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**Planning, Building & Environmental Services**

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**David Morrison**  
Director

## MEMORANDUM

To: Napa County Board of Supervisors	From: David Morrison, PBES Director Brian Bordona, Supervising Planner
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Date: March 26, 2019
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Re: Background and Discussion Section for the Draft Water Quality and Tree Protection Ordinance Staff Report
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### **BACKGROUND AND DISCUSSION**

#### History

The Board of Supervisors originally approved the Conservation Regulations (County Code Chapter 18.108) in 1991, establishing procedures and standards for projects that might have an effect on water quality or other natural resources, to balance the desires for both environmental and agricultural sustainability. Three years later, the Board adopted Resolution No. 94-19, which established technical standards for erosion control and sediment specifications, vineyard replanting program contents, slope determination methodology, erosion plan contents, and a list of additional watercourses. In 2002, the Board amended the Conservation Regulations to add sensitive domestic and municipal watershed protection measures to ensure enhanced water quality protection in these areas. Some of those additional protections include vegetation retention requirements, a shortened grading season, oversight of erosion control installations, special geologic stability assessments, and sizing of water conveyance and detention facilities.

A copy of the existing adopted Conservation Regulations is provided in Attachment E.

In 2003, the Board adopted Ordinance No. 1221, which would have created biologically-based stream classes similar to those used by state and federal resource agencies. The ordinance would have codified the recommendations of the 15-member Napa River Watershed Task Force. For Class I and II streams, setbacks would have ranged from 75 to 150 feet for agricultural and commercial uses, and 35 to 125 feet for residential uses, depending on the slope. Agricultural and commercial uses would have had a 25-foot setback from Class III streams. The ordinance also would have limited removal of native trees within 50 feet of identified streams, based on the diameter breast height of the native trees. A referendum of Ordinance No. 1221 was placed on the March 2004 ballot, known as Measure P, and an initiative known as Measure O, which would have imposed even larger setbacks, also qualified for the 2004 ballot. Measure P passed by sixty-five percent of those who voted, and Measure O failed by seventy-three percent. As a result, no enhanced protections for streams were enacted.

In 2017, supporters gathered signatures to qualify an initiative to amend the Napa County General Plan and Zoning Code to create water quality buffers within the Agricultural Watershed (AW) zone and restrict tree removal within the buffers; strengthen oak removal remediation standards; and establish a permit program for oak tree removal, once a total of 795 acres of oak trees have been removed. The ordinance

was placed on the June 2018 ballot as Measure C, and was rejected by fifty-one percent of those who voted.

As a part of its approval of the Strategic Plan on January 19, 2019, the Board directed that the next regularly scheduled meeting include a workshop for staff to provide options and recommendations regarding specific Strategic Actions, provided as follows:

- 12.A: Update the Conservation Regulations to improve requirements for stream setbacks, to better protect riparian habitat while providing flexibility for farming.
- 12.B: Improve tree preservation by adopting a separate ordinance increasing canopy protection and mitigation requirements throughout the unincorporated area.
- 12.E: Evaluate modification of buffers around municipal reservoirs.

On January 29, 2019, the Board of Supervisors held the workshop. A total of 64 people testified during a public meeting that lasted over six hours. Based on the evidence and testimony presented before and during the workshop, the Board of Supervisors gave specific direction on a range of issues related to the Strategic Actions and requested staff to prepare an ordinance for consideration by the Planning Commission. The Board of Supervisors specifically directed that the proposed ordinance:

