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Supplement to the Staff Report



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David Morrison
Director

MEMORANDUM

To: Napa County Planning Commission

From: David Morrison, PBES Director

Date: March 6, 2019

Re: Supplement to the Staff Report: Draft Water Quality & Tree Protection Ordinance

This supplemental memorandum provides responses to questions and requested clarifications from the Planning Commission and public at the Commission meeting on February 20, 2019 on the Water Quality and Tree Protection Ordinance (the proposed ordinance).

Planning Commission Meeting of February 20, 2019

Since January 29, 2019, staff has received 61 pieces of written correspondence from individuals and organizations, including the following: George Banks, Beverly Orr, Randy Dunn, City of Napa, Igor Sill, Chuck Wagner, George Bachich, Karen Mueller, David Kearney-Brown, Barbara Schell, Kim McWilliams, Ana Vigil Footman, Napa County Farm Bureau, Marie Orr, Christopher Howell, Gil Shefer, City of Calistoga, Nancy McCoy Blotzke, Valerie Wolf, Pam Jackson, Elaine de Man, Winegrowers of Napa County, Matt Reid, Darlene Meltzer, Deborah Fortune Walton, California Native Plant Society, Jeff Durham, Margie Mohler, Kenneth Leary, Donald Williams, Scott Sedgley, Friends of the Napa River, Eldon Parker, Napa Valley Grapegrowers, Bradley Kirkpatrick, Richard Ehrenberger, Jeff Baier, Jody Frease Meijer, Diana Solari, Doug Wirth, California Wildlife Foundation, PPI Engineering, Lisa Hirayama, Barbara Guggia, Center for Biological Diversity, Mark Anisman, Lauren Coodley, Spring Mountain District Association, Wayne Ryan, Evelyn Able, Judy Donovan, Kit Long, Randy Gularte, Lynn Wyman, Sierra Club, Allene Hansen, Chris Malan, Michael Lewis, Geoff Ellsworth, Ryan Waugh, and Reverdy Johnson.

At the February 20, 2019, meeting of the Planning Commission, testimony was received from 55 people, including: Rob Duran, Rachel LeRoy, Annalee Sanborn, Harvest Duhig, Dona Bonick, Sheldon Richards, Ryan Klobas, George Bachich, Stu Smith, Stephen Rae, Ryan Waugh, Geoff Ellsworth, Laurie Claudon, Fred Chopping, Tom Clark, Tom Davies, Michelle Montgomery, Donald Williams, Chuck Wagner, George Caloyannidis, Amber Manfree, Jim Wilson, Kimberly Kinsel, Cameron Pridmore, Norm Manzer, Gary Margadant, Jason Kishineff, Draselle Muscatine, Stuart Funk, Johnnie White, Peter Nissen, Agustin Huneeus, Molly MoranWilliams, Ginny Sims, Paul Bartelt, Sara Pistone, Donald Kevitz, Kirsty Shelton, Ross Middlemiss, David Heitzman, Alan Viader, Devonna Smith, Gordon Evans, Tony McClimans, Chris Sauer, Tony Norris, Chris Howell, Patricia Damelly, Karra Taddei, James Hinton, Kellie Anderson, Stephen Rea, Mike Hackett, Michelle Benvenuto, Garrett Buckland, and Yeoryios Apallas.

Napa County General Plan

The Napa County General Plan (2008) references the Conservation Regulations in numerous policies and action items. The Conservation Regulations and proposed Water Quality and Tree Protection Ordinance further these policies and action items in multiple ways, including through the preservation of critical habitat and habitat connectivity, retention of riparian areas and fisheries, protection of domestic water supplies, improvement of water quality, protection of water quantity, and balancing the property

owners' ability to use their land. Please see the attached General Plan Consistency Analysis for more detailed information.

