization, at a meeting of the organization," or a "communication clearly and unambiguously authorized by law." *See* Regulation 18420.1(e)(4) & (5). That the Elections Code authorizes reports to be prepared containing the information set forth in Elections Code section 9111 does not mean that any statement contained in such reports is "clearly and unambiguously authorized by law." To the contrary, this language is based on the potential exceptions discussed in prior Supreme Court cases.

As the Supreme Court explained in *Vargas*, the "clearly and unambiguously" language refers to situations where a statute uses "clear and unmistakable language specifically authorizing a public entity to expend public funds for campaign activities or materials." *Vargas*, 46 Cal.4th at 23-24. Elections Code section 9111 does not contain any such language. *See id.* at 29-30 (explaining why Gov't Code § 54964 does not do so). And even if it did, that would raise a "serious constitutional question" of its legality. *Id.* at 24. Indeed, to interpret this regulation otherwise would mean that public agencies could engage even in express advocacy for or against a measure, so long as they placed that advocacy within a section 9111 report. Clearly, that is not the law.

[10] Napa County – Board of Supervisors Meeting (Feb. 27, 2018), *available at* http://napa.granicus.com/MediaPlayer.php?view_id=2&clip_id=4004 .

Thank you for your prompt attention to this important matter. Please do not hesitate to contact me if you have any questions or would like further documentation of the statements contained in this letter.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Robert "Perl" Perlmutter

Enclosures

cc: Jeffrey Brax, Acting County Counsel
Silva Darbinian, Deputy County Counsel
Clients

Exhibit List

1. **January 30, 2018 Board Agenda Letter to Napa County Board of Supervisors**

2. **February 20, 2018 Memorandum from Sean Marciniak, Miller Starr Regalia, to the Napa County Board of Supervisors.**[11]

3. **Excerpt from website of Napa County Supervisor Belia Ramos, http://myemail.constantcontact.com/BELIA-S-FEBRUARY-E-NEWSLETTER.html?soid=1127040720328&aid=vbJkN1XYvE0, (last downloaded April, 20, 2018)**

4. **Ballot Argument Against Measure C (March 16, 2018)**

5. **Rebuttal to the Argument in Favor of Measure C (March 23, 2018)**

[11] Although the first sentence of this memorandum indicates that it is "*part* of the report prepared pursuant to Elections Code § 9111," it is in fact *the entirety of the 9111 Report*. *See, e.g.*, February 27, 2018 Board Agenda Letter to Napa County Board of Supervisors, attaching this report as Exhibit A "9111 Report-Oaks Watershed."

6. **Measure C, the Napa County Watershed and Oak Woodland Protection Initiative of 2018**

7. **Impartial Analysis of Measure C prepared by Napa County Counsel pursuant to Elections Code section 9160(b) (March 9, 2018)**

8. ***Apallas v. Tuteur*, Napa County Superior Court Case No. 18CV000425, Notice of Entry of Judgment (Filed April 10, 2018)**

9. **February 26, 2018 Letter from Robert "Perl" Perlmutter to Napa County Board of Supervisors**

10. **Partial listing of Napa County Code and General Plan provisions using the same Measure C terms that the Miller Starr Report claims are allegedly "unconstitutionally vague" and pose a "significant likelihood" of litigation terms as Measure C).**

11. **Elections Code Section 9111 Report, Save Measure J Initiative (June 2, 2008) (This Report states that it evaluates "*Measure O*, the Save Measure J Initiative." In fact, the Save Measure J Initiative appeared on the November 4, 2008 ballot as "*Measure P*").**

12. **Barry Eberling, "Napa County report looks for flaws in the planned watershed and oak initiative," *Napa Valley Register* (Feb. 22, 2018), *available at* http://napavalleyregister.com/news/local/napa-county-report-looks-for-flaws-in-the-planned-watershed/article_709e93ab-6815-5616-87ad-f9e0e104cda8.html.**

13. **Barry Eberling, "Napa County supervisors place oak woodland initiative on June ballot," *Napa Valley Register* (Feb. 27, 2018), *available at* http://napavalleyregister.com/news/local/napa-county-supervisors-place-oak-woodland-initiative-on-june-ballot/article_8931e1dc-9707-5cbf-a62a-4bdaf39048a9.html.**

EXHIBIT 1

A Tradition of Stewardship
A Commitment to Service

Agenda Date: 1/30/2018
Agenda Placement: 10B

NAPA COUNTY BOARD OF SUPERVISORS
Board Agenda Letter

TO:	Board of Supervisors
FROM:	John Tuteur - Registrar of Voters Elections
REPORT BY:	John Tuteur, Assessor-Recorder-County Clerk - 253-4459
SUBJECT:	Assessor-Recorder-County Clerk and County Counsel request Board receive certification of sufficient signatures on three initiative petitions and take related actions.

RECOMMENDATION

Assessor-Recorder-County Clerk and County Counsel requests that the Board take the following actions regarding the June 5, 2018 Primary Election:

1. Receive the Certifications of the Registrar of Voters that the following petitions are sufficient as to form and have been signed by voters not less in number than 10 percent of the entire vote cast in Napa County for all candidates for Governor at the last gubernatorial election preceding the publication of the notice of intent to circulate the initiative;
    a. Napa County Watershed and Oak Woodland Protection Initiative of 2018 submitted December 1, 2017;
    b. Initiative to Disallow the Use of Personal Airports and Helipads submitted December 4, 2017; and
    c. Blakeley Construction Initiative submitted December 5, 2017; and
2. As required by Elections Code 9118 take one of the following actions:
    a. Direct staff to prepare an ordinance containing the provisions of any initiative without alteration for adoption by the Board on February 6, 2018; or
    b. Direct staff to prepare a resolution placing any initiative on the June 5, 2018 Primary Election ballot enabling the people of Napa County to approve or reject the initiative(s); or
    c. Direct staff to prepare and present to the Board for any initiative within 30 days one or more reports pursuant to Section 9111 of the Elections Code, and identify what information should be included in each report.

EXECUTIVE SUMMARY

Pursuant to Election Code 9114 the Election Division has completed its review of the signatures on the following

initiative petitions:

- Napa County Watershed and Oak Woodland Protection Initiative of 2018 submitted December 1, 2017;
- Initiative to Disallow the Use of Personal Airports and Helipads submitted December 4, 2017; and
- Blakeley Construction submitted December 5, 2017.

An examination of the signatures on each of the petitions has demonstrated that more than the requisite number of registered voters have signed the initiative petitions. The Registrar of Voter's (ROV) certificates showing the sufficiency of signatures dated January 9, 2018 is herewith submitted to the Board. The ROV has notified the proponents of each of the three initiatives of the sufficiency of signatures.

The petitions have also been reviewed by county counsel as to form. All petitions are sufficient as to form.

Elections Code Section 9118 outlines the steps the Board is required to take if an initiative petition is signed by not less than 10 percent of the entire vote cast in Napa County for all candidates for Governor at the last gubernatorial election preceding the publication of the notice of intent to circulate the initiative. In such a case the Board is required to take one of the following actions for each petition: (1) adopt the initiative as an ordinance without alteration within 10 calendar days of the date of the meeting at which the certificate of sufficiency is presented, (2) submit the ordinance, without alteration, to the voters or (3) order a report pursuant to Section 9111 at the regular meeting at which the certification of the petition is presented.

PROCEDURAL REQUIREMENTS

1. Receive certificates of sufficiency of signatures and of form of petitions, and
2. Provide direction to staff on one of the following:
    a. Prepare an ordinance containing the provisions of any initiative without alteration for adoption by the Board on February 6, 2018; or
    b. Prepare a resolution calling a special election for any initiative and consolidating it with the June 5, 2018 Primary Election; or
    c. Prepare and present to the Board for any petition a report within 30 calendar days, pursuant to Section 9111 of the Elections Code, and identify what information should be included in the report.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
What is the revenue source?	General fund. The cost of placing each initiative on the June 5, 2018 ballot will be between $10,000 and $20,000 per initiative. If one or more Election Code 9111 reports are ordered, the cost per report would be approximately $20,000 to $30,000 each.
Is it Mandatory or Discretionary?	Mandatory
Is the general fund affected?	Yes
Future fiscal impact:	There will be no future fiscal impact on the election budget or on whichever budget unit covers the EC 9111 reports.
Consequences if not approved:	The County will be exposed to costly litigation if it fails to comply with the mandatory requirements of Elections Code section 9118. The county, more

likely than not, will be required to pay the attorney fees of any successful plaintiff as well as conduct the election on a timetable established by the court.

Additional Information:

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: None Required regardless of the Board's decision [Calling an election required to be held as a result of the gathering of sufficient signatures pursuant to Elections Code section 9118 is ministerial and therefore not subject to CEQA [*Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 189]; Adopting an ordinance in lieu of calling an election is ministerial and therefore not subject to CEQA [*Native American Sacred Site and Environmental Protection Association et al. v. City of San Juan Capistrano* (2004) 120 Cal.App.4th 961, 969]].

BACKGROUND AND DISCUSSION

Pursuant to Election Code 9114 the Election Division has completed its review of the signatures on the following initiative petitions:

- Napa County Watershed and Oak Woodland Protection Initiative of 2018 submitted December 1, 2017;
- Initiative to Disallow the Use of Personal Airports and Helipads submitted December 4, 2017; and
- Blakeley Construction submitted December 5, 2017.

An examination of the signatures on each of the petitions has demonstrated that more than the requisite number of registered voters have signed the initiative petitions. The Registrar of Voter's (ROV) certificates showing the sufficiency of signatures dated January 9, 2018 is herewith submitted to the Board. The ROV has notified the proponents of each of the three initiatives of the sufficiency of signatures.

The petitions have also been reviewed by county counsel as to form. All petitions are sufficient as to form.

Elections Code Section 9118 outlines the steps the Board is required to take if an initiative petition is signed by not less than 10 percent of the entire vote cast in Napa County for all candidates for Governor at the last gubernatorial election preceding the publication of the notice of intent to circulate the initiative. In such a case the Board is required to take one of the following actions for each petition: (1) adopt the initiative as an ordinance without alteration within 10 calendar days of the date of the meeting at which the certificate of sufficiency is presented, (2) submit the ordinance, without alteration, to the voters or (3) order a report pursuant to Section 9111 at the regular meeting at which the certification of the petition is presented. Should the Board order such a report, the report must be present to the Board within 30 days at which time the Board must either adopt the initiative as an ordinance of the County or submit the initiative to the voters.

THE 9111 REPORT

The statute that controls the content of any report the Board may order is found in Elections Code section 9111 and therefore the report is commonly referred to as a 9111 Report.

Any report that is ordered, in lieu of immediately calling an election or adopting any of the initiatives without alteration, may address the effect of each initiative on any or all of the following matters:

1. Its fiscal impact;
2. Its effect on the internal consistency of the county's general and specific plans, including the housing element, the consistency between planning and zoning, and the limitations on county actions under Section 65008 of the Government Code and Chapters 4.2 (commencing with Section 65913) and 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code [NOTE: the limitations referenced relate to Affordable Housing and discrimination in housing issues];
3. Its effect on the use of land, the impact on the availability and location of housing, and the ability of the county to meet its regional housing needs;
4. Its impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space. The report may also discuss whether the measure would be likely to result in increased infrastructure costs or savings, including the costs of infrastructure maintenance, to current residents and businesses;
5. Its impact on the community's ability to attract and retain business and employment;
6. Its impact on the uses of vacant parcels of land;
7. Its impact on agricultural lands, open space, traffic congestion, existing business districts, and developed areas designated for revitalization; or
8. Any other matters the board of supervisors request to be in the report.

If the Board orders one or more 9111 report(s), the report must be completed and presented to the Board no later than 30 calendar days. If one or more report(s) is ordered, the Board must either adopt the ordinance at the next Board meeting after the 9111 report is published or submit the initiative(s) to the voters at the June 5, 2018 Primary Election.

In addition to the 9111 analysis described above, Elections Code section 9160(c) authorizes the Board, but does not require the Board, to order the County Auditor to prepare a fiscal analysis. That fiscal analysis is limited in content and length:

"(c) Not later than 88 days prior to an election that includes a county ballot measure, the board of supervisors may direct the county auditor to review the measure and determine whether the substance thereof, if adopted, would affect the revenues or expenditures of the county. He or she shall prepare a fiscal impact statement which estimates the amount of any increase or decrease in revenues or costs to the county if the proposed measure is adopted. The fiscal impact statement is "official matter" within the meaning of Section 13303, and shall be printed preceding the arguments for and against the measure. The fiscal impact statement may not exceed 500 words in length."

Historically, the Board has included said fiscal analysis as part of the 9111 report. However, the 9111 report is not included in the sample ballot pamphlet whereas a 9160(c) report would be included.

Finally, through a preliminary review, various County departments have raised the attached questions or issues about these initiatives and would invite the Board to include them in the 9111 reports to inform and clarify the issues.

SUPPORTING DOCUMENTS

A . WOWP Signature Verfication Certificate

B . Heliport Signature Verification Certificate

C . Blakeley Signature Verification Certificate

D . Questions Based on Preliminary Review

CEO Recommendation: Approve

Reviewed By: Helene Franchi

EXHIBIT 2

MILLER STARR REGALIA

MEMORANDUM

TO: The Napa County Board of Supervisors

FROM: Sean Marciniak

CC: Minh Tran, Napa County Executive Officer;
Silva Darbinian, Deputy County Counsel

DATE: February 20, 2018

RE: Legal Analysis of Napa County Watershed and Oak Woodland Protection Initiative of 2018

At the request of the Napa County Board of Supervisors, we have prepared the following legal analysis of the Napa County Watershed and Oak Woodland Protection Initiative of 2018, with the understanding that it will be transmitted to the County's Board of Supervisors as part of the report prepared pursuant to Elections Code § 9111.

I. EXECUTIVE SUMMARY

In 2017, certain citizens of Napa County ("Proponents") proposed the Napa County Watershed and Oak Woodland Protection Initiative of 2018 ("Initiative"). This Initiative proposes to amend the County of the Napa County General Plan and the County's Code of Ordinances ("County Code," or "NCC") to curtail future development along certain streams and wetlands, and within certain oak woodlands. Specifically, the Initiative states that it would:

- Limit the removal of trees, including both oak and non-oak species, within certain distances of streams and wetlands, where the size of this buffer would vary based on the type and quality of the waterbody at issue. This limitation would only apply to parcels that are both (1) greater than one acre in area, and (2) located within an Agricultural Watershed ("AW") zoning district. Ten exceptions would exist, including exceptions for the removal of dead, dying, or diseased trees and for the removal of trees located on public land. The complete list is identified below in Section II of this Memorandum.

- Mandate that, in the issuance of any discretionary approval, the County require that parties proposing to remove oak trees or oak woodlands replace these resources, or permanently preserve comparable habitat, at a 3:1 ratio. This

requirement would only apply to the removal of trees on parcels that are (1) greater than one acre in area, and (2) located within an AW zoning district. The ten exceptions referenced above would apply to this requirement as well.

- Limit the removal of oak trees after 795 acres of oak woodland habitat disappear, as measured from September 1, 2017 (the "Oak Removal Limit"). More specifically, the Initiative provides that:

    - Once 795 acres of oak woodlands are removed, whether by approval of the County or without authorization, the further removal of oak trees from private land within AW districts (without any qualification as to size) shall be subject to an oak removal permit or a use permit, depending on the number of trees proposed for removal.

    - After the 795-acre limit is reached, the County only may issue oak removal permits if: (1) the tree removal will take place on properties that are a minimum of 160 acres; (2) the tree removal is necessary to ensure that agricultural use of the parcel will be economically viable; and (3) if certain other findings can be made, as detailed in Section II of this Memorandum. The ten exceptions referenced above would apply to this permitting requirement as well.

The proposed Initiative would amend both the County's General Plan and the Napa County Zoning Code to effect these changes, and provides that these legislative amendments can be further amended or repealed only by the voters of Napa County.

The Initiative has some potential legal flaws that might engender litigation challenges if it were enacted. These potential legal defects are summarized as follows:

- The Initiative is arguably unlawfully vague or misleading with respect to: (1) various standards it imposes that are based on considerations of "necessity;" (2) what type of losses to oak woodland habitat will "count" toward the Oak Removal Limit and would trigger a violation of the water quality buffer zone restrictions, particularly with respect to trees lost to wildfire; (3) what otherwise constitutes a "removal" of trees; (4) how the term "wetland" is defined, and how it interrelates to other portions of the proposed legislation; (5) how the Initiative relates to and/or amends Measure J, a previous initiative adopted by the County's voters in 1990 that sought to preserve agricultural land uses in the County's agricultural districts; (6) the Initiative's effect on the General Plan Land Use Map; (7) the degree to which internal contradictions in the Initiative's text might render it impossible for a property owner to obtain a use permit for the removal of oak trees after the Oak Removal Limit is reached; and (8) the degree to which the replanting of vineyards is exempt from the Initiative's water quality buffer zone restrictions. (*See* Sections III.A and III.B of this Memorandum.)

- Certain terms of the Initiative may be preempted by the Oak Woodland Protection Act and recent housing legislation designed to streamline the approval of accessory dwelling units. (*See* Sections III.C.2.a and III.C.2.c.ii of this Memorandum.)

- The Initiative might be deemed to violate the citizenry's equal protection rights insofar as it exempts from its regulations the replanting of certain vineyards, telecommunication towers, cellular towers, and other defined private uses, whereas other agricultural uses and private activities are subject to the Initiative's restrictions. (*See* Section III.D.3 of this Memorandum.)

- The Initiative does not clearly provide persons accused of violating it the right to a hearing, potentially in tension with constitutional due process rights and protections. It also could, on its face, subject property owners to enforcement actions and criminal penalties who, through no fault of their own, lose trees due to wildfire. (*See* Sections III.B.3, III.D.4, and III.D.5 of this Memorandum.)

- Certain parts of the Initiative, on their face, could technically violate California Initiative Law's prohibition of "indirect" legislation and the use of precedence clauses. Whether a significant legal defect exists on this basis, however, would depend on whether the Initiative were deemed to create internal inconsistencies in the County's General Plan. To that end, the Initiative's provisions might conflict with more than a dozen goals, policies, and other provisions of the General Plan. (*See* Section III.F and Appendix A of this Memorandum.)

There is a significant likelihood the Initiative could be challenged on some or all of the foregoing bases.

Given these potential defects, if the Initiative is enacted by the Board, or is placed on the ballot and passes, a number of consequences could ensue that are difficult to predict. The Initiative could subject the County to lawsuits, and could be partially invalidated, based on the aforementioned bases.

As a general matter, the ability to bring a pre-election challenge to the Initiative is limited. Assuming the Initiative substantially complies with the procedural and substantive requirements of the Elections Code for local initiatives, the Board generally may not withhold an initiative from the ballot, since its legal duty to either enact "as is" or place a qualifying initiative on the ballot is considered ministerial. Thus, even though the Board might conclude that all or a portion of the Initiative would likely or potentially be invalid as a matter of substantive law, and that it will not enact the measure, the Initiative generally must be placed on the ballot; this is particularly true where, as here, the Initiative measure contains a severance provision and at least portions of it would likely survive any legal challenge.

II. BACKGROUND AND OVERVIEW OF NAPA COUNTY WATERSHED AND OAK WOODLAND PROTECTION INITIATIVE OF 2018

The Proponents of the Initiative, Napa County residents Mike Hackett and Jim Wilson, have authored an initiative that, if enacted, would accomplish the following:

- **Tree Protection Water Quality Buffer Zones.** The Initiative would establish buffer zones along streams and wetlands on parcels greater than one acre within AW zones, and restrict tree removal within these zones (both oak and non-oak species), though the removal of ferns, greenery, shrubs, poison oak, and other incidental vegetation would be permitted. The aforesaid buffer zones would

extend between 25 to 125 feet from the top-of-bank of any Class I, II or III stream, as defined, and within 150 feet of any wetland.

- **Oak Woodland Mitigation Requirements.** The Initiative would establish mandatory mitigations where the County renders a discretionary approval that involves the removal of oak trees or oak woodlands on AW zoned lands greater than one acre, requiring on-site replacement of lost oaks trees or oak woodlands, or permanent preservation of comparable habitat, at a minimum 3:1 ratio. Where on-site remediation is infeasible, the Initiative would require purchase of a conservation easement or payment of in-lieu fees sufficient to provide permanent preservation of comparable oaks at a 3:1 ratio on developable land within Napa County.
- **Oak Removal Limit and Permitting.** The Initiative would establish an "Oak Removal Limit," such that when a cumulative total acreage of 795 acres of oak woodlands are removed or approved for future removal in AW zones, the further removal of oak trees or oak woodlands would be subject to a special permitting process. Specifically:
    - After the Oak Removal Limit is reached, the County would only issue these permits if one of the enumerated, ten exceptions apply or if all of the following conditions apply:
        - The tree removal will take place on properties that consist of at least 160 acres;
        - The tree removal is necessary to ensure that agricultural use of the parcel will be economically viable;
        - The removal is consistent with the policies and standards of the County's General Plan and any applicable specific plan;
        - The permit allows removal of no more than five oak trees during any ten-year period;
        - The oak mitigation framework, as discussed above, is followed;
        - Oak tree removal is allowed only to the minimum extent necessary to ensure the economic viability of a property or address one of the listed exceptions; and
        - At least 90 percent of the oak canopy cover on a parcel is retained unless it is infeasible to require as much.
    - A proposal to remove ten or fewer oaks within a twelve-month period requires an oak removal permit. A proposal to remove more than ten oaks on a parcel within twelve months requires the approval of a use permit.
    - The County must track and report the acreage of oak woodlands removed pursuant to a specified framework.
- **Exceptions.** Ten exceptions[1] to the foregoing tree removal rules would include:
    - Removing downed and dead trees;
    - Adhering to requirements for firebreaks;
    - Averting an imminent threat to health and safety;
    - When required for the development or maintenance of access roads, septic or wastewater systems, water wells, water resources and storage facilities,

[1] Again, these exceptions apply to each of the three main regulatory frameworks the Initiative proposes for AW zones, including the proposed rules governing tree removals in water quality buffer zones, oak tree/woodland removals that are subject to remediation, and oak tree/woodland removals requiring a permit after the Oak Removal Limit is reached

public works facilities, solar energy systems, electric vehicle charging stations, telecommunications or cellular towers, trails, flood control projects, or stream crossings;
    - Within a recorded utility right-of-way;
    - On land owned by a public agency;
    - Where undertaken by or at the direction of a government agency as part of a project to preserve, restore, or improve habitat, alleviate a hazardous condition, or abate a public nuisance;
    - When undertaken or authorized by a federal or state agency;
    - Within eleven feet of the centerline of driveways serving legally existing or proposed structures; and
    - Within 150 feet of a lawful residence or other structure.
- **Additional Exception to Water Quality Buffer Zone Regulations.** An additional exception applies with respect to the water quality buffer zone regulations. Tree removal associated with replanting grape vines, when done within the footprint of vineyards approved prior to the effective date of the Initiative, is not an activity that is subject to these rules.
- **Limitations of Initiative.** The Initiative would establish that none of the foregoing tree removal restrictions apply:
    - To the extent they are inconsistent with state or federal law;
    - To property within an Affordable Housing Combination District ("AHCD") or other combination or overlay district where (1) the primary purpose of the district is to provide affordable housing or residential housing projects; or (2) the approval of the foregoing housing development is necessary to comply with state law;
    - To the extent they effect an unconstitutional taking of property;
    - To the extent they disturb a vested right or interfere with the implementation of project where the applicant has obtained all discretionary permits legally required prior to the effective date of the Initiative.
- **Penalties for Violation of Initiative.** The Initiative would establish penalties for violations of the foregoing rules, including that violations may be prosecuted as a misdemeanor and are subject to the maximum administrative penalties set forth in the County's.

To accomplish the foregoing, the Initiative proposes direct modifications to a series of provisions in the Napa County General Plan and Code of Ordinances. (Initiative, §§ 3, 4, 5.) The Initiative also appears to indirectly contemplate changes to the General Plan and Code of Ordinances in two ways. First, the Initiative includes a precedence clause, requiring that any County Code provisions that are inconsistent with the Initiative's proposed amendments shall not be enforced. (Initiative, § 7(A).) Second, the Initiative provides that the County is authorized to change the County's General Plan and Code "as soon as possible as necessary to ensure consistency between the provisions adopted in this Initiative and other sections of the General Plan … [and] County Code …." (Initiative, § 7(C).)

To the extent the Initiative's proposed legislation potentially violates or is preempted by state law, it contains savings clauses, whereby its proposed legislative amendments shall not apply where they are inconsistent with state law. (*See, e.g.,* Initiative, § 4 [proposed NCC, §§ 18.20.050(G)(2), 18.20.060(G)(2)], § 8].) Section 8 of the Initiative also contains a severability clause, which states in relevant part: "If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion of this initiative is held to be

invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this initiative."

III. LEGAL ANALYSIS

A. An Initiative cannot be misleading.

Courts have found an initiative or referendum petition invalid where it contains a materially misleading or inadequate short title or fails to contain the full text of the enactment. (*See, e.g., Mervyn's v. Reyes* (1998) 69 Cal.App.4th 93, 99-104, and cases cited; Elec. Code, § 9201.) "[T]he type of defect that most often has been found fatal is the failure of an initiative or referendum petition to comply with the statutory requirement of setting forth in sufficient detail the text of the proposed initiative measure or of the legislative act against which the referendum is brought 'so that registered voters can intelligently evaluate whether to sign the initiative petition and to avoid confusion.'" (*Costa v. Superior Court* (2006) 37 Cal.4th 986, 1016, fn. 22, citing *Mervyn's, supra,* 69 Cal.App.4th at 99.)

Here, the Initiative might be considered misleading insofar as it fails to identify itself as a modification of Measure J, which the voters of Napa County enacted in 1990 to preserve agricultural land. To accomplish this, the Measure J modified the County's General Plan to provide that the redesignation of existing agricultural land required voter approval, with certain exceptions, until the year 2021. (*See* General Plan Agricultural Preservation and Land Use Element ["GP-AP/LUE"] Policies -20, -21, -110, and -111.) Measure P, enacted in 2008, extended this sunset date until 2058.

The Initiative does not directly amend Measure J's provisions, nor does it mention Measure J. At the same time, the Initiative proposes policies that, in prioritizing the protection of riparian and woodland habitat, would arguably create practical conflicts with the voters' previous direction to maximize and preserve the County's agricultural production. (*See* Appendix A, Item 9, of this Memorandum.) While unclear, one potential interpretation of the Initiative is that it would, indirectly,[2] contemplate a nullification or amendment to Measure J. (*See* Initiative, § 7(A)(C)&(E).) If this result is intended, the Initiative fails to notify voters in any clear manner of this intent and consequence, and is to that extent misleading. Given that County voters previously decided that Measure J cannot be changed without a vote of the people, this lack of clarity is a material issue.

Assuming the Proponents' intent is that the Initiative does not contemplate changes to Measure J, it appears that conflicts existing between the land use policies proposed by the Initiative and those adopted by Measure J may nonetheless potentially create a horizontal inconsistency within the General Plan. The legal requirement of horizontal consistency, and the potential conflicts between the Initiative and Measure J, are discussed further in Appendix A of this Memorandum. (*See* Appendix A, Introductory Paragraphs, Item 9; *see also* Gov. Code, § 65300.5.)

B. An Initiative cannot be vague.

The United States Supreme Court's classic statement of the vagueness doctrine is that "a statute which either forbids or requires the doing of an act in terms so vague that men of

[2] Indirect legislation is, separately and independently, a violation of the law. This issue is discussed in detail in Section III.F of this Memorandum.

common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." (*Connally* v. *General Const. Co*. (1926) 269 U.S. 385, 391; *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1200.) California courts have further stated that "[s]o long as a statute does not threaten to infringe on the exercise of First Amendment or other constitutional rights, however, such ambiguities, even if numerous, do not justify the invalidation of a statute on its face. In order to succeed on a facial vagueness challenge to a legislative measure that does not threaten constitutionally protected conduct - like the initiative measure at issue here - a party must do more than identify some instances in which the application of the statute may be uncertain or ambiguous; he must demonstrate that 'the law is impermissibly vague *in all of its applications*.'" (*Evangelatos, supra,* 44 Cal.3d at 1201; *see also Citizens for Jobs and the Economy v. County of Orange* (2002) 94 Cal.App.4th 1311, 1333-1335.)

In articulating rules of construction with respect to initiative measures, courts have held the following:

- Courts interpret voter initiatives using the same principles that govern construction of legislative enactments:
    - Courts begin with the text as the first and best indicator of intent.
    - If there is no ambiguity, the plain meaning of the language ordinarily will govern.
    - If the text is ambiguous and supports multiple interpretations, courts may then turn to extrinsic sources such as ballot summaries and arguments for insight into the voters' intent.
        - Legislative antecedents not directly before voters are not relevant to the inquiry.
        - The report of a legislative analyst may be used to clarify ambiguities in a given legislative proposal.
        - Ballot materials, including voter information pamphlets and arguments in favor of or opposed to a legislative proposal, may be used to clarify ambiguities therein.
        - A court cannot presume that the electorate as a whole is aware of statements made in an articled published in magazine articles, legal periodicals, etc.
    - The opinion of drafters or legislators who sponsor an initiative is not relevant since such opinion does not represent the intent of the electorate and a court cannot say with assurance that the voters were aware of the drafters' intent. However, if there is reason to believe voters were aware of the drafters intention and believed the language of the proposal would accomplish it, a drafter's intent may be relevant to the construction of a proposed law..
    - In interpreting a voter initiative, courts give effect to the voters' formally expressed intent, without speculating about how they might have felt concerning subjects on which they were not asked to vote; a court may not add to the statute or rewrite it to conform to an assumed intent that is not apparent in its language.
    - A court must enforce the plain meaning of an initiative's text even when its consequences were not apparent from the ballot materials.
    - A court must, where reasonably possible, harmonize statutes, reconcile seeming inconsistencies in them, and construe them to give force and effect to all of their provisions.

(*Mays v. City of Los Angeles* (2008) 43 Cal.4th 313, 321; *People v. Mentch* (2008) 45 Cal.4th 274, 282; *Ross v. RagingWire Telecom., Inc.* (2008) 42 Cal.4th 920, 930; *People v. Valencia* (2017) 3 Cal.5th 347, 388, 397; *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 805; *Robert v. Sup. Ct.* (2003) 30 Cal.4th 894, 904; *Farmers Ins. Exchange v. Superior Court* (2006) 137 Cal.App.4th 842, 857; *Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 904, *as modified* (Aug. 20, 2003).)

- There is an assumption that voters who approve an initiative are presumed to "'have voted intelligently upon an amendment to their organic law, the whole text of which was supplied [to] each of them prior to the election and which they must be assumed to have duly considered....' " (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 243-244, quoting *Wright v. Jordan* (1923) 192 Cal. 704, 713.)
- There is a presumption that the voters, in adopting an initiative, did so being "aware of existing laws at the time the initiative was enacted." (*Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1048; *see also In re Lance W.* (1985) 37 Cal.3d 873, 890, fn. 11.)
- Court cannot infer voter intent where there is nothing to enlighten it in the first instance. (*Valencia, supra,* 3 Cal.5th at 375.)

The Proponents of the Initiative, through their counsel, have provided materials explaining their intended construction of the Initiative's proposed legal amendments. The substance of this correspondence, which the County received by email dated February 9, 2017, is included in the analyses below. Based on the foregoing legal authorities, this information is relevant to ascertaining the meaning of the Initiative, but it is not determinative unless it can be shown this information is placed directly before the County's voters, and that voters believed the language of the Initiative would accomplish the Proponents' intentions. It is difficult at this time to analyze whether the Proponents' materials satisfy these criteria, as the inquiry would require knowing the occurrence and impacts of future events (e.g., to what extent the Proponents' constructions, as expressed in their correspondence and in this Memorandum, are placed directly before County voters).

To some extent, the existing County Code provisions will also carry interpretative weight. Where an ambiguity surfaces in an ordinance, the County Code requires the County to interpret provisions so as "to avoid unconstitutionality wherever possible" (NCC, § 1.04.110), and that no provision of the code "shall be construed as being broad enough to permit any direct or indirect taking of private property for public use" (NCC, § 1.04.130). Similarly, the County Code provides that it "is not the intent of the board of supervisors, in its administrative capacity, to condone or permit the violation of the constitutional rights of any person, nor to condone or permit the taking of private property for public use without payment of just compensation in violation of either the United States or California Constitutions." (NCC, § 1.04.140.)

1. *The Initiative contains a "necessity" standard that might be deemed unlawfully vague.*

In *Citizens for Jobs and the Economy v. County of Orange,* the court evaluated whether a measure was improperly vague, focusing on the italicized language in the following paragraph:

> In section 4 of Measure F, the County would be allowed to expend funds '*as necessary for the planning of any project* [listed in the initiative] … and for the submission of an approved project to the voters for ratification as required herein, but only upon a vote of the Board of Supervisors after public hearing *and only to the extent necessary* (A) to define the project; (B) to prepare an environmental impact report, [etc.] … The Board of Supervisors may expend no other funds *for any other purposes relating to any such project, until and unless the act by the County to approve the project is ratified by the voters ….*"

(*Id.* at 1335, emph. in original.) The court found the italicized provisions were improperly vague. Insofar as the initiative used standards based on necessity (e.g., expending funds *as necessary for the planning of the project, and only to the extent necessary* to define the project), the court said "it is not possible to tell to what extent" the discretion of the Board was circumscribed. "Who is to decide what spending is necessary, or for what purposes that are sufficiently related to the project?" the court asked. (*Id.*, *citing Motorola Communications & Electronics, Inc. v. Department of General Services* (1997) 55 Cal.App.4th 1340, 1350.)

The Initiative contains certain provisions that rely on a "necessity" standard, including the following:

- Its terms are inapplicable to property with a combination or overlay district "whose primary purpose is to provide affordable housing or to residential housing projects whose approval is necessary to comply with state law" (Initiative, § 4 [proposed NCC, §§ 18,20.050(G)(1), 18.20.060(G)(1)].)

- It is inapplicable insofar as it is necessary to avoid a violation of law. (Initiative, § 4 [proposed NCC, §§ 18,20.050(C)(2),18,20.050(G)(2), 18.20.060(E)(3), 18.20.060(G)(2)].)

- After the Oak Removal Limit is reached, the County may issue a permit where it is "necessary" to "ensure the economically viable agricultural use of a parcel." (Initiative, § 4 [proposed NCC, § 18.20.060(E)(2)].)

Some of these "necessity" standards appear to be appropriately designed, such as those providing that the Initiative does not apply insofar as this result is necessary to avoid a violation of law. It would seem reasonable to expect that the County could analyze and determine, at least in some instances, whether application of a provision of the Initiative would violate a state or federal law (as has been undertaken in this report). However, the Initiative might be deemed impermissibly vague insofar as it would require the County to determine whether issuance of an oak removal permit is "necessary" to "ensure the economically viable agricultural use of a parcel." (Initiative, § 4 [proposed NCC, § 18.20.060(E)(2)].) For instance, does this provision require County staff to determine that enforcement of the regulation would result in an unprofitable agricultural operation, or generate a reasonable rate of return? If the latter, how would County staff calculate a reasonable rate of return? There are no criteria provided in the proposed ordinance that would guide the County in this respect, raising similar questions as those asked by the court in *Citizens for Jobs and the Economy v. County of Orange.* (*See Citizens for Jobs,* 94 Cal.App.4th 1311 at 1335.)

While various County Code provisions would obligate the County to interpret ambiguities to exclude unconstitutional results (*see* NCC, §§ 1.04.110, 1.04.130, 1.04.140), those provisions may not assist here. The potential interpretations of "necessity," as discussed in the foregoing paragraph, would all effect a result that passes constitutional muster, and the rules of construction in the County Code do not require the County to observe "bare minimum" constitutional protections. These rules of construction, therefore, are not assured to resolve the identified ambiguities.

2. *Evaluation of whether the Initiative contains terms that are well-defined or would result in confusion.*

(a) *Evaluation of Initiative's use of word "feasible."*

The Initiative provides that, in establishing an oak removal mitigation framework, on-site remediation is required unless it is "infeasible," and that any off-site mitigation must be "as close as feasible" to the parcel where trees are proposed for removal. (Initiative, § 4 [proposed NCC, § 18.20.050(A)(2)&(3); *see also* proposed NCC, § 18.20.070(B)].) The term "feasible" also appears in: (1) the Initiative's Annual Report requirements, providing that this report must include maps showing the acreage of oak woodlands lost "where feasible" (Initiative, § 4 [proposed NCC, § 18.20.050(C)]); and (2) the oak removal permit criteria, where issuance requires the County to find that at least 90 percent of the oak canopy cover on the subject parcel would be preserved unless "the County makes specific findings why this would be infeasible" (Initiative, § 4 [proposed NCC, § 18.20.060(E)(4)(c)]).

It is unclear how the term "infeasible" is intended to be defined. For instance, does the concept of feasibility take into account legal, economic, and technological infeasibilities, or is feasibility in this instance more limited in scope? The Initiative does not provide any guidance. (*See also* discussion of ambiguities caused by Initiative's use of term "infeasible" in Appendix A, Item 11.) Currently, County staff indicate that the majority of their feasibility determinations take account of factors typically considered in CEQA review. Under the state's environmental framework, the term "feasible" means "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." (14 CCR, § 15364.) This fairly comprehensive approach, which contemplates an applicant's project objectives, comes into play in implementing a number of existing County Code sections where the staff are asked to make a finding or determine a proposed action is feasible. (*See, e.g.,* NCC §§ 18.34.050, 18.104.340, 18.119.070.) Generally, California courts hold that interpretation of the word "feasible" in a legislative plan is within the discretion of the city or county adopting the legislation. (*See, e.g., East Sacramento Partnership for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 308.)

Ambiguities in the Initiative, if adopted, could create practical concerns. For instance, consider that the Initiative would require that oak mitigation be located on-site unless it is "infeasible" to do so. (Initiative, § 4 [proposed NCC, § 18.20.060(A)(2).) In making feasibility assessments with respect to tree mitigation (e.g., as set forth in use permit conditions, or CEQA mitigation monitoring programs),[3] the County has often found

[3] It does not appear that the Initiative's proposed terms would limit the County's ability to impose tree mitigation requirements required by other legal frameworks, such as CEQA or the County's erosion control plan permitting process. For instance, in the

replacement to be an infeasible option for environmental reasons. For example, there may be a lack of suitable area on-site to replace trees, and there can be adverse impacts associated with the replanting of trees. With respect to the latter point, staff have found that the planting of trees can sometimes negatively modify the overall biological function of a given natural community. The replanting of oak trees in a grassland, for instance, could serve to reduce grassland areas within the County and result in adverse impacts to the species that rely on grassland for their habitat. It is unclear whether the Initiative's terms would permit County staff to continue taking into account these environmental factors, or whether feasibility requires the planting of trees to the detriment of other environmental habitats.

Where the existing provisions of the County's General Plan and County Code call for feasibility determinations, the County has consistently interpreted "feasibility" to encompass a broad set of factors. As presently used in County legislation, the term "feasible" is not vague because the County, as the adopter of this legislation, has a unique competence to interpret it.

The Initiative's proponents have indicated that "[f]easibility and infeasibility are terms of art that public agencies, including Napa County, use routinely. For instance, existing County General Plan Policy CON-24, which the Initiative amends, uses a form of this several times. And, of course, feasibility is a central concept in CEQA." (Proponents' response to *Questions based on Preliminary Review of Initiatives,* Question 1.) It appears, then, it is the drafters' intent that the word "feasible" captures the definition historically applied by County planning staff. This stated intent, coupled with the presumption that voters, in adopting an initiative, do so being "aware of existing laws at the time the initiative [is] enacted," suggests the County's historical interpretation of the word "feasible" would govern County's staff implementation of any Initiative's terms the County's voters might adopt. (*Kempton, supra,* 40 Cal.4th at 1048).

Ultimately, while the Initiative's failure to define the term "feasible" creates some potential legal vulnerability, the drafter's intent, coupled with the presumption that voters are aware of existing laws, mitigate the legal risks involved. It seems most likely a court would determine the County would be able to interpret the term as it currently does in implementing other provisions of the County Code and General Plan.

(b) *Evaluation of Initiative's use of the term "oak woodland."*

The Initiative proposes to regulate "oak woodlands," which are defined to mean "oak stands" with "greater than ten (10) percent canopy cover," where an "oak stand consists of at least two (2) oak trees of at least (5) inches in diameter, measured at 4.5 feet above mean natural grade." (Initiative, § 4 [proposed NCC, § 18.20.060(F)(2)].) The term "oak tree," meanwhile, is defined to include "any live tree in the genus Quercus that is not growing on timberland." (Initiative, § 4 [proposed NCC, § 18.20.060(F)(1).)

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hypothetical situations where a given property is subject to tree mitigation requirements set forth under proposed section 18.20.060 and CEQA, it would appear that the property owner would have to mitigate impacts according to whichever requirement was stricter.

While these terms are consistent with the manner in which oak woodlands are defined in some County documents, the oak woodland maps routinely used by County staff for planning purposes are compiled using methodologies that do not consider canopy cover.

(i) Planning documents where oak woodlands are defined consistent with the Initiative's definition of "oak woodland."

The Napa County Voluntary Oak Woodlands Management Plan (the "Plan") provides that "oak woodland communities are categorized by the dominant tree species and the degree of foliage cover, with woodland defined as having a canopy coverage of 10% or greater and trees spaced far enough apart to allow for a variety of shrubs, herbaceous plants, and grasses in the understory." (NCVOWMP, p. 14.) In defining "oak woodland," the Plan cites to section 1361 of the Fish & Game Code, which defines the term to mean "an oak stand with a greater than 10 percent canopy cover or that may have historically supported greater than 10 percent canopy cover." State law also defines the term "oak tree" to "means a native tree species in the genus Quercus, not designated as Group A or Group B commercial species pursuant to regulations adopted by the State Board of Forestry and Fire Protection pursuant to Section 4526, and that is 5 inches or more in diameter at breast height." (Pub. Res. Code, § 21083.4(a).)

Overall, there are minor differences between how the Initiative defines "oak woodland" and "oak tree," and how the County and state have defined them in the foregoing legislative enactments or adopted plans (e.g., Initiative's oak woodlands consist of oak stands with a canopy coverage of more than 10 percent, whereas the Plan contemplates the same canopy cover but with shrubs and other plants in the understory; the Fish & Game Code defines the term to mean existing and historic populations of oaks, whereas the Initiative appears to contemplate only existing, "live" populations).

(ii) Certain County maps that depict oak woodlands utilize a definition that is different from the Initiative's definition of "oak woodland."

The County currently maps oak woodlands according to methodology set forth in the California Native Plant Society's Manual of California Vegetation ("MCV"). This methodology is somewhat complicated, but is not based on a 10 percent canopy threshold. More information about the County's oak woodland maps, officially known as the County's Land Cover (GIS) Layer, can be found in the Biological Resources chapter of the County's Baseline Data Report (2005). (*See, e.g.,* Baseline Data Report, pp. 4-9, 4-15, 4-22.)

Because the County's mapping system is based on methodology that is inconsistent with the Initiative's definitions of oak woodlands, there could be practical difficulties in implementing some of its proposed provisions. For instance, proposed section 18.20.060(B) requires that, "[w]henever the County issues an approval for an activity that includes removal, replanting, or preservation of any oak woodlands, the County shall incorporate any relevant oak mapping information into a vegetation classification and mapping program maintained by the County." It might be difficult, given technological and other factors, to integrate changes in oak woodlands, as defined by the Initiative, with the County's Geographic Information System ("GIS") mapping system. Assessing environmental impacts also could entail a greater degree of work, since planners,

biologists, and/or arborists could no longer rely on County GIS maps, but would have to conduct site visits or review aerial photography whenever any development was proposed to determine if the requisite 10 percent canopy cover was present.

(iii) Conclusion.

There seems to be a low risk the Initiative's use of the term "oak woodland" would be deemed unconstitutionally vague. However, because the Initiative does not define the term as it is used in the MCV, there could be practical impediments to easily tracking the status of oak woodlands within the County.

Note that, to the extent the term "oak woodland" appears in the General Plan (*see, e.g.,* Policy CON-24, p. CON-30), the Initiative's definition of the term in its proposed zoning code amendments would not operate to change the General Plan. (*See* Appendix A, Item 9 [zoning amendments cannot alter general plan terms].)

(c) *Evaluation of Initiative's use of word "canopy."*

In a few instances, the Initiative proposes rules that involve the term "canopy," without defining it. For instance, under the Initiative's proposed terms, the County would be able to issue an oak removal permit only so long as 90 percent of the oak canopy is retained, unless findings of infeasibility are made. (Initiative, § 4 [proposed NCC, § 18.20.060(E)(4)(c)].) While the term "canopy" is not defined, it has a commonly understood, and clear, meaning. This common meaning is captured in the existing County Code, which defines "vegetation canopy cover" to mean "the crown area of a stand of trees (i.e., upper-story vegetation) in a natural stand of vegetation. For the purposes of this chapter, canopy cover is the collective cover of a grouping of trees viewed from an aerial photograph of the latest edition on file with the department, where the tree stand is continuous. Single trees are not considered canopy cover." (NCC, § 18.108.030.) Another question raised by the Initiative is how, if it were to be enacted, the County would measure tree canopy to ensure compliance with the proposed ordinances. To this end, County staff indicate that calculation of tree canopies is fairly routine, and can be accomplished with site visits or review of certain aerial photography. The legal risk of a court finding that the Initiative's use of the word "canopy" is unconstitutionally vague thus appears to be very low.

(d) *Evaluation of Initiative's use of word "wetland."*

The Initiative defines the term "wetlands" to mean "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adopted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas." (Initiative, § 4 [proposed NCC, § 18.20.050(D)(7)].) This definition of wetland tracks the language adopted by the U.S. Army Corps of Engineers in Title 33, Code of Federal Regulations, section 328.3(c)(4),[4] the implementation of which was stayed by a federal court in October 2015. (*In re E.P.A.*

[4] The Proponents' counsel has confirmed that the Initiative's "definition of wetlands is taken verbatim from the U.S. Army Corps definition in 33 CFR § 328.3."

(2015) 803 F.3d 804, 805.)[5] The uncertain legal status of the federal definition of "wetland" does not preclude the County from adopting, for purposes of creating tree removal buffers, the language set forth in section 328.3(c)(4). Note, the California State Water Resources Control Board is currently proposing a state wetland definition, but this definition is different than the Initiative's proposal, and has not been finalized.[6]

While it may be appropriate that the Initiative's proposed definition of "wetland" tracks a stayed federal definition, it is important to understand that this federal regulatory definition has caused a great deal of uncertainty at the regulatory level. As such, the U.S. Army Corps of Engineers developed a series of technical manuals to provide practical guidance on determining what constitutes a wetland. Congress ultimately directed that the Corps' 1987 manual be used.

On the local level, the County Code does include ordinances that refer to the word "wetland," though no ordinance currently defines the term. (*See, e.g.,* NCC, §§ 16.28.060, 18.40.170, 18.66.060, 18.82.080.) County staff indicate that wetlands are mapped as part of biological reports required as part of development projects, which adhere to state and federal protocols under the Clean Water Act. While uncertain, it appears that canons of construction would favor interpreting the word "wetland" as the County traditionally has done in the past.

Notwithstanding the foregoing, the Initiative's proposed ordinance creates confusion insofar as it appears difficult to distinguish between its definition of the term "wetland" and its definition of the term "stream."[7] More specifically, it could be difficult for a property owner to determine whether a given watercourse qualifies as a "wetland" or a "Class I, II, or III stream," thereby creating confusion about what size buffer should be maintained under proposed County Code section 18.20.050. It is unclear, for instance, whether a given watercourse can qualify as both a wetland and a stream, or whether the terms are mutually exclusive. Consider that a wetland, as proposed, would exist where an area is inundated by water at a frequency to support vegetation typically found in saturated soil conditions. It is conceivable that the requisite hydrology and vegetation could also be found at a watercourse qualifying as a "Class I stream," which is defined as a perennial

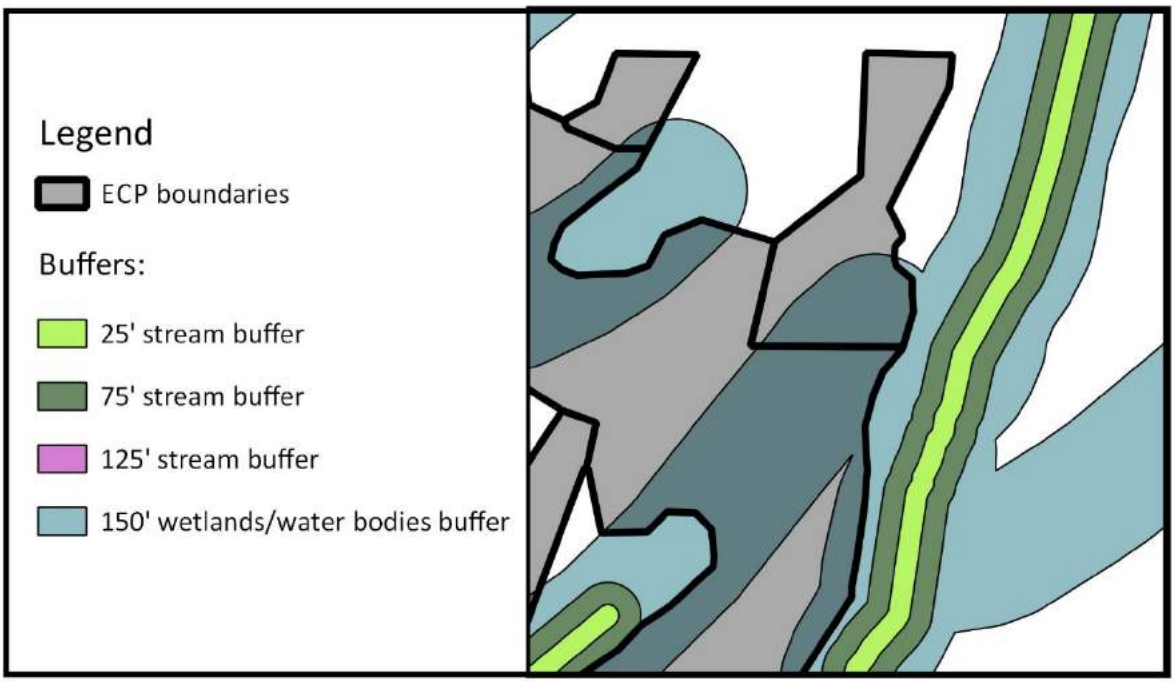
[5] The United States Sixth Circuit Court of Appeals determined, in part, there was a substantial possibility the regulation was at odds with Supreme Court precedent, and that certain aspects of the regulation never underwent the proper rulemaking procedures.

[6] The state is currently proposing to define a "wetland" as follows: "An area is wetland if, under normal circumstances, (1) the area has continuous or recurrent saturation of the upper substrate caused by groundwater, or shallow surface water, or both; (2) the duration of such saturation is sufficient to cause anaerobic conditions in the upper substrate; and (3) the area's vegetation is dominated by hydrophytes or the area lacks vegetation."

[7] The Proponents of the Initiative have prepared a chart, showing the differences between the Initiative's definition of "stream" and those definitions adopted under other regulatory frameworks. This chart is attached to this Memorandum in Appendix B. It does not appear the proposed definition of stream in itself is ambiguous; the concerns identified below address the interplay between the Initiative's use of the terms "stream" and "wetland."

watercourse (i.e., present at all seasons) that provides habitat for fish. (Initiative, § 4 [proposed NCC, § 18.20.050(D)(1)(2)(3)&(7).)[8] The practical effect could be significant.

The figure below illustrates the difference in area that comprises each of the Initiative's water quality buffer zones, with the Initiative's 25-foot and 75-foot stream buffers demarcated in yellow, green, and pink, and the Initiative's 150-foot wetland buffers delineated in light blue. Under the Initiative's proposed framework, a property owner with a Class II or Class III stream has no certainty that the smaller buffers apply and, as depicted, a determination that a stream is also a wetland could significantly affect the use of his or her property.



It appears, then, that if the Initiative's regulations were enacted, property owners might have a difficult time understanding what size water quality buffer zones apply to their properties. This ambiguity creates a potential legal vulnerability, and the legal risk is heightened given that a violator of the Initiative's terms are subject to criminal, civil, and administrative penalties (Initiative, § 4 [proposed NCC, § 18.20.070].)

(e) *Evaluation of Initiative's use of the phrase "residence or other structure."*

The Initiative provides that its provisions shall not apply within 150 feet of any "residence or other structure … or from any point of any proposed such residence or structure" for

[8] As explained in more detail in Appendix A, Item 11, the Initiative's definitions of stream appear to track state definitions set forth in Title 14, California Code of Regulations, section 916 et seq. However, these state regulations do not appear to contemplate wetlands (i.e., use or define the term), and so there is no clear precedent as to how one might distinguish the terms "wetland" and "stream" as used in the Initiative's proposed legislation.

which building permits have issued. (Initiative, § 4 [proposed NCC, §§ 18.20.050(B), 18.20.050(C)(10), 18.20.060(A)(4), 18.20.060(E)(2)].) The Initiative does not specify, however, whether the building project must entail new construction, or whether additions also qualify for the exception. It would be reasonable for the County to interpret the proposed ordinance to grant exceptions for additions to buildings, though ultimately the scope of the exception is unclear, and the County cannot extrapolate or interlineate meaning that is not present in the text adopted by voters. To the extent the Initiative does not encompass additions, meanwhile, the Initiative might give rise to equal protection claims, brought by homeowners and proprietors of other structures wishing to renovate their buildings.