- Prohibit new planting and structures on slopes over 30%, with certain exemptions.
- Create a buffer of 200 feet around municipal reservoirs, subject to comment from the cities about specific reservoirs.
- Adopt the federal definition of wetlands but monitor the state's process and consider adoption of a final state definition of wetlands.
- Create a 50-foot minimum setback around wetlands.
- Preserve the existing definition of "stream" and amend the code to include Class III equivalent streams.
- Create a 35-foot minimum setback from Class III equivalent streams.
- Maintain the existing definition of tree canopy.
- Increase tree canopy retention from 60 percent to 70 percent and extend it from development in municipal reservoir watersheds to development in all unincorporated areas.
- Extend a 40-percent shrub canopy retention requirement for development in municipal watershed reservoirs to development in all unincorporated areas (exclude grassland retention outside of municipal watersheds).
- Increase the tree mitigation ratio from 2:1 to 3:1. Prioritize mitigation to the highest biological value, preferably on-site but allowed off-site, and allow mitigation on slopes greater than 30 percent, but not in stream setbacks.
- Apply the ordinance to existing incomplete and new applications after the effective date.
- Continue to exempt fire management from the new ordinance requirements.
- Continue to exempt forest health management practices from the new ordinance requirements.
- Exempt reconstruction of structures lost to declared emergency events (and singular catastrophic events) from the new ordinance requirements
- Continue to exempt vineyard replanting in the same footprint from the new ordinance requirements.
- Exempt 5.0 acres of vineyard development on slopes less than 15% from the new ordinance requirements, with a limit of once per legal lot.

In drafting the proposed ordinance, the Planning, Building and Environmental Services (PBES) Department has concluded that the proposed revisions to the Conservation Regulations are exempt from environmental review under the California Environmental Quality Act ("CEQA;" Pub. Res. Code, § 21000

et seq) and the CEQA Guidelines (14 CCR, § 15000 et seq). The proposed revisions assure the maintenance, restoration, or enhancement of the environment and further protect water and natural resources, riparian habitat, streams and watersheds, forests, oak woodlands and other native trees and shrubland and fall within various categorical exemptions under the CEQA Guidelines, as well as the general rule exempting activities where it can be seen with certainty the activities in question will not have a significant effect on the environment. The CEQA analysis is provided in Attachment D.

On February 8, 2019, notice of the February 20, 2019, public hearing before the Napa County Planning Commission on the proposed ordinance was published in the Napa Register, emailed to stakeholders, members of the public, industry groups and persons who had requested special notice. That same day the public hearing notice and the proposed ordinance was also posted on the PBES Department’s website for matters related to the Water Quality and Tree Protection Ordinance.

On February 20, 2019 and March 6, 2019, the Planning Commission held public hearings and received staff and public comment regarding this ordinance and the proposed amendments to the Conservation Regulations. On February 20, 2019, the Planning Commission received verbal testimony from 59 people in a meeting that lasted 6 hours. At the continued hearing on March 6, 2019, the Planning Commission received verbal testimony from 58 people over 4 hours. The Commission deliberated for more than two hours and ultimately voted to move the following three recommendations regarding the proposed ordinance forward to the Board.

First Planning Commission Recommendation: Regarding the Board of Supervisors direction on January 29, 2019 (as noted above), the Commission unanimously recommended (Cottrell moved, seconded by Commissioner Whitmer) the following:

<b>Board of Supervisors Direction 1/29/19</b>	<b>Planning Commission Unanimous Recommendation 3/6/19</b>
Maintain the existing definition of tree canopy.	Create a new definition of vegetation canopy, relying on the Baseline Data Report. Exclude non-native and invasive species. Create a new definition of vegetation understory.
Increase vegetation canopy cover retention from 60 percent to 70 percent and extend it from development in municipal reservoir watersheds to development in all unincorporated areas.	No change from Board direction.
Extend a 40-percent shrub canopy retention requirement for development in municipal watershed reservoirs to development in all unincorporated areas (exclude grassland retention requirement outside of municipal watersheds).	No change from Board direction.
Require 3:1 mitigation for each acre of vegetation canopy cover removed	See Second and Third Recommendations below regarding mitigation ratios and Planning Commission’s vote on this recommendation. Also, allow deed restrictions in addition to conservation easements for use in mitigation.