Discussion

Members of the public asked during testimony on February 20, 2019 why the County is updating the Conservation Regulations. The proposed Ordinance seeks to address several problems, including the following:

- Several municipalities and a private water company have expressed a concern that land use changes may affect domestic water supplies. Local water suppliers depend on open air reservoirs for drinking water to serve their residents, and generally do not have the filtration systems needed to address elevated levels of sediment, nutrients, or pesticides (regardless of the source of these contaminants). The proposed Ordinance provides an opportunity to improve this concern. Separately, the County is working with the City of Napa to develop a voluntary surface water quality monitoring system within the City's municipal reservoir watersheds, similar to the voluntary groundwater monitoring program already in place in the County.
- The Napa River remains listed as impaired for sediment and pathogens by the Regional Water Quality Control Board (RWQCB). The RWQCB recently adopted new waste discharge requirements for vineyard properties and related unpaved roads aimed at reducing sediment levels. By proposing to extend vegetation canopy, chaparral and shrubland protections throughout the unincorporated area, the Ordinance would proactively reduce sediment and pathogen loads.
- Although land conversion is not a primary contributor to greenhouse gas emissions in Napa, limiting and mitigating vegetation canopy loss is a part of the draft strategy for the County to come into compliance with State-mandated climate change legislation.
- The Ordinance allows an opportunity for the County to codify significant environmental protection measures the County is currently obtaining on a project-by-project basis, including tree preservation requirements and setbacks from wetlands and ephemeral streams.
- Scientific information and understanding have expanded since the Conservation Regulations were first adopted, and the Ordinance allows an opportunity to incorporate new and better scientific data.

Measure C indicated that the public is divided over the balance between the rate of development in the hillside areas and additional environmental protections. This concern was a frequent issue raised during the development of the Strategic Plan and has been reflected in recent discussions about a variety of issues, including remote wineries, residential development footprints, fire prevention and response strategies, and solar facilities. The initiative process is an important protection enjoyed by the public, which provides an alternative to representative government. However, it can be a blunt instrument that does not provide for environmental review or broad public input in its development, and can be difficult to amend in rapidly changing circumstances. Initiatives may also conflict with or may not be integrated with existing County policies and regulations. Staff believes the proposed ordinance provides a balanced and measured approach, tempered by the public process that enhances environmental protection while providing the needed flexibility for sound future land use management.

The Conservation Regulations have ensured an unparalleled system of environmental protections for hillside areas, and created a rural landscape that rivals our local wines as one of the primary reasons that people travel from around the world to visit Napa Valley. The County's practices have served as the model for Regional Water Quality Control Board regulations, and resulted in Napa County providing the California Environmental Quality Act (CEQA) review for the Board of Forestry for erosion control plans involving timber harvest or timber conversion plans, while the Napa Green certification program for vineyards and wineries is a model for other regions. However, there is more work to do. Even practices that have long been at the forefront of environmental protection continue to need to be reviewed and updated to meet ever-evolving water quality and environmental standards.

At the same time, Napa County vineyards are already one of the most regulated agricultural industries in California, which has resulted in significant additional expense and permit processing time for local landowners. The valley floor is almost entirely planted. The wine industry and the tourism that it generates are the economic basis for both the County and the cities and town. Napa's land use policies and the high cost of land and housing make it challenging to attract new business sectors and diversify the economy. If the local economy is to expand and accommodate a growing population, additional lands need to be available for agricultural development.

The issues discussed below are critical to the County's land use policy. How we manage our hillside areas plays a central role in determining the quantity and quality of our drinking water, the ecological health of our county, the scenic beauty that both residents and visitors enjoy, our ability to respond to future disasters, and the future growth of our economy.

Economic Impact

Several members of the public who testified at the February 20, 2019 hearing, expressed concern about the economic impact of the proposed ordinance on individual property owners and on County revenues. Application of the Conservation Regulations is unique to each parcel, habitat, watershed, and development proposal. In addition, the market will react to any new regulations, affecting both price and demand for land, housing, and agriculture. As such, it would be highly speculative to make any generalized conclusions about what economic impact the proposed ordinance may have on individuals.

Summary of Requests for Additional Information by the Planning Commission

Attached is the full text of the Conservation Regulations, with the changes previously recommended by staff for the February 20, 2019 Planning Commission meeting. Below is a summary of the additional information and clarifications requested by the Planning Commission at the February 20, 2019 meeting, including suggested code revisions where appropriate. Attached also is the February 19, 2019 correction memo that was previously provided to the Commission at its last meeting. The revisions identified below along with the revisions contained in the correction memo comprise the changes to the proposed ordinance that staff recommends the Commission forward to the Board.