On the one hand, equal protection claims that do not involve "suspect classes" (e.g., classes based on race, national origin, religion, and alienage) are difficult to sustain, as a governmental agency need only show that a regulation is rationally related to a legitimate government interest. Here, the purpose of the Initiative is to maximize the protection of oak trees and water quality, which are legitimate governmental interests. It is not clear, however, on what basis the Proponents could distinguish between the two construction activities, and no facts have been put forth by Proponents to support this distinction. It would appear, then, that some legal risk would inhere in the Initiative's scope of regulatory exceptions.

In summary, the scope of the Initiative's regulatory exceptions is unclear, and resort to the plain text and extrinsic evidence does not appear to resolve the ambiguities. To the extent an equal protection issue does exist, County Code provisions obligate the County to interpret ambiguities to exclude unconstitutional results. (*See* NCC, §§ 1.04.110, 1.04.130, 1.04.140.) As such, the associated legal risks appear to be low.

3. *It is unclear what types of losses to oak woodlands count as "removals" under the Initiative.*

(a) *It is unclear what types of losses to oak woodlands "count" towards the Oak Removal Limit.*

The Initiative provides that the Oak Removal Limit is reached when "the cumulative total acreage of all oak woodlands removed plus all oak woodlands approved for future removal by the County within the AW district since September 1, 2017, equals 795 acres. *All oak woodlands removed within the AW district since September 1, 2017 shall be included in the cumulative total acreage, regardless of whether that removal was authorized or unauthorized.*" (Initiative, § 4 [proposed NCC, § 18.20.060(D)(1), emph. added]). It is unclear, however, whether wildfires and other calamities that have the potential to destroy trees and habitat would effect a "removal" of oak woodlands that count toward the Oak Removal Limit. The recent incidents in Napa and Sonoma Counties demonstrate the destructive potential of fires on open space and urban lands. As a result of the fires that occurred in Napa County in the autumn of 2017, newspapers have reported that millions of trees burned. The County estimates that the Nuns, Tubbs, and Atlas burn areas combined to affect 30,639 acres of oak woodlands,[9] as depicted in the chart below:

[9] This figure was compiled by overlaying a map of the burn area over the County's GIS-mapped oak woodlands. Note that: (1) the County's GIS map does not depict oak

Fire	acres of oak woodlands within fire perimeter	total acres of fire perimter	% of total
ATLAS	20,747	45,225	46%
NUNS	8,336	19,974	42%
TUBBS	1,556	4,781	33%
TOTALS	**30,639**	**69,981**	**44%**

If 2.5 percent these oak woodlands are considered "removed" under the terms of the Initiative and "count" toward the Oak Removal Limit, the Initiative's oak removal permitting system would, assuming it were ultimately enacted, be immediately applicable.

The Initiative's definition of tree "removal" does include the "intentional burning" of trees, and does provide that removal must occur "as a result of human activity" (Initiative, § 4 [proposed NCC, § 18.20.060(F)(3]), but practical questions remain. For instance, in limiting its application to "intentional" burning, does the proposed legislation distinguish between fires caused by natural phenomena (e.g., lightning) and fires caused by the negligence of a human? To the extent "intentional burnings" are contemplated, would this include only the burning of trees to make way for development, or would it also contemplate the scenario where an arsonist set a fire that resulted in the destruction of oak woodlands? It also is unclear whether all fires intentionally and lawfully set by a fire official as a wildfire control method would constitute a removal of oak woodlands that count toward the Oak Removal Limit.

The Initiative's Proponents have indicated that wildfires do not constitute the "removal" of trees, explaining that "if a tree is already dead, it doesn't fall within the definition of "oak tree," and that "removal is defined to mean 'causing a tree to die or be removed as a result of ***human activity*** by … ***intentional*** burning,'" and that wildfires are not "intentional burning." (Responses to *Questions based on Preliminary Review of Initiatives*, Question 3.) Each of the Proponents' points are recognized, but they do not rid the Initiative of uncertainty in this regard. For instance, as noted above, some wildfires are caused by intentional human activity, such as in the case of arson. Moreover, it is unclear whether the concept of intentionality covers negligent or reckless human behavior, and what happens if the cause of a fire cannot be discerned. Finally, as addressed in the next section, not all trees affected by wildfires die.

The status of backfires set by fire officials also presents some ambiguities. It is recognized that the Initiative identifies various regulatory exceptions, such as those removals which are "necessary to avert an imminent threat to public health and safety," or "where undertaken or authorized by a federal or state agency" (Initiative, § 4 [proposed

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woodlands as defined by the Initiative; and (2) this figure represents the number of acres of oak woodlands affected by the fires, and not necessarily the acreage "removed," as defined by the Initiative. Please see the other sections of this Memorandum that discuss the ambiguities surrounding the Initiative's use of the words "oak woodlands" and "removed."

NCC, § 18.20.050(C)(3)&(8)]),[10] but these exceptions appear only to apply to the oak permit removal process that arises after the Oak Removal Limit is reached (Initiative, § 4 [proposed NCC, § 18.20.060(E)(2)]). It also is recognized, as the Proponents point out, that fires lit "by or at the direction or order of a federal or state agency" are not subject to the Initiative's regulations. (*See* Initiative, § 4 [proposed NCC, §18.20.060(G)(3)]; *see* Responses to *Questions based on Preliminary Review of Initiatives*, Question 3.) This exception would, in great part and as a practical matter, exempt from regulation the setting of backfires for the purposes of fighting wildfires in Napa County. However, not all wildfires are fought at the direction of a federal or state agency. The County does contract its fire services with the California Department of Forestry and Fire Protection, a state agency, but not all the incorporated cities in the County do the same — and a city (or a county, for that matter) does not appear to qualify as a "state agency." (*See, e.g.,* Gov. Code, §§ 11000, 11410.30(a) ["local agency" is defined as "a county, city, district, public authority, public agency, or other political subdivision or public corporation in the state *other than the state*."].) Thus, to the extent a fire official not employed by Cal Fire directed a backfire be set that removed trees in unincorporated land, it would appear this act would not fall within the Initiative's safe harbor under proposed section 18.20.060(G)(3). The Proponents explain that any backfires "not set by or at the direction of a federal or state agency also do not come within the definition of removal, since it is the wildfire, rather than the backfire, that 'caused' this removal," and that to "the extent that there is any ambiguity on this last point, the County clearly has the discretion to interpret the initiative in this way." (Responses to *Questions based on Preliminary Review of Initiatives*, Question 3.) In suggesting that any removal activity that occurs as a result of or in connection with a wildfire is exempt from regulation, Proponents create a complicated and potentially problematic issue of causality. This interpretation could create loopholes in the regulatory framework that property owners may be able to exploit. A more significant legal concern is that the County may not add to a statute or rewrite it to conform to an assumed intent that is not apparent in its language. It is the intent of the voters that ultimately would govern the meaning of an initiative, based on the information directly before them. Here, broadening the Initiative's to exempt activities indirectly caused by explicitly identified, exempt activities would create concern that the County is overstepping its authority.

The Initiative's Notice of Intention to Circulate Petition ("Notice of Intent") indicates that the Proponents' concern for oak trees and oak woodlands derives, at least in part, from threats stemming from "development, deforestation, fire and pathogens," but this statement of intent is fairly general. Ultimately, there remain ambiguities as to what sort of removal activities will register for purposes of calculating the Oak Removal Limit, and neither the plain text of the proposed legislation nor extrinsic aids rid the Initiative's text of all uncertainty in this regard.

As with the term "necessity," the various County Code provisions that obligate the County to interpret ambiguities to exclude unconstitutional results does not appear to resolve these ambiguities. (*See* NCC, §§ 1.04.110, 1.04.130, 1.04.140.) The potential interpretations of what constitutes a tree removal are not distinguishable from one another

[10] The exception for activities "necessary to comply with written County or state recommendations or requirements for fuel or firebreaks" would not seem to apply to emergency situations. (*See* (Initiative, § 4 [proposed NCC, § 18.20.050(C)(2)].)

on the basis of constitutionality, and so the foregoing rules of construction do not resolve the inquiry.

(b) *Tree "removal" with respect to water quality buffer zones also creates ambiguity, and might make property owners criminally liable where such owners lose trees through no fault of their own.*

The Initiative provides that tree removal "is allowed within water quality buffer zones" where removals are (1) "necessary to avert an imminent threat to public health and safety;" (2) "where undertaken or authorized by a federal or state agency;" and (3) "necessary to comply with written County or state recommendations or requirements for fuel or firebreaks" would not seem to apply to emergency situations." (Initiative, § 4 [proposed NCC, § 18.20.050(C)(3)&(8)].) But whereas these provisions might allow firefighters and other personnel to fight or prevent fires, they do not address the circumstance where a property owner, through no fault of his or her own, suffers a loss of trees due to wildfire. The Initiative's provisions addressing water quality buffer zones, in controlling the removal of trees, defines removal to include "burning." This definition, however, does not clearly capture the intentionality of the relevant party, as was done in the proposed oak removal permitting framework, which defines tree removal to include "intentional burning." (Initiative, § 4 [proposed NCC, § 18.20.060(F)(3)].)

Ultimately, the intent of the legislation is not clearly discernible, and could be interpreted to hold a property owner responsible for a violation of the proposed ordinance, which per the terms of the Initiative is a misdemeanor and makes one liable for maximum fines (*see* Initiative, § 4 [proposed NCC, § 18.20.070].) Accordingly, if enacted, the Initiative could potentially be deemed a violation of due process rights. This risk is heightened given that a violator of the Initiative's terms are subject to criminal, civil, and administrative penalties (Initiative, § 4 [proposed NCC, § 18.20.070). Given that various County Code provisions obligate the County to interpret ambiguities to exclude unconstitutional results, it appears the rules of construction would favor not holding a property owner liable for an action outside his or her control. (*See* NCC, §§ 1.04.110, 1.04.130, 1.04.140; *see also Kempton, supra,* 40 Cal.4th at 1048 [presumption that voters know the existing laws].) Absent any other indicia of intent, then, it would appear that "burning" could include, without limitation, the intentional, reckless, and negligent burning of trees.

(c) *It is unclear what quantum of harm or injury to a tree must occur before the activity qualifies as a "tree removal."*

The Initiative prohibits the removal of trees in delineated water quality buffer zones, and prohibits the unpermitted removal of oak trees after the Oak Removal Limit is reached. But there remain questions as to what types of activities constitute "removals" for purposes of the legislation.

Under the proposed water quality buffer zone rules, tree removal "means causing the death or removal of any living tree of any species … by cutting, dislodging, poisoning, burning, topping or damaging roots." (Initiative, § 4 [proposed NCC, § 18.20.050(D)(5)].) The concept of "removal" for purposes of the Initiative's proposed oak tree regulations is similarly delineated, with removal meaning to cause "a tree to die or be removed as a result of human activity by cutting, poisoning, intentional burning, topping or damaging of roots." But it is unclear what constitutes a "removal," since the Initiative uses the term

"removal" to define that very term. (Initiative, § 4 [proposed NCC, § 18.20.050(D)(5); *see also* proposed NCC, § 18.20.060(F)(3).) This approach makes for a circular definition, raising questions about what sort of injury or harm to a tree would constitute a removal. Would, for instance, a significant amount of tree trimming (i.e., anything short of topping) constitute "removal" of a tree, or must a tree die in order to qualify as a "removal?" Would trees that suffer damage from fire, but remain alive, be "removed" as contemplated by the Initiative?[11] Oak woodland habitats can enter into different stages in the course of a life cycle; for instance, after a fire, oak woodland habitat is not necessary destroyed, but becomes a "re-emerging" habitat, as opposed to a "mature" habitat. The Initiative's definition of "oak woodland" does not account for these scientific concepts.

These are not merely academic problems. As discussed in the preceding section, the 2017 fires affected more than 30,000 acres of oak woodlands, and questions have been raised as to whether this type of tree destruction would render a property owner liable for violation of proposed section 18.20.050. A substantial number of trees damaged by recent fires, meanwhile, have remained alive, raising questions as to how many acres of oak woodlands have been removed, and how many more can be developed before the Oak Removal Limit is reached.

(d) *It is unclear how oak woodlands acreage would be counted towards the Oak Removal Limit.*

The Initiative indicates that the Oak Removal Limit is reached "when the cumulative total acreage of all oak woodlands removed plus all oak woodlands approved for future removal … equals 795 acres." " (Initiative, § 4 [proposed NCC, § 18.20.050(D)(1).] The Initiative does not, however, indicate how oak woodland acreage is to be calculated. For instance, will acreage be calculated according to canopy cover, habitat parameters that are favorable to the growth of oaks, or will a cruder system be employed (e.g., if one oak tree is removed, an entire surrounding acre will be registered toward the Oak Removal Limit)?

As explained in a preceding section, in quantifying the acreage of oak woodlands for general planning purposes, the County currently uses a Geographic Information System, which calculates oak woodland area based on the 1st edition of the Manual of California Vegetation. A complication arises, however, because the Initiative's definition of "oak woodland," which is in part based on the degree of canopy cover, does not accord with the MCV's methodology. If the two definitions and methodologies matched, one could presume the County's present methodology for calculating oak woodland acreage would apply to its implementation of any new framework. (*Kempton, supra,* 40 Cal.4th at 1048.) However, because "oak woodland" is defined with reference to canopy cover and other factors, the County's GIS/MCV approach would not be applicable.

Given the County has traditionally mapped habitat not on a parcel-by-parcel basis, but according to what land actually contains oak woodland characteristics, it is likely a court would hold that, in accounting for oak woodlands as defined under the Initiative, the County would have to account only for those acres actually supporting the canopy cover

[11] If removal is defined as an action causing "death or removal" of a tree, canons of construction which disfavor superfluous language would suggest something less than death constitutes a removal.

and other characteristics identified in the proposed legislation. (*See Kempton, supra,* 40 Cal.4th at 1048.)

As with the term "necessity," the various County Code provisions that obligate the County to interpret ambiguities to exclude unconstitutional results do not resolve these ambiguities. (*See* NCC, §§ 1.04.110, 1.04.130, 1.04.140.) The potential interpretations of what constitutes a tree removal are not distinguishable from one another on the basis of constitutionality, and so the foregoing rules of construction do not resolve the inquiry.

(e) *Evaluation of driveway width limitation.*

The Initiative would except from its proposed regulations tree removal "within eleven (11) feet of the centerline of any driveway that serves an existing or proposed structure for which all legally required permits have been issue." (Initiative, § 4 [proposed NCC, § 18.20.050(C)(9)].) Though uncertain, it appears these dimensions were proposed to comfortably accommodate minimum 20-foot widths required of fire access roads, as set forth in the California Fire Code, which the County Code has incorporated. (CFC, § 503.2.1; NCC, § 15.32.010 [incorporating California Fire Code].)

There might be instances, however, where a wider driveway is necessary due to topography or some other legitimate planning consideration. There also may be instances where it is desirable to remove trees alongside a roadway for fire purposes. (*See, e.g.,* NCC, § 15.32.180 [authorizing the fire code official to clear flammable vegetation and other combustible growth in areas within 10 feet on each side of a driveway].) The question is whether the Initiative would allow for these activities.

With respect to removing trees for fire protection, as discussed in previous sections, the removal of trees is not subject to the Initiative's proposed regulations where removal is (1) "necessary to avert an imminent threat to public health and safety;" (2) "where undertaken or authorized by a federal or state agency;" (3) "where required for the development or maintenance … of access roads; and (4) "necessary to comply with written County or state recommendations or requirements for fuel or firebreaks" would not seem to apply to emergency situations." (Initiative, § 4 [proposed NCC, § 18.20.050(C)(2)(3)(4)&(8)].) The Proponents have confirmed this construction in correspondence to the County. (Responses to *Questions based on Preliminary Review of Initiatives,* Question 2.) It therefore would appear that fire safety measures are not subject to the Initiative's proposed ordinance.

With respect to wider driveways, however, unless a wider driveway qualified for a stated exception to the Initiative's regulations, it would appear the Initiative would not allow any such expansion of driveway widths. For instance, a wider driveway intended to serve a residential or agricultural use in AW zones that was not necessary to avert a threat to the public safety or intended to enhance a property's fire safety, but was necessary only to facilitate a private land use, would be prohibited within a water quality buffer zone where it would require tree removal or, where the Oak Removal Limit was reached and oak woodlands covered a property, necessitate issuance of an oak removal permit. Notwithstanding this conclusion, if the circumstances were such that a wider driveway was necessary to ensure a property had economically viable use, and where prohibition of the driveway would qualify as an unlawful taking under the state and federal constitutions, it would appear the Initiative's provisions would not apply. To the extent application of the proposed laws were inconsistent with state or federal law, the Initiative provides that its

terms do not apply. (*See, e.g.,* Initiative, § 4 [NCC, §§ 18.20.050(G)(2), 18.20.060(G)(2)]; *see also* Initiative, § 6(B).)

An ambiguity does surface, however, with respect to measuring which trees fall within 11 feet of the centerline of a driveway. Consistent with the discussion in Sections III.B.3.b&.c, the type or quantum of injury or harm necessary to constitute a of "removal" is ambiguous. Accordingly, it is not clear when construction of a driveway will trigger the removal of a tree. For instance, must the driveway footprint encroach on the trunk of a tree? Would the substantial removal of limbs overhanging a driveway footprint qualify as a removal? The Initiative does not provide clarity, and so property owners might have to guess at whether they can or cannot remove trees within a driveway alignment. This ambiguity, in turn, creates a legal vulnerability, and the legal risk is heightened given that a violator of the Initiative's terms are subject to criminal, civil, and administrative penalties (Initiative, § 4 [proposed NCC, § 18.20.070).

4. *The Initiative's effect on Measure J is unclear.*

As discussed in Section III.A of this Memorandum, the Initiative is also unclear with regard to its effect on Measure J. Again, Measure J was a 1990 initiative in which the County voters amended the General Plan to protect agricultural uses, and provided that further amendments to Measure J may only be approved by a vote of the people. The Initiative does not amend Measure J directly, but proposes policies that, in prioritizing the protection of riparian and woodland habitat, would create practical conflicts. (*See* Appendix A, Item 9, to this Memorandum.) While the Initiative would require that the County amend other portions of the General Plan and County Code of Ordinances so that they conform to the Initiative's terms, the Initiative does not notify voters that implementing this directive would require amendments to Measure J.

Meanwhile, the various County Code provisions that obligate the County to interpret ambiguities to exclude unconstitutional results do not resolve these ambiguities. (*See* NCC, §§ 1.04.110, 1.04.130, 1.04.140.) Conflicts with Measure J do not implicate constitutional issues, and so the foregoing rules of construction do not resolve the inquiry.

5. *The Initiative does not appear to update the General Plan Land Use Map, resulting in confusion.*

The General Plan provides that the Land Use Element's standards "shall apply to the land use categories shown on the Land Use Map." (GP-AP/LUE, Policy AG/LU-112, p. AG/LU-66.) The Initiative, meanwhile, proposes three new "Agricultural Watershed District Policies" in the General Plan that are identified with reference to Agricultural Watershed *zoning*. (Initiative, § 3 [proposed Goal AG/LU-8 and Policies AG/LU-0.5, AG.LU-0.6, and CON-24 (as modified)].) In other words, the Initiative links its development restrictions to categories appearing in the County Code, as opposed to land use categories established in the General Plan.

Because AW zoning is not depicted on the Land Use Map, the standards contained in the Initiative's three new policies are, by extension, not depicted on the Land Use Map. Assuming that the Initiative only applies to the Agricultural, Watershed and Open Space (AWOS) designation, and that this approach effectively clarifies the Initiative's scope, is incorrect because "AW-Agricultural Watershed uses and/or zoning may occur in any land use designation." (Note to Table AG/LU-B, page AG/LU-67.) Accordingly, the Initiative

would result in a Land Use Map that does not depict where the standards of the Agricultural Preservation and Land Use Element apply, while Policy AG/LU-112 requires exactly that. This approach creates ambiguities and confusion that might render the Initiative legally vulnerable. Please also see Appendix A, Item 4, to this Memorandum.

6. *It is unclear whether the Initiative's mitigation requirements are obligatory or suggested.*

The Initiative would revise CON-24 in relevant part as follows:

> Pursuant to the Napa County Watershed and Oak Woodland Protection Initiative of 2018, require a permit for any oak removal within the Agricultural Watershed zoning district after the Oak Removal Limit is reached unless specified exceptions apply. Continue to m~~M~~aintain and improve oak woodland habitat to provide for slope stabilization, soil protection, species diversity, and wildlife habitat through appropriate measures including one or more of the following:
> …
> b) Comply with the Oak Woodlands Protection Act (PRC Section 21083.4) regarding oak woodland preservation to conserve the integrity and diversity of oak woodlands and retain, to the extent feasible, existing oak woodland and chaparral communities and other significant vegetation as part of residential, commercial, and industrial approvals.
>
> c) Provide for replacement of lost oak woodlands or preservation of like habitat at a minimum 2:1 ratio when retention of existing vegetation is found to be infeasible. Removal of oak species limited in distribution shall be avoided to the maximum extent feasible. Within the Agricultural Watershed zoning district, require replacement of lost oak woodlands or permanent preservation of like habitat at a 3:1 ratio when retention of existing vegetation is found to be infeasible, except where the Napa County Watershed and Oak Woodland Protection Initiative of 2018 provides for an exception to this requirement.

(Initiative §3(B)(i) [Text added by the Initiative is underlined])

The ambiguity arises in the clause "appropriate measures including one or more of the following," which suggests the County, in considering the development of oak woodlands in AW zones for residential, commercial, and industrial purposes,[12] could elect between compliance with the Oak Woodlands Protection Act identified in subsection (b), or the Initiative's formulaic mitigation in subsection (c). Insofar as the Initiative provides that, in AW zones, the County shall "*require* replacement of lost oak woodlands or permanent preservation of like habitat," suggesting the provision is mandatory, the structure of Policy CON-24 frames each subsection in the alternative.

[12] While AW zones are intended to encourage agricultural uses, single family homes, residential care facilities, day cares, certain wineries, kennels, and other uses are permitted by right or conditionally permitted in AW zones. (NCC, Ch. 18.20.)

If the County, in imposing conditions on certain development projects, can choose among the foregoing two mitigation frameworks, there are significant implications. For instance, the Oak Woodlands Protection Act requires only "appropriate" mitigation (Pub. Res. Code, § 21083.4(b)), whereas the Initiative prescribes fixed ratios for habitat replacement/preservation. Meanwhile, insofar as a property owner is proposing the "conversion of oak woodlands on agricultural land that includes land that is used to produce or process plant and animal products for commercial purposes," the owner is entirely exempt from the Oak Woodlands Protection Act, and could avoid oak woodland mitigation altogether under its provisions. (*See* Pub. Res. Code, § 12083.4(d)(3).)

For the foregoing reasons, the effect of the regulation is ambiguous. Separately and independently, the Initiative's proposed amendments to Policy CON-24 raise concerns about General Plan consistency and other issues, as further discussed in Sections III.C.2.a and III.F.2 of, and Appendix A, Item 9 to, this Memorandum.

Note, the various County Code provisions that obligate the County to interpret ambiguities to exclude unconstitutional results do not resolve these ambiguities. (*See* NCC, §§ 1.04.110, 1.04.130, 1.04.140.) Whether a property owner must implement the Initiative's mitigations or has the option to do so does not necessarily implicate constitutional issues, and so the foregoing rules of construction do not resolve the inquiry.

7. *It is unclear how the Initiative's use permit process would operate in light of fundamental contradictions in the Initiative.*

The Initiative provides that, where a property owner proposes to remove more than ten oak trees on a given parcel within a twelve-month period, the owner must apply for a use permit. (Initiative, § 4 [proposed NCC, § 18.20.060(E)(1)].) The permit may not issue, however, unless one of the ten exceptions in proposed County Code section 18.20.050(C) apply, or the permit "allows removal of no more than five oak trees from that parcel during any ten year period." (Initiative, § 4 [proposed NCC, § 18.20.060(E)(1), indicating additional requirements in NCC, § 18.20.060(E) shall apply to use permits; proposed NCC, § 18.20.060(E)(2)].) In other words, if one of the Initiative's exceptions do not apply, a property owner wishing to remove more than ten oak trees in any given year can only obtain the required use permit if he or she complies with the contradictory requirement that he or she refrain from removing more than five oak trees from the property within any ten year period. It is unclear, then, whether the Initiative would effectively ban the right of a property owner to remove more than five oak trees within a ten year period, and whether a property owner could ever make use of the use permit process in the absence of a qualifying exception.

Note, the various County Code provisions that obligate the County to interpret ambiguities to exclude unconstitutional results do not resolve these ambiguities. (*See* NCC, §§ 1.04.110, 1.04.130, 1.04.140.) The fundamental contradiction identified above does not implicate constitutional issues, and so the foregoing rules of construction do not resolve the inquiry.

8. *The scope of the vineyard exception to the Initiative's water quality buffer zones is unclear.*

The Initiative provides that its water quality buffer zones shall not apply to "replanting within the footprint of existing vineyards or within the footprint of vineyards having

obtained all legally required discretionary permits from the County where the initial vineyard planting or final discretionary permit approval occurred prior to the effective date of the" Initiative. (Initiative, § 4 [proposed NCC, § 18.20.050(E)].) It is unclear, however, whether this exception applies to the act of replanting vineyards within the footprint of existing, permitted vineyards, or whether it applies to the replanting of any type of agricultural crop. The Proponents indicate that the exception was intended to apply only to the replanting of vineyards at the request of the Napa Valley Vintners (*see* Responses to *Questions based on Preliminary Review of Initiatives*, Question 13), the intent of the drafter, as explained above, is not determinative. This ambiguity creates a potential legal vulnerability, and the legal risk is heightened given that a violator of the Initiative's terms are subject to criminal, civil, and administrative penalties (Initiative, § 4 [proposed NCC, § 18.20.070).

Equal protection concerns also exist. Specifically, it would appear difficult to distinguish between property owners wishing to replant vineyards and property owners wishing to replant other crops.

On the one hand, and as discussed before, equal protection claims that do not involve "suspect classes" (e.g., classes based on race, national origin, religion, and alienage) are difficult to sustain, as a governmental agency need only show that a regulation is rationally related to a legitimate government interest. Here, the purpose of the Initiative is to maximize the protection of oak trees and water quality. It is not clear, however, on what basis the Proponents could distinguish between the replanting of vineyards and the replanting of other crops, and no facts have been put forth by Proponents to support this distinction. It would appear, then, that some legal risk would potentially inhere in the Initiative's scope of regulatory exceptions.

In summary, the scope of the Initiative's regulatory exceptions is unclear as to whether it permits the replanting of both vineyards and other agricultural crops. To the extent an equal protection problem does exist, County Code provisions obligate the County to interpret ambiguities to exclude unconstitutional results. (*See* NCC, §§ 1.04.110, 1.04.130, 1.04.140; *see also Kempton, supra,* 40 Cal.4th at 1048 [presumption that voters know the existing laws].) As such, the associated legal risks appear to be low, though there remains some vulnerability.

C. An Initiative cannot enact a local law that is preempted by state law.

An initiative cannot lawfully impose a local law that is preempted by state law. Preemption occurs where a local ordinance duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication. This section analyzes whether the Initiative is preempted by the Oak Woodland Protection Act (Pub. Res. Code, § 21083.4 et seq); the California Forest Practice Act and Rules; and recent legislation streamlining the construction of accessory dwelling units.

1. *Relevant case law/statutes.*

Courts "have been particularly 'reluctant to infer legislative intent to preempt a field covered by municipal regulation when there is a significant local interest to be served that may differ from one locality to another.'" (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149-1150.) Courts "presume, absent a clear indication of preemptive intent from the Legislature, that such [local] regulation is *not* preempted by

state statute." (*Id*.) This is consistent with the principle of statutory construction providing "it is not to be presumed that the legislature in the enactment of statutes intends to overthrow long-established principles of law unless such intention is made clearly to appear either by express declaration or by necessary implication." (*Id*.) In acknowledging an analogous well-settled federal law presumption against preemption, the Supreme Court approvingly noted the "presumption applies both to the existence of preemption and to the scope of preemption." (*Id*. at 1150.)

For purposes of establishing a local law conflicts with state law and is preempted, a conflict may be shown where a local ordinance ***duplicates, contradicts***, or enters an area ***fully occupied*** by general law, either expressly or by legislative implication. (*Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 747.) Preemption may be express or implied:

- Express preemption. A local law may not contravene the express command of a statute. (*Friends of Lake Arrowhead v. Board of Supervisors* (1974) 38 Cal.App.3d 497, 505; *see Griffis v. County of Mono* (1985) 164 Cal.App.3d 414; *Whisman v. San Francisco Unified Ch. Dist.* (1978) 86 Cal.App.3d 782.)

- Implied preemption. "In determining whether the Legislature has preempted by implication, a court looks to the whole purpose and scope of the legislative scheme. There are three tests for implied preemption:

    - (1) The subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern;

    - (2) The subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or

    - (3) The subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality."

(*Morehart, supra,* 7 Cal.4th at 751.)

2. *Application of preemption analysis to Initiative.*

(a) *Oak Woodlands Protection Act.*

State law and the Initiative both contemplate mitigation for the removal of oak trees, and this overlap might potentially invalidate certain provisions of the Initiative.

The Oak Woodlands Protection Act (the "Act"), codified in Public Resources Code Section 21083.4, provides that, in determining what level of environmental review should apply to a project under the California Environmental Quality Act, a county determining that a project will have a significant impact on oak woodlands shall require one or more of the following mitigation measures: (1) conservation of oak woodlands through use of a conservation easement; (2) the planting of trees; (3) the contribution of funds to the Oak

Woodlands Conservation Fund, as established in the Fish and Game Code; or (4) implement other mitigation measures developed by the County. (Pub. Res. Code, § 21083.4(b).) With respect to the planting of trees, the Act does not fix a replacement ratio, thought it does provide that planting replacement trees "shall not fulfill more than one-half of the mitigation requirement for the project;" and the requirement to maintain replaced trees terminates seven years after the trees are planted. (Pub. Res. Code, § 21083.4(b)(2)(B)&(C).)

The Act also exempts from its provisions the "[c]onversion of oak woodlands on agricultural land that includes land that is used to produce or process plant and animal products for commercial uses." (Pub. Res. Code, § 21083.4(d)(3).)

Finally, the Act indicates that its provisions "shall not be construed as a limitation on the power of a public agency to comply with this division or any other provision of law." (Pub. Res. Code, § 21083.4(g).)

The Initiative's approach to oak tree removal mitigation is different. In this respect, the Initiative requires the replacement of removed oak trees at a ratio of 3:1 by permanently preserving comparable trees on-site or by replacing oak trees on-site, with a "check-up" after five years to ensure the survival rate is 80 percent or greater. (Initiative, § 4 [NCC § 18.20.060(A)(2)].) If the rate is below 80 percent, the property owner must implement additional remediation. In terms of prioritizing different mitigations, the Initiative's proposed General Plan amendment provides that the retention of existing trees if preferable but, if that is not feasible, on-site replacement of trees shall be required. (Initiative, § 3D[proposed change to General Plan Policy CON-24, subsection (e)].) That said, if on-site remediation is infeasible, off-site mitigation in the form of a conservation easement or payment of an in-lieu fee is acceptable. (Initiative, § 4 [proposed NCC § 18.20.060(A)(2)].)

It is foreseeable that the Initiative and the Act will both apply to a number of development actions. The Initiative's oak mitigation requirements apply whenever the County is asked to consider a discretionary approval. (Initiative, § 4 [proposed NCC § 18.20.060(A)].) A discretionary approval also triggers the application of the California Environmental Quality Act (Pub. Res. Code, § 21080(a)), meaning both sets of regulations would govern development applications that contemplate the removal of oak trees.[13]

The Act does not expressly preempt local law; in fact, the Act indicates that its provisions "shall not be construed as a limitation on the power of a public agency to comply with this division or any other provision of law." (Pub. Res. Code, § 21083.4(g).) One could deem the Act, then, to provide for minimum requirements, whereas local jurisdictions are authorized to impose stricter requirements. At the same time, the Initiative places

[13] For instance, whereas the Initiative provides for an inspection of mitigation trees after five years, County staff indicate that, in monitoring tree mitigation required pursuant to other regulatory frameworks (e.g., CEQA), monitoring occurs on an annual basis. However, it does not appear that the Initiative's timing would replace, for instance, CEQA mitigations. Rather, the two would appear to coexist. Under the same principle, the County could impose a mitigation ratio greater than 3:1; the upshot would be, for instance, that insofar as a developer complies with the greater ratio requirement, he or she would also comply with the Initiative's 3:1 obligation.

limitations on oak woodland mitigation requirements, providing that planting mitigations shall fulfill no more than half of the Act's mitigation requirements, and that the obligation to maintain replacement trees shall end seven years after planting. (Pub. Res. Code, § 21083.4(d).) It also should be noted that Section 21083.4(g) provides that the Act shall not prevent a *public agency* from complying with another provision of law, which is different from authorizing a public agency to enact a contradictory law. In other words, it is not clear that subsection (g) permits an agency to make demands of a property owner that exceed the Act's requirements, as opposed to permitting the agency itself to comply with obligations imposed by other law on the agency. No court appears to have interpreted whether the Act occupies the field of oak woodland mitigation, and so the scope of the Initiative is subject to some legal uncertainty in this regard. Moreover, the County's General Plan requires "compliance with the Oak Woodlands Preservation Act" in considering residential, commercial, and industrial approvals, thereby expressly placing the Act, at least in part, in tension with the Initiative's proposed terms regardless of whether, or to what extent, preemption applies. (General Plan, Policy CON-24(b).)

The Initiative might be construed as inconsistent with, and potentially preempted by, the Act in the following ways:

- The Act does not prioritize on-site remediation, but provides property owners with more flexibility in selecting mitigation. Meanwhile, the Initiative sets forth a hierarchy of mitigation, requiring first on-site replacement, then on-site preservation, and finally off-site options.

- The Act limits the obligations of a property owner to replace trees, determining that planting replacement trees "shall not fulfill more than one-half of the mitigation requirement for the project." (Pub. Res. Code, § 21083.4(b)(2)(C).) The Initiative does not include this limitation, but apparently would require a property owner to replace all trees at a 3:1 ratio if feasible, which would fulfill the Initiative's mitigation requirement *in its entirety*. (Initiative, § 3D[proposed change to General Plan Policy CON-24, subsection (e), § 4 [NCC § 18.20.060(A)(2)].)

- The Act provides that maintenance of replacement trees shall terminate seven years after the trees are planted. (Pub. Res. Code, § 21083.4(b)(2)(B).) The Initiative requires, without any limitation, that replanting and monitoring of replacement trees is required, and that if less than 80 percent of trees have survived in the fifth year after the replanting, additional remediation is required. (Initiative, § 4 [NCC § 18.20.060(A)(1)(b)].)

- The Act also exempts from its provisions the "[c]onversion of oak woodlands on agricultural land that includes land that is used to produce or process plant and animal products for commercial uses." (Pub. Res. Code, § 21083.5(d)(3).) The Initiative, meanwhile, does not exempt conversions of oak woodlands on any type of agricultural land, creating uncertainty about whether mitigation requirements apply in these circumstances.

To the extent the Initiative's oak woodland mitigation framework is optional, as opposed to mandatory (*see* Section III.B.6 of this Memorandum; *see also* Appendix A, Item 9 to this Memorandum), concerns about preemption are lessened, though the County would not be able to require the Initiative's mitigation measures to the extent they were preempted.

(b) *California Forest Practice Act and Rules.*

The California Forest Practice Act, codified at Public Resources Code section 4511 et seq, and the California Forest Practice Rules, codified at Title 14, California Code of Regulations, Chapters 4, 4.5, and 10, regulate logging on privately-owned lands in California. Courts have held that this regulatory framework exclusively governs the conduct of timber harvesting operations. (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139.) Accordingly, local law may regulate the location of timber operations but not the manner in which they are carried out. (*Id.*) For instance, a County may not require a permit for timber operations on various properties. (Pub. Res. Code, § 4516.5(d); *Westhaven Community Development Council v. County of Humboldt* (1998) 61 Cal.App.4th 365.) Timber operations are defined to include the removal of trees for commercial purposes from "timberland," and must be performed according to a timber harvesting plan meeting certain requirements. (Pub. Res. Code, §§ 4527, 4581.) "Timberland," in turn, is defined as land "which is available for, and capable of, growing a crop of trees of a commercial species used to produce lumber and other forest products, including Christmas trees." (Pub. Res. Code, § 4526.)

The Initiative provides that its limitations on the removal of oak trees and oak woodlands do not affect timberland, as defined in Public Resources Code section 4526. (Initiative, § 4 [proposed NCC, §§ 18.20.060(D)(5) [water quality buffer zones do not apply to removal of trees pursuant to timber operations undertaken pursuant to state timber harvesting plan], 18.20.060(F)(1)(2)&(4) [definition of oak and oak woodlands for purposes of Oak Removal Limit and oak removal permitting do not include trees growing on timberland].)

Insofar as the Initiative proposes to regulate the removal of trees within stream and wetland buffer areas, this scope "applies to all County approvals relating to any conversion of timberland pursuant to Public Resources Code 4621, including but not limited to County Erosion Control Plans, but does not otherwise apply to timber operations undertaken pursuant to state timber harvest plans. (Initiative, § 4 [proposed NCC, § 18.20.050(D)(5).) Section 4621 addresses the conversion of timberland to "uses other than the growing of timber," and a person contemplating such a change must apply for a timberland conversion permit from the state and meet other requirements. (Pub. Res. Code, §§ 4621.2 [required findings, including that conversion is in public interest, existence of suitable land that is not zoned for timber production], 4622 [conditions of approval].)

The Proponents of the Initiative appear to have intended to design its tree removal limitations to respect the boundaries of the state's timberland regulations. To the extent the Initiative's proposed legislation violates or is preempted by state law, it contains savings clauses, whereby its proposed legislative amendments shall not apply where they are inconsistent with state law. (*See, e.g.,* Initiative, § 4 [proposed NCC, §§ 18.20.050(G)(2), 18.20.060(G)(2)], § 8].)

There accordingly appears to be little risk a court would deem the Initiative to be preempted by the California Forest Practice Act and rules.

(c) *Recent legislation streamlining the approval of accessory dwelling units.*

(i) Statewide importance of low-cost housing.

Amending a jurisdiction's general plan by initiative, particularly its housing element, in a manner that may impair the jurisdiction's ability to comply with its housing obligations under state law arguably is curtailed on the premise that the Legislature has occupied the field of housing. (*See* Section III.C.1 of this Memorandum [principles of preemption].) For example, the Legislature has unequivocally declared that availability of low-income housing is an area of statewide concern. Government Code section 65580 states, "[t]he availability of housing is of vital statewide importance, and the early attainment of decent housing and a suitable living environment for every California family is a priority of the highest order." Further, in exercising their authority to regulate subdivisions under the Map Act, local agencies must, inter alia, "[c]onsider the effect of ordinances adopted and actions taken by [them] with respect to the housing needs of the region in which the local jurisdiction is situated." (Gov. Code, § 65913.2(b).)

The detailed statutory framework set out regarding the required substantive contents of a jurisdiction's housing element, as well as the comprehensive scheme by which it is updated, reflect this recognition that the availability of housing is a matter of statewide concern, and that cooperation between government and the private sector is critical to attainment of the State's housing goals. Repeatedly, the courts have recognized "as common knowledge" the State's preemption of the area of promoting construction of low cost housing. (*See, e.g.*, *Building Indust. Ass'n v. City of Oceanside* (1994) 27 Cal.App.4th 744, 750; *Buena Vista Gardens Apartments Ass'n v. City of San Diego Planning Dept.* (1985) 175 Cal.App.3d 289, 306; *Bruce v. City of Alameda* (1985) 166 Cal.App.3d 18, 21-22.)

The issue of preemption is perhaps most stark when an *initiative* seeks to amend or otherwise re-adopt a jurisdiction's housing element specifically — as opposed to other portions of the general plan that may affect housing — thereby triggering the need for voter approval for any future changes. Government Code sections 65588 and 65585 require periodic review and revisions to the Housing Element; if voter approval for changes were required, this could be construed as preventing the County from complying with its statutorily mandated duties. (*See also DeVita*, *supra*, 9 Cal.4th at 793 n. 11 [in *dicta*, lending support for the notion that, unlike the land use element, the housing element cannot be amended by initiative].)

To a great extent, this preemption concern does not appear applicable to the Initiative since it does not propose any specific amendments to the County's Housing Element, nor does it appear to require any amendments to the Housing Element to eliminate obvious internal inconsistencies. Moreover, and as explained in more detail below, the Initiative expressly includes certain "affordable housing" exceptions, whereby its development restrictions and permitting processes do not apply to the extent they would violate state housing requirements. (*See, e.g.,* Initiative, § 4 [proposed NCC, §§ 18.20.050(G)(2), 18.20.060(G)(2)], § 8].) Nonetheless, certain terms of the Initiative would appear to conflict with provisions in the Government Code that encourage and streamline the approval of accessory dwelling units.

(ii) Evaluation of potential conflicts with ADU legislation.

State law mandates that local agencies ministerially approve accessory dwelling units, or "ADUs," that meet certain requirements. (Gov. Code, § 65852.2(a)(3),(4)&(b).) In general, a ministerial decision involves little or no personal judgment by the public official as to the wisdom or manner of carrying out the project — the public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision generally involves only the use of fixed standards or objective measurements. A discretionary approval, by contrast, does require the official to exercise subjective judgment in approving or conditionally approving a project.

With respect to ADUs, the Government Code provides that a jurisdiction must ministerially approve a unit if the following conditions are met: (1) the unit is not intended for sale separate from the primary residence and may be rented; (2) the lot is zoned for single-family or multifamily use and contains an existing, single-family dwelling; (3) the unit is either attached to an existing dwelling or located within the living area of the existing dwelling or detached and on the same lot; (4) the increased floor area of the unit does not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet; (5) the total area of floorspace for a detached accessory dwelling unit does not exceed 1,200 square feet; (6) no passageway can be required; (7) no setback can be required from an existing garage that is converted to an ADU; (8) the unit complies with local building code requirements; and (9) approval is given by the local health officer where private sewage disposal system is being used. (Gov. Code, § 65852.2.) The County has adopted local legislation that implements the Government Code. (NCC, §§ 18.08.550, 18.104.180.) Meanwhile, the AW zoning district permits single family dwelling units, thereby permitting ADUs through a ministerial process where the foregoing Government Code requirements are met. (NCC, § 18.20.020(C).)

The Initiative's oak removal permitting process appears to disrupt this streamlined ADU approval process. Specifically, the Initiative prescribes a discretionary permitting process for any proposed removal of oak trees or woodlands in AW districts after the Oak Removal Limit is reached, requiring the County to determine whether the proposed tree removal ensures the economically viable use of a parcel. (Initiative, § 4 [proposed NCC, § 18.20.060(D)&(E).)[14] Thus, insofar as construction of an ADU would require the removal of an oak tree (after the Oak Removal Limit is reached), the terms of the Initiative and State law would be in conflict.

The Initiative does provide that where a property falls within a combination or overlay district, the primary purpose of which is to provide affordable housing or residential housing projects required by State law, the Initiative's terms are not applicable. (*See, e.g.,* Initiative, § 4 [proposed NCC, §§ 18.20.050(G)(1), 18.20.060(G)(1).) However, while owners of property within an AW zone have the option of electing and developing under

[14] The oak removal remediation requirements in proposed section 18.20.060(A) of the Napa County Code only apply to development projects already requiring discretionary review. (Initiative, § 4.) The water quality buffer legislation in proposed section 18.20.050, meanwhile, does not appear to trigger any discretionary review processes. (*Id.*) Therefore, because the Government Code now requires that ADUs be ministerially approved, the foregoing two components of the Initiative would not appear to conflict with these streamlining provisions of state law.

the County's Affordable Housing Combination District, it does not appear that a property owner must do so to construct an ADU. The Initiative's "affordable housing" exception, then, does not appear to reconcile the Initiative's conflict with the Government Code's ministerial ADU approval provisions. That said, to the extent the Initiative's proposed legislation violates or is preempted by state law, it also contains savings clauses, whereby its proposed legislative amendments shall not apply where they are inconsistent with state law. (*See, e.g.,* Initiative, § 8].)

Accordingly, it appears the oak removal permitting process cannot apply to the County's approval of ADUs, even after the Oak Removal Limit is reached. This determination does not invalidate the Initiative but, in light of the Initiative's savings clauses, suggests that the County cannot require oak removal permits in the entitlement of ADUs.

(d) *Sustainable Groundwater Management Act.*

The Sustainable Groundwater Management Act ("SGMA") established a new structure for managing California's groundwater resources at a local level by local agencies. SGMA requires the formation of locally-controlled groundwater sustainability agencies ("GSAs") in the State's high- and medium-priority groundwater basins and subbasins ("basins"). The Napa Valley Subbasin has been determined to be a medium priority basin.

A GSA is responsible for developing and implementing a groundwater sustainability plan ("GSP") to meet the sustainability goal of the basin. However, there is an alternative to a GSP, provided that the local entity can meet certain requirements. (Water Code, § 10733.6.)

On November 30, 2016, Napa County published the Final Draft of the report *Napa Valley Groundwater Sustainability, A Basin Analysis Report for the Napa Valley Subbasin* ("Basin Analysis Report"), which proposed an alternative submittal to the GSP. As part of this alternative submittal, the County delineated groundwater recharge areas that substantially affected groundwater recharge, including wetlands.

The Initiative's proposed terms do not appear to affect any of the foregoing planning efforts. While the Initiative does affect the County's streams and wetlands, and defines certain resources for purposes of water quality and oak removal regulations, these terms do not appear to affect the County's compliance with SGMA.

First, it does not appear the County's classification of streams and wetlands affects regulatory processes other than the Initiative's proposed regulation of water quality buffer zone, oak mitigation, and oak removal. The County's SGMA-related planning efforts have been undertaken in accordance with DWR regulations, including definitions adopted by DWR, and the Initiative does not purport to affect these planning efforts.[15] To the extent the Initiative defines streams and wetlands (*see* Initiative, § 4 [proposed NCC, § 18.20.050(D)(1)(2)(3)&(7)), it is only "for purposes of [proposed] section" 18.20.050.

[15] For instance, wetland delineations were prepared to DWR in accordance with the state guidance, and DWR has reviewed and proposed no modifications to the County's delineations. (*See* Dec. 9, 2016 DWR letter, *Proposed Modifications to the Final Draft of the Basin Analysis Report for the Napa Valley Subbasin*.)

Second, the practical effect of the Initiative, if adopted, would not appear to compromise the County's alternative plan for compliance with SGMA. The stated purpose of the Initiative is to protect water quality and tree resources. To the extent the Initiative's protects sources of groundwater recharge, such as wetlands and streams, such terms would appear to constitute an extra layer of protection to water resources, and should not disrupt any existing protection upon which the alternative plan relies. (*See* Initiative, § 4 [proposed NCC, §§ 18.20.050(F), 18.20.060(G)(2)].)

(e) *Regional Water Quality Control Board General Permit for Vineyard Properties (Order No. R2-2017-0033)*

The California Regional Water Quality Control Board, San Francisco Bay Region, regulates the discharge of waste from certain vineyards by setting performance standards, schedules, and mitigation and monitoring requirements where operation of a vineyard is proposed. This regulatory framework implements, in part, the Porter-Cologne Water Quality Control Act.

It would not appear that the Initiative would interfere with or frustrate this regulatory program. The Initiative provides that nothing in its terms "shall preclude the County from requiring larger stream or wetland setbacks pursuant to any other policy or regulation," nor is it enforceable where it would be inconsistent with state or federal law. (Initiative, § 4 [proposed NCC, §§ 18.20.050(F), 18.20.060(G)(2)].)

D. An Initiative may not exceed an agency's police power or violate the constitution.

If the content of an initiative violates either the state or federal constitution, the initiative is invalid. For instance, an initiative that violates the due process or equal protection rights of affected property owners will not survive judicial scrutiny. (*Building Indus. Ass'n v. City of Carmillo* (1986) 41 Cal.3d 810, 824.) A city's "authority under the police power is no greater than otherwise it would be simply because the subsequent rezoning was accomplished by initiative." (*Arnel Development Co. v. City of Costa Mesa* [*"Arnel"*](1981) 126 Cal.App.3d 330, 337.)

The Initiative includes provisions that its regulations shall not apply to the extent they violate the constitution or laws of the United States or State of California. (Initiative, § 4 [proposed NCC, §§ 18.20.050(G)(2), 18.20.060(G)(2)] § 6(A).)

1. *Analysis of Initiative's potential to effect an unlawful taking of property.*

There Initiative appears to recognize and respect, to large degree, the private property rights protected under the state and federal constitutions. For instance, the proposed legislation, by its own terms, does "not apply to projects or activities for which the owner or applicant has obtained a vested right, pursuant to state law, or has obtained all legally required discretionary permits from the County necessary for it to proceed, prior to the effective date of the Napa County Watershed and Oak Protection Initiative of 2018." (Initiative, § 4 [proposed NCC, § 18.20.080]; *see also* Initiative, § 4 [proposed NCC, § 18.20.050(E), establishing certain exemptions for existing vineyards].)

The state and federal constitutions, however, protect more than vested rights but also, for instance, the economic viability of a given property. To this end, the Initiative more broadly provides that, in "the event a property owner contends that application of this Initiative effects an unconstitutional taking of property, the property owner may request, and the Board of Supervisors may grant, an exception to application of any provision of this Initiative if the Board of Supervisors finds, based on substantial evidence, that both: (1) the application of any aspect of this Initiative would constitute an unconstitutional taking of property; and (2) the exception will allow the cutting or removal of trees only to the minimum extent necessary to avoid such a taking." (Initiative, § 6(B).)[16] Note, however, that if the Initiative were enacted, the Board likely would *have to grant* an exception in order to comply with constitutional law (i.e., the Board really would not have the discretion to grant or withhold one). Note too that the express terms of the Initiative would also appear to compel the Board to grant an exception. (*See* Initiative, § 4 [proposed NCC, §§ 18.20.050(G)(2), 18.20.060(G)(2), providing Initiative's regulations do not apply where they are inconsistent with state or federal law].)

Further, where an ambiguity surfaces, the County Code requires the County to interpret provisions so as "to avoid unconstitutionality wherever possible" (NCC, § 1.04.110), and provides that no provision of the code "shall be construed as being broad enough to permit any direct or indirect taking of private property for public use" (NCC, § 1.04.130). Similarly, the County Code provides that it "is not the intent of the board of supervisors, in its administrative capacity, to condone or permit the violation of the constitutional rights of any person, nor to condone or permit the taking of private property for public use without payment of just compensation in violation of either the United States or California Constitutions." (NCC, § 1.04.140.)

2. *Analysis of assumptions and statistics underlying Initiative's Oak Removal Limit.*

The Initiative's Oak Removal Limit appears to designed to place a "cap" on vineyard development after 2030.

More specifically, the Oak Removal Limit appears be calculated based on estimated vineyard growth through year 2030, as outlined in the County's General Plan. To this end, the General Plan Conservation Element projects that 10,000 acres of vineyards are likely to be established through year 2030. (GP-CE, pp. CON-19 and -20.) We understand that this projection contemplated gross vineyard acreage, and did not account for portions of

[16] A taking could occur under the Initiative's framework if, for instance, the Oak Removal Limit were reached, the only usable portion of a site less than 160 acres were covered in oak woodlands, and none of the listed exceptions under proposed section 18.20.050(C) applied. In this case, a property owner wanting to locate a use on his or her property would not be able to obtain an oak removal permit. (*See* Initiative, § 4 [proposed NCC, §§ 18.20.060(E)(2) [eligible sites must be 160 or more acres].) In such a situation, the inability of the property owner to obtain an oak removal permit likely would eliminate all economic value of the subject property, triggering application of the Initiative's "failsafe" provision under section 6(B). Currently, there are roughly 663 parcels exceeding 160 acres that are located entirely within AW zones, though it is unknown how many of those parcels, if oak woodland acreage were subtracted out, would retain a farmable area of more than 160 acres.

vineyards not dedicated to the growing of grapes (e.g., areas dedicated to access roads, infrastructure, and other uses).

Meanwhile, County records show that approximately 4,321 acres of new vineyard were permitted from January 1, 2005 until May 1, 2017,[17] meaning that approximately 5,679 acres of vineyards could be developed before reaching the General Plan's 10,000-acre projection.[18] Based on the above information, the Oak Removal Limit seems to contemplate the 10,000-acre projection as a "cap" on vineyard development. The 795-acre Oak Removal Limit, then, reflects an assumption 14 percent of the remaining, 5,679 acres are covered in oak woodlands (i.e., 0.14 x 5,679 = 795 acres, the "Oak Removal Limit").