Prioritize mitigation to the highest biological value, preferably on-site but allowed off-site, and allow mitigation on slopes greater than 30 percent, but not in stream setbacks.	Prioritize mitigation to the highest biological value, preferably on-site but allowed off-site, and allow mitigation within stream setbacks (when riparian restoration is proposed) and on slopes greater than 30 percent.
Prohibit new planting and structures on slopes over 30%, with certain exemptions.	Prohibit new planting and structures on slopes over 30%, with certain exemptions. Also, allow earthmoving activity on 30% slopes with a Use Permit where improvements are needed to comply with County Roads and Street Standards for existing roadways or driveways to existing legally constructed structures.
Preserve the existing definition of “stream” and amend the code to include Class III equivalent streams.	No change from Board direction.
Require a 35-foot minimum setback from Class III equivalent streams.	No change from Board direction.
Require a 50-foot minimum setback around wetlands.	No change from Board direction.
Require a buffer of 200 feet around municipal reservoirs, subject to comment from the cities about specific reservoirs.	Require a 500-foot setback from municipal reservoirs.
Apply the ordinance to existing incomplete and new applications after the effective date.	Apply the ordinance to applications that are substantially incomplete and new applications after the effective date.
Continue to exempt fire management from the new ordinance requirements.	Continue to exempt fire management from the new ordinance requirements. Clarify that fire management is exempt on properties that do not have structures. Clarify that exemption applies when actions are consistent with CalFire procedures and County Code. Also add a definition of defensible space.
Exempt reconstruction of structures lost to declared emergency events (and singular catastrophic events) from the new ordinance requirements	Exempt reconstruction of legally constructed structures up to 125% of the original footprint lost to declared emergency events (and singular catastrophic events) from the new ordinance requirements
Continue to exempt vineyard replanting in the same footprint from the new ordinance requirements.	No change from Board direction.
Exempt 5.0 acres of vineyard development on slopes less than 15% from the new ordinance requirements, with a limit of once per legal lot.	No change from Board direction.

Second Planning Commission Recommendation: Regarding the minimum mitigation ratio for preservation or replacement of vegetation canopy cover, Commissioner Hansen moved, seconded by

Commissioner Mazotti, to recommend that the proposed ordinance require a minimum mitigation ratio of 2:1 for each acre of vegetation canopy cover removed where the mitigation occurs on developable land or within stream setbacks. The motion passed 3-2 (AYES: Hansen, Mazotti, Whitmer; NOES: Gallagher, Cottrell).

Third Planning Commission Recommendation: Regarding the minimum mitigation ratio for preservation or replacement of vegetation canopy cover on slopes of more than thirty percent or off-site, Commissioner Cottrell moved, seconded by Commissioner Gallagher, to recommend that the proposed ordinance require a minimum mitigation ratio of 3:1 for each acre of vegetation canopy removed. The motion passed 3-2 (AYES: Cottrell, Gallagher, Whitmer; NOES: Hansen, Mazotti).

Separate from the Planning Commission's specific recommendations on the proposed ordinance, the Commission also unanimously recommended that the Board provide future direction on the following related issues:

1. Encourage the municipalities and water company to participate in Green Certified programs for municipal owned land around reservoirs.
2. Establish protections for heritage oaks.
3. Expand the notification process when large numbers of property owners are affected.
4. Allow for mitigation banks funded by in-lieu fees paid to the Parks and Open Space District.
5. Require building standards that exceed state requirements in the Climate Action Plan.
6. Establish procedures to require more monitoring and reporting in the implementation of deed restrictions.

Staff incorporated the Planning Commission's three recommendations into the ordinance. A copy of the proposed Water Quality and Tree Protection Ordinance with the proposed tracked change revisions to the Conservation Regulations as directed by the Board of Supervisors and revisions recommended by the Planning Commission on March 6, 2019 is included as Attachment B. A clean copy of the revised ordinance is included as Attachment C.