Section 18.108.010 – Purpose

No further changes proposed.

Section 18.108.020 – General provisions

Commissioner Gallagher requested that the draft ordinance restrict vegetation canopy mitigation on slopes of more than 30%, when the slopes are located within stream setbacks. Commissioner Gallagher also requested that the ordinance allow mitigation for the removal of vegetation canopy in stream setbacks where restoration is proposed. Staff recommends the following revision:

- D. Vegetation Removal Mitigation. The removal of any vegetation canopy cover shall be mitigated by permanent replacement or preservation of comparable vegetation canopy cover, on an acreage basis at a minimum 3:1 ratio. The location for replacement or preservation may be prioritized as follows:
1. Replacement or preservation shall first be accomplished on-site on lands with slopes of thirty percent or less and outside of stream and wetland setbacks.
 2. If sufficient vegetation canopy cover to achieve the 3:1 ratio in full or in part cannot be accomplished under subsection (D)(1) of this section, on-site preservation or replacement may occur on slopes greater than thirty percent and up to fifty percent in areas that result in the highest biological and water quality protections as determined by the director.
 3. If sufficient vegetation canopy cover to achieve the 3:1 ratio in full or in part cannot be accomplished under subsections (D)(1) and (D)(2) of this section, off-site replacement or preservation may occur if it is within the same watershed and the habitat is of the same or better quality as determined by the director.
 4. Replacement of vegetation canopy cover may occur within stream setbacks and be applied to the 3:1 preservation ratio where a restoration plan prepared by a qualified professional has been approved by the Director, and where consistent with Section 18.108.025 (D), as determined by the Director. Mitigation may not occur within stream setbacks, when restoration areas are proposed on slopes of more than 30 percent.

Commissioner Gallagher requested that the ordinance add deed restrictions to the options that landowners may use in mitigating canopy cover. Staff recommends the following change:

- E. Preserved Vegetation Canopy Cover. Preserved vegetation canopy cover shall be enforceably restricted with a perpetual protective easement or perpetual deed restriction preserving and conserving the preserved vegetation canopy cover.

Commissioner Whitmer asked why the County used the June 1993 aerial photos as the baseline for the current code. The June 1993 aerial photos were the most recent depictions of the vegetation cover in the municipal watersheds at the time the Conservation Regulations were amended in 1994. Staff recommends retaining the use of the 1993 baseline to avoid resetting the baseline through the application of current aerial photos. For the non-municipal watersheds in the proposed ordinance, the most recent aerial photos would be those taken in 2018. However, the 2017 Napa Fire Complex burned over 70,000 acres. Although damage was limited to the vegetation understory in some areas, other areas of the County were severely burned, removing vegetation and trees. In the severely burned areas, it may take years for trees to reach maturity, but the tree canopy will re-establish since California ecosystems are adapted to regular wildfires. Using the 2018 baseline would treat the 2017 fires as a long-term condition, rather than a temporary phase in vegetation succession and disturbance, and would allow for the permanent conversion of forest land without environmental review.

Commissioner Cottrell asked if the County has allowed off-site mitigation for an Erosion Control Plan in the past. Staff is aware of one instance, related to the Syar Mining Permit and Reclamation Plan,

approved by the Board of Supervisors in 2016. The off-site location was required to be within the Napa River watershed and within 3.5 miles of the project. Litigation regarding the Syar project remains pending.

Commissioner Hansen asked about the basis and process for establishing the current requirements of 60% tree retention within the municipal watersheds, and requiring use permits for planting on slopes between 30% and 50%. The original intent of the Conservation Regulations was to protect water quality by limiting the amount of vegetation that could be removed and converted to other uses, thereby reducing the potential for erosion within municipal watersheds. Those land cover types having relatively higher potential for erosion (i.e., forested areas) received more protection by requiring greater retention requirements (60% retention), while those land cover types with less susceptibility to erosion (i.e., shrub and grasslands) received less protection (40% retention). Staff has not been able to determine the process involved in adopting the Conservation Regulations in 1993, or the reasoning by which 60% and 40% were determined.

