

## A VIEW FROM THE FRONT LINES: ENVIRONMENTAL ACTIVISTS' WAR ON NAPA VALLEY WINE GROWERS

by

Stuart Smith

During the past thirty-five years Napa Valley vintners have established an international reputation for making and marketing some of the finest wines in the world. Less well known to the public, but certainly no less dramatic for the Valley's citizens and vintners, is Napa Valley's emerging national reputation for land use policies. What most would characterize as innovative land use policy in 1968 with the historic creation of the Agricultural Preserve — which stated that the highest and best use of the land was for agriculture — has now deteriorated into what can only be described as the Environmental Wars. During the last six years the Valley has had to deal with County-imposed Moratoriums, passionate and inflamed rhetoric, alleged threats, lawsuits, counter-lawsuits, initiatives and counter-initiatives, and now referendums, along with national press coverage and best selling books chronicling our dysfunctional state of affairs. *See James Conaway, THE FAR SIDE OF EDEN - NEW MONEY, OLD LAND, AND THE BATTLE FOR NAPA VALLEY (2002).*

While California comes up with an occasional good idea, it export all its ideas, trends and policies to the rest of the nation — good or bad — which is why those outside of the state should be concerned with what is happening in Napa Valley. Here, a small group of committed environmentalists, coupled with misguided but well-intentioned politicians, has generated complete chaos within the wine growing community.

By way of example here is what has happened: I have been growing grapes and making wine on my forested mountain property since 1971. In early 1999, I wanted to plant a new three-acre vineyard on land which I had legally cleared years before. To do this, I was required to comply with the County's 1991 Conservation Ordinance, created to reduce soil erosion on land with a five percent slope or greater and develop an Erosion Control Plan (ECP) for approval. Engineering, maps, reviews, and fees totaled \$6,000 and required five months for approval. After the Sierra Club used the California Environmental Equality Act (CEQA) to successfully challenge how the County processed the ECPs in the fall of 1999, that same permit today will cost up to \$80,000 and approval might come only in time to plant during

the spring of 2007. And in what can only be described as pursuing a policy of appeasement, Valley floor wine growers, fearful that the environmentalists may use CEQA to stop the replanting of their established vineyards on the Valley floor, are readily sacrificing new vineyards in the mountains. There may be more than a little anti-competitiveness here since many of the much sought-after wines from Napa Valley are now being grown on mountain slopes.

The impetus for the Conservation Ordinance began during the summer of 1989 when Delia Viader, new to both Napa and grape growing, began developing a vineyard on her recently purchased mountain property just east of St. Helena; of more importance is that the property's location was just above Bell Canyon Reservoir, the drinking water for the City of St. Helena. Her workers failed to finish their fieldwork before an early, heavy rainfall, which caused enough erosion to significantly impact St. Helena's drinking water supply. Not surprisingly, Napa County's Board of Supervisors responded with an ordinance. This one finally passed in the spring of 1991 and was called the Conservation Ordinance, colloquially referred to as the Con Regs or the Hillside Ordinance.

After several continuous public hearings the Supervisors pared the Ordinance down to dealing with just soil erosion. Rarely do those who govern and those who are governed have the same goal, but in this case all involved agree that soil erosion is bad. Where they differ is how to administer the Ordinance. It has been suggested that it be made voluntary and that a peer review board be used to inform newcomers on the how's, why's and wherefore's of developing, planting and growing grapes on mountain soils. If a peer review board was determined to be insufficient, then the Supervisors could always go to the next level of enforcement. The supervisors ignored the suggestion, passed the Conservation Regulations and set the stage for the past six years of environmental warfare.

Once the Napa County Supervisors passed the Con Regs, they felt they had addressed the problem and could move on. Unfortunately, the County then, as now, relies on neighbors turning in neighbors for code enforcement. During the summer of 1997 Jason Pahlmeyer, a Southern California attorney, began clearing his newly purchased land in order to establish fifty acres of new vineyard in the mountains east of Napa. For whatever reason Mr. Pahlmeyer (and others) chose to ignore the permitting process and proceeded to clear and plant his land without a permit.

Unfortunately for Mr. Pahlmeyer, Chris Malan, a local environmental activist, could see his property from her nearby home and objected. Ms. Malan had at that time founded Concerned Citizens for Napa Hillside and her small group was determined to stop all development in the hillsides, especially since Ms. Malan already had her hillside home built. The battle was on and Ms. Malan had Mr. Pahlmeyer as her "bad boy." Once caught, Mr. Pahlmeyer, the subject of numerous articles and letters to editors, had to go back and do an Erosion Control Plan and present it to the Napa County Planning Commission where the Sierra Club, Concerned Citizen for Napa Hillside and the Napa County Farm Bureau spoke against Mr. Pahlmeyer and his project.

Within weeks of the Pahlmeyer hearing, County staff was recommending denial of another new vineyard on mountain land. This project could not have been more different from Mr. Pahlmeyer's: the owner, again new to Napa and wine growing, did everything right — accepted all of the County staff's recommendations, dotted the "i"'s and crossed the "t"'s. In recommending denial the Staff Report mentioned as an issue the vineyard's impact on the Napa Valley "viewshed" no less than seven times. The project's vineyard manager went to the Napa County Farm Bureau seeking their support as an agricultural project and hence in compliance with the County's General Plan. The Farm Bureau's refusal

to endorse this mountain project after speaking out against Mr. Pahlmeyer was viewed as the powerful flatlanders refusing to support fellow mountain farmers and ignited many of them to start a competing farming rights organization called Farmers for Napa Valley. Farmers For Napa Valley railed against Concerned Citizens for Napa Hillside, the Sierra Club, the County, and especially against the Napa County Farm Bureau in our effort to keep all their rights to farming.