Ultimately, the Oak Removal Limit could result in a greater or lesser level of vineyard establishment, depending on the accuracy of the assumptions underlying its calculation. For instance, if more than 14 percent of AW zoned lands are covered in oak woodlands, then the full 10,000 acres contemplated in the General Plan would likely not undergo development, since the 795 acres of woodland development would be removed faster than anticipated. Meanwhile, if the coverage rate is less than 14 percent, more than 10,000 additional acres would accommodate vineyards.

Despite these uncertainties, it would appear to be difficult to successfully challenge the Initiative on the basis that the Oak Removal Limit is based on false assumptions that render the legislation arbitrary and capricious. The Initiative is not implementing any established limit on oak woodland removal set by the County, but is creating a practical "ceiling" on future development in oak woodlands based on general projections in the County's General Plan Conservation Element. How the Initiative's Proponents derived the Oak Removal Limit would only be potentially legally vulnerable if it were not based on substantial evidence. Here, the intent of the Proponents is to set a quantifiable limit on future removal of oak woodlands that is roughly in line with expected vineyard development in the future. Land use planning in any jurisdiction is often imprecise, and California courts recognize the difficulties of this process, and will defer to local governments insofar as their regulatory framework is addresses a legitimate public interest, is reasonable, and has evidentiary backing. The Initiative seeks to maximize protection of natural resources while allowing a fixed amount of future development, and so the risk of a party successfully challenging the Initiative based on discrepancies between the Oak Removal Limit and the projections in the General Plan would appear to be low.

Finally, it is important to know how much of the 795-acre oak woodland "budget" has been taken by vineyard projects constructed or approved since September 1, 2017.[19] Since

[17] After May 1, 2017, 124.5 acres of vineyards were permitted and, currently, there are 565.9 acres pending. These acreages do not appear to be wholly accounted for by the Initiative.

[18] According to the Initiative's Proponents, the Napa Valley Vintners prepared a handout entitled *The 2018 Initiative and Vineyard Development Potential*, which is attached as Appendix C, to this Memorandum. This document indicates that there are 5,679 acres of undeveloped land in AW districts that may be converted to vineyards.

[19] It is not clear what would occur if these approvals were challenged in court. Based on the plain language of the Initiative, which provides that "all oak woodlands

that date, County staff indicate that 22.39 acres of vineyards were constructed and/or permitted that removed oak woodlands, leaving a balance of 727.61 acres of vineyard development before the Oak Removal Limit is reached.[20] Please note, there appear to be pending applications for development that would affect an additional 123.25 acres of oak woodlands. If approved, the balance of oak woodlands that could be developed before reaching the Oak Removal Limit would be 604.36 acres.

Tables showing the list of approved and pending projects, minus the project currently under judicial review, are included in Appendix E to this Memorandum. A map showing the location of this development is included as Appendix F.

3. *The Initiative might potentially violate the equal protection rights of Napa County citizens.*

The Initiative's water quality buffer zone regulations do "not apply to replanting within the footprint of existing vineyards or within the footprint of vineyards having obtained all legally required discretionary permits from the County where the initial vineyard planting or final discretionary permit approval occurred prior to the effective date of the Napa County Watershed and Oak Woodland Protection Initiative of 2018." (Initiative, § 4 [proposed NCC, § 18.20.050(E)].)[21] Aside from vineyards, the Initiative also exempts telecommunications or cellular towers, solar energy systems, and electric vehicle charging stations from its scope. (Initiative, § 4 [proposed NCC, § 18.20.050(C)].)

The Initiative's terms appear to have been formulated, at least in part, through compromises reached by the Initiative's Proponents and the Napa Valley Vintners, a non-profit trade association that advocates for local vintners.[22] While it is speculative to say

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approved for removal by the County within the AW district" will register toward the Oak Removal Limit (Initiative, § 4 [proposed NCC, § 18.20.060(D)]), it appears that it is the administrative approval, and not the status of ensuing court proceedings, that "counts" toward the Oak Removal Limit. That said, insofar as a reviewing court would direct the County to rescind any approval affecting oak woodland acreage, presumably the cumulative total acreage of all oak woodlands removed since September 1, 2017 would decrease by the appropriate amount.

[20] There are limitations as to the accuracy of this data. First, the acreage of oak woodlands associated with approved and pending development, as cited herein, is calculated using the County's GIS mapping system, and does not accurate capture the area of "oak woodlands" as the term is defined in the Initiative. Moreover, these statistics capture only oak woodlands affected by proposed vineyards, and do not account for other uses such as residences and wineries. The foregoing "accounting" of oak woodlands, therefore, should be deemed an estimate only.

[21] Consistent with Section III.B.8 of this Memorandum, it is unclear whether this exception applies to the replanting of grape vines or any agricultural crop. We have assumed, for purposes of this analysis, that it is only the replanting of grape vines that is exempted. Regardless of what is replanted, it is the class of current vineyard owners that arguably would be disproportionately affected/benefitted by the Initiative.

[22] Proponents have provided the County with a press release purportedly distributed by the Proponents and the Napa Valley Vintners, which is attached to this Memorandum as Appendix D.

for certain whether the vineyard exemption was included in the Initiative's text to satisfy the Napa Valley Vintners,[23] its narrow scope potentially raises issues about equal protection, and questions as to why other agricultural operations and accessory uses were not similarly exempted. The AW zone — the only zoning district regulated by the Initiative — is ostensibly intended to preserve and promote all agricultural uses, and not just vineyards or properties owned by vintners. Moreover, while solar energy systems and electric vehicle charging stations may merit an exemption due to the public benefits of encouraging alternative energy, it is unclear whether there exists a legitimate rationale for exempting only telecommunications and cellular towers from the Initiative's provisions.

To survive judicial scrutiny, a regulation must be rationally related to a legitimate governmental interest. While this legal test is generally not considered difficult to satisfy, the Initiative's proponents have not articulated any rational reasons for exempting only a narrow set of agricultural and other private land uses from its scope. The Initiative would therefore appear to have some potential legal vulnerability on the ground of a violation of equal protection rights, although on balance this risk appears to be low.

4. *Does the Initiative, in authorizing the assessment of civil, administrative, and mitigation penalties for violations of its terms, violate the law?*

Cities and counties can impose administrative fines or penalties for the violation of an ordinance, and can adopt legislation providing for the abatement of any nuisance at the expense of the person responsible for the nuisance. (Gov. Code, §§ 38773 to 38773.5 53069.4.)

With respect to penalties, the Initiative provides that violators shall be subject to "the maximum administrative penalty that the County has established for violations of this Code," shall be potentially liable for civil penalties, and shall have to pay a sum of money equal to the cumulative value of the individual oak trees unlawfully removed or the full cost of remediating the damage. (Initiative, § 4 [proposed NCC, § 18.20.070(C)&(E).)

While they could be considered somewhat harsh, the Initiative does not appear to impose penalties that are "grossly excessive" and that transcend "the constitutional limit." (*BMW of North American, Inc. v. Gore* (1996) 517 U.S. 559, 585-586.) In many respects, the Initiative's penalty structure is fairly standard and, insofar as it requires assessment of a "maximum administrative penalty" and the financing of mitigation for a violation, these fees appear to be reasonably related to the costs of curing the violation, and not disproportionate to what the County could assess on a violator of a different ordinance.

A question does arise, however, as to how the County will calculate the value of individual oak trees that are removed. At present, the County does not have an official protocol or methodology; the most reasonable method would appear to be having a certified arborist assess the value of the trees and document his or her determinations in a report..

Notwithstanding the above, insofar as the Initiative could result in criminal, civil, and maximum administrative penalties for property owners who suffer tree loss through

[23] We understand that the Napa Valley Vintners may now be opposing the Initiative, based on recent news reports.

wildfire that occurred beyond their control, as discussed in Section III.B.3.b, the Initiative could be deemed to violate their due process rights, making the Initiative potentially vulnerable to legal challenge in that respect.

5. *The failure of the Initiative to provide a citizen with a hearing to contest an alleged violation might violated the accused's rights to due process.*

A minimal requirement of the due process clause of the U.S. Constitution is the right to a hearing that provides an accused party with an opportunity to present arguments in response to the proposed penalty, fine, or disturbance of a property right. (*Ohio Bell Tel. Co. v. PUC* (1937) 301 U.S. 292, 305.) While constitutional law does not require a governmental agency to establish a formal hearing, with full rights of confrontation and cross-examination, the agency must provide an opportunity to be heard. (*See Mohilef v. Janovici* (1996) 51 Cal.App.4th 267, 276.)

The Initiative would provide that a violation of its terms constitutes a misdemeanor and subjects a violator to various civil and administrative penalties. (Initiative, § 4 [proposed NCC, § 18.20.070(C).) Whereas the Initiative requires the investigation and noticing of an alleged violation, it is unclear whether the Initiative provides accused parties with a hearing and other due process rights. (*See* Initiative, § 4 [proposed NCC, § 18.20.070(A).) The legislation merely states that violations are "subject to any and all available judicial and administrative enforcement actions, including, but not limited to, the provisions addressing civil and administrative penalties, stop orders, and public nuisance abatement procedures set forth in the County Code." (Initiative, § 4 [proposed NCC, § 18.20.070(C).) This reference to other procedures in the County Code, while clearly contemplating the ability of the County to levy penalties (i.e., the ability to initiate "enforcement actions"), does not clearly incorporate the rights accorded to accused parties that appear in the County Code. Any failure to provide a member of the public with such rights would constitute a violation of constitutional law. To the extent the Proponents of the Initiative did intend to incorporate hearing rights set forth elsewhere in the County Code, the Initiative is, at best, vague on this point.

Separately, the Initiative would appear to potentially violate Government Code section 53069.4, which requires that " administrative procedures set forth by ordinance adopted by the local agency … shall provide for a reasonable period of time, as specified in the ordinance, for a person responsible for a continuing violation to correct or otherwise remedy the violation prior to the imposition of administrative fines or penalties …." While the Initiative provides that a violator must correct an alleged violation by "a date specified," the Initiative does not guide the code enforcement officer in selecting an appropriate date and, accordingly, does not guarantee an accused violator his or her rights to a reasonable cure period.

E. An Initiative provision cannot impair an essential legislative function and/or rise to the level of a constitutional amendment.

An initiative cannot interfere with the efficacy of an essential governmental power. (*Newsom v. Bd. of Sup.* (1928) 205 Cal. 262, 271-272 [initiative cannot impair power to grant a franchise]; *Simpson v. Hite* (1950) 36 Cal.2d 125, 134 [initiative cannot impair power to site a courthouse]; *Citizens for Jobs and the Economy v. County of Orange* (2002) 94 Cal.App.4th 1311, 1324, 1331 [initiative cannot impair management of financial

affairs and implementation of public policy declared by prior measure]; *City of Atascadero v. Daly* (1982) 135 Cal.App.3d 466, 470 [initiative cannot impair power to tax].)

1. *Evaluation of requirement that Initiative may only be amended by a vote of the people.*

Courts appear somewhat hesitant to find that restrictions on general land use planning constitute the impairment of an essential function. The California Supreme Court, in *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 769-699, held that an initiative was valid where an agricultural land use designation could be changed during a 30-year period only by a majority vote of the electorate. The Court held that it could not "discern a design in the planning law to limit the operation of Election Code section 9125 [providing that initiative provision only could be repealed by electorate vote] in prohibiting a supervisorial repeal of initiatives." (*Id.* at 797.)

The initiative at issue in *DeVita* was Measure J, and it is similar to the Initiative considered here in that both constitute legislative amendments to the County's General Plan by limiting urban development. However, Measure J is distinguishable from the instant proposal in that it contemplated an expiration date, whereas the proposed Initiative arguably could be interpreted to institute a permanent moratorium, with limited exception, on development occurring within oak woodlands after the Oak Removal Limit is reached, and near watercourses. Such a measure may qualify as a "constitutional," as opposed to "legislative" enactment, or otherwise interfere with the agency's police power, and thus remain outside the scope of the initiative power. (*Id.* at 798-799.). The appropriate question is whether the Initiative would inherently frustrate the fundamental objectives of the planning law. (*Id.* at 792.)

The Supreme Court concluded that Measure J was valid because it amended "a portion of the land-use element of the County's general plan – a legislative act" and provided "formal, limited voter approval requirements as a means of implementing that restriction." (*Id.* at 799; *cf. Citizens for Jobs, supra,* 94 Cal.App.4th at 1327 [initiatives that broadly limit power of future legislative bodies to carry out their duties, pursuant to either a governing charter or own inherent police power, should not be considered legislative measures, but constitutional provisions that are outside scope of initiative power]; *City and County of San Francisco v. Patterson* (1988) 202 Cal.App.3d 95, 102-105 [initiative could not prohibit charter city from selling or leasing real property without voter approval].) The court also held Measure J's voter-approval clause merely formalized Elections Code section 9125, which sets no limit on the length of time an initiative can remain in force absent amendment or repeal by a vote of the electorate. (*Id.* at 798.)

It is likely a court would uphold the Initiative against claims it impaired an essential governmental function. The instant Initiative, like Measure J, makes it difficult to change aspects of the General Plan, and imposes formidable restrictions on development on properties with oak trees and oak woodlands, but the scope of this restriction is similar insofar as it amends a portion of the General Plan and, in restricting further amendments thereto, reiterates the provisions of Elections Code section 9125.

2. *Evaluation of practical effects of administering Initiative provisions, and associated fiscal impacts.*

In reviewing whether an initiative will interfere with an essential governmental function, courts are "mindful that initiative measures are not to be stricken down lightly." (*Citizens for Jobs and the Economy, supra,* 94 Cal.App.4th at 1324.) What follows is an analysis of the administrative and fiscal burdens that adoption of the Initiative would impose on County government, and whether any such burdens amount to an impairment of an essential governmental function.

(a) *Administrative and fiscal impacts of overseeing compliance with water quality buffer zone requirements.*

The Initiative would prohibit the removal of trees in designated water quality buffer zones, and so staff time and resources expended in overseeing this regulatory framework would involve enforcement actions where a member of the public violated its terms. Typically, portions of the cost of enforcement are recovered through the assessment of criminal, civil, and administrative penalties, but in County staff's experience these rarely result in recoveries of greater than 35 percent of actual costs.

(b) *Administrative and fiscal impacts of overseeing compliance with oak removal mitigation requirements.*

The time and materials that County staff spend in proposing and monitoring mitigation requirements are traditionally recovered from project applicants, and so the fiscal impacts of overseeing compliance with oak removal mitigation requirements are likely negligible. Most, if not all, of the County's discretionary permits are on a time and materials basis, with costs being passed on to the applicant. While workload would no doubt increase, it would very difficult to quantify; however, to the extent additional staff proved necessary, it is anticipated that fees collected through the time and materials system would fund this support. With respect to enforcement costs in the case of a violation, please see Section III.E.2.a, above.

(c) *Administrative and fiscal impacts of tracking oak woodland removal for purposes of enforcing Oak Removal Limit.*

Per County staff, vegetation removal (including oak woodlands) are currently tracked for new vineyard projects requiring Erosion Control Plans, and so the fiscal impacts of ongoing tracking are anticipated to be minimal. Moreover, to the extent the County's existing tracking system falls short in capturing unanticipated aspects or details of the proposed Initiative, the application process could be revised to require applicants to provide pre- and post-project oak woodland data as part of their application package or development proposal.

(d) *Administrative and fiscal impacts of overseeing oak removal/use permit for removal of oak trees after Oak Removal Limit is reached.*

Per County staff, the cost of processing permits can be highly variable, depending on the magnitude and complexity of the request. As discussed in Section III.E.2.b, it is customary that permit applicants reimburse the County for staff time and costs expended

on permit processing, and it is anticipated the County would recover costs incurred in processing oak removal permits in the same manner.

F. Does the Initiative violate California initiative law's prohibition of "indirect" legislation or the use of precedence provisions?

The Initiative proposes a number of direct changes to the County's General Plan and Code of Ordinances. (*See* Initiative, §§ 3, 4, 5). Because a general plan and zoning ordinance must be internally consistent, to the extent the Initiative's direct changes conflict with other County regulations, the Initiative provides that any such inconsistent provisions "shall not be enforced in a manner inconsistent with this Initiative," and that the County is further "authorized to amend the County of Napa General Plan … the County Code, including the Zoning Code, and other ordinances, policies, and plans … affected by this Initiative as soon as possible as necessary to ensure consistency …." (Initiative, § 7(A)(C)&(E).)

These provisions raise the issue of whether the Initiative might be held invalid, in whole or in part, through the use of impermissible "indirect legislation" directives or "precedence" clauses.

1. *Relevant case law.*

While it is well-established that the land use element of a general plan may be amended by initiative (*DeVita,* 9 Cal.4th at 779, 795-96), the initiative power is limited by the California constitution to the enactment of "statutes" — i.e., direct legislation. (*Pala Band of Mission Indians v. Board of Supervisors* (1997) 54 Cal.App.4th 565, 575-76.) Thus, a "proper amendment" to a general plan by initiative must "make[ ] a specific change to a specific portion of the General Plan." (*Id.* at 576.) Attempts to *indirectly* legislate by initiative, such as directing a city council to amend the city's general plan to reflect the "concepts" stated in an initiative measure, are invalid exercises of the initiative power. (*Marblehead v. City of San Clemente* (1991) 226 Cal.App.3d 1504, 1510.)

In the seminal *Marblehead* case, a developer (Marblehead) brought a facial challenge to an initiative measure enacted by the City of San Clemente, which purported to amend the city's general plan. (*Id.* at 1506.) The lower court granted a writ invalidating the measure, and the Court of Appeal affirmed on the ground that it was "an improper exercise of the electorate's initiative power because rather than amending the general plan, it directs the city council to do so." (*Id.*) The initiative purported to mandate achievement of certain standard traffic congestion levels before plan amendments and approvals, zone changes, or map approvals could be granted, with certain exceptions, but did not propose specific legislation effectuating these concepts; rather, it provided in pertinent part that: "Upon the effective date of this initiative, the general plan of the City shall be deemed to be amended to contain these concepts and enforced as such by the City.…The City shall within six (6) months revise the text of the general plan and other ordinances to specifically reflect the provisions of this amendment and ordinance." (*Id.* at 1507, fn. omitted.) While the people's reserved initiative and referendum powers are "liberally construed in favor of their exercise" (*id.* at 1509), they are nonetheless limited to the adoption or rejection of statutes, and "an initiative which seeks to do something other than enact a statute … is not within the initiative power reserved by the people." (*Id.,* quoting *American Federation of Labor v. Eu* (1984) 36 Cal.3d 687, 714.)

In rejecting the initiative before it, the *Marblehead* court made several observations underscoring the nature of the measure as prohibited "indirect" legislation, which are relevant here:

- "The actual amendment of the general plan is left to the city council." (*Id.* at 1510.)

- "Which elements of the general plan are affected and how the substantive terms of Measure E are to be incorporated into these elements is unexplained." (*Id*.)

Further, the Court indicated the initiative was flawed due to its potential introduction of internal consistencies into the general plan, while burdening the city council to work out a resolution of the same with no specific direction or guidance:

> The city council could not simply append Measure E to the existing plan. Government Code section 65300.5 declares "the general plan and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies for the adopting agency." No element of the general plan may take precedence over the provisions of other elements. (*Sierra Club v. Board of Supervisors* (1981) 126 Cal.App.3d 698, 704, 708.) Thus, a review of the entire general plan would be required to determine which elements need to be altered.

(*Id.* at 1510.)

The Court stopped short of holding that a general plan amendment initiative could not direct the city council to revise existing *zoning* to render it consistent with a general plan amendment, but found the flawed initiative before it was not so limited:

> While it might be argued the electorate could amend a general plan and direct the city council to revise the city's zoning ordinances to comply with it, Measure E goes beyond that. It directs the city council to amend both the general plan and the zoning ordinances. This type of measure is not within the electorate's initiative power.

(*Id.* at 1510.)

In *Pala Band of Mission Indians v. Board of Supervisors* (1997) 54 Cal.App.4th 565, the Court of Appeal appeared to limit the application of *Marblehead* in upholding (with the exception of a single severable section) an initiative measure that amended San Diego County's general plan to designate a site known as "Gregory Canyon" for use as a privately-owned solid-waste facility. (*Id.* at 570.) The initiative there at issue (Proposition C) contained both "direct" and "indirect" proposed legislation. (*Id.* at 576-578.) Its primary operative sections — Sections 7A and 7B — amended the General Plan and Zoning Ordinance, respectively, in *direct* fashion:

> … Section 7A amends the General Plan; it does not rely on future legislative action. This is accomplished by language directing that the land use element of the General Plan be changed to permit a previously impermissible land use (waste disposal) in a particular area (Gregory Canyon). Section 7A provides the land use element and all relevant community plans and maps "shall be amended to designate the Gregory Canyon site Public/Semi-public lands with a Solid Waste Facility Designator." *This is a proper amendment as it makes a specific change to a specific portion of the General Plan*. …

(*Id.* at 576, fn. omitted, emph. added.)

The Court further stated:

> Likewise, Section 7B specifically amends the zoning ordinance to create a new zoning classification applicable to the Gregory Canyon site. This is a proper amendment since it makes a specific change to the Zoning Ordinance. The fact that the initiative did not cite to the particular ordinance number where the amendment will be located does not invalidate the initiative. We are unaware of any authority requiring that an initiative specify the particular numerical section that will contain the proposed amendment.

(*Id.* at 577.)

The Court next addressed the effect of Sections 7C and 7D which, if adopted, would have authorized the county to make conforming amendments to the county's general plan and ordinances as proved necessary,[24] similar to Section 7(C) of the Initiative. As to Sections 7C and 7D of the San Diego County initiative, the Court reasoned:

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[24] Sections 7C and 7D read as follows:

"C. Amendments to Other County Ordinances and Policies.

"All other County ordinances, rules, and regulations which constitute legislative acts shall be amended as necessary to accommodate the Project as set forth in this initiative.

"D. County Cooperation.

"The County of San Diego shall cooperate with the Applicant whenever possible in issuing permits and approvals so that the Project can proceed in a timely fashion."

"The County of San Diego is hereby authorized and directed to amend other elements of the General Plan, sub-regional plans, community Zoning Ordinance, and other ordinances and policies affected by this initiative as soon as possible and in the manner and time required by State Law to ensure consistency between this initiative and other elements of the County's General Plan, sub-regional and community plans, Zoning Ordinance and other County ordinances and policies." (*Id.* at 575, fn. 6.)

> While Sections 7C and 7D do not propose "direct" amendments to the laws or to the General Plan, *Marblehead* does not provide a basis for invalidating these sections. The proposed general plan amendments in *Marblehead* did not state how *any* specific element of the general plan would be changed. Rather, the San Clemente initiative required the city council to make amendments as necessary to promote land use "concepts" identified in the initiative. *Marblehead* stated the voters could not propose such unspecified amendments to the San Clemente general plan because such vague mandate is [sic] inconsistent with the purpose of a general plan, to serve as an "integrated, internally consistent and compatible statement of policies. …" [Citations.]
>
> Here, the voters said precisely how the General Plan is to be amended – Section 7A changes the land use element to designate the Gregory Canyon Site for use as a solid waste facility. *Sections 7C and 7D merely tell the County to enact any necessary amendments to ensure the General Plan amendment will take place. Such enabling legislation promotes, rather than violates, the requirement that a general plan reflect an integrated and consistent document. Further, on this record there is no basis to believe any amendment to the General Plan would be necessary since there is no evidence Proposition C creates an inconsistency in the plan.*

(*Id.* at 577, fn. and citations omitted, emph. added.)

In a footnote, the Court attempted to distinguish and harmonize prior authority as follows:

> Because there are no inconsistencies on the face of the plan, Pala's reliance on *Sierra Club v. Board of Supervisors* (1981) 126 Cal.App.3d 698 is unavailing. In *Sierra Club*, the county adopted a land use element that was inconsistent with the general plan's open space element. [Citation.] The county recognized the inconsistencies, but "[b]ecause of a lack of time" did not attempt to make the elements consistent and instead inserted a clause stating that the land use element would take precedence over other general plan elements. [Citation.] The court held this "precedence clause" was improper and could not be used to cure conflicts within a general plan. Here, unlike in *Sierra Club*, there is no evidence of an inconsistency or that Section 7 requires the land use element to take "precedence" over the other elements.

(*Id.* at 577-578, fn. 8, citations omitted.)

The *Pala Band* Court further declined to read past precedents as barring "indirect" legislation of the type before it, distinguishing *American Federation of Labor v. Eu, supra,* 36 Cal.3d 687 as invalidating an initiative which directed adoption of a mere policy "resolution" rather than a "statute" (*id.,* at 577-578):

> Section 7C does not ask the board of supervisors to adopt a resolution – it tells the legislative body to enact any necessary *laws* to permit the "Project" to take effect. Section 7D likewise tells the legislative body to enact any needed General Plan or Zoning Ordinances to ensure consistency with the Sections 7A and 7B amendments. Neither *Marblehead* nor *American Federation of Labor* can fairly be read as prohibiting the voters from exercising such powers.

(*Id.* at 578, fn. omitted.)

Pala Band's reasoning in this respect is highly questionable. While subsequent cases have cited *Pala Band* in support of general propositions to the effect that the initiative power is to be liberally construed with an eye to upholding that reserved power, none has followed its reasoning or holding on the "direct/indirect" or "precedence clause" issues. In fact, the Fourth District has more recently distinguished *Pala Band* in a way that appears to *minimize* and limit its pronouncements on those topics:

> …[T]he cases chiefly relied upon by the Proponents are distinguishable here. In both *Pala, supra,* 54 Cal.App.4th 565 and *San Mateo, supra*, 38 Cal.App.4th 523, the initiative measures upheld made substantive amendments to land use provisions of a county's general plan or equivalent, to implement affirmative policy statements. *In Pala, supra, 54 Cal.App.4th 565 this court found the initiative measure was a proper amendment to the general plan that did not rely on future legislative action. Instead, it made a specific change to a specific portion of the general plan.* (*Id.*, at p. 756.)

(*Citizens For Jobs & The Economy v. County of Orange* (2002) 94 Cal.App.4th 1311, 1330, emph. added [affirming judgment invalidating initiative measure that did not directly amend the general plan or provide substantive policy, but, rather, impermissibly interfered with essential government functions and county's fiscal management powers, involved matters of statewide concern, impermissibly affected local legislative authority delegated by the federal and state governments, and imposed administrative restrictions making it difficult for county's board to carry out already-established base reuse policy]; *see also Building Industry Assn. v. City of Oceanside* (1994) 27 Cal.App.4th 744 [disfavoring determination that an initiative can impliedly amend a general plan].)

Still more recent authority has reaffirmed the vitality of *Marblehead* and *American Federation of Labor v. Eu* in prohibiting initiative measures that "are in the nature of resolutions that declare policies without providing the specific laws to be enacted." (*See, e.g., Widders v. Furchtenicht* (2008) 167 Cal.App.4th 769, 784.)

It is difficult to completely reconcile the disparate strands of thought that led to the *Pala Band* court's conclusions. There are strong arguments to be made that *any* initiative attempting to effect "indirect" legislation amending the general plan to achieve internal consistency or effectuate a "precedence clause" subordinating other elements to the directly-amended element in the event of a conflict is impermissible. *Pala Band* itself is expressly limited to situations where "there is no basis to believe any amendment to the General Plan would be necessary" because there is no evidence that the initiative at issue creates any internal inconsistency. (*Pala Band*, *supra*, 54 Cal.App.4th at 577.)

2. *Implications for the Initiative.*

Those portions of the Initiative in Sections 7(A) and 7(C) directing the County to amend its *general plan* (as distinguished from its inferior specific plan, zoning and other enactments) to ensure consistency with the Initiative's General Plan amendments are arguably invalid and constitute an impermissible "precedence clause" and/or "indirect" legislation *on their face*. (*See, e.g., id.; Sierra Club, supra,* 126 Cal.App.3d at 704, 708.) Moreover, they are likely invalid and ineffective to the extent that the evidence shows the "direct legislation" parts of the Initiative actually create any internal general plan inconsistency.

Recognizing that the Initiative's Proponents can plausibly argue their measure's language is essentially "approved as to form" by the *Pala Band* decision, it appears the best reading of that decision is that it strives to uphold the exercise of the initiative power where the following elements are present: (1) the initiative accomplishes its *primary* purposes through "direct" legislation that amends specific parts of specific plans and ordinances; (2) the initiative does not state broad policies and then direct the legislative body to do the "heavy lifting" by drafting and enacting specific legislation to carry them out; and (3) to the extent the initiative contains some directives to the local legislative body to enact "indirect legislation," such as "enabling legislation" or legislation to achieve consistency, those directives must either (a) affect only *inferior* zoning or other enactments, or (b) if they purport to affect other provisions of the *general plan*, there cannot be evidence of an *actual* internal general plan-inconsistency created by the direct legislation. Where there is such an inconsistency created by an initiative, it is unlikely a court would hold that it is permissible for the initiative to direct the legislative body to undertake comprehensive general plan review and enactment of other, unspecified general plan amendments to the extent needed to "cure" the inconsistency.

As discussed in Appendix A to this memorandum, the proposed Initiative arguably *may* conflict with various policies in the General Plan in more than a dozen ways, depending on how the County Board of Supervisors is inclined to exercise its discretion to interpret and balance relevant provisions of the General Plan. While the law concerning indirect legislation is not settled, any provision of the Initiative deemed to clearly conflict with existing General Plan policies might be deemed invalid by a reviewing court if it were to be challenged. As discussed further in Appendix A, a majority of the Initiative's provisions have the potential to conflict to some extent with existing General Plan policies, including the Initiative's water quality buffer zone regulations, the oak tree and woodland mitigation requirements, and the establishment of the Oak Removal Limit and its associated permitting processes.

G. Will the Initiative, if Adopted, violate the terms of the *DeHaro* settlement agreement?

On June 21, 2004, the County entered into a settlement agreement with the plaintiffs in *Jorge DeHaro v. County of Napa*, Napa County Sup. Court Case No. 26-22255, in connection with a lawsuit that alleged the County failed to comply with various state and federal affordable housing and discrimination laws. (*DeHaro* Stipulation and Order, June 21, 2004, p. 1 (*DeHaro* Settlement Agreement).)

As set forth in detail in the *DeHaro* Settlement Agreement, the County is obligated, among other things, to adopt a housing element for the 2001-2007 compliance period (and concomitant re-zoning actions) that substantially complies with requirements of the applicable law. (*See, e.g.*, *DeHaro* Settlement Agreement, pp. 2, 3, 9).

The Initiative does not violate the terms of the *DeHaro* Settlement Agreement since, as explained more fully above, it would not likely be construed as: (1) significantly impairing the County's ability to comply with state and federal affordable housing laws (in the event and to the extent the Settlement Agreement imposes obligations on the County beyond those addressed in the 2001-2007 Housing Element cycle); (2) precluding development of the sites in AW zones that are identified for affordable housing in the County's current Housing Element; or (3) otherwise preventing the County from satisfying its obligations thereunder.

H. To what extent may a portion of the Initiative survive if other portions are held invalid?

The potential defects in the proposed Initiative would not seem to affect the entirety of its scope, and Section 8 of the Initiative contains a severability clause which states in relevant part: "If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion of this initiative is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this initiative." The question is whether portions of the Initiative may survive in the event other sections are challenged and held invalid, pursuant to the foregoing severability clause.

A provision in, or a part of, a legislative act may be unconstitutional or invalid without invalidating the entire act." (13 Cal. Jur. 3d. Const. Law, § 76; *Verner, Hilby & Dunn v. Monte Sereno* (1966) 245 Cal.App.2d 29, 33.) Thus, "[a]n ordinance may contain provisions which are invalid, either because of a conflict with state law or for any other reason, and other provisions which appear to be valid, and in such case the question arises whether the good may be separated from the bad and allowed to stand. Sometimes the legislative body declares its intent, by a severability clause, that each part of its enactment stands or fall on its own merits, regardless of the others, and considerable weight is given to such a clause." (*People v. Commons* (1944) 64 Cal.App.2d Supp 925, 932-933; *see Blumenthal v. Board of Medical Examiners* (1962) 57 Cal.2d 227, 237-238.) However, even if broadly drawn, a severability clause does not deprive the judiciary of its normal power and duty to construe the statute and determine whether the invalid part so materially affects the balance as to render the entire enactment void. "In other words, the presence of a severability clause does not change the rule that an unconstitutional [or invalid] enactment will be upheld in part only if it can be said that that part is complete in itself and would have been adopted even if the legislative body

had foreseen the partial invalidation of the statute." (*Verner, supra,* 245 Cal.App.2d 29, 35.) That is, "where the invalid portions of the statute are so connected with the rest of the statute as to be inseparable, it is clear the act must fall." (*Commons, supra,* 65 Cal.App.2d Supp. at 933.)

Here, those portions of the Initiative which may potentially be held preempted or otherwise unlawful include its stream buffer provisions, oak woodland/tree mitigation requirements, Oak Removal Limit, and oak woodland/tree removal permitting processes. However, many of these components are separate and independent (e.g., the stream buffer provisions versus the Oak Removal Limit provisions), and invalidation of one component would not necessarily mean the remaining provisions would be invalid. Therefore, it is likely the severability clause would effectively operate to limit the extent of any invalidation of the terms of the Initiative if a reviewing court were to determine certain discrete portions only were preempted and invalid.

IV. ECONOMIC AND POLICY IMPACTS OF THE INITIATIVE.

A. Estimated impact on property values and tax.

The Initiative's proposed development restrictions, in comparison to the existing regulatory framework, would affect approximately 402,729 acres of additional land in AW zones,[25] including 100,756 acres of additional land subject to water quality buffer zone regulations. At the same time, existing acreage is already subject to significant environmental protection frameworks, but the County presently has not been able to calculate this acreage. Ultimately, the economic impacts of the proposed amendments are speculative. It is likely that, insofar as acreage within a given property became undevelopable, the value of that parcel would decrease which, in turn, would result in a loss of property tax revenue from the County. At this time, however, the County has not been able to quantify this effect.

B. Impact of Initiative on efforts to increase agricultural diversity within Napa County.

The Initiative would result in less development of agricultural uses within the County owing to the practical exclusion of development from water quality control buffers, the occupation of developable acreage with tree mitigation, and through the establishment of the Oak Removal Limit and the permitting process that applies thereafter. It does not appear, on its face, to discriminate between the types of agricultural activities that may be planted pursuant to its regulatory exceptions or as part of development occurring before the Oak Removal Limit is reached. The Proponents indicate that the Initiative "could help encourage diversity by providing greater protection for the County's long-term water supply … and by reducing the type of destructive erosion that washes away high quality soils." (Response to *Questions based on Preliminary Review of Initiatives,* Question 14.) While the Proponents might have articulated environmental benefits of the Initiatives, the causal connection between the Initiative and an increase in agricultural diversity is unclear. It appears the Initiative's effects on agricultural diversity ultimately are neutral.

[25] A map showing developed and undeveloped properties within AW zones is included in Appendix G to this Memorandum.

C. Potential to incentivize removal of oak saplings.

The Initiative prevents the removal of trees that are five inches or more diameter within the proposed water quality buffer zones (Initiative, § 4 [proposed NCC, § 18.20.050(D)(5)]) and, after the Oak Removal Limit is reached, significantly restrict a property owner's ability to remove any oak trees that are five inches in diameter (Initiative, § 4 [proposed NCC, § 18.20.060(E)(1)&(F)(2)]).) A question was raised as to whether this legislation might have the unintended effect of limiting the natural development of oak and other woodlands on properties within Napa County, as property owners might be incentivized to remove saplings before they reach the critical mass necessary to fall within the scope of the Initiative. It appears that existing provisions of the County Code would, to some extent, safeguard against the removal of oak saplings. Chapter 18.108.070 subjects "earthmoving activities," which includes "vegetation clearing," to a host of permitting processes depending on the nature of the property. (NCC, § 18.108.030.) For instance, under the County's existing conservation regulations, earthmoving is generally prohibited in stream setback areas, precluded on slopes greater than 30 percent, and subject to permitting requirements on slopes greater than five percent. (NCC, §§ 18.108.025(B), 18.108.060, 18.108.070(A)&(B).) The County thus would have the ability to control, subject to certain exceptions and exemptions, the removal of oak saplings. That said, there are limitations to the County's authority, and existing regulations would not prevent the removal of all oak saplings. Thus, to some extent, there is a possibility that the Initiative, if enacted, could incentivize property owners to remove oak trees before they triggered restrictions imposed by the Initiative's proposed ordinances. It is difficult to predict, however, how many acres of oak and other woodlands would fail to materialize if the Initiative is adopted, however.

Perhaps a greater consideration is that, since the wildfires of 2017, many owners of property damaged by the fire may be incentivized to prevent oak woodlands from re-emerging on their land. As discussed above, the Initiative defines "oak woodlands" according to a canopy cover threshold, and it is possible that certain wildfires could result in a determination that such acreage has been "removed" from the County's oak woodland inventory. In such circumstances, property owners wishing to avoid the Initiative's strictures might be incentivized to prevent oak trees from re-emerging on their land in the first place (e.g., by planting gardens or grass), whereas nature, left to its own devices, would have replaced the habitat lost.

D. Potential of Initiative to interfere with infrastructure project.

A question has been raised as to whether the Initiative would impact the funding for infrastructure, including infrastructure related to transportation, schools, parks, and open space. The Board of Supervisors has also inquired as to whether the Initiative would preclude the construction of public roads and other public safety work in the vicinity of oak woodlands after the Oak Removal Limit is reached.

The Initiative does not specifically mention infrastructure or public roads except to provide that, during an enforcement action, the County has the right to impose conditions on a violator that includes the removal of any infrastructure built in violation of law. (Initiative, § 4 [proposed NCC, § 18.20.070(B).) However, the Initiative does except from its scope actions necessary to avert an imminent threat to public health and safety; facilities necessary for the public health; the development of access roads; projects within a recorded utility right-of-way; projects on land owned by any public agency; actions

undertaken by or at the direction or order of a federal, state, or local agency as part of a project to preserve habitat, alleviate a hazardous condition,, or abate public nuisance; and projects undertaken or authorized by a federal or state agency. (Initiative, § 4 [proposed NCC, §§ 18.20.050(B), 18.20.050(C), 18.20.060(A)(4), 18.20.060(E)(2).)

Given that a majority of infrastructure projects, including public roadway projects, would be undertaken by the either County, a state agency, or a public utility on land owned or dedicated to these entities, it would appear that the Initiative would not unduly interfere with any planned infrastructure projects.

V. CONCLUSION.

Overall, there is some risk that, if enacted, the proposed Initiative, or portions of it, would be vulnerable to being legally challenged and invalidated. The Initiative's most significant potential legal defects include:

- The Initiative may be deemed unlawfully vague or misleading with respect to: (1) various standards it imposes that are based on considerations of "necessity;" (2) what type of losses to oak woodland habitat will "count" toward the Oak Removal Limit and would trigger a violation of the water quality buffer zone restrictions, particularly with respect to trees lost to wildfire; (3) how the Initiative relates to and/or amends Measure J, a previous initiative adopted by the County's voters that sought to preserve agricultural land uses in the County's agricultural districts; (4) the Initiative's effect on the General Plan Land Use Map; (5) the degree to which internal contradictions in the Initiative's text might render it impossible for a property owner to obtain a use permit for the removal of oak trees after the Oak Removal Limit is reached; and (6) the degree to which the replanting of vineyards is exempt from the water quality buffer zone restrictions. (*See* Sections III.A and III.B of this Memorandum.)

- Terms of the Initiative may be preempted by the Oak Woodland Protection Act and recent housing legislation designed to streamline the approval of accessory dwelling units. (*See* Sections III.C.2.a and III.C.2.c.ii of this Memorandum.)

- The Initiative might arguably be deemed to violate the citizenry's equal protection rights insofar as it exempts from its regulations vineyards, telecommunication towers, and cellular towers, whereas other agricultural uses and private activities are subject to the Initiative's restrictions. (*See* Section III.D.3 of this Memorandum.)

- The Initiative does not clearly provide persons accused of violating it the right to a hearing, potentially in tension with constitutional protections of due process rights. It also could, on its face, subject property owners to criminal penalties who, through no fault of their own, lose trees due to wildfire to enforcement actions. (*See* Sections III.B.3, III.D.4, and III.D.5 of this Memorandum.)

- Certain parts of the Initiative, on their face, might technically violate California Initiative Law's prohibition of "indirect" legislation and the use of precedence clauses. Whether a significant legal defect exists on this basis, however, depends on whether the Initiative is deemed to create internal inconsistencies in the County's General Plan. To that end, the Initiative's provisions might conflict with

more than a dozen goals, policies, and other provisions of the General Plan. (*See* Section III.F and Appendix A of this Memorandum.)

Based on (a) the ministerial nature of the County's duty to enact "as is" or place duly qualified initiative measures on the ballot under the Elections Code; (b) existing law that strongly disfavors pre-election review of Initiative measures, and (c) the facts that the Initiative contains a severance clause and that some of its provisions are likely to be held severable in the event they are enacted and subsequently challenged and invalidated, it is highly unlikely that pre-election review of the Initiative would be granted by a court. Therefore, even if County's Board believes the Initiative is legally defective in whole or in part, it may not disqualify the initiative and it is not recommended that pre-election review be sought.

APPENDIX A: Consistency Analysis of Proposed Initiative and County General Plan

ISSUE: Does The Initiative Potentially Result In An Internally Inconsistent General Plan And, If So, Can The Initiative Withstand A Challenge On That Basis?

Any initiative amendment to a general plan "must conform to all the formal requirements imposed on general plan amendments enacted by the legislative body. The amendment itself may not be internally inconsistent, or cause the general plan as a whole to become internally inconsistent (Gov. Code, § 65300.5), or to become insufficiently comprehensive (Gov. Code, § 65300), or to lack any of the statutory specifications for the mandatory elements of the general plan set forth in Government Code section 65302. (*DeVita v. County of Napa* (1995) 9 Cal.4th at 796, n.12.) As set forth in Section III.F of the Memorandum, an inconsistency also would make the Initiative vulnerable to a claim that the Initiative violates the prohibition against "indirect" legislation.

Authorities Defining Consistency.

"An action, program or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." (Governor's Office of Planning and Research, *General Plan Guidelines* (2003), p. 164; *see Corona-Norco Unified Sch. Dist. v. City of Corona* (1993) 13 Cal.App.4th 1577; *City of Irvine v. Irvine Citizens Against Overdevelopment* (1994) 25 Cal.App.4th 868, 879.) To be consistent, an action, program, or project must be "in agreement or harmony" with the general plan. (*Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 817.) In evaluating the scope or meaning of any given policy in a General Plan, the legislative body that adopted the document is entitled to significant deference in its interpretation. (*See, e.g., Save Our Peninsula Comm. v. County of Monterey* (2001) 87 Cal.App.4th 99, 142 [city's interpretation owed "great deference … because the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity"].) The foregoing, interpretative powers apply equally to legislation adopted by a county board of supervisors and legislation adopted by initiative, such as the General Plan policies enacted through Measure J. (*San Francisco Tomorrow v. City & Cty. of San Francisco* (2014) 228 Cal.App.4th 1239; *Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 675; *Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540.)

The proposed Initiative arguably may create rules that are inconsistent with some policies and actions in the General Plan, although there is no clear evidence of any internal inconsistency. The determination ultimately would depend on the manner in which the County Board of Supervisors interpreted existing provisions in the General Plan.

Analysis Of Initiative And Its Consistency with the General Plan.

1) The Initiative appears to be consistent with the Housing Element's identification of affordable housing sites and the Affordable Housing Combination District's promotion of affordable housing.

The Housing Element provides a detailed description of specific sites available for housing. (*See* GP-HE, Table H-F, p. H-12; Figure H-1-1, p. H-35; Table H-1-1, p. H-50.) These sites are given the Affordable Housing Combination District (AHCD) zoning designation, and some of the

sites have a base zoning of AW. (*See* GP-HE, Table H-F, p. H-12; pp. H-39 and H-52.) The Housing Element examines each of these sites, including a detailed review of environmental and regulatory constraints, to determine the reasonable number of housing units that can be developed in these specific areas. (*Id.; see also See* GP-HE, p. H-32 et seq.) The total "reasonable" amount of housing for these AW zoned housing sites is about 150 units. (*See* GP-HE, Table H-F, p. H-12.)

The Housing Element is implemented by the AHCD zoning. (Napa County Code Chapter 18.82.) This overlay zoning allows development the foregoing housing opportunity sites at specified densities without a use permit. (Napa County Code §18.82.050(c).) The Initiative substantially restricts development near water bodies and creates a new discretionary permit to remove oak woodlands on the AW zoned sites, and the imposition of these development restrictions would, on their face, frustrate the purpose of the AHCD's removal of the use permit requirement.

However, there are two provisions in the Initiative that ameliorate this conflict: (1) the Initiative provides that it is inapplicable to property with a combination or overlay district "whose primary purpose is to provide affordable housing or to residential housing projects who approval is necessary to comply with state law" (Initiative, § 4 [proposed NCC, §§ 18,20.050(G)(1), 18.20.060(G)(1)]); and (2) the Initiative provides that it is inapplicable insofar as it is necessary to avoid a violation of law (Initiative, § 4 [proposed NCC, §§ 18,20.050(C)(2),18,20.050(G)(2), 18.20.060(E)(3), 18.20.060(G)(2)]).

The foregoing exceptions would appear to allow for the full development of affordable housing on AHCD zoning. Napa County has a total unit capacity of 1,677 housing units, and its Regional Housing Needs Allocation ("RHNA") obligation is 180 units, and it does not appear the Initiative would interfere with buildout of this capacity. (*See* GP-HE, pp. H-10 to H-13). It should be noted, too, that Measure J restricts, to a greater extent, the construction of housing projects in agricultural lands, providing that the County may re-designate an agricultural district to another type of district only upon finding that the change is necessary to comply with state law, and that there is no suitable land available in non-agricultural lands or incorporated cities within the County. (*See* GP-AP/LUE, Policy AG/LU-111(f), pp. AG/LU-65 to -66.)

2) The Initiative appears to be consistent with the Housing Element policies that seek to maximize the provision of new affordable housing.

While the Initiative does not appear to interfere with the County's ability to satisfy RHNA obligations, the Initiative might frustrate goals in the County's Housing Element that seek to maximize the production of affordable housing.

The construction of affordable housing is often subsidized through the construction of market-rate housing, such as through the exercise of incentives under State Density Bonus Law or through the payment of in-lieu fees. Legislative enactments that limit market-rate development, then, have the effect of discouraging the production of affordable housing.

Here, the Initiative's development limitations do not apply to property with a combination or overlay district "whose primary purpose is to provide affordable housing or to residential housing projects who approval is necessary to comply with state law." (Initiative, § 4 [proposed NCC, §§ 18,20.050(G)(1), 18.20.060(G)(1)].) State law generally requires a county to provide minimum amounts of affordable housing. The County's Housing Element, by contrast, seeks to

maximize the production of affordable housing. Consider the following goal, policy, and program of the Housing Element:

- **GOAL H-5:** Maximize the provision of new affordable housing in both rental and ownership markets within unincorporated Napa County. (*See* GP-HE, p. H-14.)

- **Policy H-5a:** Reduce, defer, or waive planning, building, and/or development impact fees when nonprofit developers propose new affordable housing development projects. (*See* GP-HE, p. H-17.)

- **Program H-2b:** Continue to encourage greater provision of affordable housing units in conjunction with market rate projects by implementing the Affordable Housing Ordinance, which requires an inclusionary percentage of 17 to 20 percent in for-sale projects, allows the payment of housing impact fees in for-sale housing projects only for developments of four or fewer units, and requires new rental developments to pay a housing impact fee. (Ongoing) The County will conduct a nexus study during the Housing Element planning period to verify the residential fee amounts and inclusionary percentages. (*See* GP-HE, p. H-20.)

It does not appear, however, that the General Plan, when considered as a whole, requires a maximization of housing projects in agriculturally designated lands. As discussed above, Measure J significantly restricts the construction of housing projects in agricultural lands, requiring the County to find prior to approval that the proposed housing project is necessary to comply with state law, and that there is no suitable land available in non-agricultural lands or incorporated cities. (*See* GP-AP/LUE, Policy AG/LU-111(f), pp. AG/LU-65 to -66.)

Insofar as General Plan policies seek to maximize affordable housing, it appears these policies are limited in scope to non-agricultural lands. Accordingly, the restrictions on residential development in the Initiative would appear to be consistent with these policies, since the Initiative only concerns agriculturally zoned lands.

3) The Initiative's limitation of oak woodlands removal might frustrate the Housing Element's objective to facilitate second unit construction.

By restricting development in oak woodlands, the Initiative also impacts the Housing Element's objective to facilitate the development of at least twenty-five second unit dwellings during the planning period in zoning districts where second units are permitted. (GP-HE, p. H-19 [Housing Element Objective H-2b].) Second units are permissible in AW zoning.

Second units are often deemed to qualify as affordable housing, and while the Initiative provides for "affordable housing" exceptions from its development limitations, this exception only covers development pursued under an AHCD overlay and residential development necessary to satisfy state law. Because second units may be developed in the County outside of these two circumstances, application of the Initiative's development restrictions might frustrate the County in fully implementing its second unit production goals.

It appears a conflict would exist between the Housing Element and Initiative except that, as discussed in Section III.C.2.c of the Memorandum, it appears the Initiative's oak removal permitting process cannot apply to the County's approval of second units (known alternatively as ADUs), since state law provides that such units shall be approved ministerially, and would preempt any conflicting, local legislation. This preemption, then, might moot concerns over any

inconsistency between the Initiative and the General Plan's objective for the facilitation of second units.

4) The Initiative might create inconsistency between the Agricultural Preservation and Land Use Element and the Land Use Map.

To demonstrate Napa County's land use policy, the General Plan Land Use Map depicts where the standards in the Agricultural Preservation and Land Use Element apply to the designations shown on the map. (GP-AP/LUE, Policy AG/LU-112, p. AG/LU-66 [The standards shown or contained in the Land use Element shall apply to the land use categories shown on the Land Use Map"].) The General Plan's maps and figures must be consistent with the policies stated in the Plan. (*See Sierra Club v. Kern County Board of Supervisors* (1981) 126 Cal.App.3d 698.)

Rather than making changes to a General Plan designation shown on the Land Use Map, the Initiative provides three new "Agricultural Watershed District Policies" that apply in AW zoned areas, where such policies include the establishment of water quality buffer zones, the imposition of mandatory oak removal mitigation measures, and the imposition of a permitting process for the removal of oaks after a certain level of development has occurred. (Initiative, §§ 3, 4.) References to AW zones appear in a few of the Initiative's proposed General Plan provisions, including proposed Goal AG/LU-8 and Policies AG/LU-0.5, AG.LU-0.6, and CON-24 (as modified). (Initiative, § 3.) Because AW zoning <u>is not depicted</u> on the Land Use Map, the standards of these two new policies are not depicted on the Land Use Map. Underscoring this problem is that "AW-Agricultural Watershed uses and/or zoning may occur in any land use designation." (GP-AP/LUE, Note to Table AG/LU-B, p. AG/LU-67.) The Initiative results in a Land Use Map that does not depict where, on the Land Use Map, the standards of the Agricultural Preservation and Land Use Element apply, whereas Policy AG/LU-112 directly requires this type of illustration.

At worst, this failure creates an inconsistency in the General Plan; at best, the Initiative's failure to update the Land Use Map results in a lack of clarity in the applicable standards, and would likely lead to confusion. (*See* Section III.B.5 of the Memorandum.)

5) The Initiative might promote non-agricultural uses on agriculturally designated lands in conflict with General Plan Policies prohibiting the same, and conflict with General Plan policies favoring the diversification of agricultural products.

The General Plan's Agricultural Preservation and Land Use Element includes the following goals and policies:

- **Goal AG/LU-1.** Preserve existing agricultural land uses and plan for agriculture as the primary land use in Napa County. (GP-AP/LUE, p. AG/LU-12.)

- **Policy AG/LU-4.** The County will reserve agricultural lands for agricultural use, including lands used for grazing and watershed/open space, except for these lands which are shown on the Land Use Map as planned for urban development." (GP-AP/LUE, p. AG/LU-13.)

- **Policy AG/LU-9.** The County shall evaluate … rezonings … to determine their potential for impacts on farmlands mapped by the State Farmland Mapping and Monitoring Program … and shall avoid converting farmland

where feasible. Where conversion of farmlands mapped by the state cannot be avoided, the County shall require long-term preservation of one acre of existing farm land of equal or higher quality for each acre of state-designated farmland that would be converted to nonagricultural uses. This protection may consist of establishment of farmland easements or other similar mechanism, and the farmland to be preserved shall be located within the County and preserved prior to the proposed conversion …. (GP-AP/LUE, p. AG/LU-14.)

- **Policy AG/LU-12.** No new non-agricultural use or development of a parcel located in an agricultural area shall be permitted unless it is needed for the agricultural use of the parcel, except as provided in Policies AG/LU-2, AG/LU-5, AG/LU-26, AG/LU-44, AG/LU-45, and ROS-1.[26] (GP-AP/LUE, p. AG/LU-14.)