Commissioners Gallagher, Whitmer, and Cottrell also requested staff review of the tree retention strategy used in El Dorado County. Staff notes that there are two different tree retention programs used by El Dorado. The first is in the General Plan and applies to oak woodlands (Policy 7.4.4.4). It offers two options to address the impact of tree removal. One is to retain a percentage of trees on-site, in a reverse sliding scale, as follows:

Percent Existing Canopy Cover	Canopy Cover to be Retained
80–100	60% of existing canopy
60–79	70% of existing canopy
40–59	80% of existing canopy
20–39	85% of existing canopy
10-19	90% of existing canopy
1-9 for parcels > 1 acre	90% of existing canopy

In addition, applicants are required to mitigate at a 1:1 ratio for the loss of canopy. The second option is for applicants to pay an in-lieu fee into a County conservation fund, at a mitigation ratio of 2:1 on a tree by tree basis. However, the policy exempts both agricultural cultivation and approved Fire Safe Plans from the tree retention requirements. Unlike Napa County, El Dorado County does not apply these requirements to the establishment of new vineyards

The second program employed by El Dorado County is Ordinance No. 5061, adopted in November 2017. It requires that the County issue a permit for the removal of any oak trees. The removal of trees may be mitigated through payment of an in-lieu fee or replacement planting. However, agricultural activities conducted for the purposes of producing or processing plant and animal products or the preparation and cultivation of land for this purpose are exempt from this ordinance. Staff notes that single-family homes on parcels larger than one acre are subject to the oak tree ordinance. Other exemptions include Fire Safe Plans, utility line maintenance, County roads, affordable housing, emergencies, Timber Harvest Plans, removal of dying or diseased trees, and personal use.

Commissioner Cottrell also asked about similar programs in Sonoma County. Sonoma County’s Timberland Ordinance allows major timberland conversions only if the conversion includes substantial public benefits and permanently protects 2:1 acres of timberland no steeper than 50%, on site or in the local area, and with the same or a higher site classification. The preserved timberland must be

contiguous to other timberland where feasible, and must be rehabilitated to meet state stocking standards within five years if it is understocked at the time of approval. These requirements only apply to timberlands and not to oak woodlands. (Sonoma County Code section 26-88-160.)

Sonoma County also has a Tree Protection Ordinance that calculates the arboreal value of removed trees, and requires replacement trees tiered to those values. However, agricultural uses are exempt from these requirements. (Sonoma County Code section 26-88-010(m).)

In addition, Sonoma County has a Valley Oak Habitat combining district that requires mitigating oak tree removal by: (1) retaining other valley oaks on the property; (2) planting replacement valley oaks on-site or at another site within the county having proper conditions to sustain them; or (3) paying an in-lieu fee. The mitigation requirements are tiered depending on the diameter of the tree removed, at breast height. These provisions do not apply to emergency procedures, dead or dying trees, or projects subject to design review. (Sonoma County Code section 26-67-030.)

Overall, because of the very different nature of both El Dorado and Sonoma Counties' tree retention policies, it is difficult to make any direct comparisons as to whether either approach would be better suited for Napa County. In particular, the tree retention requirement cannot be looked at in absence of other applicable requirements. The proposed ordinance proposes a minimum 3:1 mitigation requirement, which is higher than either of the other two jurisdictions. The proposed ordinance also prioritizes mitigation to be first located on-site, whereas both Sonoma and El Dorado Counties have in-lieu fee programs that allow impacts to be mitigated off-site. Most notably, both Sonoma and El Dorado Counties exempt agriculture from oak woodland programs. In addition, neither County applies CEQA to evaluate the impacts of new agricultural development. Consequently, staff continues to support the 70% tree retention requirement as outlined by the Board of Supervisors, as it provides a consistent and predictable permitting process, and creates the most effective water quality protections as compared to the other programs. In addition, converting the Conservation Regulations' existing tree canopy retention requirement to one of the alternatives discussed above may also require additional CEQA review.

Section 18.108.025 – General Provisions – Intermittent/perennial streams

No further changes proposed.