By late 1998 the County tried to calm things down by forming the Napa River Watershed Task Force (WTF). Fifteen public members along with one supervisor and one planning commissioner were appointed to try and reach consensus on land use in the Napa watershed. I was named to the Taskforce which began meeting in January of 1999. If the sky is falling, as claimed, I asked, could someone show me the pieces? None could. This first Phase ended in late May of 1999 with Phase II beginning that October. During the interval between the two Phases, Chris Malan (having become a Board Member of the local Sierra Club Chapter) convinced the national Sierra Club to sue Napa County claiming that the County's administration of the Erosion Control Plan process was in violation of the California Environmental Quality Act. In addition to suing the County, the Sierra Club sued five other vineyardists who had approved ECPs, one of which was Mr. Pahlmeyer. Those five vineyardists then counter-sued the County for reliance on their approved permits. At issue: If a government or its agents use discretion in granting a permit, must the government agency must have a public review of the permit?

When the County passed the Con Regs in 1991 they acknowledged that one-size-fits-all is inappropriate for mountain land. The County recognized that there are different soil types, different slopes and contours and different rainfall patterns within the County. Therefore, the planners and field agents were given discretion to work with the landowner and the engineer and to modify the plans to insure the best possible project.

The County did use discretion when granting Erosion Control Plans and lost the case in early 2000. The Sierra Club gloated over its victory and threatened to sue again under CEQA if the County didn't take into effect what are called "cumulative impacts" of new vineyards on the environment. CEQA was designed for urban and commercial projects, not agricultural ones; Napa County has been slow to adapt to the new requirements, in part, because Napa County is the only County in California that now has to put its growers through CEQA.

Has Napa County continued to be the leader in environmental regulation since passing the 1968 Ag Preserve or the 1991 Conservation Ordinance? Has Napa led the way in vineyard regulations with Santa Barbara, San Luis Obispo, Monterey, Santa Cruz, Lake and Mendocino passing similar ordinances? With the exception of Sonoma County's very weak and self-regulating ordinance, the answer is no, but with a twist, and that twist is CEQA. Without CEQA the Con Regs are an acceptable response by a County to an influx of wealthy folks who don't know anything about growing grapes on the side of a mountain.

Unfortunately, Napa County has now become the poster child for what doesn't work, and reminds one of the old adage about good intentions paving the road to hell. Napa Valley is now the perfect test case that demonstrates that CEQA doesn't work for agriculture and should be exempted from it. California Senate Bill 1810 was introduced in early 2000 and would have exempted agriculture from CEQA if a County had environmental protections in place. This was the right idea whose time had not yet come. The bill would have returned environmental protection back to local authorities, but was withdrawn when the County failed to support it and both the Sierra Club and the Napa County Farm

Bureau objected.

It seems environmentalists continually decry any demand for good science as simply a delaying tactic to avoid the inevitable. Not in this case. Over the last three years there have been five studies, some funded by the environmentalist themselves, with all studies repudiating the environmentalists' claims: A March 2000 Sonoma State University study commissioned by Chris Malan "... has shown that Napa's ordinance is a model of effective regulation for vineyard erosion control."

In June of 2000 a University of California-Davis study showed that Napa's grape growers were the most regulated in California. In April 2001 an aquatic insect study of the Napa River commissioned by Friends of the Napa River found "...an 'astounding' variety of aquatic insects were discovered, including several rare types ... (study director) Dewberry said the diversity of species found, much greater than the number found in the Russian River, surprised researchers. 'I'm not aware of anybody knowing ... that was the case for Napa,' he said."

The March 21, 2002 Napa Valley Register headline (and article) read "Study indicates steelhead abundant in Napa River." And most importantly, the federally mandated Total Maximum Daily Load (TMDL) report issued in June 2002 stated that "sediment and turbidity" are not the problems so many thought it was. The alleged cause for twelve years of battles just vanished. Other good news: on December 3 and 10 of 2002, the Napa Valley Land Stewards (a new grass roots property rights organization) organized more than 800 people to show up in opposition to the Supervisors' proposed Streamside Setback Ordinance. While the Supervisors passed the Ordinance anyway, the Land Stewards have sued the County using CEQA and organized a successful referendum putting the ordinance to a vote of the people. Both sides have now learned to use CEQA to stop government actions.

Environmentalists, as a general rule, are only interested in science and logic to support their positions, not to find the truth or answers to environmental problems. They hold strong passionate beliefs, almost with a religious fervor, that they are right and that only they understand the real issues at hand. In fact, good news for the environment is bad news to them. If a permanent solution is to be found, then all stakeholders must accept the resolution. If one side has the power and forces a resolution on the other side, it is only a temporary solution. The losing side bides its time until it can obtain sufficient power to reopen the issues.

Lastly, we should remember Adam Smith, author of WEALTH OF NATIONS, and his worries about the ultimate commercial society, where specialization becomes so great, and people's interests become so narrow, that they lose interest in what happens outside of their work and home and lose sight of the larger picture — in a word, apathy. Unless you are directly involved, most people don't care.