On March 15, 2019, notice of the March 26, 2019, public hearing before the Board of Supervisors on the proposed ordinance including the recommendations of the Planning Commission was published in the Napa Register, emailed to stakeholders, members of the public, industry groups and persons who had requested special notice. That same day the public hearing notice and the proposed ordinance was also posted on the PBES Department's website for matters related to the Water Quality and Tree Protection Ordinance.

### 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. A General Plan Consistency Analysis is attached as Attachment F for more detailed information.

### Discussion

The entirety of the proposed revisions to the Conservation Regulations are shown in the proposed ordinance in redline/tracked changes in Attachment B. The following summarizes the proposed ordinance provisions that have generated the most comment and interest from the public. These

provisions effectuate the direction of the Board of Supervisors, with revisions recommended by the Planning Commission.

Section 18.108.020 – General Provisions.

- Requires a minimum of 70% of vegetation canopy cover and 40% of vegetation understory (chaparral or shrub) be retained on parcels located outside of the municipal reservoir watersheds, when earthmoving activities are proposed.
- Requires the removal of tree or chaparral/shrub canopy be mitigated on an acre-for-acre basis, prioritized as follows:
  - On-site lands under 30% slope and outside of stream and wetlands setbacks, at a 2:1 ratio.
  - On-site lands between 30% and 50% slope that result in high biological or water quality protection, at a 3:1 ratio.
  - Off-site lands in the same watershed with equal or better quality habitat, at a 3:1 ratio.
  - On-site lands within stream setbacks where a restoration plan has been prepared by a qualified professional biologist approved by the Director, at a 2:1 ratio.
- Exempts non-native species from the requirements to mitigate vegetation canopy.
- Requires that preserved vegetation canopy cover be protected through a perpetual protective easement or perpetual deed restriction.

Section 18.108.025 – General Provisions – Intermittent/perennial streams

- Authorizes the Director to determine which watercourses are subject to this Chapter.
- Prohibits agricultural roads, and vineyard avenues or tractor turnaround areas necessary for ongoing agricultural operations, from stream setback areas.
- Establishes that stream setbacks are the minimum.
- Creates a new 35-foot setback for ephemeral and intermittent streams.
- Establishes that stream setbacks shall be measured from top of bank or the ordinary high water mark.

New Section 18.108.026 – General provisions – Wetlands

- Consistent with Board direction, the section establishes a minimum 50-foot setback from any wetlands for all construction, earthmoving, land clearing, or agricultural activities.

Section 18.108.027 – Sensitive domestic water supply drainages

- Change from 60% tree canopy retention to 70%.
- Requires that a biologist submitting a report be a professional.
- Requires that a perpetual protective easement or perpetual deed restriction be used instead of a memorandum of understanding when two or more parcels are combined in the same application.
- Requires that no earthmoving activities occur within 500-feet of a sensitive domestic water supply, as measured from the high water mark of the reservoir.

Section 18.108.030 – Definitions.

The definitions that have generated the most comment and interest from the public include the following:

- “Chaparral” means a shrubland dominated by species having evergreen, leathery leaves such as chamise, manzanita, or scrub oaks.
- “Delineated wetland boundary” means precise edge of a wetland identified by a wetland delineation

study or map.