New Section 18.108.026 – General provisions – Wetlands

Commission members inquired about the proposed definition of "wetland," which references both the existing federal and a proposed state definition. Staff and professionals representing landowners are familiar with the federal definition, which has been in place for several decades. The State Water Resources Control Board (SWRCB) has proposed a new state definition that is generally more protective than the federal standard and would cover waters of the state that fall outside the protection of the federal Clean Water Act. The state board issued clarifications and policy changes on February 22, and is holding a workshop on the proposed definition on March 5 with the intent of bringing it to the SWRCB for approval on April 2. If approved by the SWRCB, the new definition would likely govern wetlands and proposed earth-moving activities in Napa County.

Section 18.108.027 – Sensitive domestic water supply drainages

Commissioner Gallagher requested an update regarding the response of the cities, town, and private water company to the County's request for recommendations on a municipal reservoir setback. To date, staff has heard from most of the jurisdictions. The City of American Canyon does not have a

reservoir and deferred to the other municipalities. The City of Napa indicated that it will be able to make an informed recommendation once it has monitoring data from the City-County joint watershed study. The Cities of St. Helena and Calistoga have requested a 500-foot setback. The Town of Yountville and Howell Mountain Mutual Water Company indicated that a 200-foot setback would be sufficient. At this time, absent further feedback from Napa, staff continues to recommend a 200-foot setback from municipal reservoirs.

Section 18.108.030 – Definitions

A question was raised during public comment about the need to amend the definition of “ephemeral” or “intermittent stream” to exclude ditches and other artificially created watercourses. Staff believes that the recommended definition is sufficient, as proposed below, since it defines such streams as natural channels and excludes constructed conveyances.

“Ephemeral” or “intermittent stream” means any natural channel with bed and banks containing flowing water or showing evidence of having contained flowing water, such as deposit of rock, sand, gravel, or soil, that does not meet the definition of “stream” in this chapter.

The proposed ordinance refers to fire management strategies as an exempt activity. Staff recommends that, the term “defensible space” be added to the specifics of the exempt activity (see Staff recommended change to 18.108.050 (H) below) and that a new definition for “defensible space” be added as follows:

“Defensible Space” means the area within the perimeter of a parcel, development, neighborhood or community where wildland fire protection practices and measures are implemented, in order to defend against encroaching wildfires or provide for people to escape structure fires.

Defensible space is required by any person who owns, leases, controls, operates or maintains a building or structure in or adjoining any mountainous area, forest-covered lands, brush-covered lands, grass-covered lands or any land that is covered with flammable material. PRC 4291 requires 100 feet of Defensible Space (or to the property line if less than 100 feet) from every building or structure that is used for support or shelter of any use or occupancy.

Commissioners Gallagher and Whitmer requested that the definition of Vegetation Canopy Cover include the State oak woodland definition. Comments were raised regarding the wording of the current definition and its inability to include all oak woodland types (alliances or associations). For example, oak woodland areas consisting of relative low density, with a discontinuous canopy closure, and individual single trees would not receive coverage under the current definition¹ as proposed. The revised recommended language is consistent with the County’s current vegetation classification system utilized in the General Plan, Baseline Data Report, and the County’s vegetation GIS layer, all of which use the vegetation classification system under the Manual of California Vegetation. Therefore, staff recommends the following changes:

“Vegetation Canopy Cover” means the biotic communities classified as oak woodland, riparian oak woodland, or coniferous forest based on the current Manual of California Vegetation (MCV) and as

¹ “Vegetation canopy cover” means 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.

described in the Napa County Baseline Data Report (BDR).

“Vegetation Understory” means the biotic communities classified as chaparral/ scrub, shrub land, grassland, rock outcrop or vegetated portions of wetlands based on the current Manual of California Vegetation (MCV) and as described in the Napa County Baseline Data Report (BDR).

Section 18.108.040 – Exceptions in the form of a use permit

No further changes proposed.

Section 18.108.050 – Exemptions

The Commission and public raised the topic of fuel management, to ensure that homeowners could continue to protect their homes. Staff recommends the inclusion of the term “defensible space” to the exemption under 18.108.050(H) to read as follows. This would work in concert with the definition proposed in Section 18.108.030 above.