The Goal and Policies quoted above strongly support preserving agriculturally designated lands, as shown on the General Plan Land Use Map, for agricultural uses. In contrast, the Initiative provides significant limitations on agricultural uses while providing exceptions to promote open space preserve, residential, and governmental uses. Each of these are distinctly non-agricultural uses, and the extent to which the Initiative would encourage such non-agricultural development is potentially significant. For instance:

> *Open Space Preserve Use* – Insofar as the Initiative creates water quality buffer zones and limitations on the removal of oak woodlands, the Initiative converts many acres of agricultural lands into open space preserves. An open space "preserve" is land use separate and apart from an agricultural use; it is recognized and described in the General Plan as "dedicated open space areas whose primary purpose is the preservation of native plants and wildlife, significant landscape features, and natural resource." (GP-ROSE, p. ROS-4.)
>
> *Residential and Governmental Uses* – The Initiative contemplates approximately ten exceptions from its development restrictions, including where development is proposed on public land, within utility rights of way, within 150 feet of residences, and for certain affordable housing projects. (*See, e.g.,* Initiative, § 4 [proposed NCC, § 18.20.050(C)&(G).) In doing so, the Initiative promotes non-agricultural development.

These "exceptions to the rule" do not align, for instance with the exceptions in existing Policy AG/LU-12 (i.e., non-agricultural uses are allowed where they support agricultural uses; *see also* footnote 4), and thus promote non-agricultural use of agricultural lands that the existing General Plan policies do not contemplate. Moreover, it is unclear how the de facto conversion of valuable farmland to open space lands would interact with Policy AG/LU-9, which requires long-

[26] The listed policies allow non-agricultural use where: (1) they are accessory to agricultural use (Policy AG/LU-2); (2) they consist of farm labor housing and institutional components that promote agriculture (Policy AG/LU-5); (3) they are limited to single-family residences and child care centers (Policy AG/LU-26); (4) they consist of commercial uses on parcels fronting the west side of the Napa River south of the City of Napa (Policy AG/LU-44); (5) they consist of existing commercial establishments located within a commercial zoning designation (Policy AG/LU-45); and (6) recreational open space and facilities that maintain agricultural productivity (Policy ROS-1).

term preservation of one acre of existing farm land of equal or higher quality for each acre of state-designated farmland that would be converted to nonagricultural uses. The Initiative does not address, much less provide for, the preservation of farmland for each acre affected by its water quality buffer zones and oak woodland protection measures.

The practical effect of these changes could be substantial, though quantifying impacts is difficult. Policy CON-24 currently could be interpreted to require a 2:1 oak tree replacement ratio, whereas the Initiative proposes a 3:1 ratio, and thus would require an increase in mitigation by 50 percent. Meanwhile, there are 2,336 acres of mapped farmland in the County which are currently overlaid with oak woodlands, and which would have to be preserved under Policy AG/LU-9 insofar as this acreage is located in AW zones. Accordingly, the requirements of Policy AG/LU-9 could create conflicts, and result in an inconsistency, with the Initiative's proposed rules (e.g., what if the situation arose where it became necessary to convert oak woodlands into working farmland in order to comply with Policy AG/LU-9's preservation requirements?). There would seem, here, to be a battle of preservation efforts.

Accordingly, the Initiative's protection of natural resources might create a practical obstacle to implementing the County's policies favoring increases in agricultural production.

Moreover, the Initiative might frustrate the realization of General Plan policies that favor the diversification of agricultural products. For instance, Policy AG/LU-10 provides that the "County recognizes that increasing local food production in Napa County and increasing local food purchases by County residents and institutions … will contribute to greater food security, increase agricultural diversity, and create a reliable market for small-scale farmers." (GP-AG/LUE, pp. LU-16, -17.) By placing a limit on development through the establishment of the Oak Removal Limit (*see* Initiative, § 4 [proposed NCC, § 18.20.060(D)]), and by disincentivizing the production of crops besides grapes (*see* Sections III.D.3 and IV.C of this Memorandum), the Initiative potentially frustrates these goals.

6) The Initiative's development restrictions might conflict with policies in the General Plan Conservation Element.

The General Plan's Conservation Element includes the following goals and policies:

- **Policy CON-2.** The County shall identify, improve, and conserve Napa County's agricultural land through the following measures:
    - Provide a permanent means of preservation of open space land for agricultural production;
    - Require that existing significant vegetation be retained and incorporated into agricultural projects to reduce soil erosion and to retain wildlife habitat. When retention is found to be infeasible, replanting of native or non-invasive vegetation shall be required.

  (GP-CE, p. CON-22.)

- **Policy CON-26.** Consistent with Napa County's Conservation Regulations, natural vegetation retention areas along perennial and intermittent streams shall vary in width with steepness of the terrain, the nature of the undercover, and type of soil. The design and management of natural vegetation areas shall consider habitat and water quality needs, including the needs of native fish and special status species and flood protection where appropriate. Site-specific setbacks shall be established in coordination with Regional Water Quality Control Boards, California Department of Fish and Game, U.S.

> Fish and Wildlife Service, National Oceanic and Atmospheric Administration National Marine Fisheries Service, and other coordinating resource agencies that identify essential stream and stream reaches necessary for the health of populations of native fisheries and other sensitive aquatic organisms within the County's watersheds. Where avoidance of impacts to riparian habitat is infeasible along stream reaches, appropriate measures will be undertaken to ensure that protection, restoration, and enhancement activities will occur within these identified stream reaches that support or could support native fisheries and other sensitive aquatic organisms to ensure a no net loss of aquatic habitat functions and values within the county's watersheds. (GP-CE, p. CON-30 to -31.)

In some respects, the Initiative implements the foregoing policies. For instance, with respect to Policy CON-2, the Initiative's imposition of mandatory oak tree mitigation requirements supports Policy CON-2's requirement that property owners replant native vegetation. However, tension exists insofar as Policy CON-2 suggests that preservation of open space and vegetation on agricultural lands should be a secondary consideration to preservation/development of agricultural use on such lands. For instance, the policy requires that existing vegetation be retained and "incorporated into" agricultural projects for the purposes of reducing soil erosion and retaining wildlife habitat and not, as the Initiative proposes, that erosion control and habitat preservation take precedence over agricultural uses.

With respect to Policy CON-26, the General Plan contemplates that site-specific setbacks shall be established in coordination with Regional Water Quality Control Boards, California Department of Fish and Game, U.S. Fish and Wildlife Service, National Oceanic and Atmospheric Administration National Marine Fisheries Service, and other coordinating resource agencies that identify essential stream and stream reaches necessary for the health of populations of native fisheries and other sensitive aquatic organisms within the County's watersheds. It is not clear that the Initiative's formulation of water quality buffer zones, which essentially impose setbacks along certain streams and wetlands, underwent any such review by state and federal agencies, or on what basis the width of these zones was calculated.

7) The Initiative's amendment to CON-24 might conflict with the Summary and Vision Chapter.

The Summary and Vision Chapter currently states that the Conservation Element has been revised from past General Plans to "[m]itigate potential losses of significant biological communities and *oak woodlands countywide* by avoiding their removal or requiring their restoration/replacement, or preservation of like habitat at a 2:1 ratio within Napa County."

The Initiative amends Policy CON-24 to require a 3:1 preservation for removed oak woodlands in the AW zoning district, which conflicts with the Summary and Vision Chapter's description of preservation "countywide" at a 2:1 ratio. This discrepancy appears to create confusion rather than an integrated statement of County policy.[27]

[27] It may be argued that the Summary and Vision Chapter is not material because it is not within a required element of the General Plan. There are two counter-arguments to this position. First, the Government Code requires that the entire General Plan be an integrated, internally consistent policy document, not just the General Plan's elements. Second, arguing against the need to conform the Summary and Vision chapter to the rest of the General Plan calls into question the need for any other conforming amendments in the Initiative's section 5, which includes amendment to the Implementation Element.

8) The Initiative appears to create an inconsistency within General Plan Policy CON-24 insofar as the Policy incorporates the terms of the Oak Woodlands Protection Act.

The Initiative revises CON-24 in relevant part as follows:

> Pursuant to the Napa County Watershed and Oak Woodland Protection Initiative of 2018, require a permit for any oak removal within the Agricultural Watershed zoning district after the Oak Removal Limit is reached unless specified exceptions apply. Continue to m~~M~~aintain and improve oak woodland habitat to provide for slope stabilization, soil protection, species diversity, and wildlife habitat through appropriate measures including one or more of the following:
> …
> b) Comply with the Oak Woodlands Protection Act (PRC Section 21083.4) regarding oak woodland preservation to conserve the integrity and diversity of oak woodlands and retain, to the extent feasible, existing oak woodland and chaparral communities and other significant vegetation as part of residential, commercial, and industrial approvals.
>
> c) Provide for replacement of lost oak woodlands or preservation of like habitat at a minimum 2:1 ratio when retention of existing vegetation is found to be infeasible. Removal of oak species limited in distribution shall be avoided to the maximum extent feasible. Within the Agricultural Watershed zoning district, require replacement of lost oak woodlands or permanent preservation of like habitat at a 3:1 ratio when retention of existing vegetation is found to be infeasible, except where the Napa County Watershed and Oak Woodland Protection Initiative of 2018 provides for an exception to this requirement

(Initiative §3(B)(i) [Text added by the Initiative is underlined].) The proposed language allows "one or more" mitigation measures, including compliance with the Oak Woodland Protection Act (Pub. Res. Code, § 21083.4 et seq), which expressly allows for mitigation through conservation easements for oak woodlands at an unspecified ratio, or payment to an in lieu fund for oak woodland conservation (Pub. Res. Code, §21083.4(b).) The Initiative, in contrast, prescribes a fixed ratio, and does not provide for the payment of in lieu fees.

As discussed in Section III.C.2.a of this Memorandum, there are potential inconsistencies between the Oak Woodlands Protection Act and the Initiative. Because a portion of the General Plan Policy CON-24 incorporates the terms of the Oak Woodlands Protection Act, any such inconsistency would also negatively affect the internal consistency of the General Plan.

9) The Initiative's development restrictions might conflict the provisions of Measure J.

The County's General Plan provides that it is important for the County to make decisions "without substantially decreasing the amount of land designated as Agricultural Reserve (AR) or Agriculture, Watershed and Open Space (AWOS) by the General Plan without approval of the voters pursuant to Measure J." (GP-AP/LUE, p. AG/LU-9.)

Measure J is codified in the General Plan under Policies AG/LU-20, AG/LU-21, AG/LU-110 and AG/LU-111, which provide in relevant part:

- The minimum parcel sizes in AWOS districts is 160 acres, and in AR districts is 40 acres. (*See also* Policy LU-8 [minimum parcel sizes ensure that agricultural areas can be maintained as economic units].)
- The types of uses in AR districts are agriculture, the processing of agricultural products, and single-family dwellings.
- In AWOS and AR districts, the maximum building intensity is one dwelling per parcel.
- Lands designated AWOS or AR may not be re-designated with a different use until December 31, 2058
- Nothing shall be construed or applied to prevent the County from complying with its housing obligations under state law.

The Initiative might conflict with Measure J in the following ways:

- Insofar as the Initiative precludes or substantially limits tree removal within proposed water quality buffer zones and within AWOS or AR districts after the Oak Removal Limit is reached, it effectively might reduce the farmable area of parcels so that they are no longer economically viable. Measure J provides that the minimum parcel size in AWOS districts shall be 160 acres, and that the minimum parcel size in AR districts shall be 40 acres. These minimums, meanwhile, were explicitly set so as to ensure that agricultural areas could be maintained as economic units. Therefore, insofar as the Initiative would reduce, as a practical matter, the availability of developable area in AWOS and AR districts,[28] it could result in parcels that, effectively, are below the minimum acreage requirements and therefore not economically viable. Moreover:
    - The Initiative's oak removal permitting processes contemplate that such permits may not issue unless they are necessary to ensure the economically viable agricultural use of a parcel. (Initiative, § 4 [proposed NCC, § 18.20.060(E)(2).) However, it is unclear whether this permitting requirement contemplates the economic-based, minimum acreage requirement under Measure J. To avoid such a conflict, the Initiative would likely have to be applied in such a manner that, whenever a prohibition against the removal of oak trees or woodlands would result in farmable areas of less than 160 acres in AWOS districts and 40 acres in AR districts, economic need would per se be established. The Initiative does not identify criteria for economic viability and thus is potentially in conflict with Measure J. At best, the Initiative is improperly vague on this point.
    - The Initiative's oak removal permitting process contemplates that such permits may not issue where a parcel is less than 160 acres in area, regardless of what General Plan district the parcel is located in (because AW zones might occur in AWOS, AR, and other General Plan districts). This broad approach potentially conflicts with Measure J's establishment of a 40-acre minimum parcel size in AR districts (GP-AP/LUE, pp. AG/LU-16 to -17 [Policy AG/LU-21]) because, after the Oak Removal Limit is reached, the full number of farmable, 40- to 159-acre parcels envisioned under Measure J potentially would not be developable.
    - Measure J provides that lands designated AWOS or AR may not be re-designated with a different use until December 31, 2058, whereas the Initiative

[28] See statistics regarding developable land and other acreages in Item 5, *supra.*

could, in restricting the removal of oak woodlands, convert mapped farmland[29] in the aforesaid districts to open space preserve and other non-agricultural uses. (*See* Item 5, above.)

10) The Initiative's precedence clause may be unlawful and result in both horizontal and vertical inconsistency among the General Plan and County Code.

The Initiative's conforming amendments purport to render the Initiative consistent with the General Plan (Initiative, § 5), and that if "any provisions of the County Code or of any other County of Napa ordinance or resolution … are inconsistent with the General Plan amendments and County Code amendments adopted by this Initiative," they "shall not be enforced in a manner inconsistent with this Initiative" (Initiative, § 7(A).)

Stated another way, the Initiative provides that inconsistencies between the Initiative and existing General Plan provisions are resolved in favor of the Initiative. The California Supreme Court has held that an agency cannot rely on a precedence clause to fulfill the statutory requirement for an internally consistent and integrated general plan. (*Sierra Club v. Kern County Board of Supervisors* (1981) 126 Cal.App.3d 698.) Specifically, in the matter of *Sierra Club v. Kern County Board of Supervisors*, Kern County's General Plan expressly provided that the land use element would control in the event of conflicts between the land use element and the open space element. The court held that the open space element could not be held legally subordinate to the land use element through the use of a precedence clause.

Furthermore, some of the potential conflict occurs between the Initiative's proposed changes to the County Code and the existing provisions of the General Plan, creating a situation where a zoning provision purports to amend conflicting sections of a general plan. For instance, the Initiative's proposed amendments to the General Plan only generally contemplate restrictions on tree removal within water quality buffer zones and on property in AW zones after the Oak Removal Limit is reached. (Initiative, § 3 [proposed new General Plan Goal AG/LU-8 and Policies AG/LU-0.5 and AG/LU-0.6.) The specific details of these tree removal restrictions, including for instance the oak removal permitting criteria and exceptions list (*see, e.g.,* Initiative, § 4 [proposed NCC, §§ 18.20.060(C), 18.20.060(E)]), have independent potential to conflict with provisions of the existing General Plan. It would be contrary to state law, then, to sanction a precedence clause that nullifies existing general plan provisions on the basis they conflict with details in a new zoning ordinance. The Government Code and court opinions provide that a general plan sits atop the land use planning document hierarchy, and zoning ordinances that are not consistent with a general plan are invalid at the time they are passed. (*Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540, 544.) As such, the Initiative could result in amendments to the County Code that do not comport with provisions of the General Plan.

11) The Initiative might create a vertical inconsistency by rendering portions of the Conservation Regulations inoperable.

[29] This acreage figure was provided by County staff, and describes acres designated using the state's Farmland Mapping and Monitoring Program, which includes the categories of Farmland of Local Importance, Prime Farmland, Farmland of Statewide Importance, and Unique Farmland.

Napa County's Conservation regulations provide steam setback requirements as well as a mechanism for the Planning Commission to approve exceptions to those setbacks on a case-by-case basis. (NCC, §18.108.025 & 040.) This existing framework differs from the Initiative's water quality buffer zone setbacks in a number of ways, including: (1) the two watercourse setback regulations involve streams that are defined differently; (2) the setback distances are different; (3) the list of prohibited uses within the setback areas are different; and (4) the list of uses that are permitted in setback areas as exceptions/exemptions are different.

The County Code's existing setback framework applies to "streams," which are defined as:

- Watercourses designated by a solid line or dash and three dots symbol on the largest scale of the United State Geological Survey maps most recently published, or any replacement to that symbol;
- Any watercourse which has a well-defined channel with a depth greater than four feet and banks steeper than 3:1 and contains hydrophilic vegetation, riparian vegetation or woody-vegetation including tree species greater than ten feet in height; those
- Those watercourses listed in Resolution No. 94-19 and incorporated herein by reference.

(NCC, §18.108.030.) The Initiative's setbacks, meanwhile, prevent development in areas surrounding "Class I, II, or II" streams, defined as follows:

- "Class I stream" means a perennial watercourse that serves as a domestic water supply, or that provides habitat to sustain fish for all or part of the year.
- "Class II stream" means a perennial or intermittent watercourse that provides aquatic habitat for non-fish aquatic species, including invertebrates.
- "Class III stream" means an intermittent or ephemeral watercourse showing evidence of a defined bed and banks, annual scour and capacity to transport sediment to a Class I or Class II stream.

(Initiative, § 4 [proposed NCC, § 18.20.050(D)(1)-(3).)[30]

Accordingly, there are streams that would be subject to the Initiative, but that would not trigger application of the County's existing setback rules, such as intermittent watercourses showing evidence of a defined bed and bank, but which do not have a bed deeper than four feet and banks steeper than 3:1. Meanwhile, there are streams subject to the County's existing setback rules that would not be subject to the Initiative's provisions, such as a watercourse designated on a recent United State Geological Survey map that does not, for instance, have a defined bed or bank. Note, also, that the Initiative contemplates buffers around wetlands, whereas the County's existing framework does not.

The geometry of the Initiative's setbacks, when compared to existing setbacks, also differs. Setbacks established in the County's existing code range from 35 feet to 150 feet depending on the slope of surrounding lands, with buffers increasing as slopes increase. (NCC,

[30] These stream classifications, incidentally, appear to loosely match the water classifications set forth in Table I of Title 14, California Code of Regulations, section 916.5, which the State of California uses to determine watercourse and lake protection zones in regulating timber operations. However, it does not appear the Initiative incorporates these state definitions, or attempts to regulate timber operations.

§18.108.025.)[31] The Initiative, meanwhile, prescribes setback distances depending on the type of stream or wetland involved (e.g., Class 3 streams have a setback of 25 feet, Class 1 streams have a setback of 125 feet, and wetlands have a setback of 150 feet), without regard to topography. (Initiative, § 4 [proposed NCC, § 18.20.050(A)(1)-(4).)

The categories of uses permitted in the two different setbacks are also different. With respect to the existing stream setbacks, construction of main or accessory structures, earthmoving activity, grading or removal of vegetation, or certain agricultural uses of land shall be prohibited within the stream setback areas. (NCC, §18.108.025) Please note that "earthmoving activities" are defined fairly broadly, and include "any activity that involves vegetation clearing, grading, excavation, compaction of the soil, or the creation of fills and embankments to prepare a site for the construction of roads, structures, landscaping, new planting, and other improvements. It also means excavations; fills or grading which of themselves constitute engineered works or improvements." (NCC, §18.108.030) The types of prohibited agricultural uses include *growing and raising trees*; grazing livestock, selling agricultural products, animal husbandry, and other farming activities. (NCC § 18.08.040, emph. added.) The Initiative, meanwhile, prevents only the removal of trees within its proposed water quality buffer zones, and does not more broadly prohibit land uses. (Initiative, § 4 [proposed NCC, § 18.20.050(B).)

Note, the existing prohibition on growing and raising trees in a stream setback zone potentially conflicts with Initiative's tree removal mitigation requirements, which require on-site mitigation unless it is "infeasible" to do so. (Initiative, § 4 [proposed NCC, § 18.20.050(A)(2).) It is unclear, then, whether the existing prohibition on "growing and raising trees" in an existing setback area is a legal infeasibility that enables a property owner to mitigate tree removal at an offsite location, or if the Initiative's prioritization of on-site mitigation nullifies the existing prohibition on planting trees in a stream setback area. This ambiguity presents a legal vulnerability.

The types of uses permitted in the two setback areas, referred to herein as "exceptions,"[32] also differ. The existing stream setback regulations permit a broad variety of exceptions, as summarized in the table on the next page.

[31] Note that the provisions of Chapter 18.108 protect natural resources in areas besides stream setbacks. For instance, earthmoving is generally prohibited in stream setback areas, precluded on slopes greater than 30 percent, and subject to permitting requirements on slopes greater than five percent. (NCC, §§ 18.108.025(B), 18.108.060, 18.108.070(A)&(B).) In some respects, then, the existing County Code protects a broader array of properties.

[32] County Code Chapter 18.108 identifies both exceptions and exemptions. The former denotes activities that need not comply with stricture regulations so long as a use permit is issued, whereas exempt activities are generally entirely free of the strictures of Chapter 18.108. (*Compare* NCC, § 18.108.040 *with* NCC, §§ 18.108.050.)

Uses permitted in existing stream setbacks under Chapter 18.108 of the County Code	Uses permitted in Initiative's water quality buffer zones[+]
[+]exceptions are placed in rows best corresponding to exceptions in existing County Code)	
Maintenance of existing legal vineyards or other agricultural crop*	Replanting within the footprint of existing vineyards or within the footprint of vineyards having obtained all legally required discretionary permits from the County where the initial vineyard planting or final discretionary permit approval occurred prior to the effective date of the Napa County Watershed and Oak Woodland Protection Initiative of 2018*
Use and maintenance of existing tractor turnaround areas, agricultural roads, recreational roads, trails and crossings*	No analog
Activities which are consistent with agricultural practices in the area and which are intended to protect the security and safety of the surrounding area including, but not limited to, fire, flood protection and bank stabilization, weed control, trespass and nuisance protection*	No analog
Development and maintenance of those water resources, including pumps, that are necessary for agricultural and domestic purposes*	No analog
Maintenance and replacement of existing public works facilities such as pipes, cables, culverts and the like*	No analog
Maintenance of existing or restoration of previously dredged depths in existing flood-control projects and navigational channels authorized by a permit issued by the director of public works pursuant to Title 16*	Where required for the development or maintenance of flood control projects, provided that the development or maintenance occurs pursuant to all applicable laws*
Construction of nonmotorized vehicular and pedestrian trails*	No analog
Construction of new public works projects such as drainage culverts, stream crossings when such projects are specifically authorized and permitted by existing state, federal or local law*	Where undertaken or authorized by a federal or state agency* Where required for the development or maintenance of public works facilities, provided that the development or maintenance occurs pursuant to all applicable laws*
Construction activities undertaken by or under the auspices of a federal, state or local agency to preserve or restore existing habitat areas*	
Removal of vegetation as authorized by the director or designee to alleviate an existing hazardous condition*	To remove downed and dead trees or dying or diseased trees*
Other uses similar to the foregoing found by the director or designee to be consistent with the intent of this chapter*	No analog
Installation of stream crossings, recreational roads, and equestrian and nonmotorized trails in accordance with appropriate permits from other state, federal and local use permit requirements when it can be determined by the director or designee that the least environmentally damaging alternative has been selected as a part of an approved project*	Where required for the development or maintenance of pedestrian, bicycle; or equestrian trails or stream crossings, provided that the development or maintenance occurs pursuant to all applicable laws*
Additions to existing single-family residences or other structures allowed without a use permit where the proposed addition is attached and when no earthmoving or grading is required***	No analog
Maintenance of private access roads, such as	No analog

resurfacing, cleaning ditches, etc.***	
Clearing of vegetation and/or grading in connection with:*** -the construction, remodeling or other improvements of single-family residences and/or associated accessory structures permitted before May 13, 1991; -the planting and/or maintenance of decorative landscaping and/or construction of landscape structures meeting certain standards; -for projects specifically authorized by any use permit or other administrative or discretionary permit, including small winery exemptions, issued by the county of Napa or Napa County water conservation and flood control district prior to June 11, 1991;	
-any septic or wastewater system, or water well;	Where required for the development or maintenance of water wells, water resources and storage facilities, septic or wastewater systems or other facilities necessary for the protection of public health, provided that the development or maintenance occurs pursuant to all applicable laws*
-other facilities necessary for the protection of public health;	Where necessary to avert an imminent threat to public health and safety*
- correction of any problem involving hazardous wastes or materials, where such construction or corrective activity is required by, and completed under the supervision of the County planning department to comply with federal, state or local standards; minor trenching (so long as such work is conducted and restored outside the winter shutdown period and outside the required stream setbacks); - preliminary testing for site suitability for septic systems or water wells; -creation and/or maintenance of firebreaks required by, and completed under the direction of the California Department of Forestry and Fire Protection; -a state timber harvesting permit or other state or federal permit;	Where undertaken by or at the direction or order of a federal, state or local agency as part of a project or program to preserve, restore or improve habitat, or alleviate an existing hazardous condition*
-a city permit for city-owned properties;	On land owned by any public agency*
-the abatement of a public nuisance;	Where undertaken by or at the direction or order of a federal, state or local agency as part of a project or program to abate a public nuisance*
-the clearing of temporary erosion control cover crops and/or grading activities, but only in conjunction with the planting of agricultural crops or installation of erosion control measures on land cleared of vegetation and/or graded prior to May 13, 1991; -completion of multi-year phased agricultural,	

vegetation and/or grading activities approved pursuant to certain County ordinances; -activities which are consistent with existing agricultural practices, including but not limited to, post hole digging, fire protection and prevention, and weed control; maintenance operations for ongoing agricultural activities, including maintenance of existing roads, existing erosion and sediment control devices, and activities involving minimal soil disturbance such as discing, spraying, fertilizer applications, shallow ripping for root stimulating, trellising, installation of irrigation, fencing, and minor trenching for repair work; -earthmoving activity associated with mining and mining-related activities conducted pursuant to and in compliance with an approved surface mining and reclamation permit; earthmoving activity and construction of improvements authorized by a final map or development agreement approved and recorded by the county of Napa after January 1, 1986; -earthmoving activity and construction of improvements authorized by use permit, site plan approval and building permit approval where provisions for erosion control were included as part of the approved permit for projects located within the industrial park or the general industrial zoning districts; -replanting of existing vineyards when the area to be replanted involves less than one acre, and the footprint of the replanting area does not change, and any re-contouring, grading or re-engineering is necessary to correct existing erosion or water quality problem, regardless of slope percent of the area to be replanted; -repair and maintenance of existing water storage facilities when no permit is required from any federal, state or local agency; and -construction of a water tank in connection with an existing dwelling where no construction of a roadway is necessary and the slope is fifteen percent or less.	See vineyard replanting exception in first row*
No analog	Within a recorded utility right-of-way
For structural/road development projects: roads, driveways, buildings and other man-made structures have been designed to complement the natural landform and to avoid excessive grading; and primary and accessory structures employ architectural and design elements which in total serve to reduce the amount of grading and earthmoving activity required for the project, so long as these projects meet other defined parameters**	Within eleven (11) feet of the centerline of any driveway that serves an existing or proposed structure for which all legally required permits have been issued* Where required for the development or maintenance of access roads, provided that the development or maintenance occurs pursuant to all applicable laws*
Agricultural projects and agricultural roads (as defined by Napa County department of public works) meeting	No analog

defined standards**	
No analog	Within one hundred fifty (150) feet from any point of a residence or any other structure that is subject to the requirements of the California Building Code or from any point of any proposed such residence or structure for which the owner has obtained all legally required permits*
No analog	Where required for the development or maintenance of solar energy systems; electric vehicle charging stations; telecommunications or cellular towers, provided that the development or maintenance occurs pursuant to all applicable laws*

* Such exceptions are permitted by right and/or require no special permits

** Such exceptions require a use permit

*** Such activities are exempt from County Code Chapter. 18.108 whether or not they occurs within stream setback areas.

(NCC, §§ 18.108.25, 18.107.040, 18.108.050; Initiative, § 4 [proposed NCC, § 18.20.050(C)&(E).)

In general, the list of exceptions and exemptions to the development restrictions within existing stream setbacks is much more expansive than the list of exceptions to the water quality buffer zones proposed by the Initiative. That said, there are a handful of exceptions to the Initiative's proposed water quality buffer zones that do not appear as exceptions under existing law, including exceptions for buffers around residences, solar energy systems, electric vehicle charging stations, telecommunications or cellular towers, on lands owned by all public agencies (where the existing exception merely covers city-owned properties), and within recorded utility rights-of-way.

Overall, the Initiative would enact a separate setback framework prohibiting the removal of trees in water quality buffer zones, whereas existing laws more broadly prohibit development in stream setback areas. Overlap would occur, then, insofar as existing setback regulations also prohibit the removal of trees. Where there is a conflict with respect to tree removal, the Initiative appears to contemplate that the more restrictive regime would control. For instance, the Initiative provides that nothing encoded in its terms "shall preclude the County from requiring larger stream or wetland setbacks pursuant to any other policy or regulation." (Initiative, § 4 [proposed NCC § 18.20.050(F)].)by its own terms would control, though there is some ambiguity as to whether the more restrictive provision would control.

In general, the number of permitted activities, especially with respect to agricultural uses, would be less numerous under the Initiative's framework, though in some respects the Initiative allows uses not contemplated by existing law. However, it would appear that the more restrictive provision ultimately would control.

Another point of conflict involves the existing prohibition on growing and raising trees in a stream setback zone. Again, the Initiative's tree removal mitigation requirements require on-site mitigation unless it is "infeasible" to do so (Initiative, § 4 [proposed NCC, § 18.20.050(A)(2)), and so it is unclear whether the existing prohibition on "growing and raising trees" in an existing setback area is a legal infeasibility that enables a property owner to mitigate tree removal at an offsite location, or if the Initiative's prioritization of on-site mitigation nullifies the existing prohibition on planting trees in a stream setback area. This ambiguity presents a legal vulnerability.

12) The proposed Initiative arguably would conflict with General Plan policies requiring a stable and consistent regulatory environment.

The following General Plan policies require a stable and consistent regulatory environment:

- **Goal AG/LU-6:** Create *a stable and predictable regulatory environment* that encourages investment by the private sector and balances the rights of individuals with those of the community and the needs of the environment. (GP-AP/LUE, p. AG/LU-12, emph. added)

- **Policy AG/LU-107:** The County shall provide *a clear, consistent, timely, and predictable review process* for all proposed projects, ensuring that all applicants are treated fairly, that staff's analysis is objective, and that decision-makers and interested members of the public receive information and notice as required by law. (GP-AP/LUE, p. AG/LU-63, emph. added)

- **Action Item AG/LU-107.1:** Undertake revisions to the zoning ordinance (County Code Title 18), *simplifying and reorganizing to the extent feasible so that members of the public, applicants, planners, and decision-makers can more easily access information and understand code requirements*. (GP-AP/LUE, p. AG/LU-63, emph. added)

On the one hand, the Initiative makes long-lasting changes to County's General Plan and Code of Ordinances, providing that its provisions only may be changed by a vote of the people. This fact favors stability. On the other hand, and as explained above, there are a number of conflicts between the Initiative's provisions and existing policies and regulations, creating ambiguities and uncertainties. Insofar as the Initiative has the potential to create a system of regulation that is inconsistent and unpredictable for any proposed project on affected parcels (*see, e.g.,* discussion above regarding overlapping stream setback regulations), the Initiative potentially results in unfair treatment to current owners of parcels who may see neighbors disparately burdened or benefited based on the existing configuration of their land. Such a framework could be deemed unstable and not conducive to investment.

13) The proposed Initiative arguably would conflict with General Plan policies requiring equitable treatment of property owners.

The General Plan mandates equal treatment of persons:

- **Policy AG/LU-106:** The County shall seek to ensure that equal treatment is provided to all persons, communities, and groups within the county in its planning and decision-making processes, regardless of race, age, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, gender, self-identified gender or sexual orientation, or economic status.

Thus, to the extent the proposed Initiative may engender a viable claim of violation of equal protection rights, it also may, depending on the proclivity of the County's Board, be deemed to create an inconsistency with the aforementioned policy in the General Plan. The viability of an equal protection claim is discussed in Section III.D.3 of this Memorandum. In short, the Initiative's limited exceptions for vineyards and telecommunication and cellular towers, with no corresponding exception for other agricultural and private land uses, creates a vulnerability for the Initiative.

14) The proposed Initiative arguably would conflict with General Plan policies that require the County to maintain flexibility in its planning.

Sections 3, 4, 5, 7(D) and 10 of the proposed Initiative, without qualification, provides that the language in the Initiative may only be "repealed or amended by vote of the people of the County." This approach potentially might conflict with the following General Plan policies that reserve to the County flexibility in its land use planning:

- **General Agricultural Preservation and Land Use Policy:** Preserving the economic viability of agriculture by helping to position Napa County to compete globally and by accepting the industry's *need to adapt and change* is a goal that is inherent in the policies presented in this Element. (GP-AP/LUE, p. AG/LU-9, emph. added.)

- **Policy AG/LU-33:** *The County will promote development concepts that create flexibility, economy, and variety in housing* without resulting in significant environmental impacts and without allowing residences to become timeshares, resorts, hotels, or similar tourist-type accommodations. (GP-AP/LUE, p. AG/LU-19, emph. added)

- **Policy AG/LU-109:** The County recognizes the principle of sustainability by seeking to address community needs *without compromising the ability of future generations to meet their own needs*. (GP-AP/LUE, p. AG/LU-62, emph. added)

The County Board of Supervisors would be within its discretion to determine that the flexibility provided for in this policy could be compromised by the Initiative to the extent it actually requires a vote of the electorate for *any* amendment to the Land Use Map.

At the same time, in the *DeVita v. County of Napa* (1995) 9 Cal.4th at 796, 789, the plaintiffs attacked Measure J on the theory it interfered with the flexibility of good land use planning. The court noted that, while a static general plan would be "ineffective and eventually obsolete … it is also desirable that plans possess some degree of stability." (*Id.*) The court ultimately determined that Measure J was lawfully adopted, noting that it had a sunset date. (*Id.* at 791.) It appears a court would similarly find that the Initiative is lawful, given that local agencies have the discretion to decide how frequently a general plan amendment can be, though the fact that the Initiative has no specific sunset date creates a small amount of vulnerability. Ultimately, so long as the County does not interpret its General Plan flexibility provisions to forbid permanent changes to agricultural promotions policies, the Initiative is likely to survive judicial attack based on flexibility concerns.

APPENDIX B: Stream Definitions Comparison Provided by Proponents of Initiative

Source	Class I	Class II	Class III
Napa County Watershed and Oak Woodland Protection Initiative of 2018	a perennial watercourse that serves as a domestic water supply, or that provides habitat to sustain fish for all or part of the year. (125 ft)	a perennial or intermittent watercourse that provides habitat for non-fish aquatic species, including invertebrates. (75 ft)	an intermittent or ephemeral watercourse showing evidence of a defined bed and banks, annual scour and capacity to transport sediment to a Class I or Class II stream. (25 ft)
14 CFR 916.5 (Dept Forestry/Fire Protection)	1) Domestic supplies on site and/or within 100 feet downstream of the operations area and/or 2) Fish always or seasonally present onsite includes habitat to sustain fish	Fish always or seasonally present offsite within 1,000 feet downstream and/or 2) Aquatic habitat for non-fish aquatic species 3) Excludes Class III waters that are tributary to Class I Waters	No aquatic life present; watercourse showing evidence of being capable of sediment transport downstream to waters Class I or Class II waters under normal high water flow conditions after completion of timber operations
Policy for Maintaining Instream Flows in Northern California Coastal Streams, Effective February 4, 2014, Division of Water Rights, SWRCB, Cal EPA	Fish are always or seasonally present, either currently or historically; and habitat to sustain fish exists.	Seasonal or year-round habitat exists for aquatic non-fish vertebrates and/or aquatic benthic macroinvertebrates.	An intermittent or ephemeral stream exists that has a defined channel with a defined bank (slope break) that shows evidence of periodic scour and sediment transport
Lake County, California Code of Ordinances Sec. 30-4			An intermittent or ephemeral watercourse having a defined bank and channel and a width to depth ratio of five to one (5:1) or less and shows evidence of annual scour and sediment transport
Measure P	A perennial, seasonal, or intermittent watercourse in which, in a year with average rainfall, fish are always or seasonally present onsite or habitat to sustain fish migration or spawning exists (100-150 ft standard setback)	A perennial, seasonal, or intermittent watercourse or spring in which, in a year with average rainfall, habitat for aquatic non-fish vertebrates and/or aquatic, benthic macroinvertebrates exists. (75-150 ft standard setback)	An intermittent or ephemeral watercourse having a defined channel with a defined top of bank (slope break) and a width to depth ratio of 5:1 or less showing evidence of annual scour and sediment transport (25 ft standard setback)
Measure O			same as Initiative: "Class III stream" means an intermittent or ephemeral watercourse showing evidence of a defined bed and banks, annual scour and capacity to transport sediment to a Class I or Class II stream.

The 2018 Initiative and Vineyard Development Potential

If the 2018 Initiative were to pass, analysis done on behalf of the Napa Valley Vintners ("NVV") indicates that new vineyard development would continue to be allowed as follows:

- Agricultural Watershed: It would still allow up to approximately 5,679 acres[1] of currently undeveloped land in the AW district to be converted to vineyard pursuant to the current ECP process with the exception of requiring new setbacks and meeting the 3:1 mitigation requirements.
  - This is a 13% increase over the existing 45,000 acres[2] planted in Napa County.
  - Based on the County approved ECP acreage of 4,321 between 2005 and 2017 and the Draft Climate Action Plan 1,726 acres of vineyard conversion between 2005 and 2014, it is estimated that over 2,000 currently approved but undeveloped acres remain available for development. These acres would not subject to the Oak Removal Limit.[3] (See discussion of Wildfires below.)
- Timberland in Agricultural Watershed: The Initiative excludes "timberland" from the definition of oak woodland. The 42,431 acres of land classified as Coniferous Forest, includes 29,676 acres[4] of land dominated by conifer tree species, such as, Douglas fir and coastal redwoods that would likely require a Timber Conversion Permit ("timberland") and therefore, would not be subject to the Oak Removal Limit. Increased stream and wetland setbacks would apply.
- Agricultural Preserve: The 2018 Initiative applies only to the AW district, therefore the approximately 2,230 acres[5] of land suitable for vineyard development in the AP district would be unaffected.
  - This is a 5% increase over the existing 45,000 acres planted in Napa County.
- Wildfires and Oak Removal Limit: Based on the plain language of the 2018 Initiative it is possibly that the wildfires will have an impact on the calculation of the 795 Oak Removal Limit. However, the 2018 Initiative requires that the calculation of the 795-acre Oak Removal Limit be based on the total acreage of oak woodlands *removed* plus those approved for future *removal* since September 1, 2017. The Initiative defines "remove" and "removal" as "causing a tree to die or be removed as a result of human activity by [among other things]…*intentional burning*…" The recent fires were a result of numerous causal factors, such as, extremely dry conditions and high winds, we are not aware of any evidence of intentional causes at this time.
  - Questions have been raised regarding whether the Oak Removal limit has already been reached due to the initiative's language and more recently due to the wildfires. The former concern appears to have been addressed by additional language included in the initiative clarifying that the calculation of the Oak Removal Limit only includes those oak woodlands removed or approved for removal since September 1, 2017; however, the later position is based on the fact that there is no express exception for "acts of god" or "natural disasters". While it is correct that there is no express exception, it is important to note the definition of "remove" and "removal", as discussed above. That said, there remain questions regarding whether any oak trees that have been physically removed by the County, other governmental agencies or contractors will be exempt based on the Initiative excluding oak removal undertaken at the direction of the state or federal government. It's also possible that property owners have removed additional oak woodlands independent of government approval.

[1] This acreage estimate is based on a technical appendix to the County's Draft Climate Action Plan, which indicates that from 2005-2014, approximately 253 acres of Oak woodlands were removed and approximately 1,726 acres of total vineyard were converted. (253/1726 = 14% (rounded down).) *See* Draft Climate Action Plan (June 2017), Appendix A, Revised Final Technical Memo #1, August 25, 2016 ("DCAP, App. A") p. 20, Table 14. The County confirmed that between January 1, 2005 and May 1, 2017 it had approved 4,321 acres of new vineyard. This resulted in there being 5,679 acres remaining out of the General Plans projection of up to 10,000 acres of new vineyards between 2005 and 2030. The remaining acreage of 5,679 x .14 = 795.06 acres of estimated oak woodland removal. Note that some portion of the 795-acre Oak Removal Limit will not be available for vineyard development due to other uses that would also result in the removal of oak woodland.

[2] County of Napa

[3] It should be noted that approved acres includes access roads, reservoirs, etc. and do not reflect net vineyard acres.

[4] Napa County Baseline Data Report, Biological Resources, November 30, 2005, Table 4-3.

[5] Tessera Sciences GIS analysis of remaining vineyard acreage in AP District prepared for NVV.

APPENDIX D: Press Release

BULLETIN

Subject: NVV and Environmental Leaders Collaborate to Protect Woodlands and Watershed

Date: September 5, 2017

NVV is collaborating with local environmental leaders in support of a ballot initiative that will protect oak woodlands and the local watershed.

The Napa County Watershed and Oak Woodland Protection Initiative of 2018 establishes enhanced water quality buffer zones and oak woodland protections in the Ag Watershed, without overburdening responsible property owners.

The initiative has been filed with the County Clerk's office for the June 2018 ballot. It comes following several months of thoughtful discussions and compromise between our leadership and Mike Hackett and Jim Wilson, co-authors of last year's similar initiative effort that did not qualify for the ballot due to a legal technicality. NVV actively opposed the 2016 proposal, which lacked industry input.

What Will the Initiative Accomplish?

Together, we identified common ground to enhance environmental protections in the Ag Watershed (AW):

- **Water Quality Buffer Zones**: Compromise on buffer zones around creeks and streams in the AW was achieved by looking back at 2004's Measure P, a stream setback ordinance championed by NVV and other industry partners. The new initiative will expand the definition of watercourses subject to stream setbacks by utilizing common stream classification definitions, compared to the county's current unique definition. Class 2 streams will have a 75' setback and Class 3 streams will have a 25' setback. Presently, setbacks are 35' to 150' based on slope.
- **Oak Woodland Protection:** Compromise on oak woodland preservation includes a new mitigation ratio for removal of oaks of 3:1, rather than the existing 2:1. A qualified professional must prepare the mitigation plan and at least 80 percent of the replanted trees must survive at least five years. The initiative does not include a new permit process for

removal of oaks.

- **General Plan Projections Used to Limit Future Oak Woodland Removal:** The joint initiative proposes a limit on oak woodland acreage that can be removed within the AW. The limit is based on the amount of oak woodland removal associated with vineyard development envisioned through the lifetime of the current Napa County General Plan in 2030. With limited exceptions, further removal of oak trees above this limit would be precluded after that date, unless voters decided to increase it. Future vineyards could be developed in the same manner as now, provided this development didn't involve further removal of oak woodlands.

It's important to note that the initiative is forward-looking and will not affect vineyard replants.

Why Did We Do This?

Goal 2 of the NVV's Strategic Plan calls for us to "**Protect and enhance the Napa Valley, its wines, environment and community"** and to "Improve our environment" by "developing and advocating for strong conservation-based positions to protect and enhance natural resources." The joint initiative helps accomplish this goal and strategy.

Though the 2016 initiative, which we and other industry groups actively opposed, failed to qualify for the ballot, we never considered that a "win" for the wine industry. Rather, it inspired us to explore common ground and the chance to collaborate with the original petitioners, given they had publicly declared their intent to come back with a new ballot measure. Together, we found an approach that we believe will receive widespread support and eliminate the need for a potentially costly and divisive community campaign with an uncertain outcome.

When presented with the concept over the summer, **initial feedback from County leaders has been extremely enthusiastic.** They, too, recognize the value of industry and environmental leaders working together for common community benefit, as we have done in the past.

What's Next?

The Napa County Watershed and Oak Woodland Protection Initiative of 2018 will receive a Title and Summary from the County. This month, we'll begin a signature gathering campaign. Approximately 5,000 registered voters must sign on for the initiative to qualify for the June 2018 ballot. Concurrently, we will be reaching out to build a broad coalition of stakeholder and community

support.

How Can You Help?

- If you are registered to vote in Napa County, be one of the 5,000 signatories to help this initiative qualify for the ballot.
- Spread the word to your friends, neighbors and colleagues on the win/win aspects of the initiative: enhanced environmental protection without undue burden on responsible property owners.

Leaders in our community have a long and successful history of collaboration and compromise for the greater good, going back to the establishment of the Ag Preserve a half century ago. There are numerous examples since. **This is the next step in that proud local tradition.**

We thank NVV Board Chair Michael Honig and NVV Community and Industry Issues Chair Russ Weis for the countless hours they have invested in this effort, as well as neighbors Mike Hackett and Jim Wilson for the spirit of collaboration demonstrated in this process.

APPENDIX E: Approved and Pending Projects Potentially Removing Oak Woodlands

TRACK I EROSION CONTROL PLANS, APPROVED SINCE 2017-09-01

	ESTIMATED ACRES REMOVED BY ECP, BY VEGETATION CLASS								
Project by parcel number	**Agriculture**	**Coniferous forest**	**Developed**	**Grassland**	**Oak woodlands**	**Riparian woodland**	**Rock Outcrop**	**Shrubland**	**Total by ASMT**
P15-00006 (LPC California Associates, LLC)									
018200022000		0.08			0.07				0.15
018230002000	0.33	4.43	1.72		10.90				17.39
018230004000		0.01	0.06						0.07
018230009000	0.00	0.02	0.01						0.03
Gross project acres: 18.7	***0.34***	***4.54***	***1.79***		***10.97***				***17.63***
P15-00399 (VANGONE VINEYARDS)									
032440005000				0.14	0.04		1.61	4.37	6.17
032440006000								0.06	0.06
Gross project acres: 6.2				***0.14***	***0.04***		***1.61***	***4.43***	***6.23***
P16-00230 (Steinschriber Vineyard)									
018200022000		0.74			2.29				3.03
Gross project acres: 3.1		***0.74***			***2.29***				***3.03***
P17-00033 (Tower Snow ECP)									
039020035000					0.03				0.03
039630006000					0.12				0.12
039640008000				0.41					0.41
039640010000				2.09	8.04				10.13
Gross project acres: 10.4				***2.50***	***8.20***				***10.69***
P17-00217 (Okell Holdings Track I New ECP)									
033140049000	10.55			0.09	0.57	0.03			11.23
033140052000	0.01				0.02				0.03
033340015000	0.01					0.02			0.02
Gross project acres: 11.28	***10.57***			***0.09***	***0.58***	***0.05***			***11.28***
P17-00249 (Hanabi 100 Acres Track I ECP)									
032530028000				2.09	0.03				2.13
Gross project acres: 2.2				***2.09***	***0.03***				***2.13***
P17-00280 (Falcor Track I ECP)									
043102016000				0.00					0.00
043190029000				0.26	0.00				0.26
043190030000				1.86	0.17				2.03
Gross project acres: 18.7				***2.12***	***0.18***				***2.29***
Grand Total	**10.90**	**5.27**	**1.79**	**6.93**	**22.29**	**0.05**	**1.61**	**4.43**	**53.28**

all measurements are in acres

TRACK I EROSION CONTROL PLANS, PENDING AS OF 2018-02-12

ESTIMATED ACRES TO BE REMOVED BY ECP, BY VEGETATION CLASS

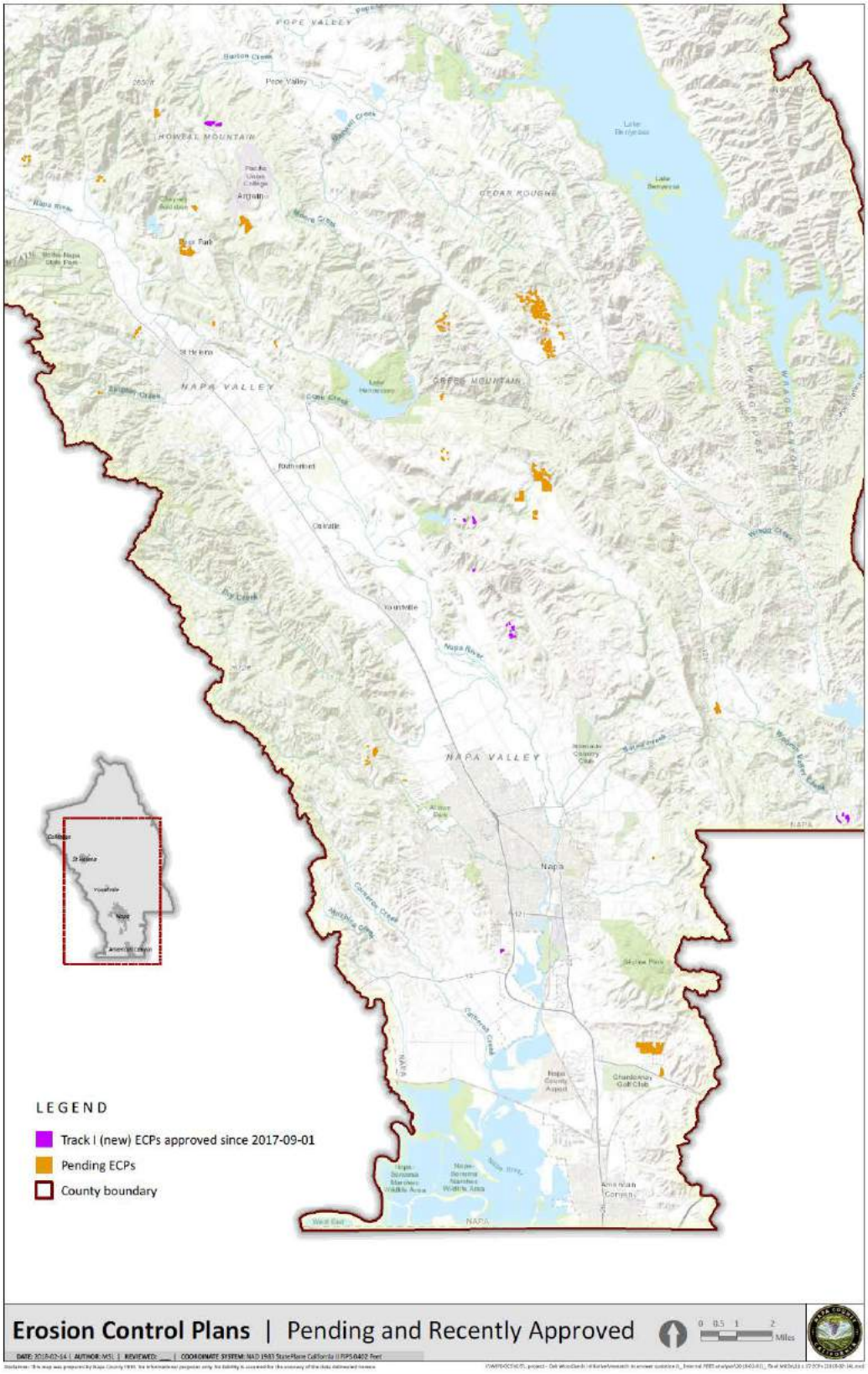
Project by parcel number	Agriculture	Coniferous forest	Developed	Grassland	Oak woodlands	Other	Riparian woodland	Shrubland	Streams and reservoirs	Total by ASMT	Oak Woodland acres within stream setbacks*
P13-00373 (Davis Estates Track I ECP)											
018060011000					0.12			0.05		0.17	0.02
018060012000				0.10	1.16			4.36		5.62	0.22
018060013000					2.23			5.14		7.37	
018060076000				0.04	0.05					0.09	
Gross project acres: 15 / TOTALS:				***0.14***	***3.56***			***9.55***		***13.25***	**0.24**
P14-00043 (Frostfire Vineyards)											
021010074000		0.38	0.53		3.18		0.39			4.48	
021020007000			0.00		0.00					0.00	
Gross project acres: 4.5 / TOTALS:		***0.38***	***0.53***		***3.18***		***0.39***			***4.48***	**0**
P14-00322 (Anthem Winery)											
035460034000				0.00	0.01					0.01	
035460038000				0.53	0.28					0.82	
Gross project acres: 1.2 / TOTALS:				***0.53***	***0.29***					***0.82***	**0**
P14-00410 (Le Colline/Cold Springs, LLC)											
024300070000		1.19			2.27			4.45		7.91	
024300071000		4.30						2.53		6.83	
024300072000		6.20	0.29		3.36			3.12		12.96	
024324005000			0.00							0.00	
024332022000					0.09			0.16		0.24	
024340001000	1.00	5.01			0.79			0.21		7.01	
024340010000		0.00								0.00	
Gross project acres: 34.8 / TOTALS:	***1.00***	***16.70***	***0.29***		***6.50***			***10.46***		***34.95***	**0**
P15-00342 (Hendrickson Family Vineyards)											
032540015000								0.13		0.13	
032540016000	9.44							18.72		28.16	
Gross project acres: 28.42 / TOTALS:	***9.44***							***18.85***		***28.29***	**0**
P15-00389 (James B. Heiser)											
024450009000	0.12	3.53	0.06		0.11			1.38		5.20	
024450013000	0.05	0.38	0.07		0.00			0.01		0.51	
Gross project acres: 6 / TOTALS:	***0.17***	***3.91***	***0.13***		***0.11***			***1.39***		***5.71***	**0**
P16-00271 (Bremer Family Vineyard)											
021060003000			0.03		0.06					0.09	
021400002000	1.29				2.48					3.77	0.23
021400003000	0.05	0.01			0.25			0.02		0.33	
021400004000	5.48		0.01		0.05			0.05		5.58	
021400005000	2.02		0.01		1.46			2.72		6.22	
021400006000			0.00		0.16					0.16	
021420027000	0.37		0.07		2.53			1.02		3.98	
025370057000		0.98	0.29					1.89		3.16	
025370058000	0.00	0.03	3.98		0.09			4.92		9.03	
025370059000	0.02		0.07							0.09	
Gross project acres: 32.7 / TOTALS:	***9.23***	***1.02***	***4.45***		***7.09***			***10.62***		***32.41***	**0.23**
P16-00323 (Orin Swift Cellars)											
032500010000			0.00							0.00	
032500011000			1.06					11.04		12.09	
032540002000					0.98			5.82		6.80	0.4
032540003000	0.16			3.63	2.84			24.97		31.60	
032540005000								2.10		2.10	
032540007000				0.02				0.63		0.64	
032540021000								0.00		0.00	
032540043000				0.29	1.06			12.79		14.14	0.09
032540046000	0.10							35.15		35.26	
Gross project acres: 117.7 / TOTALS:	***0.26***		***1.06***	***3.93***	***4.87***			***92.51***		***102.63***	**0.49**
P16-00337 (Phelan Ranch)											
025240037000								0.23		0.23	
025440007000	5.34	0.26	0.26					12.73		18.59	
Gross project acres: 18.6 / TOTALS:	***5.34***	***0.26***	***0.26***					***12.96***		***18.82***	**0**