- “Defensible space” means the area within the perimeter of a parcel, development, neighborhood or community where basic wildland fire protection practices and measures are implemented, providing the key point of defense from an approaching wildfire or defense against encroaching wildfires or escaping structure fires. The perimeter as used in this definition is the area encompassing the parcel or parcels proposed for construction and/or development, excluding the physical structure itself. The area is characterized by the establishment and maintenance of emergency vehicle access, emergency water reserves, street names and building identification, and fuel modification measures.
- “Driveway” means a privately owned and maintained access road connecting a parcel to a public or private roadway.
- “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.
- “Perpetual protective easement” means an easement preserving and conserving the preserved vegetation canopy cover and vegetation understory. The protective easement shall be dedicated to the county, a public agency or a qualified nonprofit organization approved by the county, and shall be in a form acceptable to county counsel and recorded prior to commencement of earthmoving activity.
- “Qualified professional biologist” means an individual possessing academic and professional experience in biological sciences and related resource management activities who is able to identify biotic resources and can recognize and is familiar with the habitats and behaviors of listed species that may be present in the county. The individual must have specialized skills and appropriate licenses/permits/certifications specific to the study being conducted (e.g., general botanical, wetland, and wildlife habitat knowledge for biotic resource and stream setback assessments, and certification by the U.S. Army Corps of Engineers in wetland delineation for wetland assessments and wetland delineation studies or maps).
- “Shrub” means a wood plant with a short ultimate height, commonly with two or more stems from the base.
- “Shrublands vegetation” means areas where shrubs dominate, including chaparral, chenopod scrubs, coastal scrubs, and desert scrubs.
- “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 described in the Napa County Baseline Data Report (2005 or as amended).
- “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 (2005 or as amended).

#### Section 18.108.040 – Exceptions in the form of a use permit.

Prohibits the ability to seek an exception in the form of a Use Permit to perform earthmoving, grading and land clearing on slopes greater than thirty percent. An exception through the use permit process may be granted pursuant to Section 18.108.040(A) for grading improvements to an existing roadway or driveway serving an existing legally constructed structure where necessary to meet the requirements of the county’s Road and Street Standards. See further details below in Section 18.108.060 – Slope regulations – prohibited uses.

#### Section 18.108.050 – Exemptions

Proposed additions and revisions to existing exemptions include:

- Exempts additions to legally-constructed single-family residences or other structures, when not located within a landslide area, or within the setbacks for streams, wetlands, and/or municipal reservoirs (See Section 18.108.050 (A)).



- Exempts the creation and maintenance of defensible space for legally-constructed structures and fire management strategies consistent with the Napa County Fire Hazard Abatement Ordinance (County Code Chapter 8.36) (See Section 18.108.050 (H)).
- Deletes Paragraph (N), the provisions of which have been integrated into Paragraphs (H) and (O).
- Exempts the replanting of legally-established vineyards of less than one acre, where the footprint and contours are unchanged.
- Exempts the rebuilding of legally constructed structures lost to fire or natural disaster where the new footprint does not exceed 125% of the original footprint. (See Section 18.108.050 (V).)

Section 18.108.060 – Slope regulations – prohibited uses

Proposed revisions include:

- Incorporates existing language from Exhibit A of Resolution 94-19 - Slope Determination Methodology for calculating slope, as it relates to structural development, road development, and general land clearing (which includes vineyards) and identifies the extent to which grading can occur on slopes greater than 30%. Resolution 94-19 is included in Attachment G.
- Deletes the option to apply for an exception in the form of a Use Permit for grading and earthmoving activities on slopes greater than 30%.
- Allows for an exception in the form of a Use Permit for grading improvements to an existing roadway or driveway serving an existing legally constructed structure, where necessary to meet the requirements of the county's Road and Street Standards.

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

Proposed revisions include:

- Allows an erosion control plan to be prepared by Construction General Permit Qualified SWPPP Practitioner (QSP) and/or Qualified SWPPP Developer (QSD).
- Prohibits the property owner from preparing an erosion control plan subject to review and approval by the Resource Conservation District (RCD).

Section 18.108.135 – Oversight and operation

Proposed revisions include:

- Eliminates several gender-specific terms.

Section 18.108.140 – Securities, violations, and penalties

Proposed revisions include:

- Requires that severe soil erosion hazard areas be based solely on the Napa County Soil Survey.
- Prohibits the use of recorded liens as a form of security for erosion control plans.

Applicability of the new requirements (See Section 17).

Consistent with the Board's direction on applications subject to the Code Compliance Resolution, the provisions of the ordinance will apply to all applications for uses that may involve earthmoving activity that are filed on or after the effective date of this ordinance. Applications that are substantially conforming and received by the PBES Department prior to the effective date of this ordinance will not be



subject to the new requirements. 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.