For existing legally constructed structures, the creation and/or maintenance of defensible space firebreaks or implementation of fire management strategies required by, and completed under the direction of the California Department of Forestry and Fire Protection;

Commissioner Hansen asked why the proposed exemption for new agricultural planting on less than five acres is limited to areas less than 15 percent slopes, when the Regional Water Quality Control Board regulations new waste discharge requirements (WDRs) exempts vineyards less than five acres on less than 30 percent slopes. Staff drafted the language in the proposed ordinance to be consistent with past County practices and Board direction. The proposed exemption is based on the Napa County Local Procedures for Implementing the California Environmental Quality Act (CEQA), not the WDRs. Furthermore, the WDRs are limited in scope focusing solely on water quality, while CEQA encompasses several resource categories including biological resources, greenhouse gases, traffic, groundwater, water quality, among many others. The Local Procedures provide the following local categorical exemption from CEQA:

Class 4: Minor Alterations to Land [*State CEQA Guidelines §15304*]

New vineyards: Installation and operation of new vineyards that would:

- (a) disturb less than 5½ acres of land and have an average slope of 15% or less;
- (b) are located in a drainage 5½% or less of which is known to have been converted to vineyard since 1993;
- (c) do not increase overall groundwater use on the parcel, if the parcel is within a groundwater deficient area. In all other areas would not consume in total with all other uses on the parcel groundwater exceeding the Phase 1 groundwater standard determined by the Department of Public Works; **AND**
- (d) are located more than half a mile from a designated Mineral Resource Area, or an active or potentially active mine or quarry.

Currently, the County’s Local Procedures allow CEQA exemptions for areas with a slope under 15percent. If the Commission were to allow an exemption for areas with a slope of less than 30 percent, the proposed ordinance would no longer be covered by the Categorical Exemption from CEQA that staff

has recommended. Expanding the exemption to allow areas up to 30 percent slope would require additional CEQA review.

Section 18.108.055 – Exemption from discretionary permit

No further changes proposed.

Section 18.108.060 – Slope regulations – prohibited uses

No further changes proposed.

Section 18.108.070 – Erosion hazard areas – Use requirements

No further changes proposed.

Section 18.108.075 – Requirements for structural erosion control measures

No further changes proposed.

Section 18.108.080 – Agricultural erosion control plans – Requirements and authorization to prepare – Field modifications

No further changes proposed.

Section 18.108.090 – Requirements for vineyard replanting programs

No further changes proposed.

Section 18.108.100 – Erosion hazard areas – Vegetation preservation and replacement

No further changes proposed.

Section 18.108.120 – Existing erosion control

No further changes proposed.

Section 18.108.130 – Variances not permitted

No further changes proposed.

Section 18.108.135 – Oversight and operation

No further changes proposed.

Section 18.108.140 – Securities, violations, and penalties

No further changes proposed.

Section 17 of the Ordinance

Commissioners Gallagher and Hansen requested that staff provide greater definition regarding the definition of a “complete application.” To address this request, staff has incorporated language similar to that used in Resolution 2018-164, adopted by the Board of Supervisors in December 2018 concerning the County Code Compliance Program, as follows:

SECTION 17: The provisions of this Ordinance No. ____ [insert number] shall apply to all applications for uses that may involve earthmoving activity that are filed on or after the effective date of this ordinance. The provisions of the ordinance shall also apply to any applications for uses that may involve earthmoving activity that were filed prior to the effective date of the ordinance, but that were ultimately not accepted by the County as complete for processing as filed. Qualified permit applications must be substantially conforming and must be received by the Planning, Building, and Environmental Services (PBES) Department prior to the effective date of this ordinance. A “substantially conforming” application must include a substantially complete set of the documents required in the application checklist, and information responsive to the requirements. Applicants must make a good faith effort to make the application as complete as possible. A “substantially conforming” application need not include technical studies where the applicant demonstrates studies could not be completed by the effective date of this ordinance due to seasonal conditions or other extenuating circumstances. All excluded technical studies must be submitted as soon as possible, not to exceed 120 days from the effective date of this ordinance. Any substantially conforming applications for uses that may involve earthmoving activity that were filed prior to the effective date of this ordinance, and that were ultimately accepted by the County as complete for processing as filed, shall continue to be reviewed and decided upon under the provisions of the Napa County Code in effect as of _____ [insert date], the day prior to the effective date of this ordinance.