P16-00341 (North Winery LLC)											
025070043000					0.04			0.64		0.67	
025110062000					3.06			0.53		3.60	
Gross project acres: 4.28 / TOTALS:					***3.10***			***1.17***		***4.27***	**0**
P17-00147 (Fantesca Track I)											
022250008000					1.08					1.08	
Gross project acres: 1.05 / TOTALS:					***1.08***					***1.08***	**0**
P17-00196 (Babu Vineyards)											
027010033000		0.61			1.00					1.61	
027010038000					0.41					0.41	
Gross project acres: 2.05 / TOTALS:		***0.61***			***1.41***					***2.02***	
P17-00261 (Denali Track I ECP)											
025070064000		0.09			2.64			0.04		2.77	
Gross project acres: 2.7 / TOTALS:		***0.09***			***2.64***			***0.04***		***2.77***	**0**
P17-00276 (Laird Kirkland Ranch Rd Track I ECP)											
057020081000	0.01									0.01	
057140002000	1.33									1.33	
057140008000				0.13						0.13	
057140013000	2.13									2.13	
057140014000	5.13						0.14			5.26	
057140015000	0.02						0.04			0.05	
057140016000	0.09			87.18		2.91	0.00			90.18	
057140018000				0.01						0.01	
Gross project acres: 99.2 / TOTALS:	***8.71***			***87.32***		***2.91***	***0.17***			***99.10***	**0**
P17-00295 (Kenzo Wooden Vly Track I ECP)											
033040056000				1.66	0.77					2.43	
033380001000	1.26			10.05	1.70					13.01	
Gross project acres: 15.2 / TOTALS:	***1.26***			***11.70***	***2.48***					***15.44***	**0**
P17-00348 (Promise Wine LLC Track I ECP)											
032520009000			3.47		0.90			0.45		4.82	
Gross project acres: 4.75 / TOTALS:			***3.47***		***0.90***			***0.45***		***4.82***	**0**
P17-00431 (Settler's Hill Track I ECP)											
022230012000					0.00					0.00	
022230014000	2.21	1.26			2.40					5.88	
022230015000	0.00				0.03					0.03	
Gross project acres: 5.97 / TOTALS:	***2.22***	***1.26***			***2.43***					***5.91***	**0**
P17-00432 (KJS Sorrento Track I ECP)											
025270022000	1.93			68.25	47.10		0.39	0.75		118.41	0.09
025270025000	0.17			8.40	28.57		0.09	0.18		37.41	0.04
Gross project acres: 155.8 / TOTALS:	***2.10***			***76.64***	***75.67***		***0.48***	***0.93***		***155.82***	**0.13**
P17-00440 (Eisele Vineyard Estate)											
020340030000	0.56	0.09	0.59		5.29					6.53	
Gross project acres: 6.5 / TOTALS:	***0.56***	***0.09***	***0.59***		***5.29***					***6.53***	**0**
P17-00441 (3646 SMR Track I ECP)											
022150026000	0.04	0.03			0.73					0.80	
Gross project acres: 1.5 / TOTALS:	***0.04***	***0.03***			***0.73***					***0.80***	**0**
P18-00001 (Mt. Veeder Vyds Track I ECP)											
034230028000	0.05			2.27					0.01	2.33	
034230029000				15.15	1.27					16.42	
034270026000				0.03	0.00					0.03	
034270035000				0.03						0.03	
034270036000			0.03	0.20	0.00					0.23	
035010001000				0.00						0.00	
035010054000	0.03			0.07						0.10	
Gross project acres: 19.01 / TOTALS:	***0.08***		***0.03***	***17.75***	***1.28***				***0.01***	***19.14***	**0**
P18-00029 (Continuum Estate Track I ECP)											
032010076000								0.40		0.40	
032010091000	1.05				0.04			0.85		1.94	
032030043000					0.48			2.73		3.21	0.02
Gross project acres: 5.5 / TOTALS:	***1.05***				***0.52***			***3.97***		***5.55***	**0.02**
P18-00045 (Ficeli Track I ECP)											
052220025000			1.14		0.13					1.27	
Gross project acres: 1.2 / TOTALS:			***1.14***		***0.13***					***1.27***	**0**
Grand Total	**41.46**	**24.36**	**11.96**	**198.02**	**123.25**	**2.91**	**1.04**	**162.88**	**0.01**	**565.88**	**1.11**

all measurements are in acres

** no timberland acres were included*

APPENDIX F: Map of Approved and Pending Projects



APPENDIX G: Map of Developed v. Undeveloped Lands in AW Zones

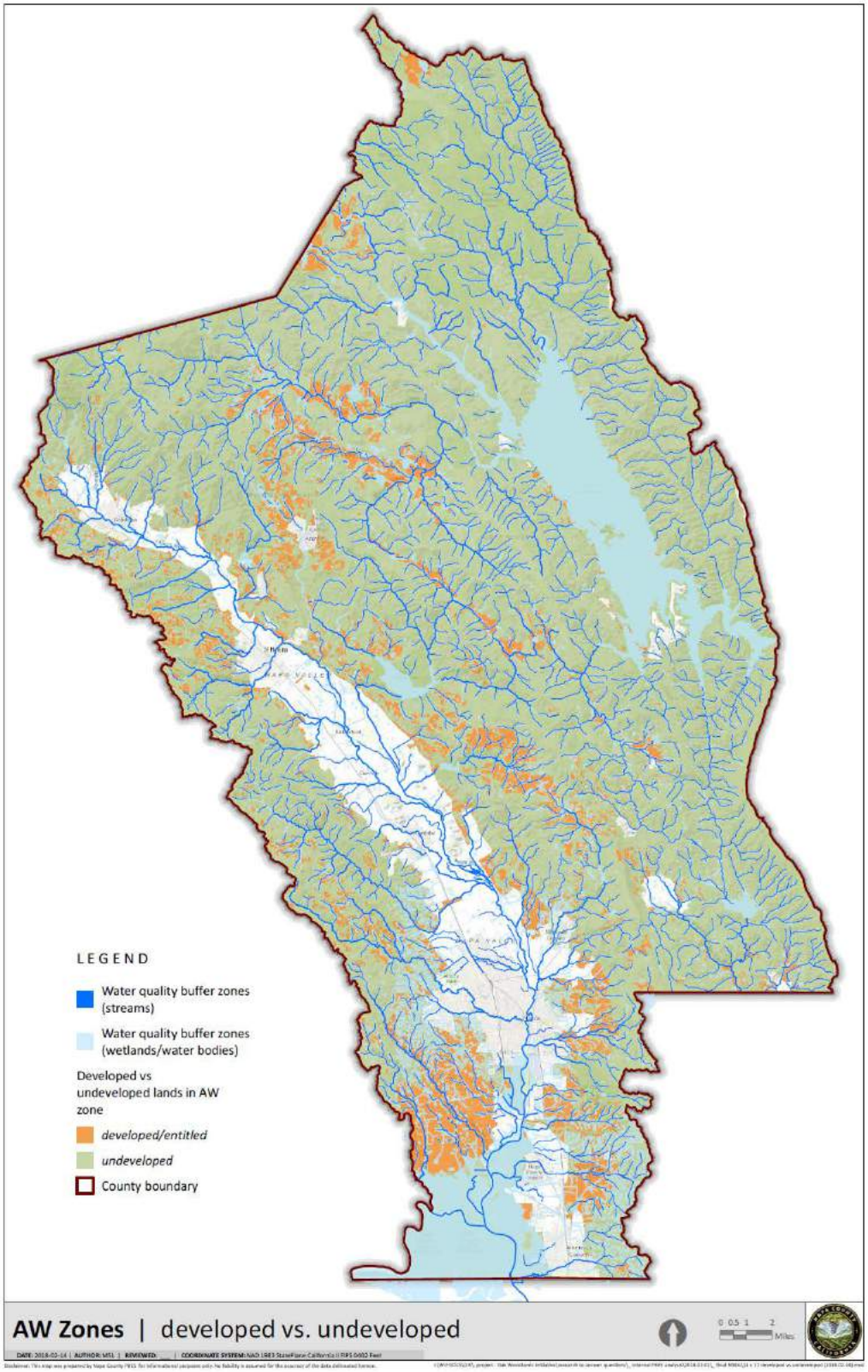


EXHIBIT 3

February 28, 2018

With March quickly approaching, crab feed season is coming to an end and that means it'll soon be time for my daughter to pick up her 4-H project goats!

Are you looking for an opportunity to serve our community? Consider applying for one of our commissions. Below you will find information about our newly formed Veterans Commission.

I'll be hosting a series of community meetings in the 5th District this spring. I hope you'll join me and participate in our discussions of roads, emergency response and how to be fire wise.

~ Belia Ramos

In This Issue . . .

BOARD OF SUPERVISORS NEWS

Agricultural Preserve

This year, we're celebrating the 50th anniversary of the Ag Preserve here in Napa County. Because of this special milestone, we will share stories about the preserve and its continued impact to our community in a social media campaign over the next 50 days leading up to April 9 - the day the ordinance was enacted. Make sure to visit the **County Facebook page** for stories that highlight Napa County's ongoing role in protecting this historical ordinance and honor one of the most unique land use policies nationwide.

Napa County Veterans' Commission

The Board recently adopted a resolution authorizing the establishment of the Napa County Veterans' Commission. The goal of forming this commission is to provide the County with appropriate recommendations concerning Veteran's needs county-wide. I am excited to get this brand-new commission going in order to better serve the 11,000 veterans that live in Napa County. If you're interested in serving on the commission, please click **here** or visit the Napa County website.

Initiative Petitions

At its January 30, 2018 meeting, the Board ordered 9-111 reports analyzing any potential impacts of the passage of each of the following initiatives:

- **Napa County Watershed and Oak Protection Initiative**
- **Initiative to Disallow the use of Personal Airports and Helipads**
- **Blakeley Construction Initiative**

On February 27, the Board received the 9-111 report for each of the initiatives and adopted a resolution placing the "Napa County Watershed and Oak Protection Initiative" and the "Initiative to Disallow the use of Personal Airports and Helipads" on the ballot for the June 5, 2018 Primary Election enabling the people of Napa County to approve or reject the initiatives. The Board will adopt a county ordinance for the "Blakeley Construction Initiative" without alteration on March 6, 2018. For more information on each of the initiatives, please click on the respected links above.

A DAY OF REMEMBRANCE

The California State Senate declared February 16 NorCal Heroes Day and honored the first responders, community leaders and non-profit organizations who supported our communities during the Northern California fires.

Napa County Supervisors Diane Dillon, Alfredo Pedroza, and Belia Ramos, and Sheriff John Robertson, and Napa County Fire Chief Barry Biermann attended and are pictured here with Senator Ted Gaines, Senator Bill Dodd, Chief Steve Akre of the Sonoma Valley Fire & Rescue Authority, and Senator Jim Nielsen.

AMERICAN CANYON STATE OF THE CITY

I recently attended American Canyon's 2018 State of the City. It was a great opportunity to highlight what's happening in American Canyon in terms of economic development, water, open space, and more as well as report on Napa County issues important to our community. If you missed it, and would like to watch it at your convenience, click **here** or visit the City of American Canyon website.

A DAY WITH NAPA HIGH SCHOOL ENGLISH LEARNERS

Mentorship is a community responsibility. A couple of weeks ago I had the opportunity to visit students from Napa High School who have all emigrated from Latin America and now call Napa County their home. Our topics of conversation included culture, educational challenges, and the American Dream. Thank you Ms. Howard for allowing me the opportunity to meet such a wonderful group of students!

24 HOUR MENTAL HEALTH CRISIS HOTLINE

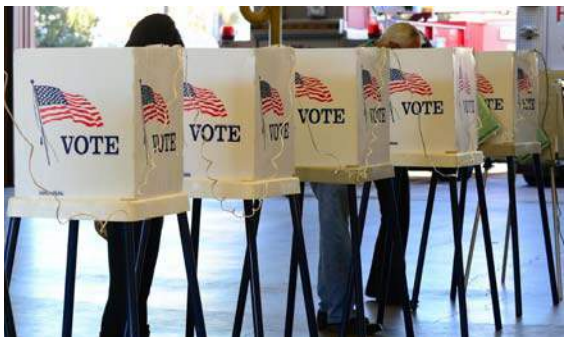
If you know someone who may have a mental health crisis or mental health emergency please call **(707) 253-4711** , 24 hours a day. The services are available to Napa County residents of all ages and any person in crisis will be seen and assessed regardless of eligibility. Bilingual (English/Spanish) services are available.

FEATURED NON-PROFIT ORGANIZATION: MENTIS

For 70 years, Mentis has been dedicated to the emotional health and wellness of our community through accessible and affordable mental health services. Mentis provides professional counseling to individuals, couples, and families of all ages, in both English and Spanish, as well as supportive housing for adults living with mental illness.

Check out this video where I had the opportunity to congratulate Mentis on its 70th Birthday and discuss why Napa County is proud to partner with Mentis in serving our community.

JOB OPPORTUNITIES WITH THE NAPA COUNTY ELECTION DIVISION



The Napa County Election Division is looking for Vote Center Leads and Vote Center Clerks to work May 14 through June 5 and/or October 15 through November 6. There will be Vote Centers located throughout the county, at least one in each municipality:

Angwin, Calistoga, St. Helena, Yountville, Napa, and American Canyon. Each Center will be staffed with two Leads and at least five Clerks.

Each Center will require at least one bilingual staff member fluent in Spanish. American Canyon, Calistoga and Napa Centers will require at least one bilingual staff fluent in Tagalog. Bilingual persons are encouraged to apply.

For more information on the Vote Center Lead and the Voter Center Clerk positions or to apply, please click **here** .

BELIA'S PET ADOPTION FEE MATCH

MEET JAMIE IN KENNEL #5

I am sponsoring the Napa County Animal Shelter by paying half of the adoption fee for the first dog adopted from the shelter's Kennel #5 (for District 5) each month.

The dog currently residing in that kennel is Jamie (pictured above), a German Shepherd mix. She is 7 years old and spayed. Jamie is a very sweet dog that loves attention and knows how to heel, sit, stay and fetch. Help save this loving animal by making Jamie part of your family and open up shelter space for another animal who might desperately need it.

Full adoption fees for dogs are $175 for puppies younger than five months old; $150 for dogs five months and older. The adoption fee includes the cost of spaying and neutering, heartworm treatment and vaccinations.

Adopt your new best friend today!
Napa County Pet Adoption webpage.

UPCOMING EVENTS!

Coombsville Area Informational Meeting

A Tradition of Stewardship
A Commitment to Service

I will be hosting an informational meeting at **6:30 PM on Wednesday, March 21** at Mt. George Elementary School (multipurpose room) - 1019 2nd Avenue, Napa. Come learn about the list of projects under the Measure T program and when your street will be paved. Learn about how to prepare for an emergency, the importance of a Fire Wise Council and how to start one in your community, and where we are in the fire recovery process. Please share with your friends, family, and neighbors. I look forward to seeing you there!

Holi A Festival of Colors

Helping Hand Indo American & the American Canyon Arts Foundation will be hosting Holi A Festival of Colors, an incredible and colorful celebration of Spring.

When: 3-5 PM on Sunday, March 4, 2018

Where: Shenandoah Park - 100 Sonoma Creek Way, American Canyon

The event is FREE and open to all ages. Light snacks and refreshments will be provided.

Voter's Choice Act Workshops

The Voter's Choice Act became law in 2016 to make voting more convenient and accessible. As a pilot county, Napa County will be 100% Vote By Mail for the June 5, 2018 Primary Election. Learn about vote centers and ballot drop boxes. Discover what changes are coming, test out the new equipment, and find out how you can participate at one of these upcoming Voter's Choice Act Workshops:

- **March 5 - 5:30 PM:** Napa County Library - 580 Coombs St.
- **March 7 - 5:30 PM:** American Canyon Library - 300 Crawford Way
- **March 21 - 6:00 PM:** Art Room, Yountville Community Center - 6516 Washington St.
- **March 27 - 5:30 PM:** Calistoga Community Center - 1307 Washington St.
- **March 29 - 5:30 PM:** St. Helena Library - 1492 Library Ln.

Free Vaccination/Microchip & Spay/Neuter Voucher Clinic

Jameson Animal Rescue Ranch will be offering free spay/neuter vouchers and free vaccinations & microchips to the first 200 dogs and cats.

Sunday, March 4
11 AM - 1 PM
American Canyon Senior Center
2185 Elliott Drive

No RSVP required. First come, first served. If you need a spay/neuter voucher, you do not need to bring your pet. Cats must be in a crate. Dogs must be on leash. For more information, call (707) 927-3536.

Upcoming Board of Supervisors Meeting . . .

Join the Board on March **13** at 9:00 a.m. on the third floor of the County Administration Building—1195 Third Street, Suite 305, Napa.

ABOUT BELIA

Belia, who lives in American Canyon, was born in Napa and raised in unincorporated St. Helena and Pope Valley. She calls all of Napa County home. Belia is a business owner, educator, and mother of three children. Belia attended St. Helena public schools from kindergarten through high school. She graduated from Saint Mary's College of California in 1999 and UC Hastings College of the Law in 2004. Prior to serving on the Board of Supervisors, Belia served as an American Canyon City Council Member from 2010-2016. In 2017, Belia began serving on the Board of Supervisors. In April, she became Board Chair, and currently serves on the following panels: 25th District Agricultural Association, Napa Valley Transportation Authority, Association of Bay Area Governments, North Bay Water Reuse Authority, Latino Caucus of California Counties and Rebuild North Bay.

Visit the Napa County Board of Supervisors Website

Supervisor Belia Ramos, Fifth District | Napa County Board of Supervisors |
Phone: (707)-259-8277 | Email: belia.ramos@countyofnapa.org

Confirm that you like this.

Click the "Like" button.

EXHIBIT 4

FILED
Napa County
Assessor-Recorder-County Clerk
Elections Division
MAR 16 2017
By: Deputy

STATEMENT THAT ARGUMENT IS TRUE AND CORRECT

All arguments/rebuttal arguments concerning measures shall be accompanied by this form to be signed by each author(s). Author(s) names and titles listed will be listed and printed in the Voter's Information Pamphlet in the order provided below and will appear as indicated below.

The undersigned author (s) of the:

- ☐ Argument in Favor of (300 words)
- ☐ Rebuttal to the Argument in Favor of (250 Words)
- ☑ Argument Against (300 words)
- ☐ Rebuttal to the Argument Against (250 words)

Ballot Measure letter C at the June Primary
Name of Election

Election for Napa County
Jurisdiction (name of district)

to be held on June 5, 2018, hereby state that such argument is true and correct to the best of his/her/their knowledge and belief.

1. Belia Ramos
Signature of Individual voter eligible to vote

Belia Ramos
Print Name to Appear in Voter's Information Pamphlet

Napa County Supervisor
(Optional) Print title to appear under name

2. Manuel Rios
Signature of Individual voter eligible to vote

Manuel Rios
Print Name to Appear in Voter's Information Pamphlet

NAPA Co. Farm Bureau President
(Optional) Print title to appear under name

3. David R. Whitmer
Signature of Individual voter eligible to vote

DAVID R. WHITMER
Print Name to Appear in Voter's Information Pamphlet

RETIRED NAPA COUNTY AGRICULTURAL COMMISSIONER
(Optional) Print title to appear under name

4. Jeri Hansen-Gill
Signature of Individual voter eligible to vote

Jeri Hansen-Gill
Print Name to Appear in Voter's Information Pamphlet

CEO, Sustainable Napa County
Napa County Planning Commission
(Optional) Print title to appear under name

5. Phil Blake
Signature of Individual voter eligible to vote

Phillip Blake
Print Name to Appear in Voter's Information Pamphlet

Sierra Club Member / Former Napa Co. District Conservationist, NRCS / Environmental Consultant
(Optional) Print title to appear under name

Put simply: Measure C is confusing, poorly written, and will create too many unintended consequences.

Napa County already has rigorous environmental regulations in place. This measure undermines voter-approved Measure J, which continues to effectively protect Napa County's water quality and oak woodlands. 41

Measure C will do more harm than good. Measure C will outlaw future farming in the Ag Watershed and encourage other types of development, while still allowing 795 acres of oak woodlands to be removed – opening the door for event centers and more luxury homes to be developed across our agricultural watershed; destroying our viewshed and hillsides; and increasing traffic on our already congested rural roads and Highway 29. 69

Residents, conservation groups, and agriculturalists are all questioning why proponents would place such a poorly written measure on the ballot. An independent legal analysis concluded that Measure C is "unlawfully vague and misleading" and "creates a significant likelihood" of costly lawsuits against the County – lawsuits that taxpayers will ultimately have to pay for. 53

Restrictions from Measure C will prevent property owners from making even the slightest changes to their land, such as removing just two oaks without a permit, widening a driveway, or adding on to one's home, and that same legal analysis states this measure could "subject property owners to enforcement actions and criminal penalties who, through no fault of their own, lose trees due to wildfire" caused by human activity. 69

Napa County's agricultural community, environmental leaders, elected officials, and residents stand united against Measure C. Please join Napa County Farm Bureau, Napa Valley Vintners, Napa Valley Grapegrowers and Winegrowers of Napa County, along with Coalition Napa Valley, Sustainable Napa County, Senator Bill Dodd, Napa County Supervisors and Mayors in Napa County, who all oppose Measure C.

Don't be fooled! Protect Napa. Vote No on Measure C.

www.ProtectNapa.com 58

290

FILED
Napa County
Assessor-Recorder-County Clerk
Election Division
MAR 16 2017
By: _____
Deputy

EXHIBIT 5

COALITION FOR SUSTAINABLE AGRICULTURE
REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE C – DRAFT FOUR
MARCH 19, 2018
WORD COUNT: 244 (250 WORDS MAX)

Rebuttal to argument in favor of Measure C

We agree on the importance of protecting agriculture, our natural resources and scenic vistas, but as an independent legal analysis on Measure C concluded, it's "unlawfully vague and misleading" and threatens the very things proponents claim it might protect.

The Facts About Measure C:

Allows for the Removal of Massive Amounts of Oak Woodlands
Napa County's rigorous environmental regulations already protect woodland areas. Measure C will reverse these protections by allowing 795 acres of oak woodlands to be removed—hurting our ability to protect our local watershed, water quality and groundwater supplies.

Threatens Hillsides and Iconic Vistas
Measure C narrowly targets agriculture, but overlooks the real threat to the Napa Valley: destroying our Agricultural Watershed and scenic hillsides to develop luxury homes and other development —which are **NOT** restricted under Measure C.

Hurts Agriculture
Agricultural organizations are **UNITED AGAINST** Measure C: Napa County Farm Bureau, Napa Valley Vintners, Napa Valley Grapegrowers and Winegrowers of Napa County.

Goes too Far
Measure C will prevent homeowners from making even the smallest changes to their land. In fact, someone who removes even two oak trees from their property without following the strict regulations of Measure C could be charged with a misdemeanor!

It's clear: Measure C adds confusing regulations with numerous unintended consequences and undermines Measures J and P, which voters approved to protect farmland.

Join our broad-based coalition: every Napa County agricultural group, Coalition Napa Valley, Sustainable Napa County, elected officials, community leaders and residents and **Vote No on Measure C.**

www.ProtectNapa.com

FILED
Napa County
Assessor-Recorder-County Clerk
Election Division
MAR 23 2018
By: _____
Deputy

STATEMENT THAT ARGUMENT IS TRUE AND CORRECT

All arguments/rebuttal arguments concerning measures shall be accompanied by this form to be signed by each author(s). Author(s) names and titles listed will be listed and printed in the Voter's Information Pamphlet in the order provided below and will appear as indicated below.

The undersigned author (s) of the:

☐ Argument in Favor of (300 words)
☐ Argument Against (300 words)
☑ Rebuttal to the Argument in Favor of (250 Words)
☐ Rebuttal to the Argument Against (250 words)

Ballot Measure letter C at the June Primary
Name of Election

Election for Napa County
Jurisdiction (name of district)

to be held on June 5, 2018, hereby state that such argument is true and correct to the best of his/her/their knowledge and belief.

1. _____
Signature of Individual voter eligible to vote
Jill Techel
Print Name to Appear in Voter's Information Pamphlet
_____
(Optional) Print title to appear under name

2. _____
Signature of Individual voter eligible to vote
Alfredo Pedroza
Print Name to Appear in Voter's Information Pamphlet
_____
(Optional) Print title to appear under name

3. _____
Signature of Individual voter eligible to vote
Elaine Honig
Print Name to Appear in Voter's Information Pamphlet
_____
(Optional) Print title to appear under name

4. _____
Signature of Individual voter eligible to vote
Keith Caldwell
Print Name to Appear in Voter's Information Pamphlet
_____
(Optional) Print title to appear under name

5. _____
Signature of Individual voter eligible to vote
Joel Tranmer
Print Name to Appear in Voter's Information Pamphlet
Former CEO & Trustee of Land Trust of Napa County
(Optional) Print title to appear under name

FILED
Napa County
Assessor-Recorder-County Clerk
Election Division
MAR 23 2018
By: _____
Deputy

AUTHORIZATION FOR ANOTHER PERSON(S) TO SIGN REBUTTAL ARGUMENT

TO BE COMPLETED BY INITIAL ARGUMENT SIGNERS ONLY IF REBUTTAL ARGUMENT IS TO BE SIGNED BY DIFFERENT AUTHORS.

The undersigned authors of the argument

☐ Argument in Favor ☑ Argument Against

Ballot Measure Letter C at the June Primary election to be held on June 5, 2018 authorize(s) the following person(s) to sign the Rebuttal Argument in his/her/their place:

(Name of Election)

(One or more people who signed the argument may be replaced with different people to sign the rebuttal argument.)

1. JILL TECHEL to sign instead of Belia Ramos
(Print name of rebuttal signer) (Print name of argument signer)

Signature of Argument signer: [signature] Date: 3/16/18

2. _____ to sign instead of _____
(Print name of rebuttal signer) (Print name of argument signer)

Signature of Argument signer: _____ Date: _____

3. _____ to sign instead of _____
(Print name of rebuttal signer) (Print name of argument signer)

Signature of Argument signer: _____ Date: _____

4. _____ to sign instead of _____
(Print name of rebuttal signer) (Print name of argument signer)

Signature of Argument signer: _____ Date: _____

5. _____ to sign instead of _____
(Print name of rebuttal signer) (Print name of argument signer)

Signature of Argument signer: _____ Date: _____

FILED
Napa County
Assessor-Recorder-County Clerk
Election Division
MAR 23 2018
By: _____
Deputy

Attach this form to the "Statement that Argument is True and Correct" form submitted with the rebuttal argument.

AUTHORIZATION FOR ANOTHER PERSON(S) TO SIGN REBUTTAL ARGUMENT

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The undersigned authors of the argument

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(Name of Election)

(One or more people who signed the argument may be replaced with different people to sign the rebuttal argument.)

1. _____ to sign instead of _____
(Print name of rebuttal signer) (Print name of argument signer)

Signature of Argument signer: _____ Date: _____

2. ALFREDO PEDROZA to sign instead of Manuel Rios
(Print name of rebuttal signer) (Print name of argument signer)

Signature of Argument signer: Manuel Rios Date: 3-16-18

3. _____ to sign instead of _____
(Print name of rebuttal signer) (Print name of argument signer)

Signature of Argument signer: _____ Date: _____

4. _____ to sign instead of _____
(Print name of rebuttal signer) (Print name of argument signer)

Signature of Argument signer: _____ Date: _____

5. _____ to sign instead of _____
(Print name of rebuttal signer) (Print name of argument signer)

Signature of Argument signer: _____ Date: _____

FILED
Napa County
Assessor-Recorder-County Clerk
Election Division
MAR 23 2018
By: _____
Deputy

Attach this form to the "Statement that Argument is True and Correct" form submitted with the rebuttal argument.

AUTHORIZATION FOR ANOTHER PERSON(S) TO SIGN REBUTTAL ARGUMENT

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The undersigned authors of the argument

☐ Argument in Favor ☑ Argument Against

Ballot Measure Letter C at the June Primary election to be held on June 5, 2018 authorize(s) the following person(s) to sign the Rebuttal Argument in his/her/their place:

(Name of Election)

(One or more people who signed the argument may be replaced with different people to sign the rebuttal argument.)

1. _____ to sign instead of _____
(Print name of rebuttal signer) (Print name of argument signer)

Signature of Argument signer: _____ Date: _____

2. _____ to sign instead of _____
(Print name of rebuttal signer) (Print name of argument signer)

Signature of Argument signer: _____ Date: _____

3. ELAINE HONIG to sign instead of DAVID R WHITMER
(Print name of rebuttal signer) (Print name of argument signer)

Signature of Argument signer: David R. Whitmer Date: MARCH 5, 2018

4. _____ to sign instead of _____
(Print name of rebuttal signer) (Print name of argument signer)

Signature of Argument signer: _____ Date: _____

5. _____ to sign instead of _____
(Print name of rebuttal signer) (Print name of argument signer)

Signature of Argument signer: _____ Date: _____

FILED
Napa County
Assessor-Recorder-County Clerk
Election Division
MAR 23 2018
By: _____
Deputy

Attach this form to the "Statement that Argument is True and Correct" form submitted with the rebuttal argument.

AUTHORIZATION FOR ANOTHER PERSON(S) TO SIGN REBUTTAL ARGUMENT

TO BE COMPLETED BY INITIAL ARGUMENT SIGNERS ONLY IF REBUTTAL ARGUMENT IS TO BE SIGNED BY DIFFERENT AUTHORS.

The undersigned authors of the argument

☐ Argument in Favor ☑ Argument Against

Ballot Measure Letter C at the June Primary election to be held on June 5, 2018 authorize(s) the following person(s) to sign the Rebuttal Argument in his/her/their place:
(Name of Election)

(One or more people who signed the argument may be replaced with different people to sign the rebuttal argument.)

4. KEITH CALDWELL to sign instead of Jeri Hansen-Gill
(Print name of rebuttal signer) (Print name of argument signer)

Signature of Argument signer: Jeri Hansen-Gill Date: 3/16/18

2. _____ to sign instead of _____
(Print name of rebuttal signer) (Print name of argument signer)

Signature of Argument signer: _____ Date: _____

3. _____ to sign instead of _____
(Print name of rebuttal signer) (Print name of argument signer)

Signature of Argument signer: _____ Date: _____

4. _____ to sign instead of _____
(Print name of rebuttal signer) (Print name of argument signer)

Signature of Argument signer: _____ Date: _____

5. _____ to sign instead of _____
(Print name of rebuttal signer) (Print name of argument signer)

Signature of Argument signer: _____ Date: _____

FILED
Napa County
Assessor-Recorder-County Clerk
Election Division
MAR 23 2018
By: _____
Deputy

Attach this form to the "Statement that Argument is True and Correct" form submitted with the rebuttal argument.

7

AUTHORIZATION FOR ANOTHER PERSON(S) TO SIGN REBUTTAL ARGUMENT

TO BE COMPLETED BY INITIAL ARGUMENT SIGNERS ONLY IF REBUTTAL ARGUMENT IS TO BE SIGNED BY DIFFERENT AUTHORS.

The undersigned authors of the argument

☐ Argument in Favor ☑ Argument Against

Ballot Measure Letter C at the June Primary election to be held on June 5, 2018 authorize(s) the following person(s) to sign the Rebuttal Argument in his/her/their place:

(Name of Election)

(One or more people who signed the argument may be replaced with different people to sign the rebuttal argument.)

1. _____ to sign instead of _____
(Print name of rebuttal signer) (Print name of argument signer)

Signature of Argument signer: _____ Date: _____

2. _____ to sign instead of _____
(Print name of rebuttal signer) (Print name of argument signer)

Signature of Argument signer: _____ Date: _____

3. _____ to sign instead of _____
(Print name of rebuttal signer) (Print name of argument signer)

Signature of Argument signer: _____ Date: _____

4. _____ to sign instead of _____
(Print name of rebuttal signer) (Print name of argument signer)

Signature of Argument signer: _____ Date: _____

5. JOEL TRANMER to sign instead of Phillip Blake
(Print name of rebuttal signer) (Print name of argument signer)

Signature of Argument signer: Phill Blake Date: 3-16-18

Attach this form to the "Statement that Argument is True and Correct" form submitted with the rebuttal argument.

EXHIBIT
6

To the Honorable County Clerk of the County of Napa: We, the undersigned, registered and qualified voters of the County of Napa, hereby propose an initiative measure to amend the County of Napa General Plan and Napa County Code. We petition you to submit this measure to the Board of Supervisors of the County of Napa for submission of the measure to the voters of the County of Napa at the earliest special or general election for which it qualifies.

The measure provides as follows:

NAPA COUNTY WATERSHED AND OAK WOODLAND PROTECTION INITIATIVE OF 2018

The people of the County of Napa do hereby ordain as follows:

SECTION 1: TITLE

This Initiative shall be known and may be cited as the "Napa County Watershed and Oak Woodland Protection Initiative of 2018" (hereinafter "Initiative").

SECTION 2: PURPOSE AND FINDINGS

A. **Purpose:** Water affects the quality of life of every Napa County resident. The purpose of this Initiative is to protect the water quality, biological productivity, and economic and environmental value of Napa County's streams, watersheds, wetlands and forests, and to safeguard the public health, safety and welfare of the County's residents. The people of Napa County desire that this Initiative be enforced to the fullest extent possible to achieve these goals.

B. **Effect of this Initiative:** This Initiative adopts policies and zoning requirements for the Agricultural Watershed zoning district that protect forests and tree canopy near streams and wetlands and ensure the long-term preservation of Napa's oak woodlands. This Initiative is intended to complement the protections the County wisely established decades ago for agricultural and open space lands in the Agricultural Preserve.

C. **Water Quality Protection:** Natural areas along streams and wetlands play a critical role in protecting County water resources by reducing erosion, alleviating flooding, and improving water quality. The County's oak trees and oak woodlands also play a key role in sustaining healthy watersheds and water quality by reducing soil erosion, slowing runoff, capturing rainfall, improving the water holding capacity of soil, increasing nutrient retention, and mitigating flooding. Preserving Napa County's water resources is critical to the long-term health of its residents and their environment.

D. **Protection of Streams and Wetlands:** Trees and vegetation along streams and wetlands filter water for municipal, rural and agricultural use, reduce water pollution, and provide important habitat for fish and wildlife. This Initiative provides enhanced protection for these areas by preserving forest and riparian habitat along stream corridors and wetlands within the Agricultural Watershed zoning district.

E. **Importance of Oak Woodlands:** Napa County's oak woodlands are one of its defining scenic features and most biologically diverse natural resources, providing habitat for over 300 wildlife species and over 1,000 plant species. Napa's oak woodlands provide numerous recreational, ecological, and economic benefits by enhancing the natural scenic beauty for residents and visitors, protecting property values, improving water quality, and moderating temperature extremes and climate change, all of which improve the health, safety, and general welfare of County residents. The County's oak populations, however, are threatened by development, deforestation, fire and pathogens such as Sudden Oak Death and infestations of the Goldspotted Oak Borer parasite. The combination of human impacts and other hazards will cumulatively fragment oak ecosystem continuity and damage watersheds throughout the County unless appropriate conservation steps are taken. A program to ensure the long-term conservation of oak trees and oak woodlands within the Agricultural Watershed zoning district is a necessary part of the County's environmental and water quality protection policies.

F. **Protection of Oak Woodlands:** This Initiative will protect oak woodlands within the Agricultural Watershed zoning district by requiring the replacement of lost oaks or preservation of comparable habitat at a 3:1 ratio and by establishing an Oak Removal Limit. The Oak Removal Limit takes effect when 795 additional acres of oak woodlands have been removed. This acreage limit takes into consideration the historic rate of oak woodland removal associated with new vineyard development, the General Plan's projection that a maximum of 10,000 acres of new vineyards would be developed by 2030, the planning horizon of the current General Plan, and other projected growth and constraints on growth under the General Plan.

G. **Building on the Legacy of Measure J:** Just as Measure J in 1990 reaffirmed and locked in place the General Plan land use designations and minimum parcel sizes for agricultural lands, this Initiative reaffirms the extent of oak woodland removal reasonably necessary for the vineyard and other development envisioned under the current General Plan. The 2008 General Plan recognized that removal of some oak woodlands was necessary to allow the future growth, including vineyard development, envisioned under that plan. As County leaders recognized at the time they adopted the General Plan in 2008, however, oak woodlands play a critical role in protecting the County's watersheds, water supply, and habitat. By adopting this Initiative, the voters have determined that the Oak Removal Limit respects expectations under the 2008 General Plan and the growth it anticipated. The voters have further determined that unrestricted removal of oak woodlands beyond this Oak Removal Limit is unsustainable and would be detrimental to the health, well-being, and general welfare of the County. Therefore, once the Oak Removal Limit is reached, any removal of oak trees would, with limited exceptions, require a permit which the County could issue only after making specified findings.

SECTION 3: GENERAL PLAN AMENDMENTS

This Initiative hereby amends the Napa County General Plan ("General Plan"), adopted June 3, 2008, as amended through October 5, 2017 ("submittal date"), as shown below. Text to be

inserted in the General Plan is indicated in **bold** type. Text to be deleted from the General Plan is indicated in ~~strikethrough~~ type. Text in standard type currently appears in the General Plan and is readopted by this Initiative. The language adopted and readopted in the following amendments may be changed only by a vote of the people.

A. *The General Plan's Agricultural Preservation and Land Use Element is hereby amended as follows:*

(i) The following new Goal AG/LU-8 is added to the list of "Agricultural Preservation and Land Use Goals," currently on page AG/LU-12 of the General Plan:

Goal AG/LU-8: To help ensure the long-term sustainability of agriculture in Napa County, preserve watersheds, water quality and wildlife habitat within the Agricultural Watershed zoning district by protecting forests and trees along streams and wetlands and by protecting oak woodlands. To implement this goal, the Napa County Watershed and Oak Woodland Protection Initiative of 2018 amended the County Code to establish water quality buffer zones and an Oak Removal Limit that limits oak removal after 795 acres of oak woodlands are removed, as measured from September 1, 2017.

(ii) The following new heading and new Policies AG/LU-0.5 and AG/LU-0.6 are added immediately before the section entitled Agricultural Preservation Policies, currently on page AG/LU-13 of the General Plan:

AGRICULTURAL WATERSHED DISTRICT POLICIES

Policy AG/LU-0.5: Pursuant to the Napa County Watershed and Oak Woodland Protection Initiative of 2018, implement water quality buffer zones along streams and wetlands within the Agricultural Watershed zoning district.

Policy AG/LU-0.6: Ensure the long-term health and protection of oak woodlands within the Agricultural Watershed zoning district and sustainable build-out of the 2008 General Plan by establishing an Oak Removal Limit of 795 acres as set forth in the Napa County Watershed and Oak Woodland Protection Initiative of 2018. After the Oak Removal Limit is reached, additional oak removal shall, with limited exceptions, require a permit subject to the findings required by that Initiative.

B. *The General Plan's Conservation Element is hereby amended as follows:*

(i) Policy CON-24 of the Conservation Element's "Natural Resources Policies," currently on page CON-30 of the General Plan, is hereby amended as follows:

Pursuant to the Napa County Watershed and Oak Woodland Protection Initiative of 2018, require a permit for any oak removal within the Agricultural Watershed zoning district after the Oak Removal Limit is reached unless specified exceptions apply. Continue to m~~M~~aintain and improve oak woodland habitat to provide for slope

stabilization, soil protection, species diversity, and wildlife habitat through appropriate measures including one or more of the following:

a) Preserve, to the extent feasible, oak trees and other significant vegetation that occur near the heads of drainages or depressions to maintain diversity of vegetation type and wildlife habitat as part of agricultural projects.

b) Comply with the Oak Woodlands Preservation Act (PRC Section 21083.4) regarding oak woodland preservation to conserve the integrity and diversity of oak woodlands, and retain, to the maximum extent feasible, existing oak woodland and chaparral communities and other significant vegetation as part of residential, commercial, and industrial approvals.

c) Provide replacement of lost oak woodlands or preservation of like habitat at a **minimum** 2:1 ratio when retention of existing vegetation is found to be infeasible. Removal of oak species limited in distribution shall be avoided to the maximum extent feasible. **Within the Agricultural Watershed zoning district, require replacement of lost oak woodlands or permanent preservation of like habitat at a minimum 3:1 ratio when retention of existing vegetation is found to be infeasible, except where the Napa County Watershed and Oak Woodland Protection Initiative of 2018 provides for an exception to this requirement.**

d) Support hardwood cutting criteria that require retention of adequate stands of oak trees sufficient for wildlife, slope stabilization, soil protection, and soil production be left standing.

e) Maintain, to the extent feasible, a mixture of oak species which is needed to ensure acorn production. Black, canyon, live, and brewer oaks as well as blue, white, scrub, and live oaks are common associations.

f) Encourage and support the County Agricultural Commission's enforcement of state and federal regulations concerning Sudden Oak Death and similar future threats to woodlands.

[Implemented by Action Item CON NR-7]

SECTION 4: NAPA COUNTY CODE AMENDMENTS

This Initiative hereby amends the Napa County Code Title 18, also known as the Napa County Zoning Code, as amended through the submittal date, as shown below. Text to be inserted in the Zoning Code is indicated in **bold** type. The language adopted in the following amendments may be changed only by a vote of the people.

To Chapter 18.20, "AW Agricultural Watershed District," commencing with

section 18.20.010, after the text of section 18.20.040, add the following:

Section 18.20.050 – Water Quality Buffer Zones.

A. In all AW districts, on parcels greater than one (1) acre, the following areas shall constitute water quality buffer zones:

1. Within one hundred and twenty-five (125) feet, as measured horizontally from the top of the bank, on both sides of any Class I stream;

2. Within seventy-five (75) feet, as measured horizontally from the top of the bank, on both sides of any Class II stream;

3. Within twenty-five (25) feet, as measured horizontally from the top of the bank, on both sides of any Class III stream; and

4. Within one hundred and fifty (150) feet of any wetland, as measured horizontally from the point at which the area no longer meets the definition of wetland.

B. Except as provided in subsection (C) of this section, no tree removal, as defined in subsection (D), shall be allowed or undertaken within the water quality buffer zones established by this section.

C. Tree removal is allowed within water quality buffer zones under any of the following circumstances:

1. To remove downed and dead trees or dying or diseased trees;

2. Where necessary to comply with written County or state recommendations or requirements for fuel or firebreaks;

3. Where necessary to avert an imminent threat to public health and safety;

4. Where required for the development or maintenance of any of the following, provided that the development or maintenance occurs pursuant to all applicable laws: access roads; septic or wastewater systems or other facilities necessary for the protection of public health; water wells; water resources and storage facilities; public works facilities; solar energy systems; electric vehicle charging stations; telecommunications or cellular towers; pedestrian, bicycle, or equestrian trails; flood control projects; or stream crossings;

5. Within a recorded utility right-of-way;

6. On land owned by any public agency;

7. Where undertaken by or at the direction or order of a federal, state or local

agency as part of a project or program to preserve, restore or improve habitat, alleviate an existing hazardous condition, or abate a public nuisance;

8. Where undertaken or authorized by a federal or state agency;

9. Within eleven (11) feet of the centerline of any driveway that serves an existing or proposed structure for which all legally required permits have been issued; or

10. Within one hundred fifty (150) feet from any point of a residence or any other structure that is subject to the requirements of the California Building Code or from any point of any proposed such residence or structure for which the owner has obtained all legally required permits.

This subsection (C) is not intended to, and shall not, relieve any person of the obligation to obtain a permit where required by Section 18.20.060 or to comply with any other policy or law.

D. For purposes of this section, the following terms have the following meanings:

1. "Class I stream" means a perennial watercourse that serves as a domestic water supply, or that provides habitat to sustain fish for all or part of the year.

2. "Class II stream" means a perennial or intermittent watercourse that provides aquatic habitat for non-fish aquatic species, including invertebrates.

3. "Class III stream" means an intermittent or ephemeral watercourse showing evidence of a defined bed and banks, annual scour and capacity to transport sediment to a Class I or Class II stream.

4. "Dying or diseased trees" means trees that have been designated in writing by a certified forester, forest pathologist or arborist as: having tested positive for Sudden Oak Death; necessary to remove to control the spread of disease or insect pests to healthy trees; or posing an imminent threat to public health and safety.

5. "Tree removal" means causing the death or removal of any living tree of any species that is five (5) inches or more in diameter, measured at 4.5 feet above mean natural grade, by cutting, dislodging, poisoning, burning, topping or damaging of roots, but does not include removal or harvest of incidental vegetation such as berries, ferns, greenery, mistletoe, herbs, shrubs, or poison oak. This section applies to all County approvals relating to any conversion of timberland pursuant to Public Resources Code 4621, including but not limited to County Erosion Control Plans, but does not otherwise apply to timber operations undertaken pursuant to state timber harvest plans.

6. "Watercourse" means any well-defined channel with distinguishable bed and bank showing evidence of having contained flowing water indicated by deposit of rock, sand, gravel, or soil, including, but not limited to, a "Stream" as defined in County Code Section 18.108.030.

7. "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

E. This section does not apply to replanting within the footprint of existing vineyards or within the footprint of vineyards having obtained all legally required discretionary permits from the County where the initial vineyard planting or final discretionary permit approval occurred prior to the effective date of the Napa County Watershed and Oak Woodland Protection Initiative of 2018.

F. Nothing in this section shall preclude the County from requiring larger stream or wetland setbacks pursuant to any other policy or regulation.

G. This section does not apply:

1. To property within an Affordable Housing Combination District (AHCD) or other combination or overlay district whose primary purpose is to provide affordable housing or to residential housing projects whose approval is necessary to comply with state law; or

2. Where application of this section would be inconsistent with state or federal law.

Section 18.20.060 – Oak Removal Requirements.

A. <u>Oak Removal Remediation</u>. In issuing any discretionary approval for activities or projects on privately owned parcels of land within the AW district that are greater than one (1) acre, the County shall require replacement of lost oak trees or oak woodlands, or permanent preservation of comparable habitat, at a minimum 3:1 ratio as follows:

1. On-site replacement of removed oak trees or oak woodlands at a 3:1 ratio or permanent preservation of comparable oak trees or oak woodlands at a 3:1 ratio by:

a. Permanently preserving comparable oak trees or oak woodlands on-site through dedications, conservation easements, or similar measures; or

b. Replanting and monitoring of replacement oak trees on-site pursuant to a plan that ensures replacement of failed plantings. The plan shall include a provision requiring a registered professional forester or certified arborist to file with the County, in the fifth year after the completion of replanting, a report that evaluates the survival rate of replanted oaks. If the survival rate is below eighty (80) percent, the property owner or applicant shall implement additional remediation to ensure 3:1 replacement of the original oak trees removed.

2. Where on-site remediation pursuant to subsection (A)(1) of this section is infeasible, purchase of a conservation easement or payment of in-lieu fees sufficient to provide permanent preservation of comparable oak trees or oak woodlands at a 3:1 ratio shall be required. All such in-lieu fees shall be deposited into a separate fund that shall be used exclusively for the purposes of oak woodland preservation.

3. For the purposes of this subsection (A), "comparable" oak trees or oak woodlands preserved as remediation must be on land in Napa County as close as feasible to the site to be remediated and on land that is otherwise capable of being developed under existing County laws and regulations. Areas that are not subject to development or conversion to agricultural use due to existing legal restrictions, such as zoning regulations protecting slopes or stream corridors or existing easements, shall not constitute comparable oak trees or oak woodlands.

4. Remediation is not required under this subsection (A) where oak removal is undertaken in any of the circumstances set forth in Section 18.20.050(C)(1-9). This exception is not intended to, and does not, excuse compliance with any other oak remediation policy or law.

B. <u>Mapping</u>. Whenever the County issues an approval for an activity that includes removal, replanting, or preservation of any oak woodlands, the County shall incorporate any relevant oak mapping information into a vegetation classification and mapping program maintained by the County.

C. <u>Annual Report</u>. Within one year of the effective date of the Napa County Watershed and Oak Woodland Protection Initiative of 2018, and annually thereafter, County staff shall prepare and submit to the Board of Supervisors a report setting forth the following information for all lands within the AW district: the total acreage of oak woodlands removed, replanted, and permanently preserved, in the previous year and from September 1, 2017 to the present; the cumulative total acreage of all oak woodlands removed since September 1, 2017; the total acreage of oak woodlands approved for removal, but not yet removed, pursuant to any County approval; and any other information the County determines is necessary to determine the Oak Removal Limit pursuant to Section 18.20.060(D). Where feasible, the Annual Report shall include maps showing the acreage of oak

woodlands lost in each vegetation classification.

D. <u>Oak Removal Limit</u>.

1. The "Oak Removal Limit" is reached when the cumulative total acreage of all oak woodlands removed plus all oak woodlands approved for future removal by the County within the AW district since September 1, 2017, equals 795 acres. All oak woodlands removed within the AW district since September 1, 2017 shall be included in the cumulative total acreage, regardless of whether that removal was authorized or unauthorized. However, oak woodlands approved for removal by the County prior to September 1, 2017, shall not be included within the Oak Removal Limit, regardless of when they are removed.

2. After the Oak Removal Limit is reached, the County shall not allow any additional oak tree or oak woodland removal within the AW district except pursuant to subsection (E). The County planning director shall immediately notify the Board of Supervisors when the Oak Removal Limit established pursuant to the Napa County Watershed and Oak Woodland Protection Initiative of 2018 has been reached and that no further oak removal is permitted except pursuant to Section 18.20.060(E).

E. <u>Oak Removal after the Oak Removal Limit Is Reached</u>.

1. Once the Oak Removal Limit is reached, removal of any oak woodland or any oak tree of at least five (5) inches in diameter, measured at 4.5 feet above mean natural grade, on private land within the AW district is permitted only pursuant to a County oak removal permit. An oak removal permit for removal of more than ten (10) oak trees on a single parcel within a twelve (12) month period shall be in the form of a County use permit and be subject to all applicable State and County use permit requirements in addition to the requirements set forth in this section.

2. An oak removal permit may be issued only if the County determines or, for a use permit, the Planning Commission or Board of Supervisors finds, that the oak removal complies with the applicable provisions of this Code, is consistent with the policies and standards of the general plan and any applicable specific plan, and is necessary either to: (a) ensure the economically viable agricultural use of a parcel, provided that (i) the parcel is a minimum of 160 acres, and (ii) the permit allows removal of no more than five oak trees from that parcel during any ten year period; or (b) address one or more of the circumstances set forth in Section 18.20.050(C)(1)-(10). These determination or findings shall be in addition to any other determinations or findings required by County or state law.

3. An oak removal permit may also be issued, or the requirement for a permit

waived, if, after a public hearing, the Board of Supervisors finds, based on substantial evidence, that oak removal or waiver of the oak removal permit requirement is necessary to avoid a violation of the constitution or laws of the United States or of the State of California.

4. An oak removal permit shall do all of the following:

a. require compliance with the Oak Removal Remediation requirements set forth in subsection (A), where applicable;

b. allow oak tree removal only to the minimum extent necessary to address the circumstances set forth in subsection (E)(2) and (E)(3); and

c. ensure retention of at least ninety (90) percent of the oak canopy cover on the parcel unless the County makes specific findings explaining why this would be infeasible.

5. The County shall post on the County website notice of all oak removal permits within seven (7) days of their issuance.

F. <u>Definitions</u>. For the purposes of this section and Section 18.20.070, the following terms have the following meanings:

1. "Oak tree" means any live tree in the genus Quercus that is not growing on timberland.

2. "Oak woodland" means an oak stand with a greater than ten (10) percent canopy cover. An oak stand consists of at least two (2) oak trees of at least five (5) inches in diameter, measured at 4.5 feet above mean natural grade. A parcel may contain one or more oak woodlands. "Oak woodland" does not include timberland.

3. "Remove" or "removal" means causing a tree to die or be removed as a result of human activity by cutting, dislodging, poisoning, intentional burning, topping or damaging of roots, but does not include removal or harvest of incidental vegetation such as berries, ferns, greenery, mistletoe, herbs, shrubs, or poison oak.

4. "Timberland" means "timberland" as defined in Public Resources Code section 4526.

G. This section does not apply:

1. to property within an Affordable Housing Combination District (AHCD) or other combination or overlay whose primary purpose is to provide affordable housing or to residential housing projects whose approval is

necessary to comply with state law;

2. to projects or activities that are not subject to local permit requirements under state or federal law or where application of this section is otherwise inconsistent with state or federal law; or

3. to oak removal undertaken by or at the direction or order of a federal or state agency.

Section 18.20.070 - Enforcement of Section 18.20.050 and Section 18.20.060.

A. The County shall promptly investigate complaints of violations of Section 18.20.050 or Section 18.20.060 and make a determination within thirty (30) days of receipt of the initial complaint whether a violation has occurred. Whenever the County determines that a violation of either of these sections has occurred, the County shall notify the violator in writing of the violation and require that appropriate remedial conditions be implemented or adhered to by a date specified. All notices of violation shall be published on the County website within fourteen (14) days of their issuance. Each violation of Section 18.20.050 or Section 18.20.060 and each failure to comply with the County's notice or meet the deadlines specified therein shall constitute a separate and distinct violation, punishable as set forth in this section.

B. Conditions in the notice of violation shall include actions sufficient to fully remediate the environmental damage caused by the violation. These conditions may include, but are not limited to: removal of vegetation, crops, infrastructure, or structures put in place or constructed in violation of Section 18.20.050 or Section 18.20.060 and on-site replacement or replanting of cut or damaged trees at a 3:1 ratio. If full remediation of the area damaged by the violation is infeasible or insufficient, the full remediation requirement may be satisfied by permanent protection of an area with comparable ecological values as close to the damaged site as feasible at a minimum of a 3:1 ratio to the area damaged by the violation.

C. Penalties. It is unlawful and a public nuisance for any person to violate any of the provisions of Section 18.20.050 or Section 18.20.060 for any purpose or to cause any other person to do so. Such a violation shall be enforceable as a misdemeanor and subject to any and all available judicial and administrative enforcement actions, including, but not limited to, the provisions addressing civil and administrative penalties, stop orders, and public nuisance abatement procedures set forth in the County Code. The amount of the administrative penalty for violations of Section 18.20.050 or Section 18.20.060 shall be the maximum administrative penalty that the County has established for violations of this Code.

D. Within one year of the effective date of the Napa County Watershed and Oak Woodland Protection Initiative of 2018, and annually thereafter, the County shall

prepare and submit to the board a report setting forth the following information for the previous year: the number of formal complaints received concerning violations of Section 18.20.050 and Section 18.20.060; the status of investigations into such complaints; copies of all notices of violation issued pursuant to these sections; and a summary of all actions taken to remediate such violations, including a map showing areas damaged by such violations and areas on which remediation has occurred.

E. In addition to the penalties set forth in subsection (C) of this section, the County may require any person who removes an oak tree in violation of the provisions of Section 18.20.060 to pay a sum of money equal to:

1. The cumulative value of the individual oak trees removed as measured by a standard tree appraisal system designated by the County; or

2. The full cost of remediating any damage caused by the violation in accordance with the provisions of subsection (A) of Section 18.20.060.

Section 18.20.080. <u>Applicability</u>. Section 18.20.050 through Section 18.20.070 do not apply to projects or activities for which the owner or applicant has obtained a vested right, pursuant to state law, or has obtained all legally required discretionary permits from the County necessary for it to proceed, prior to the effective date of the Napa County Watershed and Oak Woodland Protection Initiative of 2018.

SECTION 5: CONFORMING AMENDMENTS

In light of the General Plan amendments set forth above in Section 3 of this Initiative, the General Plan is hereby further amended as set forth below in order to promote internal consistency among the various sections of the General Plan. Text to be inserted in the General Plan is indicated in **bold** type. Text to be deleted from the General Plan is indicated in ~~strikethrough~~ type. Text in standard type currently appears in the General Plan and is not changed by this Initiative. The language in the following amendments may be further amended without a vote of the people in the course of future updates and revisions to the General Plan, provided that any such amendments do not conflict with any provisions of Sections 3 and 4 of this Initiative.

A. In the Summary and Vision Element:

(i) Insert the following new paragraph following the last indented bullet in the existing text currently on page SV-4 of the General Plan:

In 2018, the voters adopted the Napa County Watershed and Oak Woodland Protection Initiative of 2018 to provide additional protections for County streams, wetlands and oak woodlands within the Agricultural Watershed zoning district. These changes included an increase in the habitat replacement ratio required to mitigate potential losses of oak woodlands.

B. In the Agricultural Preservation and Land Use Element:

(i) Policy AG/LU-17, currently on page AG/LU-15 of the General Plan, is amended to read:

Consistent with the Napa County Watershed and Oak Woodland Protection Initiative of 2018, t~~T~~he County encourages active, sustainable forest management practices, including timely harvesting to preserve existing forests, retaining their health, product, and value. The County also encourages timber plantations for fuel wood and lumber production. (For more policies related to the managed production of resources and forest management practices, please see the Conservation Element.)

C. In the Conservation Element:

(i) Insert the following new paragraph following the fourth paragraph of the existing text currently on page CON-10 of the General Plan:

In 2018, the voters adopted the Napa County Watershed and Oak Woodland Protection Initiative of 2018 to provide additional protections for County streams and wetlands within the Agricultural Watershed zoning district.

(ii) Insert the following new paragraph prior to the first full paragraph of the existing text currently on page CON-22 of the General Plan:

In 2018, the voters adopted the Napa County Watershed and Oak Woodland Protection Initiative of 2018 to provide additional protections for County watersheds and oak woodlands within the Agricultural Watershed zoning district. This Initiative recognized that preserving watersheds and oak woodlands are important to the long-term sustainability of County vineyards and other agriculture.

(iii) Policy CON-19, currently on page CON-29 of the General Plan, is amended to read:

The County shall encourage the preservation of critical habitat areas and habitat connectivity through the use of conservation easements or other methods as well as through continued implementation of the Napa County Conservation Regulations associated with vegetation retention and setbacks from waterways **and the Napa County Watershed and Oak Woodland Protection Initiative of 2018**.

(iv) Policy CON-26, currently on pages CON-30 to CON-31 of the General Plan, is amended to read:

Consistent with Napa County's Conservation Regulations **and the requirements of the Napa County Watershed and Oak Woodland Protection Initiative of 2018**, natural vegetation retention areas along perennial and intermittent streams ~~shall~~ **may** vary in width with steepness of the terrain, the nature of the undercover, ~~and~~ type of soil**, and the underlying zoning district**. The design and management of natural vegetation areas shall consider habitat and water quality needs, including the needs of native fish and special

status species and flood protection where appropriate. Site-specific setbacks shall be established **pursuant to Napa County's Conservation Regulations and the requirements of the Napa County Watershed and Oak Woodland Protection Initiative of 2018, and** in coordination with Regional Water Quality Control Boards, California Department of Fish and Game, U.S. Fish and Wildlife Service, National Oceanic and Atmospheric Administration National Marine Fisheries Service, and other coordinating resource agencies that identify essential stream and stream reaches necessary for the health of populations of native fisheries and other sensitive aquatic organisms within the County's watersheds.

Where avoidance of impacts to riparian habitat is infeasible along stream reaches, appropriate measures will be undertaken to ensure that protection, restoration, and enhancement activities will occur within these identified stream reaches that support or could support native fisheries and other sensitive aquatic organisms to ensure a no net loss of aquatic habitat functions and values within the county's watersheds.

(v) Action Item CON NR-7, currently on page CON-35 of the General Plan, is amended to read:

The County **has** ~~shall~~ adopt**ed** ~~a~~ **the Napa County V**~~v~~oluntary Oak Woodland Management Plan **(2010)** to identify and mitigate significant direct and indirect impacts to oak woodlands. **Where oak removal is permitted under the Napa County Watershed and Oak Woodland Protection Initiative of 2018,** ~~M~~ **m**itigation may be accomplished **in accordance with the Initiative** through a combination of the following measures:

a) Conservation easement and land dedication for habitat preservation;

b) Payment of in-lieu fees; and/or

c) Replacement planting of appropriate size, species, area, and ratio.

[Implements Policy 24]

(vi) Policy CON-35, currently on page CON-32 of the General Plan, is amended to read:

Consistent with the Napa County Watershed and Oak Woodland Protection Initiative of 2018, t~~T~~he County shall encourage active forest management practices to preserve and maintain existing forests and timberland, allowing for their economic and beneficial use.

(vii) Policy CON-45, currently on page CON-38 of the General Plan, is amended to read:

Protect the County's domestic supply drainages through vegetation preservation and protective buffers to ensure clean and reliable drinking water consistent with state regulations and guidelines. Continue implementation of current Conservation Regulations **and zoning regulations** relevant to these areas, such as vegetation retention

requirements, consultation with water purveyors/system owners, implementation of erosion controls to minimize water pollution, and prohibition of detrimental recreational uses. [Implemented by Action Item CON WR-3]

(viii) Policy CON-50(a), currently on page CON-39 of the General Plan, is amended to read:

Preserve riparian areas through adequate buffering and pursue retention, maintenance, and enhancement of existing native vegetation along all intermittent and perennial streams through existing stream setbacks in the County's Conservation Regulations **and the Napa County Watershed and Oak Woodland Protection Initiative of 2018** (also see Policy CON-27 which retains existing stream setback requirements).

D. In the Implementation Element:

(i) Action Item CON NR-7, currently on page IP-7 of the General Plan, is amended to read:

The County **has** ~~shall~~ adopt**ed** ~~a~~ **the Napa County V**~~v~~oluntary Oak Woodland Management Plan **(2010)** to identify and mitigate significant direct and indirect impacts to oak woodlands. **Where oak removal is permitted under the Napa County Watershed and Oak Woodland Protection Initiative of 2018,** ~~M~~**m**itigation may be accomplished **in accordance with the Initiative** through a combination of the following measures:

a) Conservation easement and land dedication for habitat preservation;

b) Payment of in-lieu fees;

c) Replacement planting of appropriate size, species, area, and ratio.

(B; CDPD)

SECTION 6: EXEMPTIONS FOR CERTAIN PROJECTS

A. The provisions of this Initiative shall not be applicable to the extent, but only to the extent, that they would violate the constitution or laws of the United States or of the State of California.

B. In the event a property owner contends that application of this Initiative effects an unconstitutional taking of property, the property owner may request, and the Board of Supervisors may grant, an exception to application of any provision of this Initiative if the Board of Supervisors finds, based on substantial evidence, that both: (1) the application of any aspect of this Initiative would constitute an unconstitutional taking of property; and (2) the exception will allow the cutting or removal of trees only to the minimum extent necessary to avoid such a taking.

C. The provisions of this Initiative shall not be applicable to any person or entity that has obtained, as of the effective date of this Initiative, a vested right, pursuant to State law, to undertake any activities that would be prohibited by this Initiative.

SECTION 7: IMPLEMENTATION

A. **Effective Date:** This Initiative shall take effect as provided in the California Elections Code. Upon the effective date of this Initiative: (1) the provisions of Sections 3 and 5 of the Initiative are hereby inserted into the Napa County General Plan, as an amendment thereof; except that if the four amendments of the mandatory elements of the General Plan permitted by State law for any given calendar year have already been utilized in the year in which the Initiative becomes effective, this General Plan amendment shall be the first amendment inserted into the Napa County General Plan on January 1 of the next year; and (2) the provisions of Section 4 of the Initiative are hereby inserted into the Napa County Code as an amendment thereof. Upon the effective date of this Initiative, any provisions of the County Code or of any other County of Napa ordinance or resolution that are inconsistent with the General Plan amendments and County Code amendments adopted by this Initiative shall not be enforced in a manner inconsistent with this Initiative.

B. **Interim Amendments:** The date that the notice of intention to circulate this Initiative was submitted to the elections official of the County of Napa is referenced herein as the "submittal date." The Napa County General Plan in effect on the submittal date as amended by this Initiative comprises an integrated, internally consistent, and compatible statement of policies for the County of Napa. In order to ensure that nothing in this Initiative measure would prevent the General Plan from being an integrated, internally consistent, and compatible statement of the policies of the County, as required by State law, and to ensure that the actions of the voters in enacting this Initiative are given effect, any amendment or update to the General Plan that is adopted between the submittal date and the date that the General Plan is amended by this Initiative measure shall, to the extent that such interim-enacted provision is inconsistent with the General Plan provisions adopted by this Initiative, be amended as soon as possible to ensure consistency between the provisions adopted by this Initiative and other provisions of the General Plan. Likewise, any amendment to the County Code that is adopted between the submittal date and the date that the County Code is amended by this Initiative shall, to the extent that such interim-enacted provision is inconsistent with the County Code provisions adopted by this Initiative, be amended as soon as possible to ensure consistency between the provisions adopted by this Initiative and other provisions of the County Code.

C. **Other County Ordinances and Policies:** The County of Napa is hereby authorized to amend the County of Napa General Plan, all specific or community plans, the County Code, including the Zoning Code, and other ordinances, polices and plans, including climate action plans, affected by this Initiative as soon as possible as necessary to ensure consistency between the provisions adopted in this Initiative and other sections of the General Plan, specific or community plans, the County Code, including the Zoning Code,

and other County ordinances, policies, and plans.

D. **Reorganization:** The General Plan and County Code may be reorganized or readopted in different format, and individual provisions may be renumbered or reordered, in the course of ongoing updates of the General Plan and County Code, provided that the provisions of Section 3 of this Initiative shall remain in the General Plan, and the provisions of Section 4 of this Initiative shall remain in the County Code, unless earlier repealed or amended by vote of the people of the County.

E. **Implementing Ordinances:** The Board of Supervisors is authorized, after a duly noticed public hearing, to adopt implementing ordinances, guidelines, rules, and/or regulations, as necessary, to further the purposes of this Initiative.

F. **Enforcement and Defense of Initiative:** The Board of Supervisors shall take all steps reasonably necessary to enforce this Initiative and to defend it against any challenge to its validity.

G. **Project Approvals:** Upon the effective date of this Initiative, the County and its departments, boards, commissions, officers, and employees shall not take any action which is inconsistent with this Initiative.

SECTION 8: SEVERABILITY AND INTERPRETATION

This Initiative shall be interpreted so as to be consistent with all applicable federal, State, and County laws, rules, and regulations. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion of this Initiative is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Initiative. The voters hereby declare that this Initiative, and each section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion thereof would have been adopted or passed even if one or more sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, parts, or portions are declared invalid or unconstitutional. If any provision of this Initiative is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Initiative that can be given effect without the invalid application. Any singular term shall include the plural and any plural term shall include the singular. All references to County and State code sections shall mean those code sections, including any amendments, in effect at the time of their application. The title and captions of the various sections in this Initiative are for convenience and organization only, and are not intended to be referred to in construing the provisions of this Initiative. The provisions of this Initiative shall be liberally interpreted in order to give effect to its purposes.

SECTION 9: CONFLICTING LAW

A. In the event that this measure and another measure or measures relating to tree removal in specified locations in the County of Napa near streams and wetlands or to oak removal or remediation shall appear on the same County election ballot, the provisions of these other measures shall be deemed to be in conflict with this measure. In the event that more than

one such measure passes and this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure or measures shall be null and void in their entirety. In the event that more than one such measure passes and the other measure or measures shall receive a greater number of affirmative votes than this measure, the following rules shall apply: if more than one such measure passes, then both measures shall go into effect except to the extent that particular provisions of one measure are in direct, irreconcilable conflict with particular provisions of another measure. In that event, as to those conflicting provisions only, the provisions of the measure which received the most votes shall prevail.

B. If this measure is approved by the voters but superseded by any other conflicting ballot measure approved by more voters at the same election, and the conflicting ballot measure is later held invalid, it is the intent of the voters that this measure shall be self-executing and shall be given the full force of law.

SECTION 10: AMENDMENT OR REPEAL

Except as otherwise provided herein, this Initiative may be amended or repealed only by the voters of Napa County.

932838.2

EXHIBIT
7

A Tradition of Stewardship
A Commitment to Service

Assessor-Recorder-County Clerk
Election Division

1127 1st St, Suite E
Napa, CA 94559-2922

(707) 253-4321
Fax: (707) 253-4390

JOHN TUTEUR
REGISTRAR OF VOTERS

Receipt of Impartial Analysis

Napa County Elections Division acknowledges receipt of the following Impartial Analysis:

Ballot Measure: Measure C- Napa County Watershed and Oak Woodland Protection Initiative of 2018

Name of Person Delivering Impartial Analysis: Sue Ingalls

Date delivered: March 9, 2018

John Tuteur, Registrar of Voters

Received by:

JOHN TUTEUR (or Deputy)

A Tradition of Stewardship
A Commitment to Service

NAPA COUNTY COUNSEL

1195 Third Street, Suite 301
Napa, CA 94559-3092
www.countyofnapa.org

Main: (707) 253-4521
Fax: (707) 259-8220

Jeffrey Richard
Acting County Counsel

MEMORANDUM

To:	John Tuteur, Registrar of Voters	From:	Jeffrey Richard, Acting County Counsel
Date:	March 9, 2018	Re:	Measure C- Napa County Watershed and Oak Woodland Protection Initiative of 2018

Attached please find the impartial analysis for this measure. Please let me know if our office can be of further assistance.

FILED
Napa County
Assessor-Recorder-County Clerk
Election Division
MAR 9 2018
By: _____
Deputy

MEASURE C

IMPARTIAL ANALYSIS BY THE NAPA COUNTY COUNSEL

Measure "C" amends the Napa County General Plan and Zoning Ordinance to establish "water qualify buffer zones" on parcels greater than one acre within the Agricultural Watershed (AW) zoning district and would limit tree removal, including both oak and non-oak species, within those zones. The buffer zones would extend between 25 to 125 feet from the top-of-the-bank of any Class I, II, or III stream, as defined, and within 150 feet of any wetland. Tree removal associated with replanting grape vines within the footprint of vineyards approved before the Measure's effective date would be permitted.

Measure C requires on-site replacement of lost oak trees or oak woodlands, or permanent preservation of comparable habitat, at a minimum 3:1 ratio for activities on AW zoned lands greater than one acre, with limited exceptions. Where infeasible, purchase of a conservation easement or payment of in-lieu fees sufficient to provide permanent preservation of comparable oaks at a 3:1 ratio would be required.

Measure C establishes an "Oak Removal Limit," such that when a cumulative total of 795 acres of oak woodlands are removed in AW zones, as measured from September 1, 2017, further removal of oak woodland would be subject to a permitting process. Oak tree removal is defined to include "intentional burning" that would count toward the Limit. Oaks destroyed by fires caused by natural phenomena, by backfires set by state or federal agencies, or removed at the direction of CalFire would not count towards this Limit. It is unclear whether trees removed due to fires resulting from other causes would count toward the Limit.

Once the Limit is reached, permits are required for removal of oak trees five inches or greater in diameter. Permits may be issued in the circumstances set forth in the next paragraph or where removal is necessary to ensure that agricultural use of parcels greater than 160 acres remain economically viable.

Measure C establishes exceptions to the rules on tree removal in the buffer zones that include , but are not limited to, removing downed and dead trees, adhering to State and County requirements for firebreaks, averting imminent threat to health and safety, for development or maintenance of access roads, septic or wastewater systems, water wells, water resources and storage facilities; on land owned by a public agency; within 11 feet of the centerline of driveways ; and within 150 feet of a lawful residence or other structure. These exceptions also apply to oak removal after the Limit is reached. Oak removal permits must ensure retention of at least 90% of the affected oak canopy unless infeasible and, for agricultural uses or new structures, must include remediation measures.

Effect on Existing Law: Napa County's existing conservation regulations provide stream setback requirements which differ from the buffer zone setbacks of Measure C in their definition of streams and in the types of uses allowed within the setbacks. Where there is a conflict with respect to tree removal, Measure C contemplates that the more restrictive regime would control.

A YES VOTE MEANS you want to amend the General Plan/zoning regulations to establish the above described buffer zones and to establish the regulatory framework with respect to the removal of oak trees and oak woodlands.

A NO VOTE MEANS you do not want to amend the General Plan/zoning regulations to establish the above described buffer zones and to establish the regulatory framework with respect to the removal of oak trees and oak woodlands.

Jeffrey M. Richard
Acting County Counsel

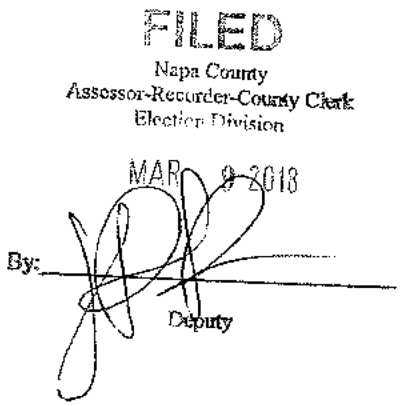

EXHIBIT 8

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Attorneys for Petitioner
YEORYIOS C. APALLAS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

YEORYIOS C. APALLAS,

Petitioner,

v.

JOHN TUTEUR, NAPA COUNTY REGISTRAR OF VOTERS; and DOES 1 through 20, inclusive,

Respondents.

Case No. 18CV000425

NOTICE OF ENTRY OF JUDGMENT

CALENDAR PREFERENCE REQUIRED BY STATUTE (ELEC. CODE § 13314(A)(3))

Action Filed: April 2, 2018

JILL TECHEL; ALFREDO PEDROZA; ELAINE HONIG; KEITH CALDWELL; JOEL TRANMER; and DOES 21 through 40, inclusive,

Real Parties in Interest.

CONSOLIDATED WITH:

YEORYIOS C. APALLAS,

Petitioner,

v.

JOHN TUTEUR, NAPA COUNTY REGISTRAR OF VOTERS; and DOES 1 through 20, inclusive,

Respondents.

Case No. 18CV000395

CALENDAR PREFERENCE REQUIRED BY STATUTE (ELEC. CODE § 13314(A)(3))

Date: April 11, 2018
Time: 8:30 a.m.
Dept: I
Judge: Hon. Rodney Stone
Action Filed: March 26, 2018

BELIA RAMOS; MANUEL RIOS; DAVID R. WHITMER; JERI HANSEN-GILL; PHILLIP BLAKE; and DOES 21 through 40, inclusive,

Real Parties in Interest.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 6, 2018, the Court in the above-captioned consolidated actions entered judgment pursuant to the Stipulation and Request for Entry of Judgment; [Proposed] Judgment, submitted by Petitioner Yeoryios C. Apallas, Respondent John Tuteur, Napa County Registrar of Voters, Real Parties in Interest Belia Ramos, Manuel Rios, David R. Whitmer, Jeri Hansen-Gill, and Phillip Blake (Case No. 18CV000395) and Real Parties in Interest Jill Techel, Alfredo Pedroza, Elaine Honig, Keith Caldwell, and Joel Tranmer (Case No. 18CV000425). The court entered judgment following a hearing on April 6, 2018 on the Unopposed Ex Parte Application for Entry of Stipulated Judgment and Issuance of a Peremptory Writ of Mandate filed by Petitioner Yeoryios C. Apallas. A true and correct copy of the Court's ruling is attached hereto as Exhibit A.

DATED: April 10, 2018

SHUTE, MIHALY & WEINBERGER LLP

By: _____
ROBERT S. PERLMUTTER

Attorneys for Petitioner
YEORYIOS C. APALLAS

988012.1

EXHIBIT A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

YEORYIOS C. APALLAS,

Petitioner,

v.

JOHN TUTEUR, NAPA COUNTY REGISTRAR OF VOTERS; and DOES 1 through 20, inclusive,

Respondents.

JILL TECHEL; ALFREDO PEDROZA; ELAINE HONIG; KEITH CALDWELL; JOEL TRANMER; and DOES 21 through 40, inclusive,

Real Parties in Interest.

YEORYIOS C. APALLAS,

Petitioner,

v.

JOHN TUTEUR, NAPA COUNTY REGISTRAR OF VOTERS; and DOES 1 through 20, inclusive,

Respondents.

Case No. 18CV000425

STIPULATION AND REQUEST FOR ENTRY OF JUDGMENT; ~~[PROPOSED]~~ JUDGMENT

CALENDAR PREFERENCE REQUIRED BY STATUTE (ELEC. CODE § 13314(A)(3))

Action Filed: April 2, 2018

[PROPOSED FOR] CONSOLIDATION WITH:

Case No. 18CV000395

CALENDAR PREFERENCE REQUIRED BY STATUTE (ELEC. CODE § 13314(A)(3))

Date: April 11, 2018
Time: 8:30 a.m.
Dept: I
Judge: Hon. Rodney Stone
Action Filed: March 26, 2018

BELIA RAMOS; MANUEL RIOS; DAVID R. WHITMER; JERI HANSEN-GILL; PHILLIP BLAKE; and DOES 21 through 40, inclusive,

Real Parties in Interest.

Petitioner, Respondent, and Real Parties in Interest to these two actions proposed for consolidation—which relate to the ballot arguments for Napa County Measure C on the June 5, 2018, ballot and have calendar preference under the Elections Code—have stipulated to entry of a judgment that will fully dispose of both cases. Respondent John Tuteur, Napa County Registrar of Voters ("Registrar"), has indicated that he does not oppose entry of this judgment and that it will not interfere with the conduct of the June 5, 2018, election. Accordingly, the parties hereby stipulate and request that the Court enter judgment as detailed below.

In Case No. 18CV000395 ("*Apallas I*") Petitioner Yeoryios Apallas challenges as false and misleading four statements in Real Parties' Direct Argument Against Measure C, which is attached hereto as Exhibit 1. In Case No. 18CV000425 ("*Apallas II*"), Petitioner Apallas challenges as false and misleading two statements in Real Parties' Rebuttal to the Argument in Favor of Measure C, which is attached hereto as Exhibit 2.

At an ex parte hearing held on March 28, 2018, this Court set an expedited briefing and hearing schedule in *Apallas I*, with a hearing set for April 11, 2018. The parties to both cases subsequently stipulated to consolidate the two cases and have them both heard at that same time and date. *See* Stipulation and [Proposed] Order Consolidating Cases and Establishing Briefing Schedule for Additional Claims, filed April 3, 2018. The challenged statements in *Apallas I* are as follows:

1. "Measure C will outlaw future farming in the Ag Watershed;"

2. "Measure C will . . . open[ ] the door to event centers . . . and increas[e] traffic on our already congested rural roads and Highway 29."

3. "Restrictions from Measure C will prevent property owners from . . . adding to one's home . . ."

4. "Please join . . . Napa County Supervisors and Mayors in Napa County, who all oppose Measure C."

The challenged statements in *Apallas II* are as follows:

1. Measure C: "Allows for the Removal of Massive Amounts of Oak Woodlands. Napa County's rigorous environmental regulations already protect woodland areas. Measure C will reverse these protections by allowing 795 acres of oak woodlands to be removed-hurting our ability to protect our local watershed, water quality and groundwater supplies."

2. "Measure C will prevent homeowners from making even the smallest changes to their land."

The Elections Code section 9190 provides that "[d]uring the 10-calendar-day public examination period" after ballot arguments are filed, any voter of the jurisdiction in which the election is being held "may seek a writ of mandate or an injunction requiring any or all of the materials to be amended or deleted." Respondent Registrar has indicated that amending the challenged ballot arguments will not interfere with the conduct of the election. The Elections Code further provides that "a writ of mandate or injunction shall be issued only upon clear and convincing proof that the material in question is false, misleading, or inconsistent with [the Elections Code], and that issuance of the writ or injunction will not substantially interfere with the printing or distribution of official election materials as provided by law." Elections Code § 9190(b)(2).

To avoid further expense and litigation, and without any admission of liability by Real Parties in Interest, Petitioner and Real Parties have stipulated that the ballot arguments initially filed by Real Parties in interest shall be replaced with the amended ballot arguments attached hereto as Exhibits 3 and 4. Petitioner and Real Parties have further stipulated that they will not file, or directly or indirectly support the filing of, any additional challenges to any ballot argument filed in connection with Napa County Measure C on the June 5, 2018 ballot.

Real Parties have represented and acknowledge that the No on Measure C, Coalition f Sustainable Agriculture Committee, FPPC I.D. #1401241,[1] has agreed to pay Petitioner's attorneys' fees in the amount of $54,000, within five days of the filing of this Stipulation anc [Proposed] Order, with payment made to Shute, Mihaly & Weinberger, LLP, Trust Account, attention Robert S. Perlmutter at the address in the caption above. Real Parties further repres and acknowledge that, in the event the No on Measure C campaign does not timely make anc deliver the payment set forth in the preceding sentence, Petitioner will be entitled to a lodesta award of attorneys' fees of $54,000, plus "fees on fees" in the amount deemed reasonable by Court, through a timely filed motion under Code of Civil Procedure section 1021.5.

The Parties agree that the Court may retain jurisdiction over this matter to enforce this stipulation and judgment until performance in full of its terms. The Parties further agree that this stipulation may be executed by facsimile or electronically and in counterparts, each of which shall be deemed to be an original, and all of which shall constitute one and the same document. It may also be electronically signed by any of the Parties through the use of commercially available electronic signature software, which shall be deemed an original signature.

DATED: April 5, 2018

YEORYIOS C. APALLAS
Petitioner

DATED: April _____, 2018

JOHN TUTEUR, NAPA COUNTY REGISTRAR OF VOTERS
Respondent

[1] Real Party in Interest Belia Ramos represented herself in this litigation and no other entity has made or is making any payments on her behalf.

Real Parties have represented and acknowledge that the No on Measure C, Coalition for Sustainable Agriculture Committee, FPPC I.D. #1401241,[1] has agreed to pay Petitioner's attorneys' fees in the amount of $54,000, within five days of the filing of this Stipulation and [Proposed] Order, with payment made to Shute, Mihaly & Weinberger, LLP, Trust Account, attention Robert S. Perlmutter at the address in the caption above. Real Parties further represent and acknowledge that, in the event the No on Measure C campaign does not timely make and deliver the payment set forth in the preceding sentence, Petitioner will be entitled to a lodestar award of attorneys' fees of $54,000, plus "fees on fees" in the amount deemed reasonable by the Court, through a timely filed motion under Code of Civil Procedure section 1021.5.

The Parties agree that the Court may retain jurisdiction over this matter to enforce this stipulation and judgment until performance in full of its terms. The Parties further agree that this stipulation may be executed by facsimile or electronically and in counterparts, each of which shall be deemed to be an original, and all of which shall constitute one and the same document. It may also be electronically signed by any of the Parties through the use of commercially available electronic signature software, which shall be deemed an original signature.

DATED: April _____, 2018

YEORYIOS C. APALLAS
Petitioner

DATED: April 5, 2018

JOHN TUTEUR, NAPA COUNTY REGISTRAR OF VOTERS
Respondent

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DATED: April _____, 2018

YEORYIOS C. APALLAS
Petitioner

DATED: April _____, 2018

JOHN TUTEUR, NAPA COUNTY
REGISTRAR OF VOTERS
Respondent

DATED: April 5, 2018

BELIA RAMOS
Real Party in Interest

[1] Real Party in Interest Belia Ramos represented herself in this litigation and no other entity has made or is making any payments on her behalf.

DATED: April 5, 2018

MANUEL RIOS
Real Party in Interest

DATED: April 5, 2018

DAVID R. WHITMER
Real Party in Interest

DATED: April ____, 2018

JERI HANSEN-GILL
Real Party in Interest

DATED: April 5, 2018

PHILLIP BLAKE
Real Party in Interest

DATED: April 5, 2018

JILL TECHEL
Real Party in Interest

DATED: April 5, 2018

ALFREDO PEDROZA
Real Party in Interest

DATED: April ____, 2018

ELAINE HONIG
Real Party in Interest

DATED: April ____, 2018

KEITH CALDWELL
Real Party in Interest

DATED: April 5, 2018

JOEL TRANMER
Real Party in Interest

Approved as to form:

DATED: April ___, 2018

SHUTE, MIHALY & WEINBERGER LLP

By: _____
ROBERT S. PERLMUTTER
SUSANNAH T. FRENCH
Attorneys for Petitioner
YEORYIOS C. APALLAS

DATED: April ___, 2018

OFFICE OF NAPA COUNTY COUNSEL

By: _____
SILVA DARBINIAN
Deputy County Counsel
Attorneys for Respondent
JOHN TUTEUR, NAPA COUNTY
REGISTRAR OF VOTERS

DATED: April ___, 2018

ARNOLD & PORTER KAYE SCHOLER LLP

By: _____
STEVEN L. MAYER

DocuSigned by:

DATED: April 4/5/2018, 2018

ELAINE HONIG
Real Party in Interest

DATED: April _____, 2018

KEITH CALDWELL
Real Party in Interest

DATED: April _____, 2018

JOEL TRANMER
Real Party in Interest

Approved as to form:

DATED: April ___, 2018

SHUTE, MIHALY & WEINBERGER LLP

By: _____
ROBERT S. PERLMUTTER
SUSANNAH T. FRENCH

Attorneys for Petitioner
YEORYIOS C. APALLAS

DATED: April ___, 2018

OFFICE OF NAPA COUNTY COUNSEL

By: _____
SILVA DARBINIAN
Deputy County Counsel

Attorneys for Respondent
JOHN TUTEUR, NAPA COUNTY REGISTRAR OF VOTERS

DATED: April ____, 2018

ELAINE HONIG
Real Party in Interest

DATED: April ____, 2018
4/5/2018

DocuSigned by:
KEITH CALDWELL
Real Party in Interest

DATED: April ____, 2018

JOEL TRANMER
Real Party in Interest

Approved as to form:

DATED: April ___, 2018

SHUTE, MIHALY & WEINBERGER LLP

By: _____
ROBERT S. PERLMUTTER
SUSANNAH T. FRENCH

Attorneys for Petitioner
YEORYIOS C. APALLAS

DATED: April ___, 2018

OFFICE OF NAPA COUNTY COUNSEL

By: _____
SILVA DARBINIAN
Deputy County Counsel

Attorneys for Respondent
JOHN TUTEUR, NAPA COUNTY
REGISTRAR OF VOTERS

DATED: April _____, 2018

BELIA RAMOS
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DATED: April _____, 2018

MANUEL RIOS
Real Party in Interest

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DAVID R. WHITMER
Real Party in Interest

DATED: April _____, 2018
4/5/2018

DocuSigned by:
[signature]
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JERI HANSEN-GILL
Real Party in Interest

DATED: April _____, 2018

PHILLIP BLAKE
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DATED: April _____, 2018

JILL TECHEL
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DATED: April ____, 2018

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Approved as to form:

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SHUTE, MIHALY & WEINBERGER LLP

By: _____

ROBERT S. PERLMUTTER
SUSANNAH T. FRENCH

Attorneys for Petitioner
YEORYIOS C. APALLAS

DATED: April 5, 2018

OFFICE OF NAPA COUNTY COUNSEL

By: _____

SILVA DARBINIAN
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Attorneys for Respondent
JOHN TUTEUR, NAPA COUNTY
REGISTRAR OF VOTERS

DATED: April ___, 2018

ARNOLD & PORTER KAYE SCHOLER LLP

By: _____
STEVEN L. MAYER

Attorneys for Real Parties in Interest
JILL TECHEL, ALFREDO PEDROZA, ELAINE HONIG, KEITH CALDWELL, JOEL TRANMER, MANUEL RIOS, DAVID R. WHITMER, JERI HANSEN-GILL and PHILLIP BLAKE

[PROPOSED] JUDGMENT

TO RESPONDENT TUTEUR AND ALL THOSE ACTING PURSUANT TO HIS DIRECTION AND CONTROL:

Good cause appearing from the Petitions and the foregoing stipulation in these consolidated actions, and the Court having considered the agreement of the Parties to stipulate to judgment as set forth herein and determined that an order directing the Registrar to amend the ballot arguments as requested by the Parties will not interfere with the June 5, 2018 election and otherwise complies with the Elections Code, the Court hereby directs that the Registrar shall replace the Direct Argument Against Measure C, (attached hereto as Exhibit 1), and the Rebuttal to the Argument in Favor of Measure C, (attached hereto as Exhibit 2), with the amended Direct Argument Against Measure C (attached hereto as Exhibit 3) and the amended Rebuttal to the Argument in Favor of Measure C, (attached hereto as Exhibit 4).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. That a peremptory writ of mandate shall issue under seal of this Court ordering Respondent and all those acting pursuant to his direction and control replace the Direct Argument Against Measure C, (attached hereto as Exhibit 1), and the Rebuttal to the Argument in Favor of Measure C, (attached hereto as Exhibit 2), with the amended Direct Argument Against Measure C (attached hereto as Exhibit 3) and the amended Rebuttal to the Argument in Favor of Measure C, (attached hereto as Exhibit 4) The writ of mandate shall further order the Registrar to publish the replacement arguments in Exhibits 3 and 4 in the official ballot pamphlet for the June 5, 2018, election.

2. That the entry of this order and judgment are consistent with the provisions of Elections Code §9190(b)(2).[2]

[2] The Elections Code provides that "a writ of mandate or injunction shall be issued only upon clear and convincing proof that the material in question is false, misleading, or inconsistent with [the Elections Code], and that issuance of the writ or injunction will not substantially interfere with the printing or distribution of official election materials as provided by law." Elections Code § 9190(b)(2).

3. The court will retain jurisdiction over this matter to enforce the settlement until performance in full of the terms of the settlement..

IT IS SO ORDERED.

DATED: April 9, 2018

R. STONE

HON. RODNEY STONE
JUDGE OF THE SUPERIOR COURT

987528.6

EXHIBIT 1

Put simply: Measure C is confusing, poorly written, and will create too many unintended consequences.

Napa County already has rigorous environmental regulations in place. This measure undermines voter-approved Measure J, which continues to effectively protect Napa County's water quality and oak woodlands. 41

Measure C will do more harm than good. Measure C will outlaw future farming in the Ag Watershed and encourage other types of development, while still allowing 795 acres of oak woodlands to be removed – opening the door for event centers and more luxury homes to be developed across our agricultural watershed; destroying our viewshed and hillsides; and increasing traffic on our already congested rural roads and Highway 29. 69

Residents, conservation groups, and agriculturalists are all questioning why proponents would place such a poorly written measure on the ballot. An independent legal analysis concluded that Measure C is "unlawfully vague and misleading" and "creates a significant likelihood" of costly lawsuits against the County – lawsuits that taxpayers will ultimately have to pay for. 53

Restrictions from Measure C will prevent property owners from making even the slightest changes to their land, such as removing just two oaks without a permit, widening a driveway, or adding on to one's home, and that same legal analysis states this measure could "subject property owners to enforcement actions and criminal penalties who, through no fault of their own, lose trees due to wildfire" caused by human activity. 69

Napa County's agricultural community, environmental leaders, elected officials, and residents stand united against Measure C. Please join Napa County Farm Bureau, Napa Valley Vintners, Napa Valley Grapegrowers and Winegrowers of Napa County, along with Coalition Napa Valley, Sustainable Napa County, Senator Bill Dodd, Napa County Supervisors and Mayors in Napa County, who all oppose Measure C.

Don't be fooled! Protect Napa. Vote No on Measure C.

www.ProtectNapa.com 58

290

FILED
Napa County
Assessor-Recorder-County Clerk
Election Division
MAR 16 2017
By: [signature]
Deputy

EXHIBIT 2

COALITION FOR SUSTAINABLE AGRICULTURE
REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE C – DRAFT FOUR
MARCH 19, 2018
WORD COUNT: 244 (250 WORDS MAX)

Rebuttal to argument in favor of Measure C

We agree on the importance of protecting agriculture, our natural resources and scenic vistas, but as an independent legal analysis on Measure C concluded, it's "unlawfully vague and misleading" and threatens the very things proponents claim it might protect.

The Facts About Measure C:

Allows for the Removal of Massive Amounts of Oak Woodlands
Napa County's rigorous environmental regulations already protect woodland areas. Measure C will reverse these protections by allowing 795 acres of oak woodlands to be removed—hurting our ability to protect our local watershed, water quality and groundwater supplies.

Threatens Hillsides and Iconic Vistas
Measure C narrowly targets agriculture, but overlooks the real threat to the Napa Valley: destroying our Agricultural Watershed and scenic hillsides to develop luxury homes and other development —which are **NOT** restricted under Measure C.

Hurts Agriculture
Agricultural organizations are UNITED AGAINST Measure C: Napa County Farm Bureau, Napa Valley Vintners, Napa Valley Grapegrowers and Winegrowers of Napa County.

Goes too Far
Measure C will prevent homeowners from making even the smallest changes to their land. In fact, someone who removes even two oak trees from their property without following the strict regulations of Measure C could be charged with a misdemeanor!

It's clear: Measure C adds confusing regulations with numerous unintended consequences and undermines Measures J and P, which voters approved to protect farmland.

Join our broad-based coalition: every Napa County agricultural group, Coalition Napa Valley, Sustainable Napa County, elected officials, community leaders and residents and **Vote No on Measure C.**

www.ProtectNapa.com

FILED
Napa County
Assessor-Recorder-County Clerk
Election Division
MAR 23 2018
By: _____
Deputy

EXHIBIT 3

Direct Argument

Measure C is confusing, poorly written, and will create too many unintended consequences.

Napa County already has rigorous environmental regulations. This measure undermines voter-approved Measure J, which continues to effectively protect Napa County's water quality and oak woodlands.

Measure C will do more harm than good. It will restrict future farming in the Ag Watershed and encourage other types of development, while still allowing 795 acres of oak woodlands to be removed —opening the door for event centers and more luxury homes to be developed across our agricultural watershed; destroying our viewshed and hillsides; and increasing traffic on our already congested rural roads and Highway 29.

Residents, conservation groups and agriculturalists all question why proponents would place such a poorly written measure on the ballot. An independent legal analysis concluded that Measure C is "unlawfully vague and misleading" and "creates a significant likelihood" of costly lawsuits against the County -- lawsuits that taxpayers will ultimately have to pay for.

When the Oak Tree Removal Limit is reached, Measure C will require property owners to obtain a permit before removing oak trees in the Ag Watershed, to make changes to their land such as widening a driveway or adding on to one's home. The same legal analysis states this measure could "subject property owners to enforcement actions and criminal penalties who, through no fault of their own, lose trees due to wildfire" caused by human activity.

Napa County's agricultural community, environmental leaders, elected officials and resident stand united against Measure C. Please join Napa County Farm Bureau, Napa Valley Vintners, Napa Valley Grapegrowers, Winegrowers of Napa County, Coalition Napa Valley, Sustainable Napa County, Senator Bill Dodd, Supervisors Gregory, Pedroza and Ramos; and Mayors Techel (Napa), Canning (Calistoga), Garcia (American Canyon), and Dunbar (Yountville); who all oppose Measure C.

Don't be fooled. Protect Napa. Vote No on Measure C.

www.ProtectNapa.com

986758.4

EXHIBIT 4

Rebuttal to argument in favor of Measure C

We agree on the importance of protecting agriculture, our natural resources and scenic vistas, but as an independent legal analysis on Measure C concluded, it's "unlawfully vague and misleading" and threatens the very things proponents claim it might protect.

The Facts About Measure C:

Permits Removal of Massive Amounts of Oak Woodlands
Measure C's proponents say they want to protect woodland areas. Yet Measure C will allow 795 acres of oak woodlands to be removed without a permit. The County would lose 795 acres of agricultural land.

Threatens Hillsides and Iconic Vistas
Measure C narrowly targets agriculture, but overlooks the real threat to the Napa Valley: destroying our Agricultural Watershed and scenic hillsides to develop luxury homes and other development —which are **NOT** restricted under Measure C.

Hurts Agriculture
Agricultural organizations are UNITED AGAINST Measure C: Napa County Farm Bureau, Napa Valley Vintners, Napa Valley Grapegrowers and Winegrowers of Napa County.

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It's clear: Measure C adds confusing regulations with numerous unintended consequences and undermines Measures J and P, which voters approved to protect farmland.

Join our broad-based coalition: every Napa County agricultural group, Coalition Napa Valley, Sustainable Napa County, elected officials, community leaders and residents and **Vote No on Measure C.**

www.ProtectNapa.com

987709.1

PROOF OF SERVICE

Apallas v. Tuteur, et al.
Case Nos. 18CV000395 and 18CV000425
Napa County Superior Court

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the City and County of San Francisco, State of California. My business address is 396 Hayes Street, San Francisco, CA 94102.

On April 10, 2018, I served true copies of the following document(s) described as:

NOTICE OF ENTRY OF JUDGMENT

on the parties in this action as follows:

Silva Darbinian Deputy County Counsel County of Napa 1195 Third Street, Suite 301 Napa, California 94559 Tel: (707) 253-4521 Fax: (707) 259-8220 E-mail: Silva.Darbinian@countyofnapa.org	Attorneys for Respondent JOHN TUTEUR, NAPA COUNTY REGISTRAR OF VOTERS
Steven L. Mayer Arnold & Porter Kaye Scholer LLP Three Embarcadero Center, 10th Floor San Francisco, California 94111-4024 Tel: (415) 471-3163 Fax: (415) 471-3400 E-mail: steve.mayer@apks.com	Attorneys for Real Parties in Interest MANUEL RIOS, DAVID R. WHITMER, JERI HANSEN-GILL, PHILLIP BLAKE, JILL TECHEL, ALFREDO PEDROZA, ELAINE HONIG, KEITH CALDWELL and JOEL TRANMER
Belia Ramos E-mail: beliaeugenia@gmail.com	Real Party in Interest

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address Weibel@smwlaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 10, 2018, at San Francisco, California.

David Weibel

EXHIBIT 9

SHUTE, MIHALY & WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

ROBERT "PERL" PERLMUTTER
Attorney
perlmutter@smwlaw.com

February 26, 2018

Via E-Mail and U.S. Mail

Chairman Wagenknecht and Members of
the Board
Napa County Board of Supervisors
1195 Third Street
Suite 130
Napa, CA 94559

Re: Elections Code Section 9111 Report for Napa County Watershed and Oak Woodland Initiative of 2018

Dear Chairman Wagenknecht and Members of the Board:

On behalf of the proponents of the Napa County Watershed and Oak Woodland Initiative of 2018 ("Initiative"), we are writing to object to the Legal Analysis of Napa County Watershed and Oak Woodland Protection Initiative of 2018 prepared by the law firm of Miller, Starr and Regalia ("Miller Starr Report" or "Report"). The Report asserts that it was prepared "pursuant to Elections Code section 9111." However, the purpose of Section 9111 reports is "to better inform the county electorate and the board of supervisors about proposed initiatives" by providing a fair assessment of their fiscal, land use, and other similar impacts and effects. *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 777; Elec. Code, § 9111.

The Report prepared by Miller Starr is not a fair assessment of the Initiative's effects. Rather, it is fundamentally misleading and biased. The Report reads as if it were prepared for an opponent of the Initiative who asked its lawyers to prepare a comprehensive catalogue of every conceivable ground—no matter how flimsy—for challenging the Initiative in court. Indeed, it is a stretch to call the Miller Starr Report a "9111 report" at all. It does not, for instance, ever identify the seven specific impacts and effects that the Legislature itemized as appropriate for consideration in a 9111 Report. Nor does it even purport to set forth an unbiased analysis of the impact of implementing the Initiative. And it contains no discussion of how and to what degree the Initiative will

further its stated goals of ensuring long-term protections for Napa County's oak woodlands, streams, and wetlands that are so essential to the County's future.

The Miller Starr Report's approach is deeply troubling to our clients, as it should be to the Board and to all County voters. In the agenda for the January 30, 2018, meeting at which the Board considered whether to order a 9111 report on the three initiatives that qualified for the ballot, there was no suggestion that the Board would be requesting a report identifying every possible basis for challenging the Initiative. Nor do we recall the Board ordering such a report at the hearing itself. Instead, after hearing extensive comments by concerned members of the public about the Initiative's potential impacts and effects—both good and bad—the Board ordered a report to address the questions raised by County staff and the public pursuant to Elections Code section 9111.

We are not surprised that the Report is—grudgingly—forced to conclude that a court would almost certainly reject the potential legal claims it catalogues. Indeed, despite addressing dozens of potential legal theories, the 79-page Report fails to identify a single legal claim as having a probable chance of success. Moreover, as the Report tacitly acknowledges, nearly every potential claim raised against the Initiative *could be raised with equal force against literally hundreds of provisions of the County Code and the Napa County General Plan* ("General Plan"). Indeed, many of the terms that the Report contends are potentially vague or otherwise unconstitutional appear repeatedly in nearly identical contexts throughout the County's existing Code and General Plan.

Yet, despite largely recognizing the Initiative's validity, the Report presents a one-sided and misleading picture to the public and the Board. The Report repeatedly mischaracterizes the Initiative in an inflammatory manner—falsely suggesting, for example, that it subjects property owners whose trees are destroyed by wildfires to prosecution. Moreover, the Report appears designed to leave readers with the erroneous impression that the Initiative is honeycombed with legal flaws, despite concessions—buried deep within the Report—that it would almost certainly be upheld by the courts.

This firm drafted the Initiative. We have also drafted dozens of other land use initiatives, including Napa County's Measure J and Measure P, and reviewed or consulted regarding hundreds of others. And we have prepared, helped prepare, or reviewed many dozens of Section 9111 reports, including the 9111 report prepared by County staff for Napa County's 2008 Measure P. But we have never seen a Section 9111 Report as one-sided, biased, and wholly unrelated to the statutory purpose of section 9111 as the one prepared by Miller Starr.

Even a cursory comparison with the 9111 report the County prepared for the Save Measure J Initiative in 2008 ("Measure P") shows how fundamentally inconsistent the Miller Starr Report is with Elections Code section 9111. (A copy of the Measure P 9111 Report is attached to this letter for ease of reference.[1]) The Measure P Report, for instance, commences with a summary of the four specific items under section 9111 that the measure implicates. It then systematically examines the impacts and effects of Measure P, including both the potentially positive or beneficial impacts, and the potential negative consequences. And while it briefly mentions some potential legal concerns (*see, e.g.*, Measure P 9111 Report at 1, 7), it does not engage in dozens of pages of conjecture about how terms that appear in Measure P (as well as throughout the County Code and in the present Initiative), might be subject to litigation.

We recognize, of course, that this Board publicly supported and endorsed Measure P. And that it appears that several members may be intending to oppose this Initiative. But the fact that the Board, or individual Board members, support or oppose an initiative does not justify spending public funds on a biased and one-sided report. Indeed, while the constitution protects Board members' right to take a position for or against an initiative, it prohibits them from spending public money to create or disseminate biased and one-sided reports or other information that do not fairly present the facts.

As the California Supreme Court has repeatedly explained, "[a] fundamental precept of this nation's democratic electoral process is that the government may not 'take sides' in election contests or bestow an unfair advantage on one of several competing factions." *Stanson v. Mott*, 17 Cal.3d 206, 217 (1976). Accordingly, any public funds the County expends regarding the Initiative must be limited to giving a "fair presentation" of "all relevant facts" and cannot be used "to promote a partisan position in an election campaign." *Id.* at 209-10, 220; *see also Vargas v. City of Salinas* (2009) 46 Cal.4th 1, 40 (noting that "argumentative or inflammatory rhetoric" in informational materials prepared by a public agency is an indicator of improper and unconstitutional advocacy).

These requirements and prohibitions have also been codified in the Government Code, which expressly provides that public agencies "may not expend or authorize the expenditure of any … funds . . . to support or oppose the approval or rejection of a ballot measure." Gov. Code, § 54964(a). Rather, funds may be expended only "to provide information to the public about the possible effects of a ballot measure" and *only* if the

[1] The Measure P 9111 Report identifies the "Save Measure J" initiative as Measure O, although it was ultimately placed on the ballot as Measure P.

"information provided constitutes an accurate, fair, and impartial presentation of relevant facts." *Id.*, § 54964(c).

The Miller Starr Report does not come close to satisfying these requirements. If the Report's one-sidedness is not corrected by this Board, the Report will remain a de facto campaign piece. ***Accordingly, we urge the Board to reject this report and to correct these oversights and to provide the required fair analysis of the Initiative***.

In this regard, we note that the email transmitting this and the other Miller Starr Reports asserts that "The Board is required to accept each of the reports, [and] order it filed with the Clerk of the Board." However, there is no such requirement in Elections Code section 9111, and we are unaware of any legal authority or basis for such a requirement. Indeed, if anything, the statutory and constitutional prohibitions on the County funding or promoting one-sided materials on an initiative, requires the County *not* to take any action that could be construed as accepting the Miller Starr Report or adopting it as the County's official position.

SUMMARY

The stated purpose of the Initiative is to "protect the water quality, biological productivity, and economic and environmental value of Napa County's streams, watersheds, wetlands and forests, and to safeguard the public health, safety and welfare of the County's residents." Initiative § 2A. The Initiative achieves this goal by adopting policies for the Agricultural Watershed zoning district to protect forests and tree canopy near streams and wetlands and to ensure the long-term preservation of Napa's oak woodlands. Initiative § 2B. While the Napa County General Plan and its zoning code recognize these same concerns, the proponents of the Initiative—along with the more than 7,000 County voters who signed it—believe that the County's existing stream setbacks and oak protections do not provide sufficient protection. The Proponents also believe that Napa County's water quality, and its signature oak woodlands will not be protected for the long-term unless the County takes serious steps now to preserve these resources for the next generation.

The Miller Starr Report, however, makes little reference to the Initiative's beneficial purposes or the extent to which the Initiative will achieve them. It does not discuss, for example, how ensuring the long-term protection of Napa's watersheds and woodlands will improve water quality and thus help ensure that the County's agricultural and tourism industries continue to thrive. These omissions are particularly disturbing given that the Report repeatedly emphasizes the Initiative's alleged costs and potential liabilities. As detailed below, in many cases it does so on the basis of pure speculation or

interpretations of the Initiative that are so far-fetched that they fly in the face of the Initiative's plain language.

The Report's lack of objectivity is seen in multiple ways. Perhaps the most egregious is the Report's treatment of the Napa's recent horrific wildfires. The Report never considers the possibility that the fires' devastating impacts on oak woodlands and watersheds might make the Initiative's proposed protections of these resources even more critical. Rather, it uses the fires to incite baseless fears about the Initiative's effects. The Report suggests, for example, that the 795 acre Oak Removal Limit could already be reached *if* it includes oaks destroyed by wildfire.

Yet, buried within paragraphs of irrelevant speculation, the Report admits that, in fact, the 795 acres includes only oaks lost to "intentional burning" not to wildfires. Report at 17. The Report also recognizes that the Initiative exempts any oaks removed "by or at the direction or order of a federal or state agency," *a provision which "would, in great part and as a practical matter, exempt from regulation the setting of backfires for the purposes of fighting wildfires in Napa County*." Report at 18. Thus, the Report's insinuation that oaks lost from past or future wildfires would somehow "count" toward the Oak Removal Limit is entirely groundless.

The Report's suggestion that the Initiative could subject landowners "who, through no fault of their own, lose trees due to wildfire" to enforcement actions based on these losses is similarly false and inflammatory. It is inconceivable that the County would take such action and if it did, it would find no support in the language of the Initiative. The Board should not countenance such transparent scare tactics in a Report that is required by law to be fair and objective.

The Report also repeatedly misreads the Initiative's provisions in ways so flagrant it is difficult to believe they are unintentional. For example, the Initiative does not contain "internal contradictions" that "render it impossible for a property owner to obtain a use permit for the removal of oak trees" after the Oak Removal Limit is reached. Report at 2. Rather, it spells out exactly when a use permit is required, when the County can use a more informal permit system, and sets out numerous situations in which oak removal is permitted. The fabricated "contradictions" set forth in the Report cannot be squared with the Initiative's plain language.

The Report similarly mischaracterizes California law. Perhaps the most obvious example is the Report's claim that one sentence in the Initiative violates a prohibition against "indirect" legislation. Report at 3. In fact, identical language was considered and *expressly upheld* by an appellate court in a challenge to a different initiative. *Pala Band*

of Mission Indians v. Bd. of Supervisors (1997) 54 Cal.App.4th 565. Even though no other appellate decision has *ever* questioned *Pala's* holding, the Report nevertheless opines that the holding is "highly questionable" and that the language is vulnerable to legal attack. Report at 45. While this may be the litigation position that the Report's authors have taken in some other case or intend to take, no neutral analysis could come to this conclusion.

In this regard, a comparison to the 9111 Report that County Staff prepared for Measure P is particularly telling. Measure P contained the identical language that the Miller Starr Report contends is unconstitutional. *See* Measure P, Section 3(D), attached to Measure P 9111 Report. However, the 9111 Report for Measure P never suggests that this provision is unconstitutional. Nor, despite the alleged risk of litigation that Miller Starr claims this language creates, did any party challenge this provision after County voters enacted Measure P—with the express support of this Board. Nor to our knowledge, has any published case considered such a challenge since *Pala Band* expressly rejected it in 1997.

Finally, the pervasive tenor and approach of the Miller Starr Report seems intended to give the public the false impression that the Initiative is legally flawed. The Report spends more than 50 pages discussing dozens of "potential legal defects" and even insinuates that "the Board might conclude that all or a portion of the Initiative would likely or potentially be invalid as a matter of substantive law." Report at 3. Yet, nothing in the Report would remotely support a finding that the Initiative would "likely" be held invalid in whole or in part. Rather, the Report is repeatedly forced to concede that the Initiative would likely be *upheld* against challenge—concessions it buries deep in the text where they might be easily overlooked.

To give just one example, the Report repeatedly suggests that the Initiative violates somebody's equal protection rights (the Report does not make clear exactly whose). Yet, in the end, it admits that equal protection challenges to land use policies are "difficult to sustain," that such policies will be upheld if they are "rationally related to a legitimate government interest," that the Initiative's goals are entirely legitimate, and that, accordingly, the "legal risks appear to be low." Report at 16. The Report then adopts this same misleading approach for every far-fetched legal claim that could theoretically be brought against the Initiative. And it fails to disclose that these same types of legal claims could *potentially* be brought against *any* land use initiative or regulation, including most of the zoning and general plan policies adopted by the County.

Ultimately, the Report's conclusion that there "is a <u>significant likelihood</u> the Initiative could be challenged" (Report at 3) says less about the validity of the Initiative

than about the litigation strategy of those opposed to efforts to protect Napa's watershed and oak woodlands. As Miller Starr is well aware, any County land use policy *could* be *challenged*, but that does mean the challenge will succeed. In the case of an adopted initiative, it merely means the litigants have the resources to try to stop the initiative's policies from being implemented, despite the fact that a majority of the County voted in favor of them. And the legal standard for succeeding in such a challenge is very high. Under California law, it is the duty of the courts to "jealously guard" the initiative power, and initiatives "'must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears.'" *Rossi v. Brown* (1995) 9 Cal.4th 688, 711.

DISCUSSION

I. The Report's Analysis of the Alleged Legal Risks Is One-Sided and Misleading.

The purpose of a Section 9111 report is to provide an objective assessment of the fiscal and land use "impacts" of a proposed initiative. Elec. Code, § 9111; *Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1041 (reports "balance the right of initiative with the goal of informing voters and local officials about the potential consequences of an initiative's enactment"). The bulk of the Miller Starr Report, however, is devoted, not to an analysis of the Initiative's "impacts," but to a laundry list of every conceivable legal challenge that could *potentially* be brought against it.

Moreover, the Report's legal "analysis" is entirely one-sided. First, the Report contains lengthy discussions of potential claims, only to grudgingly conclude that the claims have no merit. Second, it repeatedly mischaracterizes the Initiative's provisions in a manner that can only mislead the public about their effects. Third, it claims that the Initiative violates California election law despite case law that shows the opposite. Finally, it presents a litany of the Initiative's alleged inconsistencies with the General Plan that fall apart on the barest scrutiny. Thus, the Report in no way constitutes the "accurate, fair, and impartial presentation of relevant facts" required by law. Gov. Code, § 54964(c).

A. The Report Repeatedly Identifies Claimed Litigation "Risks" Only to Ultimately Conclude that Initiative Is Valid.

1. The Initiative Is Not Vague.

The Report begins with an extended discussion of the "vagueness doctrine," asserting that several of the Initiative's provisions "might be deemed impermissibly vague." Report at 9. In particular, it claims that a provision "might be" vague if it contains a "necessity" standard, or uses the word "feasible," "oak woodland," "canopy," "wetland," or "residence or other structure." *Id.* at 9-16. Yet, ultimately, the Report concludes that no significant concerns exist.

Courts interpret initiatives "using the same principles that govern construction of legislative enactments," such as the County's zoning code and General Plan. Report at 7. Yet, the Initiative terms the Report identifies as unduly "vague" are used by the County in precisely the same manner. For example, the word "feasible"—which is subject to two full pages of analysis in the Report—appears at least 36 times in the County code, and the word "infeasible" appears at least 5 times. The Initiative's requirement that off-site oak mitigation be "as close as feasible" to the parcel (§ 18.20.060(A)(3)) is legally no different from the County's requirement that wetlands be protected and enhanced "to the maximum extent feasible" (County Code § 18.40.170(D)(1)). Thus, it is not surprising that the Report ultimately concedes that it is "most unlikely" that this term would be held unconstitutionally vague. Report at 11. It then goes on to make similar findings for most of the other terms. Report at 13 ("low risk" that "oak woodland" is unconstitutionally vague); *id.* ("very low" risk regarding "canopy"); *id.* 14 ("canons of construction" would uphold County interpretation of "wetland").

To the extent that the Report concludes otherwise, its findings are baseless. For example, the Report asserts that the provision permitting the County to issue an oak removal permit where "necessary" to "ensure economically viable use" of a parcel "might be deemed impermissibly vague." Report at 9. The County Code, however, contains hundreds of "necessity" standards. For instance, replanting of vineyards is exempted from certain regulations where any "re-engineering of existing terraces is *necessary* to correct existing erosion or water quality problem." County Code § 18.108.055(A). The County may grant an exception to its conservation regulations where "the encroachment if any, is the *minimum necessary* to implement the project." *Id.*, § 18.108.040(A)(5). And, in a provision nearly identical to the Initiative's, the County Code provides that the County may grant a variance where "*necessary* for the preservation and enjoyment of substantial property rights." *Id.*,§ 18.128.060(A)(3).

Certainly, if the County can make a "necessity" determination under that provision, it can make one under the Initiative. *See Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 598 (directing that the courts "should construe enactments to give specific content to terms that might otherwise be unconstitutionally vague"). For the County to conclude otherwise would mean that it must also find that many of its basic land use regulations are void for vagueness. Fortunately, the Supreme Court has rejected such challenges. *See County of Nevada v. MacMillen* (1974) 11 Cal.3d 662, 673 (noting that the phrase "necessary and proper" has been held to be an entirely permissible "'nonmathematical standard'" that regulates a "'wide spectrum of human activities'" and that "'standards of this kind are *not* impermissibly vague'") (citation omitted); *accord Creighton v. City of Santa Monica* (1984) 160 Cal.App.3d 1011, 1016, 2019-20 (city properly adopted ordinance clarifying and implementing initiative requiring rental control board to "finance its *reasonable and necessary* expenses by charging landlords annual registration fees . . . [and] to request and receive funding *when and if necessary*") (emphasis added).

Likewise, while the Report suggests that the distinction between "streams" and "wetlands" causes "confusion" (Report at 14), this distinction is commonplace. The County's General Plan, for example, provides that projects "shall avoid impacts to wetlands to the extent feasible." General Plan at CON-31. It also provides that the County shall "[e]ncourage the retention of large woody debris in streams to the extent consistent with flood control considerations." *Id.* at CON-26. The County's zoning code likewise references both streams and wetlands, without suggesting such terms are ambiguous or interchangeable. *See* County Code § 18.40.170(D)(1) ("*All wetlands, pools, pond areas or similar lands with resource value, shall be protected in their natural state and enhanced to the maximum extent feasible*."); § 18.108.030 (defining stream to include "[a]ny watercourse which has a well-defined channel with a depth greater than four feet and banks steeper than 3:1 and contains hydrophilic vegetation, riparian vegetation or woody-vegetation including tree species greater than ten feet in height").

The Initiative is no more "confusing" on this point than the existing County land use regulations. Surely, the County staff reports for the dozens of staff-proposed enactments did not contain lengthy discussions about how these terms *could* be subject to litigation. Thus, there is no legitimate basis for including such lengthy discussion in a 9111 Report when the voters propose such an enactment.

2. The Initiative Raises No Equal Protection Issues.

The Report's extended discussion of equal protection issues is similarly misleading. Recognizing that equal protection challenges to land use regulations are

reviewed under a highly deferential standard, the Report concludes that the likelihood of a successful equal protection claim is "low." Yet it undertakes two separate analyses of this essentially non-existent "risk," as well as including it as a "significant potential legal defect" in its summaries. Report at 3, 15-16, 36-37, 50.

The suggestion that the Initiative's exemption for replantings within the footprint of existing vineyards is somehow "unconstitutional" is especially absurd. *See* Report at 36. As a practical matter, if a field is currently planted, there will rarely, if ever, be mature trees within its footprint that would even be affected by the Initiative's tree removal limitations. Plus, given the unique and important role of vineyards to Napa County agriculture, there is an ample rational basis for providing an additional exemption for agricultural lands. *See, e.g.*, *Stubblefield Construction Co. v. City of San Bernardino* (1995) 32 Cal.App.4th 687, 713 (zoning ordinance is presumed valid and "'will not be held unconstitutional if its wisdom is at least fairly debatable and it bears a rational relationship to a permissible state objective'"); *Breneric Associates v. City of Del Mar* (1998) 69 Cal.App.4th 166, 186-187 ("Under the rational relationship test, the legislative action will be upheld unless 'the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decisionmaker.'").

Moreover, to the extent this provision creates an exemption for vineyards that have all discretionary permits prior to the Initiative's effective date, it mirrors other provisions that apply to *all* property owners. Section 18.20.080 provides that the Initiative's restrictions do not "apply to projects or activities for which the owner or applicant has obtained . . . all legally required discretionary permits from the County necessary for it to proceed, prior to the effective date of the Napa County Watershed and Oak Woodland Protection Initiative of 2018." Yet, the Report—inexplicably—makes no mention of this provision.

Moreover, the Initiative's limited exceptions for telecommunication facilities is reasonable given the County's recognition that such infrastructure is critical to the local economy and to its emergency response system. *See* General Plan E-10 ("Policy E-16: The County supports the expansion of energy and telecommunication services . . . to all areas of the county where these services are needed to support the development of locally appropriate jobs and services, including home-based businesses."); County Code § 18.119.080 (A) (providing that "[a]ll radio, television and voice communication facilities providing service to government or the general public shall be designed to survive a natural disaster without interruption in operation."). Likewise, solar facilities are integral part of state and local efforts to conserve energy and reduce greenhouse gas emissions.

See General Plan at SV-7 (elements of sustainability include "renewable resources such as solar energy); CON-48 ("Policy CON-70: The County shall seek to increase the amount of energy produced through locally available energy sources, including establishing incentives for, and removing barriers to, renewable and alternative energy resources (solar, wind) where they are compatible with the maintenance and preservation of environmental quality."). Thus, the limited exceptions for such facilities are not unconstitutional, but entirely reasonable.

3. The Initiative Is Not Preempted.

The Report likewise concedes that the Initiative in not preempted by state law, but only after an extended discussion of all the ways it theoretically might be. Indeed, the Report ultimately recognizes that the Initiative is not preempted by state forestry law, housing law, or any other law. Report at 29 (finding "little risk a court would deem the Initiative to be preempted by the California Forest Practice Act and rules"); *id.* at 30 (concluding that "[t]o a great extent, this preemption concern [related to low-income housing] does not appear applicable to the Initiative"); *id.* at 32 (state law regarding accessory dwelling units "does not invalidate the Initiative"); *id.* at 33 (Initiative provides "an extra layer of protection to water resources" and does not conflict with state groundwater law); *id.* at 33 (Initiative does "not appear" to frustrate regional water quality regulations). Given the Report's conclusion that the Initiative is valid, it is puzzling why the Report spends nearly eight pages entertaining baseless *potential* preemption claims.

The Report's repeated claim that the Initiative could be preempted by the "Oak Woodlands Protection Act" (Report at 2, 25, 50) is similarly bewildering. In the first place, its analysis does not discuss the Oak Woodlands Protection Act at all, but Public Resources Code section 21083.4, a provision of the California Environmental Quality Act ("CEQA"). Report at 25-27. Moreover, buried within the Report's three-page discussion of this CEQA provision is the critical acknowledgment that it "does not expressly preempt local law." Report at 27. In fact, section 21083.4(g) explicitly states that it "*shall not be construed as a limitation* on the power of a public agency to comply with [CEQA] or any other provision of law." Thus, the provision clearly does not preempt local regulation of oak woodlands and indeed expressly permits it. The Report's suggestion to the contrary, and its repeated suggestion that Initiative is preempted by the "Oak Woodlands Protection Act," is entirely groundless.

4. The Report Repeatedly Recognizes the Legal Validity of the Initiative , but only After improperly Spending Multiple Pages Discussing Numerous other Baseless Claims.

In addition to the examples above, the Report also raises numerous other legal issues, only to conclude that they present no issue at all. For example, the Report states that the Initiative "recognize[s] and respect[s], to large degree, the private property rights protected under the state and federal constitutions." Report at 33. We agree.

The Report also acknowledges that the Initiative's assumptions and goals are reasonable: "Here, the intent of the Proponents is to set a quantifiable limit on future removal of oak woodlands that is roughly in line with expected vineyard development in the future." Where, as here, a land use regulations "addresses a legitimate public interest, is reasonable, and has evidentiary backing," it will almost certainly be upheld. Report at 35. Likewise, the Report grudgingly acknowledges that the Initiative's enforcement provisions are "fairly standard." Report at 37. Indeed, they are in most respects very similar to other County enforcement provisions. *See, e.g.,* § 18.108.140.

Numerous other examples abound. *See, e.g.*, Report at p. 47 ("The Initiative does not violate the terms of the *DeHaro* Settlement Agreement"); Report at 50 ("it would appear that the Initiative would not unduly interfere with any planned infrastructure projects").

B. The Report Repeatedly Makes Unsubstantiated Claims Based on Misreadings of the Initiative's Clear Language.

1. The Report's Claims that Wildfires Affect the Oak Removal Limit and that the Initiative Would Somehow Hold Property Owners Liable for Wildfires Is Misleading and Contrary to the Plain Language of the Initiative.

One of the most irresponsible elements of the Report is its attempt to use the recent wildfires to incite baseless fears about the Initiative's impacts.

The Report asserts, for example, that it is "unclear" whether wildfires "would effect a 'removal' of oak woodlands that count toward the Oak Removal Limit." Report at 16. *But the Report then goes on to admit that the answer is not unclear at all*: the Initiative defines tree "removal" to include only the "intentional burning" of trees and does not include the removal of dead trees. Report at 16-17. Moreover, the Limit does not include oaks removed "by or at the direction or order of a federal or state agency."

Initiative, § 18.20.060(G). Thus, the Initiative not only exempts trees lost from wildfires, it would also "as a practical matter, exempt from regulation the setting of backfires for the purposes of fighting wildfires in Napa County." Report at 18.

Thus, the speculation that *if* oaks destroyed by wildfires counted toward the Oak Removal Limit, the Limit would already be reached, serves no legitimate point—except a political one that is *not* appropriate for a County report. The Report's own analysis show that the Initiative does not support this interpretation. In fact, as the Report later notes more moderately, the County to date has approved the removal of only 22 acres of oak woodland that would count toward the 795 Oak Removal Limit. Report at 36.

The Report makes similarly spurious and inflammatory claims when discussing the impacts of wildfires on water quality buffer zones. Within buffer zones, the Initiative clearly allows property owners to remove downed, dead and dying trees, and to remove trees to create firebreaks, to protect public safety, and at the direction of an agency to "alleviate an existing hazardous condition, or abate a public nuisance." Initiative, § 18.20.050(C). Property owners can also readily obtain an oak removal permit to remove oak trees for these reasons even after the Oak Removal Limit is reached. § 18.20.060(E). Thus, the Report's suggestion that the Initiative would somehow prevent property owners from removing trees destroyed by wildfires is baseless. Report at 20.

In fact, the Report concedes that tree removal is allowed within water quality buffer zones where "necessary to avert an imminent threat to public health and safety" or comply with state or local fire or fuel break requirements, but then proposes, for no reason, that this provision is limited to "firefighters." Report at 19. The Report then suggests that a property owner who "through no fault of his or her own, suffers a loss of trees due to wildfire" could be prosecuted for this loss. *Id.* This is patently absurd. Nothing in the Initiative can remotely be read to hold property owners liable for wildfires that destroy trees *anywhere* on their property. The Report's suggestion otherwise is irresponsible, and simply serves to show its partisan nature. *See Vargas*, 46 Cal.4th at 40 (noting that "argumentative or inflammatory rhetoric" is an indicator of improper and unconstitutional advocacy in government informational materials).

2. The Initiative Does Not Conflict with Measure J.

The Report's attempt to paint the Initiative as incompatible with Measure J is similarly groundless. The Report notes that the "Initiative does not directly amend Measure J's provisions." Yet it repeatedly claims that, its intent, while "unclear," *could be* to nullify Measure J and that *if* "this result is intended," the Initiative is "misleading." Report at 6.

Nullifying Measure J, however, is clearly not the effect or "intent" of the Initiative. In fact, the Initiative states that it "Builds on the Legacy of Measure J" by protecting oak woodlands and adopts a goal to "help ensure the long-term sustainability of agriculture in Napa County" by preserving the natural environment. Initiative, § 3(A). Thus, the Initiative is fully compatible with agriculture and with Measure J.

For example, the Initiative allows existing agricultural uses to continue, excluding from its provisions all projects that have received all discretionary approvals prior to its effective date. Its stream buffers and oak mitigation provisions are designed to *protect* County watersheds and help ensure the long-term viability of agriculture in the County. The Initiative does not apply at all in the Agricultural Preserve district. Moreover, the oak removal permit program does not even begin to operate until 795 acres of oak woodlands have been removed, a figure that was selected to allow full build-out of vineyard development under the planning horizon of the current General Plan. And even after the Oak Removal Limit is reached, the Initiative gives the County discretion to permit additional tree removal in a number of varied circumstances, including where oak removal is necessary to allow economically viable use of the property for agriculture.

3. The Initiative Is Not internally Inconsistent.

The Report also manufactures alleged "inconsistencies" that simply do not exist. Contrary to the Report's claim, it is not "unclear" whether the "Initiative would effectively ban the right of a property owner to remove more than five oak trees within a ten year period." Report at 24. Rather, the Initiative clearly states when an oak removal permit is required and when the permit must be in the form of a County use permit (for removal of more than 10 trees in a 12-month period). The Initiative's limits on tree removal for agricultural use after the Oak Removal Limit is reached (five trees over a 10-year period), are consistent with the Initiative's goals of allowing significant oak removal for agricultural purposes until the Limit is reached, then protecting the remaining oak woodlands to the extent feasible.

Moreover, the following "summary" provided in the Report is simply erroneous:

> After the 795-acre limit is reached, the County only may issue oak removal permits if: (1) the tree removal will take place on properties that are a minimum of 160 acres; (2) the tree removal is necessary to ensure that agricultural use of the parcel will be economically viable; and (3) if certain other findings can be made, as detailed in Section II of this

> Memorandum. The ten exceptions referenced above would apply to this permitting requirement as well.

Report at 2. In fact, provisions (1) and (2) apply *only* to the exception for agricultural use. None of the ten other specific exceptions for oak removal are limited by the size of the parcel or the economic necessity of the exception. *See, e.g.*, Section 18.20.050(C). For example, there is no minimum lot size or numerical limit for oak removal for fuel breaks, home construction, or access roads. The Report's suggestion otherwise is patently misleading.

4. The Initiative Raises No Due Process Issues.

The Report's suggestion the Initiative denies property owners a hearing is similarly untrue. The Report suggests that the Initiative somehow impliedly *excludes* existing County hearing provisions in making violations of the Initiative subject to existing County enforcement provisions. In fact, County counsel recommended referencing these provisions to ensure consistency with existing County enforcement policies, including those governing a right to a hearing. *Shaw v. People ex rel.Chiang* (2009) 175 Cal.App.4th 577, 598 (courts "do not examine [statutory] language in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment").

C. The Report's Suggestion that the Initiative Violates Initiative Law Is Baseless.

The Report also raises numerous potential claims regarding the Initiative's consistency with election law, only to recognize that such claims would be far-fetched and contrary to established law.

For example, the Report notes that an initiative "cannot interfere with the efficacy of an essential governmental power." Report at 38. Pages of analysis, however, lead only to the unsurprising conclusion that the Initiative does *not* do this: "It is likely that a court would uphold the Initiative against claims it impaired an essential governmental function." Report at 38-39.

The Report spends another five pages analyzing a single sentence that was expressly upheld by an appellate court. The Initiative provides:

> The County of Napa is hereby authorized to amend the County of Napa General Plan, all specific or community plans, the County Code, including the Zoning Code, and other

> ordinances, polices and plans, including climate action plans, affected by this Initiative as soon as possible as necessary to ensure consistency between the provisions adopted in this Initiative and other sections of the General Plan, specific or community plans, the County Code, including the Zoning Code, and other County ordinances, policies, and plans.

Initiative, § 7(G). The Initiative upheld in *Pala* contained nearly identical language:

> The County of San Diego is hereby authorized and directed to amend other elements of the General Plan, sub-regional plans, community plans, Zoning Ordinance, and other ordinances and policies affected by this initiative as soon as possible and in the manner and time required by State Law to ensure consistency between this initiative and other elements of the County's General Plan, sub-regional and community plans, Zoning Ordinance and other County ordinances and policies.

Pala, 54 Cal.App.4th at 595 (quoting § 7(D) of Proposition C at issue). In fact, *Pala* rejected exactly the challenge raised by the Report, holding that this provision was not "indirect legislation," and was not "beyond the scope of the electorate's power." *Id.* at 576-78.

The Report takes issue with *Pala's* reasoning, claiming that it is "highly questionable." In fact, *Pala* has been cited more than a dozen times by California's appellate courts and its holding on this issue has never been questioned. And nearly identical versions of this provision have been included in countless initiatives since *Pala*, including Napa's 2008 Measure P, which was endorsed by the Board of Supervisors. Yet the 9111 Report prepared for Measure P never suggested that this language raised any legal issue. The Report's attempt to do so here, and to discount an appellate decision that unequivocally establishes its validity, is simply more evidence of Miller Starr's bias.

Moreover, the primary difference between the Initiative here and Proposition C in *Pala*, is that the Initiative "authorizes," but does not "direct" the County to take any specific action. Thus, the Report's suggestion that the Initiative improperly "directs" future legislative action is even more untenable.

D. The Initiative Is Consistent with the General Plan.

The Miller Starr Report also exhaustively analyzes the Initiative's non-existent "inconsistencies" with the Napa County General Plan. Despite acknowledging that "*there is no clear evidence of any internal inconsistency*," the Report goes on for pages entertaining hypothetical concerns that the Initiative "potentially frustrates" General Plan policies. Report at 52, 57.

In doing so, the Report ignores the widely recognized fact that "policies in a general plan reflect a range of competing interests." *Orange Citizens for Parks & Recreation v. Superior Court* (2016) 2 Cal.5th 141, 157 (citation and internal quotation marks omitted). The courts therefore have held that a county "must be allowed to weigh and balance [its] plan's policies when applying them," and has "broad discretion to construe its policies in light of the plan's purposes." *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 142. Thus, as with general plan provisions enacted by the Board, the County (and the courts) are required to interpret the Initiative's policies as consistent with the rest of the General Plan. And an amendment is valid unless "a reasonable person could not conclude that the plan is internally consistent." *Federation of Hillside & Canyon Assns. v. City of Los Angeles* (2004) 126 Cal.App.4th 1180, 1195-96 (holding that local governments have "broad discretion to weigh and balance competing interests in formulating development policies, and a court cannot review the wisdom of those decisions under the guise of reviewing a general plan's internal consistency"); *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 719 (noting that "it is beyond cavil that no project could completely satisfy every policy stated in the [general plan], and that state law does not impose such a requirement").

Since the Report itself begrudgingly admits that this standard is met here (*see* Report at 52), the Report's pages of speculation to the contrary are nothing more than improper advocacy against the Initiative. Indeed, the Report tries in vain to find some inconsistency somewhere. For example, it spends several pages coming to the unremarkable conclusion that the "Initiative appears to be consistent" with the General Plan's affordable housing policies. Report at 52-53. It then raises the possibility that the Initiative "might frustrate" policies regarding second-unit construction, only to dismiss it, finding: the "oak removal permitting process cannot apply to the County's approval of second units," which "moot[s]" any possible inconsistency. Report at 54-55; Initiative, § 18.20.060(G); *accord* § 6(A). .

Next, the Report claims that the Agricultural Watershed policies in the Initiative are not depicted on the General Plan Land Use Map. But while maps and policies must

be consistent, there is no requirement that *every* general plan policy appear on the Land Use map. In fact, while citing to Policy AG/LU-112, the Report fails to mention the very *next* policy in the *existing* General Plan, which states:

> Policy AG/LU-113: **The Land Use Map is presented as a general illustration of the policies of the General Plan and is not intended to reflect every policy direction**. Specific review of applicable policies is necessary to determine the precise land use potential of any site.

General Plan, AG/LU-67 (emphasis added). The Report's complete disregard of this policy, and its claim that "[a]t worst," the lack of mapping "creates an inconsistency in the General Plan," make it sound more like a litigation brief than a neutral account of the Initiative's true impacts.

The Report then insinuates that the Initiative conflicts with General Plan policies favoring agricultural uses. But the existing Policy AG/LU-4 specifically notes that "agricultural lands" includes "lands used for grazing and watershed/open space." *See* Report at 55. Protection of streams and oak woodlands is critical to ensuring healthy farmlands and healthy watersheds as the General Plan acknowledges: "The County recognizes that preserving watershed open space is consistent with and critical to the support of agriculture and agricultural preservation goals." General Plan, CON-23, Policy CON-4; *see also* CON-30 (Policy CON-24: "Maintain and improve oak woodland habitat to provide for slope stabilization [and] soil protection . . . ."); CON-10 (stream set-backs help "protect lands from excessive soil loss and maintain or improve water quality of watercourses by minimizing soil erosion from earthmoving, vegetation removal, and grading activities related to agriculture and structural projects"). The Napa County Voluntary Oak Woodland Management Plan (2010) likewise recognizes that protecting oak woodlands has significant agricultural benefits, helping to "improve air and water quality, slow runoff, prevent erosion, mitigate flooding, . . . and benefit vineyard owners through pest management." *Id.* at 8. Yet, the Report disregards all of these provisions, giving the distinct impressions that its purpose is not to present an even-handed account of how the Initiative might further existing General Plan policies, but only to fabricate potential conflicts.

Other claimed inconsistencies are similarly specious. For example, the Report claims that the Initiative is inconsistent with Policy CON-26 and page SV-4 in the Summary and Vision Chapter, ignoring the fact that the Initiative *amends* these policies and pages to *ensure* consistency. *See* Initiative, § V(C)(iv); § V(A)(i). Likewise, the suggestion that the Initiative could create a "vertical inconsistency" is unintelligible, as it

fails to identify a single General Plan policy that the Initiative is inconsistent with or to explain how the adoption of "more restrictive" stream setbacks would create any inconsistency at all. *See* Report at 61-67.

In short, in analyzing general plan consistency, the Report is grasping at straws. The Initiative is entirely consistent with the General Plan and the Report presents no evidence to the contrary.

II. Because the Miller Starr Report Is Not Accurate, Fair, or Impartial, the Board Should Reject It as a 9111 Report and Refuse to Authorize the Expenditure of Public Funds for Its Preparation.

A Section 9111 report is designed to "better inform the county electorate and the board of supervisors" about the "impacts" of a proposed initiative. *DeVita*, 9 Cal.4th at 777; Elec. Code, § 9111. It thus serves the same purpose as the official title and summary and other ballot materials prepared by the County and must, like them, be non-partisan and fair.

A ballot summary, for example, must be "true and impartial, and not argumentative or likely to create prejudice for or against the measure." *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 243. And it must "avoid misleading the public with inaccurate information." *Id.*; *Costa v. Superior Court* (2006) 37 Cal.4th 986, 1023 (summary must provide an "accurate and objective description of the general subject matter of the initiative"). Likewise, ballot materials "cannot favor a particular partisan position," be "'false [or] misleading,'" or contain language that "'signals to voters" the government's view "'of how they should vote, or casts a favorable light on one side of the [issue] while disparaging the opposing view.'" *McDonough v. Superior Court* (2012) 204 Cal.App.4th 1169, 1174 (citations omitted).

As a report prepared with public funds, a Section 9111 Report is subject the same standards of fairness, truthfulness, and impartiality, both under the Government Code and under the Constitution. Specifically, the County "may not expend or authorize the expenditure of any of the funds . . . to support or oppose the approval or rejection of a ballot measure." Gov. Code, § 54964(a). Rather, funds may be expended only "to provide information to the public about the possible effects of a ballot measure" and *only* if the "information provided constitutes an accurate, fair, and impartial presentation of relevant facts." *Id.*, § 54964(c).

In short, as the California Supreme Court has emphasized, any materials relating to an initiative that are paid for by public funds must provide a "fair presentation" of "all

relevant facts" and the government may not "'take sides' in election contests or bestow an unfair advantage on one of several competing factions." *Stanson,* 17 Cal.3d at 220. "[E]ven when a publication or communication imparts useful information and does not expressly advocate a vote for or against a specific . . . ballot measure, the expenditure of public funds to prepare or distribute the communication is improper when the 'style, tenor and timing' [citation] of the publication demonstrates that the communication constitutes traditional campaign activity." *Vargas,* 46 Cal.4th at 27.

As detailed in Section I, above, the Miller Starr Report is not an "accurate, fair, and impartial presentation of the relevant facts" (Gov. Code, § 54964(c)), but a largely one-sided legal attack. It repeatedly mischaracterizes the Initiative and presents a biased and misleading legal analysis. Moreover, its style and tenor are not neutral but appear calculated to incite opposition to the Initiative. The Board should therefore reject it as a 9111 Report and refuse to authorize public funds for its preparation or further dissemination.

Conclusion

For the foregoing reasons, the we respectfully urge the Board to reject the Miller Starr Report and to correct the Report's inaccuracies regarding the Initiative and provide the public with the fair presentation of impacts that the law requires.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Robert "Perl" Perlmutter

RSP/dw
Enclosure: Elections Code Section 9111 Report, Save Measure J Initiative
cc: Minh Tran
Jeffrey Richard
Silva Darbinian
David Morrison

973779.6

EXHIBIT 10

Exhibit 10[1]

Measure C Term	**Napa County General Plan (2008)**[2]	**Napa County Code**[3]	**Napa County Voluntary Oak Woodland Management Plan**[4]
"necessary"	67	293	13
"feasible"/ "infeasible"	69	40	16
"oak woodland"	18	0	546
"canopy"	0	6	67
"wetland"	20	4	12
"residence"	31	38	2
"other structure"	2	10	0

[1] The full text of the Napa County General Plan (2008), Napa County Code, and Napa County Voluntary Oak Woodland Management Plan are available online and are text searchable.
[2] Napa County General Plan (2008), *available at* https://www.countyofnapa.org/DocumentCenter/View/3334.
[3] Napa County Code (2017), *available at* https://library.municode.com/ca/napa_county/codes/code_of_ordinances.
[4] Napa County Voluntary Oak Woodland Management Plan (2010), *available at* https://www.countyofnapa.org/DocumentCenter/View/953.

EXHIBIT 11

REPORT

Elections Code Section 9111 Report

Save Measure J Initiative

Prepared for:

June 3, 2008

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A. Introduction

This report evaluates the potential impacts of Measure O, the "*Save Measure J"* Initiative, which has qualified for placement on the November 4, 2008 ballot in Napa County, California. The *Save Measure J* Initiative would update and extend from 2020 to 2058, the provisions of Measure J, the Agricultural Lands Preservation Initiative, which was passed by the voters of Napa County in 1990 and is scheduled to expire on December 31, 2020. The specifics of the *Save Measure J* Initiative are summarized in Section C of this report. The full text of the proposed Initiative is included as Appendix A.

When an initiative is circulated and qualifies for the ballot, Section 9111 of the California Elections Code authorizes a County Board of Supervisors to request a report regarding the potential impacts of the initiative prior to deciding whether to adopt the initiative in the form of a County ordinance or to place the initiative on the ballot for the next statewide election for the purpose of enabling the people of Napa County to vote on the initiative, as provided in Elections Code Section 9118. Section 9111 is reproduced in full in Appendix B.

On May 6, 2008, the Napa County Board of Supervisors ordered the preparation of a report analyzing the Initiative's impacts on Napa County as it relates to general plan consistency, affordable housing, business and employment, and the additional items specified in Section B below. This report will be presented to the Board of Supervisors at its regularly scheduled meeting of June 3, 2008.

B. Scope and Assumptions

Pursuant to direction from the Napa Board of Supervisors, this report addresses the Initiative's impacts on the following (as provided in California Elections Code Section 9111):

(1) Its effect on the internal consistency of the county's general and specific plans, including the housing element, the consistency between planning and zoning, and the limitations on county actions under Section 65008 of the Government Code and Chapters 4.2 (commencing with Section 65913) and 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

(2) Its effect on the use of land, the impact on the availability and location of housing, and the ability of the County to meet its regional housing needs.

(3) Its impact on the community's ability to attract and retain business and employment.

(4) Its impact on agricultural lands, open space, traffic congestion, existing business districts, and developed areas designated for revitalization.

The analysis included in this report assumes that the *Save Measure J* Initiative is adopted by the voters and implemented as proposed. The Initiative would likely withstand legal challenge because Measure J, as originally adopted by the voters in 1990, was upheld by the Supreme Court in DeVita v. County of Napa (1995) 9 Cal.4th 763, and the *Save Measure J* Initiative is substantially similar to the original Measure, except that it extends the term to 2058 and includes an additional exemption, as discussed more fully below.

C. Description of Initiative

Napa County voters passed the Agricultural Lands Preservation Initiative (more commonly known as Measure J) at a general election on November 6, 1990. Measure J provides that all those lands designated as "Agriculture, Watershed and Open Space" (AWOS) or "Agricultural Resource" (AR) on the Napa County General Plan Land Use Map adopted by the Board of Supervisors on September 8, 1975, as amended through February 1, 1990, shall remain so designated until December 31, 2020, unless the land is redesignated to another general plan land use category by a majority vote of the people, or unless the land is annexed to a city, or redesignated by the Board of Supervisors under specified circumstances and pursuant to procedures set forth in Measure J.

Measure J also provides that those provisions of the Land Use Element of the Napa County General Plan pertaining to intent and building intensity within AWOS and AR designations may not be changed without a majority vote of the people, and that those provisions of the Land Use Element of the Napa County General Plan pertaining to minimum parcel sizes in the AWOS and AR designations may not be amended to reduce the minimum parcel size without a majority vote of the people. At present, the Land Use Element of the Napa County General Plan establishes forty (40) acres as the minimum parcel size in the areas of Napa County designated on the General Plan Map as AR and one hundred sixty (160) acres as the minimum parcel size in the areas of Napa County designated on the General Plan Map as AWOS.

The Save Measure J Initiative

Citing the success of Measure J (1990) in protecting agricultural and open space lands and the desire to have Measure J provisions continue to guide land use planning in Napa County until 2058, the proponents of the *Save Measure J* Initiative qualified a petition for the November 4, 2008 ballot.

The *Save Measure J* Initiative has been written in a similar manner to the original Measure J and would readopt portions of the Land Use Element of the Napa County General Plan as amended through September 28, 2007, effectively ensuring that these sections cannot be changed without approval by the voters until after 2058. Specifically, the *Save Measure J* Initiative would readopt existing Land Use Element provisions that specify the intent, maximum building intensity, and minimum parcel sizes permitted in agricultural areas designated as AWOS and AR. The proposed Initiative would also require voter approval before AWOS and AR land can be redesignated unless certain limited exceptions apply. Table 1 describes the intent and characteristics of the AR and AWOS General Plan land use designations in more detail.

Similar to the original Measure J, the *Save Measure J* Initiative includes certain limited exceptions or conditions under which the Board of Supervisors could re-designate AR and AWOS land without voter approval.[1] The *Save Measure J* Initiative includes one new exception that would allow the Board of Supervisors to re-designate—without a vote of the people—AR and AWOS land for affordable housing, but only to the extent necessary to meet state mandated housing obligations and only upon making six required findings, as discussed more fully below in Section D.2.

[1] These conditions of original Measure J are currently codified in General Plan Land Use Element Section F.9(d).

Table 1
General Plan Provisions Regarding Lands Designated
Agricultural, Watershed & Open Space and Agricultural Resource[a]

	Agriculture, Watershed and Open Space (AWOS)	**Agricultural Resource (AR)**
Intent	To provide areas where the predominant use is agriculturally oriented; where watershed areas, reservoirs, floodplain tributaries, geologic hazards, soil conditions and other constraints make the land relatively unsuitable for urban development; where urban development would adversely impact on all such uses; and where the protection of agriculture, watersheds, and floodplain tributaries from fire, pollution, and erosion is essential to the general health, safety, and welfare.	To identify areas in the fertile valley and foothill areas of the County in which agriculture is and should continue to be the predominant land use, where uses incompatible with agriculture should be precluded and where the development of urban type uses would be detrimental to the continuance of agriculture and the maintenance of open space which are economic and aesthetic attributes and assets of the County of Napa.
General Uses	Agriculture, processing of agricultural products, single family dwelling.	Agriculture, processing of agricultural products, single family dwelling.
Minimum Parcel Size	160 acres, except that parcels with a minimum size of 2 acres may be created for the sole purpose of developing farm labor camps owned or operated by a local government agency.	40 acres, except that parcels with a minimum size of 2 acres may be created for the sole purpose of developing farm labor camps owned or operated by a local government agency.
Maximum Building Intensity	One dwelling per parcel (except as specified in Housing Element). Nonresidential building intensity is non-applicable.	One dwelling per parcel (except as specified in Housing Element). Nonresidential building intensity is non-applicable; but where practical, buildings will be located off prime soils.

a. Per Sections F.7 and F.8 of the 1983 Land Use Element of the Napa County General Plan. Similar to the original Measure J, the *Save Measure J* Initiative would prohibit changes to the language above regarding intent and maximum building intensity without voter approval, and would also prohibit reductions in minimum parcel sizes without voter approval.

D. Planning Related Impacts of the Initiative

The Napa County Board of Supervisors has requested an evaluation of the potential effects of the proposed *Save Measure J* Initiative on the following planning matters:

- Internal consistency of the County's General Plan, particularly its Housing Element; and
- Impact of the Initiative on the use of land and the availability and location of housing, as well as the ability of the County to meet its regional housing needs.

Because the *Save Measure J* Initiative readopts existing sections of the County's General Plan (with the two substantive changes noted below), its planning-related impacts would essentially be the continuation of the controls and provisions of Measure J, and it would not create any new internal inconsistencies within the County's General Plan. The adoption of the Initiative would continue and extend to 2058 requirements of the original Measure J, which preclude the County Board of Supervisors from changing certain sections of the General Plan without a vote of the people.

1. Impact on Internal Consistency of the County's General Plan

The *Save Measure J* Initiative's main substantive modifications to existing County policies and programs are its new expiration date of 2058 and the provision that allows the Board of Supervisors to designate additional land for affordable housing to the extent necessary to meet Napa County's housing obligations under state law. This provision would help ensure that the County's agricultural, open space and watershed land protection policies would not impede the County's ability to meet its future housing obligations under state law and would not conflict with any goal or policy now within the General Plan. Please refer to Section D.2 below for further discussion of the Initiative's impact on the Housing Element and Regional Housing Needs Assessment (RHNA).

In early 2005, Napa County began the process of updating its General Plan, and on April 22, 2008, the Board of Supervisors closed the public hearing, adopted a motion of intent to adopt what is now called the 2008 General Plan Update, and requested County Counsel to prepare the required resolutions. The required resolutions are expected to be adopted prior to the November 4, 2008 election.

As required by the original Measure J, the 2008 General Plan Update retains language from the existing Land Use Element addressing AWOS and AR lands. Specifically, language related to the intent, maximum building intensity, and minimum parcels sizes in AWOS and AR designations are retained in Agricultural Preservation & Land Use Element Policies 20 and 21 respectively, and the provisions of existing Land Use Element Section F.9 are retained in Agricultural Preservation & Land Use Element Policy 111.[2] Reorganization and renumbering of policies is permissible under Measure J and would also be permissible under the *Save Measure J* Initiative, as long as the substance of adopted/referenced policies in the existing General Plan is retained.

[2] Page and policy number references refer to the December 3, 2007 Revised Public Hearing Draft of the General Plan Update.

If the *Save Measure J* Initiative is approved by the voters in the November 2008 election subsequent to adoption of the 2008 General Plan Update by the Board of Supervisors, its effect would be to insert the new language of the Initiative into the Agricultural Preservation & Land Use Element (Policy 111). Principally, this new language would include the new expiration date of 2058 and the new exception that would allow the Board to re-designate AWOS and AR land for affordable housing without voter approval under specified conditions. The new language would not affect the internal consistency of the General Plan as a whole and would not affect consistency between the General Plan and zoning.

As a clarification, the County may wish to amend text in the General Plan to explain the *Save Measure J* Initiative, if adopted. For example, an introductory sentence in the 2008 General Plan Update states "This section includes some policies which were incorporated in the General Plan by voter-approved 'Measure J'… Policies derived from Measure J may not be amended or deleted without voter approval until after December 31, 2020, or after a later date if an extension is approved by the voters."[3] If the voters approve the *Save Measure J* Initiative, the County may wish to amend this sentence to reference both Measure J and Measure O (the *Save Measure J* Initiative) and the new expiration date of 2058. Other similar statements in the 2008 General Plan Update could likewise be amended or clarified if the *Save Measure J* Initiative is adopted, although County planning staff has not identified any specific goals or policies that would require amendment to ensure internal consistency.

2. Impact on Housing Element, Housing Availability and Location, and Ability to Meet Regional Housing Needs

In analyzing the impacts of the proposed *Save Measure J* Initiative on the Housing Element, housing availability and location, and ability to meet regional housing needs, it is important to understand housing obligations under state law and Napa County's compliance with them.

a. State Law Requiring Housing Elements

State Housing Element laws mandate that local governments adequately plan to meet the existing and projected housing needs of all economic segments of the community. The law requires that local governments adopt land use plans and regulatory systems that provide opportunities for, and do not unduly constrain, development of affordable housing. As a result, housing policy in the State of California rests largely upon the effective implementation of local general plans and, in particular, local housing elements.

As one of seven state-mandated elements of the General Plan, the Housing Element is a local jurisdiction's primary housing policy document. Accordingly, the Housing Element identifies and analyzes the existing and projected housing needs and establishes policies and programs for the preservation, improvement and development of housing. Pursuant to state law (California Government Code §65588), jurisdictions are required to update their Housing Element at least every five years. Updated Housing Elements are required to be certified by HCD.

[3] Pp. 26–7 of the December 3, 2007 Revised Public Hearing Draft of the General Plan Update.

An important role of the Housing Element is to identify objectives and sites for housing development that are adequate to accommodate a local jurisdiction's allocation of regional housing needs, particularly affordable housing. Specifically, state law requires that a local jurisdiction have sufficient land available to accommodate the development of the jurisdiction's fair share of regional housing needs, called the Regional Housing Needs Assessment (RHNA).

State law sets out a process for determining each local jurisdiction's RHNA. In each RHNA cycle, the State Department of Housing and Community Development (HCD) assigns the needed number of new housing units for each region to its regional council of governments. The Association of Bay Area Governments (ABAG), Napa County's regional council of governments, in turn assigns the needed number of new housing units to individual jurisdictions in the Bay Area region. While state law does not require the construction of allocated units, it requires the Housing Element to identify sufficient available land in the jurisdiction to accommodate development of the jurisdiction's share of the regional housing need.

b. Napa County's Compliance with State Housing Element & RHNA Requirements

In the last Housing Element Update cycle (from 1999 to June 30, 2006), ABAG assigned a total of 1,969 dwelling units to the County's unincorporated area.[4] Measure J's impact on affordable housing was analyzed in the 2004 Housing Element, and it was determined at the time that Measure J was not a governmental constraint to affordable housing because sufficient suitable sites were available to meet the County's RHNA. The County was able to obtain a certified housing element through its programs and policies, and through a reallocation of a portion of its RHNA to the cities of Napa and American Canyon.

2009 Housing Element Update

In preparation for the Housing Element Update (due June 30, 2009), ABAG is in the process of finalizing the County's housing needs determination for the next Housing Element cycle, which ABAG is referring to as the 2006–2014 cycle. Based on the draft RHNA for the 2006–2014 cycle, the County anticipates a housing needs allocation of about 651 units for the unincorporated area, significantly less than the last allocation.

The County is required to and will update its Housing Element by June 30, 2009, in accordance with state law. On May 6, 2008, the County contracted with Bay Area Economics to assist staff with the Housing Element update. On May 19th, 2008, the County hosted the first of a series of public workshops to obtain public input regarding a number of issues that pertain to the Housing Element Update. The second public session—a joint session of the Board of Supervisors and Planning Commission—is scheduled for June 24, 2008.

While substantial work is involved to update the Housing Element, changes to the Housing Element are not expected to be dramatic because the Housing Element was recently updated in 2004. The County expects to complete a legally compliant Housing Element Update by June 2009. This expectation is based on the following assumptions:

- The RHNA number of 651 units is expected to be reduced by 82 units under an agreement executed with the City of Napa in 2007. (The County will ask ABAG to reduce its RHNA, under Government Code §65584.07.)

[4] The 1999–2006 cycle was later extended to June 30, 2007.

- Sites identified in the 2004 Housing Element Update and subsequently rezoned for affordable housing continue to be available and feasible for affordable housing development.
- Some policy changes proposed in the General Plan Update, such as allowing second units in the AP zoning district, would tend to increase the production of affordable housing.
- Some action items proposed in the General Plan Update, such as development of a Workforce Housing Ordinance and revisions to the County's Inclusionary Housing Ordinance, would tend to increase the production of affordable housing on identified sites.
- The County continues to collect and allocate Housing Trust Fund monies through its inclusionary housing in-lieu fee payments and commercial linkage fees and utilizes a significant portion of those fees on affordable housing projects in the incorporated jurisdictions.
- The County is undertaking a facilities planning exercise, which may result in the identification of surplus properties that could be made available for affordable housing development.

Neither Measure J nor the *Save Measure J* Initiative is likely to operate as constraints on affordable housing or to impact the County's ability to complete a legally compliant Housing Element Update for the 2006-2014 housing cycle because ample sites and programs are available for the 651 RHNA allocation. Specifically, the *Save Measure J* Initiative would not affect the tasks involved in the preparation of the 2009 Housing Element Update and would not constrain the methods (programs, policies and sites) needed for the County to meet its housing obligations under state law for the 2006–2014 housing cycle.

c. Initiative's Impact on Napa County's Ability to Comply with State Housing Law in Future RHNA Cycles

It is impossible to predict Napa County's RHNA allocations in future cycles, and therefore to determine with any certainty how much land will be required to provide sufficient sites to meet state requirements in the future. It is conceivable that Measure J—if extended to 2058—could theoretically act as a constraint to affordable housing if insufficient non-agricultural land is available for the County to designate required housing sites in future RHNA cycles. However, the provision in the *Save Measure J* Initiative allowing the Board of Supervisors to re-designate agricultural and open space lands for affordable housing without voter approval where necessary to meet state housing law requirements ensures that the County's AWOS and AR land protection policies do not impede the County's ability to meet its RHNA obligations. Prior to such approval, the Board would be required to make six findings.

The relevant section of the *Save Measure J* Initiative addressing the required findings provides as follows:

> *Nothing…shall be construed or applied to prevent the County from complying with its housing obligation under State law. Where necessary to comply with applicable State law governing the provision of housing, the Board may redesignate land designated as "Agriculture, Watershed, and Open Space" or "Agricultural Resource" on the Land Use Map to a land use designation other than "Agriculture, Watershed, and Open Space" or "Agricultural Resource," pursuant to its usual procedures and without a vote of the people, upon making all of the following findings:*

i) The redesignation is necessary to comply with a State law imposing a mandatory housing obligation in effect at the time redesignation is sought ("applicable State housing law");

ii) There is no suitable land available in the unincorporated areas of the County, other than "Agriculture, Watershed, and Open Space" or "Agricultural Resource," that may be used to satisfy the applicable State housing law;

iii) It is not feasible to satisfy the applicable State housing law using lands within an incorporated city or town;

iv) No more land is redesignated pursuant to this subsection than is necessary to comply with the applicable State housing law.

v) To the extent permissible under State law, and to the extent feasible, the redesignation includes policies providing that any development proposed for the redesignated lands will consist of affordable housing, and effective restrictions will maintain the housing as affordable in perpetuity. For purposes of this paragraph (v), "affordable housing" shall mean housing affordable to lower income households as defined in section 50079.5 of the Health and Safety Codes, as that section may be amended from time to time; and

vi) To extent permissible under State law, and to the extent feasible, any land redesignated pursuant to this subsection shall be located adjacent to the boundaries of an incorporated city or town, or if adjacency is not feasible, in a location that is the closest to the boundaries of an incorporated city or town of the feasible options available.

The provision, which is written broadly so that it would continue to be effective in the future even if state housing laws change, would act as a safeguard to ensure that the County's land use policies do not impede its ability to meet future housing obligations under state law.

The specific findings required under this section set the bar high for the redesignation of agricultural land, and effectively ensure that the County will pursue all other available remedies before use of this exception. It should be noted that these other remedies—such as execution of transfer agreements to satisfy County housing requirements within incorporated cities—could have costs and impacts associated with them, such as the annexation of other lands to cities or reimbursement of costs associated with cities acquiring a portion of the County's RHNA. Also, while federal and state law do not require that housing be affordable in perpetuity, the initiative so provides to the extent that it is feasible.

3. Impacts on Land Use

Since adoption of the County's first agricultural preserve in 1968, Napa County has maintained land use policies to ensure agricultural preservation and urban-centered growth. These policies have been supported and followed by the cities in Napa County. As a result, Napa County has been able to achieve a more sustainable, infill development pattern than other counties in the Bay Area.

Successful Preservation of Agricultural Land and Open Space

Along with Measure A (1980) and the resulting Growth Management System Element of the General Plan, Measure J has helped to preserve agricultural land and direct development to already urbanized areas by ensuring that land designated AWOS and AR will remain designated for agriculture and open space.[5] The proposed *Save Measure J* Initiative would retain and continue these County policies and land use patterns.

A vast majority of Napa County is devoted to open space and agricultural use, with urban uses (i.e. incorporated jurisdictions and non-agricultural areas of the County) making up less than 10 percent of Napa County's entire land area. While single-family homes are allowed in the AWOS and AR zoning districts, minimum parcel sizes range from 40 (AR) to 160 (AWOS) acres with one principal residence permitted per parcel. Multi-family housing, as well as commercial and industrial uses, are generally allowed only in already urbanized areas.

Population data indicates the success of the County's policies—growth is occurring in the cities rather than the unincorporated area. As shown in Table 2, Napa County's population as a whole grew 1.1 percent annually, from 99,199 in 1980 to 110,765 in 1990. Over the same period, population in the unincorporated area declined from 30,938 to 28,500 (an annual decline of 0.8 percent). Between 1990 and 2000, Napa County gained in population at an annual rate of about 1.2 percent, while the unincorporated area population declined by an annual rate of0.3 percent. From 2000 to 2005, Napa County's population grew by 1.5 percent annually from 124,279 to 133,700, while the unincorporated area gained only 372 residents or less than 0.3 percent annually.

Table 2
Population in Napa County 1990–2005

	Population				Annual Growth		
	1980	**1990**	**2000**	**2005**	**1980–1990**	**1990–2000**	**2000–2005**
American Canyon[a]	5,712	7,706	9,813	14,600	3.04%	2.45%	8.27%
Calistoga	3,879	4,468	5,190	5,200	1.42%	1.51%	0.04%
Napa	50,879	61,842	72,781	76,400	1.97%	1.64%	0.98%
St. Helena	4,898	4,990	5,951	6,100	0.19%	1.78%	0.50%
Yountville	2,893	3,259	2,916	3,400	1.20%	-1.11%	3.12%
Unincorporated Area	30,938	28,500	27,628	28,000	-0.82%	-0.31%	0.27%
Napa County	**99,199**	**110,765**	**124,279**	**133,700**	**1.11%**	**1.16%**	**1.47%**

a. Prior to 1992, American Canyon was an unincorporated Census Designated Place.

Sources: 1980–2000 from U.S. Decennial Census (STF 3), 2005 estimates from ABAG (Projections 2007).

[5] Measure A (also known as Slow Growth Initiative) called for limiting the annual number of residential building permits issued in unincorporated Napa County to reflect an annual population growth rate no higher than that of the Bay Area region, but in no event to exceed 1 percent. It also stipulated that at least 15 percent of new housing units permitted each year be affordable to persons of average or below-average income. The provisions of Measure A were enacted in the Growth Management System Element of the current Napa County General Plan and are included in Policy AG/LU-119 of the 2008 General Plan Update.

These population trends indicate consistently higher population growth rates in the urbanized areas of Napa County and limited growth in the unincorporated area, in keeping with the County's policies directing growth towards the incorporated areas.

Subsequent Initiatives Proposed to Re-designate AWOS or AR Land

A survey of past ballot initiatives demonstrates Measure J's effectiveness. Since the enactment of Measure J in 1990, a number of initiatives that would have re-designated AWOS and AR land for urban uses or allowed commercial uses in agricultural areas have qualified for the ballot. Of these, the majority have not gained voter approval, and those that passed tend to be limited to minor commercial uses, such as restaurant or other small business expansions.[6] One of the amendments to the General Plan, Measure L (2002), allows the creation of parcels two acres in size or larger in agricultural areas so long as the parcel will be utilized for farm labor camps owned or operated by a local government agency authorized to develop farm labor camps. Measure L was initiated by the Board of Supervisors and was approved by the voters in 2002.

Loss of Agricultural and Open Space Lands through Annexation

Measure J has not resulted in substantial annexations of agricultural land into incorporated cities. In fact, since 1990, the Napa County Local Agency Formation Commission (LAFCO) has not approved any annexations to the Cities of Calistoga, Napa, St. Helena, or Yountville. The City of American Canyon, which incorporated in 1992, has been the exception. According to LAFCO staff, American Canyon annexed agricultural and open space land totaling 244 acres in 1998, 4.8 acres in 2002, and 58.5 acres in 2004.

Based on this track record and provisions in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 that discourage LAFCO from annexing agricultural and open-space lands, the *Save Measure J* Initiative is unlikely to affect the pace of annexations. LAFCO of Napa County has adopted its own policies to further discourage annexation of agricultural and open-space lands that reflect local conditions and circumstances. These include a policy directing LAFCO of Napa County to defer to the County General Plan in determining what the planned land uses are for a proposed annexation site.

E. Impacts on Community's Ability to Attract and Retain Business and Employment

Napa County has enjoyed steady business and employment growth since Measure J was approved in 1990. The wine and vineyard sector is Napa County's largest employer, directly and indirectly providing nearly half of the County's employment and wages of nearly $1.4 billion per year.[7] From 1990 to 2005, employment in Napa County (2.5 percent) grew at a more rapid pace than the Bay Area as a whole (0.5 percent). Job growth in the unincorporated area was even higher at 4.7 percent. As shown in Table 3, whereas the Bay Area region experienced growth mainly in service-related jobs, the unincorporated area has grown significantly in various sectors: manufacturing and wholesale, retail, service, and other job categories.

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[6] See Appendix D.

[7] Pp. 197 of the December 3, 2007 Revised Public Hearing Draft of the General Plan Update.

Between 2000 and 2005, the unincorporated area and the County have both achieved greater than 2% annual growth rates in agricultural jobs. In 1990, the County had more residents than jobs, but by 2000, it had more jobs than employed residents.

Table 3
Employment Trends, 1990-2005

	Unincorporated Area				Napa County				Bay Area			
Jobs	**1990**	**2000**	**2005**	**Annual Growth 1990-2005**	**1990**	**2000**	**2005**	**Annual Growth 1990-2005**	**1990**	**2000**	**2005**	**Annual Growth 1990-2005**
Agricultural and Natural Resources	2,620	2,050	2,360	-0.7%	4,020	3,090	3,460	-1.0%	36,980	24,470	24,170	-2.8%
Manufacturing and Wholesale	2,580	6,920	7,140	7.0%	7,360	14,690	15,550	5.1%	708,920	863,420	709,380	0.0%
Retail	570	1,060	1,120	4.6%	9,150	7,020	7,450	-1.4%	534,960	402,670	367,680	-2.5%
Service[a]	4,180	8,720	9,280	5.5%	20,010	32,780	34,960	3.8%	1,067,460	1,907,640	1,835,170	3.7%
Other[b]	1,260	2,170	2,280	4.0%	8,560	8,780	9,270	0.5%	857,760	555,260	513,240	-3.4%
Total Jobs	11,210	20,920	22,180	4.7%	49,100	66,360	70,690	2.5%	3,206,080	3,753,460	3,449,640	0.5%
Total Jobs/Employed Residents	0.91	1.68	1.77		0.93	1.11	1.10		1.02	1.09	1.07	

a. Service jobs includes financial and professional services and health, educational and recreational services.
b. Other jobs includes construction, information and public administration.

Source: ABAG Projections, 2000 and 2007.

The wine industry has also helped Napa County to become a destination location that is recognized worldwide and has facilitated the growth of the County's tourism and hospitality sectors. Thus, the wine industry has contributed not only to agricultural jobs, but also hospitality, wholesale and retail trade, and business service jobs. In addition, the wineries have helped to increase manufacturing employment, and the Airport Industrial Area now serves an important "back of house" function for the wine industry.

The County's economic outlook into the future is positive, showing signs of continued growth and investment. Napa County has been able to weather economic downturns in the past in part due to its unique economy, which is supported by its policies preventing the loss of agricultural land. As demonstrated by the employment trends, Measure J has been an important contributor to the continued viability of agriculture in Napa County in an era when competition from other wine-producing regions around the world has been increasing. Likewise, its positive effect is expected to continue with its extension.

F. Impacts on Agricultural Land, Open Space, Traffic Congestion, Existing Business Districts and Areas Designated for Revitalization

1. Agricultural Land and Open Space

While other counties in the Bay Area have lost agricultural land and open space to sprawl, Measure J has helped to preserve agricultural land and prevent sprawl in Napa County, and the *Save Measure J* Initiative would be expected to do likewise. There is no perfect measurement of "sprawl" and many ways to define agricultural land, but Table 4 summarizes the changes in the amount of agricultural land between 1990 and 2006 for the Bay Area's counties with the most farmland based on the state's farmland mapping system. Based on this data, Napa County shows

the least amount of loss in acreage in absolute numbers (4,287 acres total) and as a percentage of total agricultural land (-1.6 percent).

Table 4
Agricultural Land by County, 1990–2006

	Napa	Contra Costa	Solano	Santa Clara	Sonoma
1990 Agricultural Land (acres)	260,613	291,062	383,187	457,106	616,141
2006 Agricultural Land* (acres)	256,326	262,352	360,562	422,301	582,434
Net Acreage Change (1990-2006)*	-4,287	-28,710	-22,625	-34,805	-33,707
Percent Acreage Loss (1990-2006)*	-1.6%	-9.9%	-5.9%	-7.6%	-5.5%

* Data shown is the most recent statistics available for all counties: 2004 data for Sonoma County and 2006 data for all other counties.

Source: California Department of Conservation Farmland Mapping and Monitoring Program, Seifel Consulting Inc.

2. Traffic Congestion

By curbing urban sprawl, Measure J has helped the County largely avoid the kind of traffic congestion related to sprawl that occurs in other counties, and the *Save Measure J* Initiative would do the same. A recent traffic analysis conducted for the General Plan Update Environmental Impact Report (EIR) projected increases in traffic volumes on major roads in Napa County over the next 25 years, leading to increased congestion. The study found that the increased volumes and congestion were largely factors of regional growth occurring outside of the County and independent of its local land use policies.[8]

3. Existing Business Districts and Areas Designated for Revitalization

Overall, Measure J has helped to boost the County's economy by protecting and supporting agriculture, the wine industry, and the businesses and jobs associated with this industry. The *Save Measure* J initiative is expected to do the same, and areas designated for revitalization within incorporated jurisdictions would continue to benefit from a strong local economy and policies of urban-centered growth. In the unincorporated County, more dispersed commercial areas in Pope Valley and communities at Lake Berryessa have not experienced the same economic benefits to date. However, some existing business districts in the unincorporated County (e.g. the Airport Industrial Area, South St. Helena, Oakville, Rutherford) have also thrived since adoption of Measure J and would continue to benefit under the *Save Measure J* Initiative.

[8] Napa County General Plan Update Final Environmental Impact Report, December 20, 2007, Volume 1, p. 2.0-16.

Appendix A:
Save Measure J Initiative Text

Notice of Intention to Circulate Petition

Notice is hereby given by the persons whose names appear hereon of their intention to circulate the petition within the County of Napa for the purpose of updating and extending Measure J, the Agricultural Lands Preservation Initiative, passed by the voters of Napa County in 1990. A statement of the reasons of the proposed action as contemplated in the petition is as follows:

- For the past 17 years, Measure J has succeeded in protecting valuable agricultural lands in the County from the encroachment of urban development. Because Measure J has worked so well for Napa County, there is a groundswell of support among both citizens and elected officials for extending the measure's provisions now.

- While other Bay Area counties have allowed sprawl to consume important agricultural areas, Measure J has ensured that Napa County preserves agricultural and open space lands. Measure J's approach has helped to make Napa County the cornerstone of California's booming wine industry. In recent years, Napa County vineyards and vintners have contributed tens of billions of dollars to California's economy.

- This initiative updates and extends the provisions of the Napa County "general plan," enshrined by Measure J, that protect agricultural and watershed lands in the County. Specifically, the measure readopts and reaffirms plan provisions that (1) maintain minimum parcel sizes for agricultural land, and (2) require voter approval before agricultural land can be converted to other uses.

- This initiative not only extends Measure J's provisions for another 50 years, but also ensures that its implementation will be flexible enough to make certain that Napa County meets its future obligations under State affordable housing laws.

- Adoption of this initiative would commemorate the fortieth anniversary of Napa County's "Agricultural Preserve" zoning designation, by reaffirming the County's long-term commitment to protection of agriculture, open space, watershed lands, and the quality of life that makes Napa County unique.

Signed by:

RON TADDEI
7391 ST. HELENA HIGHWAY, NAPA, CA 94558

Melvyn Karrelman
1102 Clark St.
Napa, CA 94559

Al Wagner
5024 Old Sonoma Rd.
Napa Co. 94558

FILED

SEP 28 2007

JOHN TUTEUR
Napa County Recorder- County Clerk
By _____
DEPUTY RECORDER - CLERK

To the Honorable Registrar of Voters of the County of Napa: We, the undersigned, registered and qualified voters of the County of Napa, hereby propose an initiative measure to amend the County of Napa General Plan. We petition you to submit this measure to the Board of Supervisors of the County of Napa for submission of the measure to the voters of the County of Napa at the earliest general or special election for which it qualifies. The measure provides as follows:

SAVE MEASURE J INITIATIVE

The people of the County of Napa do hereby ordain as follows:

Section 1. Findings and Purpose.

A. Nearly two decades ago, the voters of Napa County adopted Measure J in order to protect the County's agricultural, watershed, and open space lands, to strengthen the local agricultural economy, and to preserve the County's rural quality of life. Measure J has been highly successful in achieving these goals. In 2005, the Napa County Board of Supervisors declared that Measure J "has provided a significant level of agricultural protection" by maintaining minimum agricultural parcel sizes and requiring voter approval before agricultural property can be converted to other uses. The Board of Supervisors also declared that "extending the period of time that Measure J will be in effect . . . is essential if the agricultural nature of the County is to be preserved," and resolved to put the question of extending Measure J before the voters of the County. Accordingly, for the benefit of existing and future residents, visitors, and investors, the people of Napa County hereby declare their intent to reaffirm, update, and extend the provisions of Measure J for an additional 50 years.

B. As enacted in 1990, Measure J amended the Napa County General Plan to ensure that designated agricultural, watershed, and open space lands could not be redesignated and made available for more intensive development without a vote of the people. The California Supreme Court, in a landmark decision confirming the people's right to enact general plan amendments by initiative, declared that Measure J represented a reasonable attempt to ensure greater stability in land use policy, curb haphazard growth by channeling it toward already developed areas, and promote desired land uses. The Court also found that the voters could and should be trusted to keep the General Plan up to date in the future.

C. Napa County is a cornerstone of the California wine industry. Although Napa County produces only four percent of the state's wine by volume, it is responsible for about 27 percent of the sales value of California wine and more than 20 percent of the

industry's $50 billion impact on the state's economy. Sales revenues of wine made from Napa-grown grapes exceeded $2.3 billion in 2004. The wine and vineyard sector is also Napa County's largest employer, directly and indirectly providing nearly half of the County's total employment and generating wages of nearly $1.4 billion. By preserving agricultural land and open space, Napa County has facilitated considerable growth in the wine industry and related development. Both the total number of acres of land planted with vineyards and the total value of the County's wine grape crop have roughly doubled since 1982.

D. While other Bay Area counties have lost important agricultural lands to sprawl since the passage of Measure J, Napa County has preserved its agricultural lands. Measure J has contributed to these trends by limiting the potential for conversion of lands designated as "Agricultural Resource" or "Agriculture, Watershed, and Open Space."

E. Measure J has not interfered with Napa County's ability to meet its affordable housing obligations under state law. Residential and other land use policies and provisions established by the Napa County General Plan have proved sufficient to address the expected increase in the County's population. According to current projections, the extension of Measure J under the terms of this initiative will not impede the County's ability to continue to meet the housing needs of all economic segments of the population, including lower and moderate income households. This initiative will promote this goal by continuing to direct housing development into areas where services and infrastructure can be provided more cost-effectively. As noted in paragraph H, below, this initiative also contains a "safety valve" exception that permits the Board of Supervisors to designate additional land for housing, but only to the extent necessary to satisfy mandatory housing obligations imposed by state law at the time the redesignation is sought.

F. The Land Use Element of the County's General Plan contains policies, attached hereto as Exhibit A and incorporated herein by reference, that protect agricultural, watershed and open space lands from the adverse effects of urban uses by maintaining large minimum parcel sizes and limiting allowable building intensity. This initiative reaffirms and readopts these policies, including related statements of intent, as amended through September 28, 2007. These policies include not only the policies reaffirmed and readopted by Measure J in 1990, but also General Plan amendments that have been made, consistent with the provisions of Measure J, on several occasions since the measure was adopted.

G. The purpose of this initiative is to ensure that the intent of Measure J – to prevent the premature or unnecessary conversion of agricultural, watershed, and open

space lands to other uses – will continue to guide land use planning in Napa County. Accordingly, this initiative provides that:

1. The General Plan provisions attached hereto as Exhibit A governing intent and maximum building intensity may not be changed except by vote of the people, and that the provisions governing minimum parcel size may not be changed to reduce minimum parcel size except by vote of the people.

2. Any lands designated as "Agriculture, Watershed and Open Space" or "Agricultural Resource" on the Napa County General Plan Land Use Map adopted by the Board of Supervisors on September 8, 1975, as amended through September 28, 2007, attached hereto as Exhibit B and incorporated herein by reference, will remain so designated unless the land is annexed to or otherwise included within a city or town, redesignated to another land use category by vote of the people, or redesignated by the Board of Supervisors pursuant to one of the procedures set forth in Section 2.B of this initiative.

H. This initiative allows the Board of Supervisors to redesignate lands designated "Agriculture, Watershed and Open Space" or "Agricultural Resource" pursuant to its usual procedures and without a vote of the people only if certain findings are made, including (among other things) that the land is proven to be unsuitable for any form of agriculture and is not likely to be annexed to a city or town; if redesignation is necessary to avoid an unconstitutional taking of property without just compensation; or if redesignation is necessary to comply with state statutes concerning the provision of housing or the siting of solid waste facilities for solid waste generated within Napa County (or the Cities within the County).

I. For the past forty years – since the County first established an "Agricultural Preserve" zoning designation – land use policy in Napa County has been guided by two complementary principles: that agricultural lands should be protected and that development should occur in urban areas. The people of Napa County find and declare that the fortieth anniversary of the Agricultural Preserve presents an appropriate occasion to reaffirm and strengthen these principles by extending and updating Measure J.

Section 2. General Plan Amendments.

A. This initiative hereby reaffirms and readopts, until December 31, 2058, Sections 3.F.7.a, 3.F.7.c, 3.F.7.d, 3.F.8.a, 3.F.8.c, and 3.F.8.d of the Land Use Element of the Napa County General Plan adopted June 7, 1983, as amended through September 28, 2007, the true and accurate text of which are attached hereto as Exhibit A and

incorporated herein by reference. In addition, this initiative hereby reaffirms and readopts until December 31, 2058, the "Agriculture, Watershed and Open Space" and "Agricultural Resource" designations of the Napa County Land Use Map adopted by the Board of Supervisors on September 8, 1975, as amended through September 28, 2007, a reduced copy of which is attached hereto as Exhibit B and incorporated herein by reference.

B. This initiative hereby amends, and readopts as amended until December 31, 2058, Section 3.F.9 of the Land Use Element of the Napa County General Plan adopted June 7, 1983, as amended through September 28, 2007. Additions to the existing policy are shown in ***bold italic*** text, and deletions are shown in ~~strikethrough~~ text. Text in standard type denotes the existing General Plan policy readopted and reaffirmed by this initiative.

3.F.9 Limitations on General Plan Amendments Relating to "Agricultural, Watershed and Open Space" and"Agricultural Resource" Lands.

a) Until ~~December 31, 2020~~ ***December 31, 2058***, the provisions governing the intent and maximum building intensity for lands designated "Agriculture, Watershed and Open Space" and "Agricultural Resource" set forth in Sections 3.F.7.a, 3.F.7.d, 3.F.8.a, and 3.F.8.d of the Land Use Element adopted on June 7, 1983, as amended through ~~February 1, 1990~~ ***September 28, 2007***, (hereinafter the "Land Use Element"), shall not be amended unless such amendment is approved by vote of the people. Until ~~December 31, 2020~~ ***December 31, 2058***, the provisions governing minimum parcel size for lands designated "Agriculture, Watershed and Open Space" and "Agricultural Resource" set forth in Sections 3.F.7.c and 3.F.8.c of the Land Use Element shall not be amended to reduce minimum parcel sizes unless such amendment is approved by vote of the people.

b) All those lands designated as "Agriculture, Watershed and Open Space" or "Agricultural Resource" on the Napa County General Plan Land Use Map adopted by the Board of Supervisors (hereinafter, "Board") on September 8, 1975, as amended through ~~February 1, 1990~~ ***September 28, 2007*** (hereinafter "Land Use Map"), shall remain so designated until ~~December 31, 2020~~ ***December 31, 2058*** unless said land is annexed to or otherwise included within a city or town, redesignated to another general plan land use category by vote

of the people, or redesignated by the Board pursuant to procedures set forth in subsections c, d, ~~or~~ e, ***or f*** below.

c) Land designated as "Agriculture, Watershed and Open Space" on the Land Use Map may be redesignated to a "Public Institutional" general plan area classification by the Board pursuant to its usual procedures ***and without a vote of the people*** if such redesignation is necessary to comply with the countywide siting element requirements of Public Resources Code section 41700 *et seq.* as those sections currently exist or as they may be amended from time to time, but only to the extent of designating solid waste transformation or disposal facilities needed for solid waste generated within Napa County (including the cities within the County).

d) ~~Except as provided in subsection (e) below, l~~Land designated as "Agriculture, Watershed and Open Space" or "Agricultural Resource" on the Land Use Map may be redesignated to a land use designation other than "Agriculture, Watershed and Open Space" or "Agricultural Resource" by the Board pursuant to its usual procedures ***and without a vote of the people*** ~~only~~ if the Board makes all of the following findings:

i) Annexation to or otherwise including the land within a city or town is not likely;

ii) The land is immediately adjacent to areas developed in a manner comparable to the proposed use;

iii) Adequate public services and facilities are available and have the capability to accommodate the proposed use by virtue of the property being within or annexed to appropriate service districts;

iv) The proposed use is compatible with agricultural uses, does not interfere with accepted agricultural practices, and does not adversely affect the stability of land use patterns in the area;

v) The land proposed for redesignation has not been used for agricultural purposes in the past 2 years and is unusable for agriculture due to its topography, drainage, flooding, adverse

soil conditions or other physical reasons; and

vi) The land proposed for redesignation pursuant to subsection (d) does not exceed 40 acres for any one landowner in any calendar year, and one landowner may not obtain redesignation in the general plan of "Agriculture, Watershed and Open Space" or "Agricultural Resource" land pursuant to subsection (d) more often than every other year. Landowners with any unity of interest are considered one landowner for purposes of this limitation.

vii) The applicant for redesignation and its successors will not extract groundwater from the affected property or use pumped groundwater as a water source on the affected property except pursuant to a valid groundwater permit or use permit meeting the requirements of the Napa County Groundwater Conservation Ordinance, unless a final determination of exemption or waiver is made under that ordinance.

e) Land designated as "Agriculture, Watershed and Open Space" or "Agricultural Resource" on the Land Use Map may be redesignated to another land use category by the Board ***pursuant to its usual procedures and without a vote of the people*** if each of the following conditions are satisfied:

i) The Board makes a finding that the application of Section ***3.F.9.a or*** 3.F.9.b would constitute an unconstitutional taking of the landowner's property; and

ii) In permitting the redesignation, the Board allows additional land uses only to the extent necessary to avoid said unconstitutional taking of the landowner's property.

f) Nothing in Section 3.F.9 shall be construed or applied to prevent the County from complying with its housing obligations under State law. Where necessary to comply with applicable State law governing the provision of housing, the Board may redesignate land designated as "Agriculture, Watershed and Open Space" or "Agricultural Resource" on the Land Use Map to a land use designation other than "Agriculture, Watershed and Open Space"

or "Agricultural Resource," pursuant to its usual procedures and without a vote of the people, upon making all of the following findings:

i) The redesignation is necessary to comply with a State law imposing a mandatory housing obligation in effect at the time redesignation is sought ("applicable State housing law");

ii) There is no suitable land available in the unincorporated areas of the County, other than lands designated as "Agriculture, Watershed and Open Space" or "Agricultural Resource," that may be used to satisfy the applicable State housing law;

iii) It is not feasible to satisfy the applicable State housing law using lands within an incorporated city or town;

iv) No more land is redesignated pursuant to this subsection than is necessary to comply with the applicable State housing law;

v) To the extent permissible under State law, and to the extent feasible, the redesignation includes policies providing that any development proposed for the redesignated lands will consist of affordable housing, and effective restrictions will maintain the housing as affordable in perpetuity. For purposes of this paragraph (v), "affordable housing" shall mean housing affordable to lower income households as defined in section 50079.5 of the Health and Safety Code, as that section may be amended from time to time; and

vi) To the extent permissible under State law, and to the extent feasible, any land redesignated pursuant to this subsection shall be located adjacent to the boundaries of an incorporated city or town or, if adjacency is not feasible, in a location that is the closest to the boundaries of an incorporated city or town of the feasible options available.

fg) Approval by a vote of the people is accomplished when a general plan amendment is placed on the ballot through any procedure

provided for in the Elections Code, and a majority of the voters vote in favor of it. ***The Board may adopt a general plan amendment prior to securing a vote of the people; provided, however, that whenever*** ~~Whenever~~ the Board adopts an amendment requiring approval by a vote of the people pursuant to the provisions of ~~this subsection~~***Section 3.F.9***, the Board action shall have no effect until after such a vote is held and a majority of the voters vote in favor of it. The Board shall follow the provisions of the Elections Code in all matters pertaining to such an election.

Section 3. Implementation.

A. Upon the effective date of this initiative, the provisions of Section 2 of the initiative are hereby inserted into the Land Use Element of the Napa County General Plan as an amendment thereto, except that if the four amendments of the mandatory elements of the General Plan permitted by State law for any given calendar year already have been utilized in the year in which the initiative becomes effective, this General Plan amendment shall be the first amendment inserted into the Napa County General Plan on January 1 of the next year. At such time as this General Plan amendment is inserted in the Napa County General Plan, any provisions of the Napa County Zoning Ordinance, as reflected in the ordinance itself or in the Napa County Zoning Map, that are inconsistent with this General Plan amendment shall not be enforced.

B. The date that the notice of intention to circulate this initiative measure was submitted to the elections official of the County of Napa is referenced herein as the "submittal date." The Napa County General Plan in effect on the submittal date and the General Plan as amended by this initiative comprise an integrated, internally consistent and compatible statement of policies for the County of Napa. In order to ensure that nothing in this initiative measure would prevent the County of Napa General Plan from being an integrated, internally consistent and compatible statement of the policies of the County, as required by state law, and to ensure that the actions of the voters in enacting this initiative are given effect, any amendment to the General Plan that is adopted between the submittal date and the date that the General Plan is amended by this initiative measure shall, to the extent that such interim-enacted provision is inconsistent with the General Plan provisions adopted by Section 2 of this initiative measure, be amended as soon as possible and in the manner and time required by State law to ensure consistency between the provisions adopted by this initiative and other elements of the Napa County General Plan.

C. The Napa County General Plan, including the provisions amended and

readopted by this initiative, may be reorganized, and individual provisions may be renumbered or reordered, in the course of ongoing updates of the General Plan in accordance with the requirements of State law; provided, however, that the substance of Land Use Element Sections 3.F.7.a, 3.F.7.c, 3.F.7.d, 3.F.8.a, 3.F.8.c, 3.F.8.d, and 3.F.9; and the "Agriculture, Watershed and Open Space" and "Agricultural Resource" designations of the Napa County Land Use Map, as amended and readopted by this initiative, shall continue to be included in the General Plan until December 31, 2058, unless earlier repealed or amended pursuant to the procedures set forth in this initiative or by a vote of the people.

D. The County of Napa is hereby authorized and directed to amend the Napa County General Plan, all specific plans, the Napa County Zoning Ordinance, the Napa County Zoning Map, and other ordinances and policies affected by this initiative as soon as possible and in the manner and time required by any applicable State law, to ensure consistency between the policies adopted in this initiative and other elements of the Napa County General Plan, all specific plans, the Napa County Zoning Ordinance, the Napa County Zoning Map, and other County ordinances and policies.

E. Except as provided in Section 4 of this initiative or as otherwise required by State or Federal law, upon the date of insertion of the provisions of Section 2 of this initiative into the Napa County General Plan, all General Plan amendments, rezonings, specific plans, tentative subdivision maps, parcel maps, conditional use permits, building permits or other ministerial or discretionary entitlements for use not yet approved or issued shall not be approved or issued unless consistent with the policies and provisions of this initiative.

Section 4. Exemptions for Certain Projects.

A. This initiative shall not apply to any development project or ongoing activity that has obtained, as of the effective date of this initiative, a vested right pursuant to State or local law.

B. This initiative shall not be interpreted to apply to any land or use that, under state or federal law, is beyond the power of the local voters to affect by the initiative power reserved to the people via the California Constitution. Nothing in this Initiative shall be applied to preclude the County's compliance with state laws governing second units or the use of density bonuses where authorized by state law.

Section 5. Severability and Interpretation.

This initiative shall be interpreted so as to be consistent with all federal and state laws, rules, and regulations. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion of this initiative is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this initiative. The voters hereby declare that this initiative, and each section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion thereof would have been adopted or passed even if one or more sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, parts, or portions are declared invalid or unconstitutional. If any provision of this initiative is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this initiative that can be given effect without the invalid application. This initiative shall be broadly construed in order to achieve the purposes stated in this initiative. It is the intent of the voters that the provisions of this initiative shall be interpreted by the County in a manner that facilitates the protection for agricultural, open space, and natural resource uses of areas within the "Agriculture, Watershed and Open Space" and "Agricultural Preserve" land use designations readopted and reaffirmed herein.

Section 6. Amendment or Repeal.

Except as otherwise provided herein, this initiative may be amended or repealed only by the voters of the County of Napa.

[P:\SAVE JMAT I\kpb007 (final initative text).wpd]

Exhibit A

Exhibit A, attached, contains the true and accurate text of Sections 3.F.7.a, 3.F.7.c, 3.F.7.d, 3.F.8.a, 3.F.8.c, and 3.F.8.d of the Land Use Element of the Napa County General Plan adopted June 7, 1983, as amended through September 28, 2007, which are reaffirmed and readopted in Section 2.A of this initiative.

Proponent's Note:
The provisions enclosed by bold lines are the provisions reaffirmed and readopted by this initiative.

7) Agriculture, Watershed and Open Space

a) Intent

To provide areas where the predominant use is agriculturally oriented; where watershed areas, reservoirs, floodplain tributaries, geologic hazards, soil conditions and other constraints make the land relatively unsuitable for urban development; where urban development would adversely impact on all such uses; and where the protection of agriculture, watersheds, and floodplain tributaries from fire, pollution, and erosion is essential to the general health, safety, and welfare.

b) General Uses

Agriculture, processing of agricultural products, single family dwelling.

c) Minimum Parcel Size

160 acres, except that parcels with a minimum size of 2 aces may be created for the sole purpose of developing farm labor camps by a local government agency authorized to own or operate farm labor camps so long as the division is accomplished by securing the written consent of a local government agency authorized to own or operate farm labor camps that it will accept a conveyance of the fee interest of the parcel to be created and thereafter conveying the fee interest of such parcel directly to said local government agency, or entering into a long-term lease of such parcels directly with said local government agency.

Every lease or deed creating such parcels must contain language ensuring that if the parcel is not used as a farm labor camp within three years of the conveyance or lease being executed or permanently ceases to be used as a farm labor camp by a local government agency authorized to develop farm labor camps, the parcel will automatically revert to, and merge into, the original parent parcel."

d) Maximum Building Intensity

One dwelling per parcel (except as specified in Housing Element). Non-residential building intensity is non-applicable.

Proponent's Note:
The provisions enclosed by bold lines are the provisions reaffirmed and readopted by this initiative.

8) Agricultural Resource

a) Intent

To identify areas in the fertile valley and foothill areas of the County in which agriculture is and should continue to be the predominant land use, where uses incompatible with agriculture should be precluded and where the development of urban type uses would be detrimental to the continuance of agriculture and the maintenance of open space which are economic and aesthetic attributes and assets of the County of Napa.

b) General Uses

Agriculture, processing of agricultural products, single family dwelling.

c) Minimum Parcel Size

40 acres, except that parcels with a minimum size of 2 acres may be created for the sole purpose of developing farm labor camps by a local government agency authorized to own or operate farm labor camps so long as the division is accomplished by securing the written consent of a local government agency authorized to own or operate farm labor camps that it will accept a conveyance of the fee interest of the parcel to be created and thereafter conveying the fee interest of such parcel directly to said local government agency, or entering into a long-term lease of such parcels directly with said local government agency.

Every lease or deed creating such parcels must contain language ensuring that if the parcel is not used as a farm labor camp within three years of the conveyance or lease being executed or permanently ceases to be used as a farm labor camp by a local government agency authorized to develop farm labor camps, the parcel will automatically revert to, and merge into, the original parent parcel."

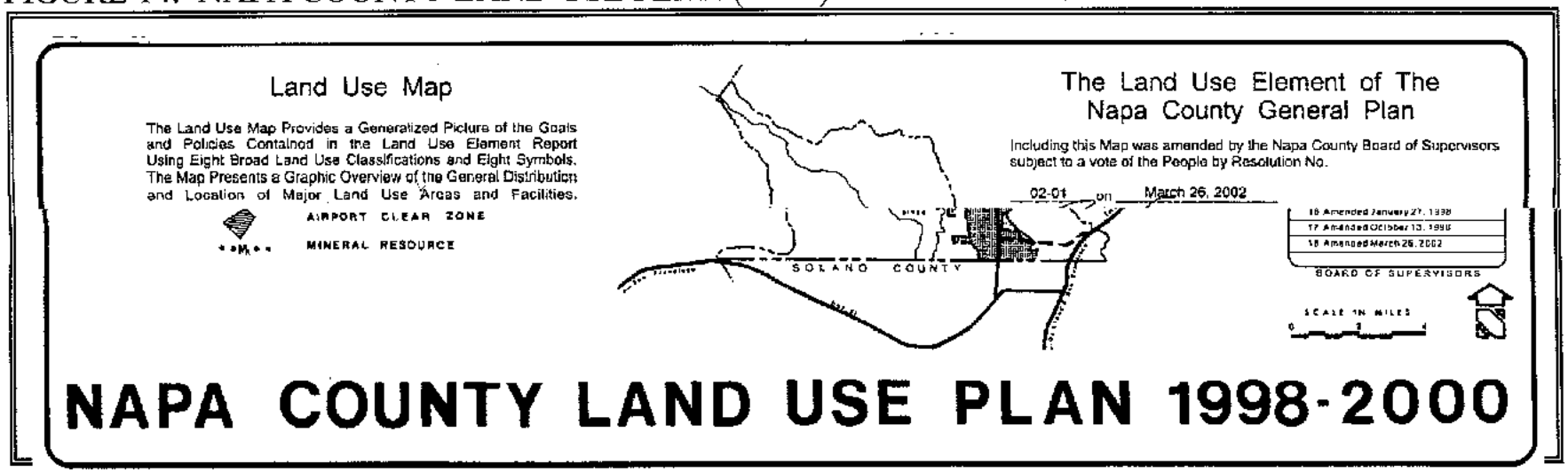
d) Maximum Building Intensity

One dwelling per parcel (except as specified in Housing Element). Non-residential building intensity is non-applicable; but where practical, buildings will be located off prime soils.

Exhibit B

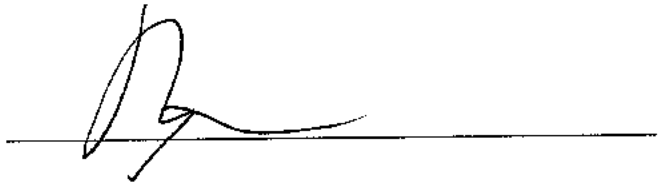
Exhibit B, attached, contains a reduced copy of the Napa County Land Use Map adopted by the Board of Supervisors on September 8, 1975, as amended through September 28, 2007, which depicts the "Agriculture, Watershed and Open Space" and "Agricultural Resource" designations reaffirmed and readopted in Section 2.A of this initiative.

FIGURE 14: NAPA COUNTY LAND USE PLAN (MAP) 1998-2000



Signed Statement of Initiative Proponent
(Elections Code § 9608)

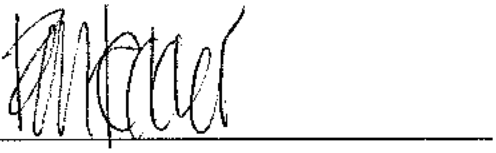
I, Melvyn Vanrelman, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.



Dated this 26 day of September, 2007

Signed Statement of Initiative Proponent
(Elections Code § 9608)

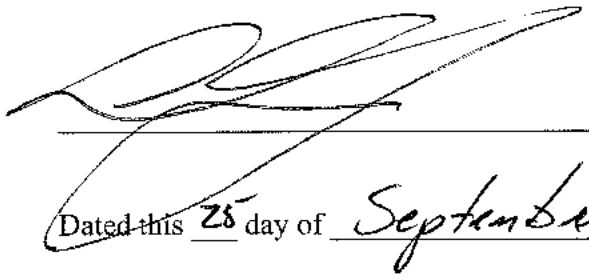
I, RON TADDEI, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.



Dated this 28TH day of SEPTEMBER, 2007

Signed Statement of Initiative Proponent
(Elections Code § 9608)

I, Al Wagner, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.



Dated this 25 day of September, 2007

Signed Statement of Initiative Proponent
(Elections Code § 9608)

I, Walker Tisdale, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

Dated this 24 day of September, 2007

Appendix B:
Elections Code Section 9111

California Elections Code §9111

§9111. Report from county agencies on effect of proposed initiative measure

(a) During the circulation of the petition or before taking either action described in subdivisions (a) and (b) of Section 9116, or Section 9118, the board of supervisors may refer the proposed initiative measure to any county agency or agencies for a report on any or all of the following:

(1) Its fiscal impact.

(2) Its effect on the internal consistency of the county's general and specific plans, including the housing element, the consistency between planning and zoning, and the limitations on county actions under Section 65008 of the Government Code and Chapters 4.2 (commencing with Section 65913) and 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

(3) Its effect on the use of land, the impact on the availability and location of housing, and the ability of the county to meet its regional housing needs.

(4) Its impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space. The report may also discuss whether the measure would be likely to result in increased infrastructure costs or savings, including the costs of infrastructure maintenance, to current residents and businesses.

(5) Its impact on the community's ability to attract and retain business and employment.

(6) Its impact on the uses of vacant parcels of land.

(7) Its impact on agricultural lands, open space, traffic congestion, existing business districts, and developed areas designated for revitalization.

(8) Any other matters the board of supervisors request to be in the report.

(b) The report shall be presented to the board of supervisors within the time prescribed by the board of supervisors, but no later than 30 days after the county elections official certifies to the board of supervisors the sufficiency of the petition.

Appendix C:

Napa County Ballot Initiatives: 1990-Present

NAPA COUNTY BALLOT INITIATIVES: 1990-Present

TITLE	DESCRIPTION	DATE OF ELECTION	Passed/Failed
Measure J Agricultural Lands Preservation	Until 2020 changes to the minimum parcel size set forth in the regulations relating to AR or AWOS lands or change of lands designated AR or AWOS to an "Urban" category cannot occur unless approved by the voters.	November 6, 1990	Passed
Measure R General Plan Change Requested by Thomas West	Change 27.55± acres from an open space (AWOS) designation to an urban (RR) designation. ("Lake Berryessa Rezone")	November 2, 1993	Failed
Measure V Outdoor Dining - Don Giovanni's	Expansion of the operation of restaurants that are non-conforming uses. Add Outdoor Dining Exception.	November 8, 1994	Passed
Measure W Controlled Growth (Richland Interests)	Create a new general plan designation and zoning district and change the general plan and zoning designation of the 1173 acres known as Suscol Creek from agriculture (AW/AWOS) to urban (BPOA/BPOD) ("Suscol Ridge")	March 26, 1996	Failed
Measure X Suscol Creek Balanced Planning (Richland Interests)	Create a new general plan designation and zoning district, change the general plan and zoning designation of the 1173 acres known as Suscol Creek from agriculture (AWOS/AW) to urban (BPOA/BPOD), approve the proposed conceptual plan, exempt the 1700± dwelling units from the building permit restrictions applicable to the rest of the County, approve a 15 year development agreement protecting the Suscol Creek development from future land use regulatory changes. ("Suscol Ridge")	March 26, 1996	Failed
Measure Z Stanley Lane Pumpkin Patch	General Plan Amendment, establishment of Agricultural Produce Stand (:PS) Combination zoning district, and redesignate AP #47-230-34 from AW to AW:PS. ("First Stanly Lane/Pumpkin Patch")	November 5, 1996	Passed
Measure D	Creates Historic Restaurant (:HR)	November 3, 1998	Passed

Historic Restaurant Zoning	Combination Zoning District and rezones the parcel on which Brix Restaurant is located.		
Measure G Aetna Springs Historic Preservation	Create a Historic Resource General Plan designation (HR) and a Historic Preservation Combination zoning District (:HP) and apply the HR designation to the Aetna Springs property which will enable Aetna Springs to resume historic resort types of uses and offer lodging accommodation for no more than 200 persons per night.	January 4, 2000	Failed
Measure K Lakeview Boat Storage General Plan Amendment	Redesignate land from AWOS to RR to allow expansion of the existing boat storage facility by use permit.	March 5, 2002	Passed
Measure L Farm Labor Camps	General Plan Amendment to allow parcel 2 acres or larger in size to be created on lands in the AR and AWOS land use categories for the sole purpose of developing farm labor camps.	March 5, 2002	Passed
Measure Q Old Pometta's Deli Preservation	An initiative amending the Napa County General Plan and zoning ordinance to create a new "Community Deli" Zoning District allowing commercial activities to occur on parcels which have had, or are immediately adjacent to, parcels that have had continuous commercial activity since before the establishment of the Agricultural Preserve ("First Pommetta's")	March 2, 2004	Failed
Measure R Old Pope Valley Market Preservation	An initiative amending the Napa County General Plan and zoning ordinance to create a new "Rural Market" Zoning District permitting local serving commercial uses and expansion of such uses in the unincorporated areas of Napa County	March 2, 2004	Failed
Measure S Napa Sea Ranch	An initiative amending the Napa County General Plan and zoning ordinance and rezoning the property known as "The Napa Sea Ranch" (Napa County Parcel Nos. 47-261-009 and 47-261-007) to Marine	March 2, 2004	Failed

	Commercial: Airport Compatibility		
Measure T County Rural Dining Zoning District	An initiative amending the Napa County General Plan and zoning ordinance to create a new "Rural Dining" Zoning District allowing certain dining and catering-related commercial activities to occur on parcels on which such commercial activities were legally established prior to January 1, 1968 and which are rezoned to the Rural Dining Zoning District by a vote of the people ("Second Pommetta's")	November 2, 2004	Failed
Measure K Stanly Lane Deli	An initiative amending the Napa County General Plan and zoning ordinance establishing delicatessens with outdoor barbeque and wine tastings as allowable uses upon grant of a use permit on lands in the Agricultural Produce Stand Combination Zoning District when accessory to an existing agricultural produce stand. ("Second Stanly Lane/Pumpkin Patch")	February 5, 2008	Passed

Sources: Napa County Elections Office, Napa County Counsel's Office.

EXHIBIT 12

Napa County report looks for flaws in the planned watershed and oak initiative

- BARRY EBERLING beberling@napanews.com

- Feb 22, 2018

Nspa County supervisors are scheduled to decide Tuesday if a proposed oak woodland preservation initiative will go on the June ballot.
Submitted photo

A planned June ballot measure limiting vineyard development of oak woodlands has potential flaws, but none of them fatal, according to a legal analysis that will go to the Napa County Board of Supervisors on Tuesday.

“The initiative could subject the county to lawsuits, and could be partially invalidated” in several areas, a report by Miller Starr Regalia, a Bay Area law firm, said.

But even if supervisors believe the initiative is legally defective in whole or in part, they can’t disqualify the measure, Miller Starr Regalia. Courts are unlikely to grant a pre-election review, the report said.

That leaves the Board of Supervisors with the choice on Tuesday of adopting the measure or putting it before the voters in the June election.

The initiative’s co-author, Mike Hackett, said a court challenge often comes with environmental change, citing the creation of the agricultural preserve 50 years ago as an example. The new watershed and oak woodland measure was drafted by two “gold-standard” Northern California law firms, he said.

“I think the whole thing will hold up,” Hackett said Wednesday.

Backers of the initiative gathered enough signatures to qualify the initiative for the June 5 election. The Board of Supervisors ordered the legal analysis before deciding whether or not it goes on the June ballot.

Wine industry groups say the measure could be a blow to agriculture. Among other things, they say a proposed oak woodlands removal limit of 795 acres in the local hills and mountains will someday curtail vineyard development.

Proponents say the goal is to protect watersheds. That, in turn, protects local water supplies needed by residents in cities such as Napa, Calistoga, St. Helena and Yountville as well as agriculture, they say.

“It’s certainly not anti-agriculture,” Hackett said on Wednesday. “I just see that as a very hollow argument.”

Some parts of the measure might be unlawfully vague or misleading, the Miller Starr Regalia report said. The measure does not clearly provide accused violators with the right to a hearing. The measure might improperly treat vineyard replantings differently than other agriculture, the report said.

One question has been when the measure’s 795-acre oak woodlands removal limit for the agricultural watershed zoning district might be reached. Proponents say the cap should enable new hillside vineyards to be planted in areas with oaks until at least 2030. Opponents say the cap will be reached much sooner.

The count toward the 795 acres would start in September 2017. The Miller Starr Regalia report said 22.39 acres of vineyards involving oak woodland removal have been permitted or constructed since then and applications are pending for another 123.25 acres. That leaves 649 acres of cap space.

This would seem to alleviate the fear among some opponents that enough vineyard projects are in the pipeline to immediately trigger the cap.

But what about wildfires such as those that burned last October? The Miller Starr Regalia report said it’s unclear whether oaks destroyed in fires and other calamities count toward the cap.

The Atlas, Tubbs and Nuns fires burned an estimated 30,639 acres with oak woodlands, the report said. If 2.5 percent of these oak woodlands are considered “removed” under the measure, the oak woodland removal cap has already been reached.

Initiative backers deny oaks destroyed in a wildfire would count toward the cap, given these trees wouldn’t be removed as a result of human activity or intentional burning, the report said. But arson fires are caused by human activity and are intentional, it said.

“Moreover, it is unclear whether the concept of intentionality covers negligent or reckless human behavior, and what happens if the cause of a fire cannot be discerned,” the report said.

Oaks destroyed in backfires to combat wildfires also present an ambiguity, the report said. Fires lit by federal or state agencies are not subject to the measure. But a backfire might be ordered by a county or city fire official.

Hackett noted that the county in 2016 disqualified an earlier version of the watershed initiative on a technicality. When backers challenged the move in court, the county used Miller Starr Regalia to oppose them. Given that, he questioned having Miller Starr Regalia write the new report.

“I think it is very one-sided,” Hackett said. “But the citizens are awake now. There is more resistance to the status quo than ever before.”

Opposing the measure are the Napa County Farm Bureau, Napa Valley Grapegrowers, Winegrowers of Napa County and an original backer, Napa Valley Vintners. The Farm Bureau called for more community collaboration on the issue. The Grapegrowers said the measure would ban new vineyards in the agricultural watershed.

The Board of Supervisors is scheduled to discuss the Miller Starr Regalia report at 1 p.m. Tuesday at the county administrative building, 1195 Third St. in Napa.

Go to https://www.countyofnapa.org/DocumentCenter/View/7750 to read the Miller Starr Regalia report.

EXHIBIT 13

Napa County supervisors place oak woodland initiative on June ballot

A Tradition of Stewardship
A Commitment to Service

It’s official—the watershed and oak woodland protection initiative will be on the June 5 ballot.

The Napa County Board of Supervisors approved the move on Tuesday afternoon, naming the initiative Measure C. The Board was scheduled later in the afternoon to take action on a Blakeley Construction initiative and an initiative to ban new personal use heliports.

Proponents gathered enough signatures from registered, local voters to qualify Measure C for an election. That gave supervisors the choice of adopting it as written or placing it on the ballot.

“I fully support, as I did with every other citizen-driven initiative, putting it on the ballot,” Supervisor Diane Dillon said.

Supervisors heard from 29 speakers over two hours, almost evenly split among Measure C proponents and opponents.

“I think both sides outlined where they are with this initiative and where the battle lines are on it,” Board Chairman Brad Wagenknecht said when the testimony ended.
One point of controversy was a Measure C informational report that the Board of Supervisors on Jan. 30 ordered staff to prepare. The law firm Miller Starr Regalia found possible legal flaws that it said might in varying degrees make the county vulnerable to lawsuits if the initiative passes.

Attorney Robert Perlmutter on behalf of Measure C backers found flaws with the Miller Starr Regalia report. These type of informational reports authorized by state law are supposed to be fair, accurate and impartial, he said.

“It reads as if it was prepared by the opponents of the measure,” Perlmutter said.
He talked about the science behind the proposed stream setbacks and other features of the initiative. He read a press release from Napa Valley Vintners praising the measure, before the wine industry group later reversed itself and opposed it.

Rex Stults of Napa Valley Vintners gave the group’s reasons for the reversal. Napa Valley Vintners held a forum with attorneys arguing both for and against Measure C and decided some points are vague, he said.

Also, Stults said, the October wildfires made a difference. The fires destroyed oaks, making it unclear to the group at what point Measure C’s oak removal limit for new vineyards in the agricultural watershed zoning district might take effect.

Former Supervisor Ginny Simms said the Miller Starr Regalia report listed all the possible negative effects of Measure C and none of the possible positive effects. Simms said protecting watersheds so people have water to drink is a positive.

Dario Sattui said Napa County already has some of the most restrictive rules in the world for planting vineyards.

“If this initiative passes, I think it’s the beginning of the demise of the wine industry in Napa County,” he said.

Grapegrower Yeoryios Apallas spoke in favor of the initiative. He said two supervisors are against it and three haven’t stated their positions.

“Don’t shirk your responsibility because you have a fealty to the wine industry,” Apallas told supervisors. “You have a fealty to the citizens.”

Vintner Stuart Smith said 100 years of accepted fire suppression theory has resulted in overgrown forests with greater fuel loads that burn hotter. Because of housing, fire management can no longer burn forests to keep them open and healthy and logging is unprofitable.

Only vineyards checker-boarding hillsides can dampen wildfire intensity and environmental destruction, as demonstrated in the October wildfires, Smith said. The oak woodland initiative would perpetuate 100 years of misguided policies and result in the opposite of what it intends, he added.

Angwin resident Kellie Anderson responded that a highway doesn’t burn in a fire, but that doesn’t mean hillsides should be checkered with highways.

Also on Tuesday, the Board of Supervisors placed Regional Measure 3 on the ballot. This is a Bay Area-wide initiative that would raise bridge tolls on the region’s state-owned bridges by $1 in 2019, $1 in 2022 and $1 in 2025.

Money raised is to pay for various traffic-relieving projects in the Bay Area, with $20 million to be allocated to Highway 29 in south Napa County.

Jack Gray of the Napa County Taxpayers Association criticized the proposed increase. He said it could hurt people who have lower-paying jobs in San Francisco and must commute there, sometimes crossing two bridges.

“I think Regional Measure 3 with the $3 increase will really cause a lot of people a lot of problems,” Gray said.

Voters will decide. County Registrar of Voters John Tuteur said the state legislation authorizing the toll increase ballot measure says the nine Bay Area counties “shall” place it on the ballot.

“I don’t think you have an option,” he told supervisors. “If you don’t do it, it would probably be put on by a judge and cost more money.”

Editor's note: The quotes from vintner Stuart Smith have been clarified from the original version.