



A Tradition of Stewardship
A Commitment to Service

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NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: David Morrison - Director
Planning, Building and Environmental Services
REPORT BY: Brian Bordona, Supervising Planner - (707) 259-5935
SUBJECT: Informational Overview of the County's Erosion Control Plan Review Process

RECOMMENDATION

Director of Planning, Building and Environmental Services requests the following actions:

1. Receive the staff presentation with discussion and any direction regarding the Erosion Control Plan (ECPA) review process; and
2. Provide direction as to whether the County should assume lead agency status for the Timberland Conversion Permitting (TCP) process.

EXECUTIVE SUMMARY

Napa County has for many years been committed to the conservation of sensitive resources and has been at the forefront of both protecting agricultural land and providing for the conservation of natural resources including surface and ground water, soils, fisheries, wildlife, important plant species, and habitats.

Napa County's Conservation Regulations, approved by the Board of Supervisors in 1991, established procedures for review of projects that might have an effect on water quality or other natural resources issues and were intended to balance the desires for environmental and agricultural sustainability. By minimizing erosion from construction and agricultural activities, the regulations protect against excessive soil loss, prevent the decline of water quality, and guard against the loss of economic productivity of the county's lands.

While the Conservation Regulations provide review for all projects involving grading and earthwork activities, the focus of this presentation will be on the regulatory framework associated with the review and approval of new vineyard projects on slopes greater than 5 percent requiring Erosion Control Plans (ECPAs). The regulatory framework consists of three primary components: 1) Conservation Regulations – Chapter 18.108 of the Zoning Ordinance, 2) the California Environmental Quality Act (CEQA) and 3) the application of General Plan Goals and

Policies germane to new vineyard development projects. These three components comprise of the review and designed standards for new vineyard ECPAs. The following provides details of each component of the regulatory framework and related standards.

PROCEDURAL REQUIREMENTS

1. Staff Reports
2. Public Comments
3. Motion, second and vote on the item.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

REGULATORY FRAMEWORK

Conservation Regulations – Chapter 18.108 of the Napa County Code

The Conservation Regulations affect development and maintenance standards of new and replanted vineyards on land slopes greater than 5 percent. Prior to the development of new vineyards on slopes greater than 5 percent, an engineered ECPA must first be reviewed and approved by Director of Planning, Building and Environmental Services (PBES). Ongoing environmental benefits of the Conservation Regulations go far beyond the soil loss issue protecting valuable natural resources. Specifically, they provide for stream setbacks based on a sliding scale directly correlated to the slope of the land adjacent to the stream or waterway. These setbacks are primarily intended to be protective of water quality, aquatic habitats, and special-status fish species, but they also provide for significant terrestrial habitat preservation and wildlife movement.

The Conservation Regulations provide for enhanced protections and benefits for project within sensitive domestic water supply drainages. Such protections include the retention of 40 to 60 percent of the vegetation existing on June 16, 1993, preparation of a geotechnical to help ensure slope stability, the requirement for drainage facilities to be designed to the 100-year storm event, and direct notification to the water purveyor. Protecting drinking water through these requirements also accomplishes habitat preservation and other environmental benefits.

The California Environmental Quality Act

The California Environmental Quality Act (CEQA) generally requires state and local government agencies to inform decision makers and the public about the potential environmental impacts of proposed projects, and to reduce those environmental impacts to the extent feasible. In general, a project subject to CEQA will not cause any adverse environmental impacts, a public agency may adopt a brief document known as a Categorical Exemption or

Negative Declaration. If the project may cause adverse environmental impacts, the public agency must prepare a more detailed study called a Mitigated Negative Declaration or Environmental Impact Report (EIR). These more detailed documents contain in-depth studies of potential impacts, measures to reduce or avoid those impacts, and in the case of an EIR, an analysis of alternatives to the project. A key feature of the CEQA process is the opportunity for the public to review and provide input on both Negative Declarations and EIRs.

Numerous resource topics are required to be analyzed as part of an IS/ND or MND or EIR. The significant resource topics that are often associated with vineyard ECPAs generally include groundwater, hydrology/water quality, biological resources, soils and geology, archaeology, traffic, air quality and greenhouse gases.

In general, agriculture activities are not subject to County discretionary approval; however, the grading, vegetation removal, and land disturbance activities on slopes greater than 5 percent required to install the vineyard require the preparation and approval of an ECPA, which is subject to review under CEQA. The CEQA documents that are typically prepared in support of the review and approval of vineyard ECPAs are: 1) Categorical Exemption, 2) Initial Study/Negative Declaration, 3) Initial Study/Mitigated Negative Declaration, and 3) Environmental Impact Report (EIR).

- I Categorical Exemption: In order for a project to qualify for a categorical exemption, the following criteria must be met:
 - a. Disturb less than 5½ acres of land and have an average slope of 15% or less;
 - b. Located in a drainage 5½% or less of which is known to have been converted to vineyard since 1993;
 - c. No 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;
 - d. Located more than half a mile from a designated Mineral Resource Area, or an active or potentially active mine or quarry.

There are no public noticing requirements or comment period associated with a categorical exemption. However, pursuant to Section 15300.2 of the CEQA Guidelines a categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. By way of example, if a project meets the required criteria, but it happens to be located within an area containing special status species, the presence of those species would constitute a significant and a categorical exemption could not be used. In this case an Initial Study/Negative Declaration or Mitigated Negative Declaration would need to be prepared.

- I Initial Study/Negative Declaration or Mitigated Negative Declaration (IS/ND or MND): A public agency shall prepare or have prepared a proposed negative declaration or mitigated negative declaration for a project subject to CEQA when:
 - a. The initial study shows that there is no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment;
 - b. The initial study identifies potentially significant effects, but:
 1. Revisions in the project plans or proposals made by, or agreed to by the applicant before a proposed mitigated negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and
 2. There is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment.

There is a 20-30 day public comment period required as part of the process. A 30 day review period is required if the project involves the jurisdiction of a state agency.

- 1 Environmental Impact Report (EIR): If the Planning Director finds during preliminary review or based on an Initial Study that there is substantial evidence in the record as a whole that a project may have a significant adverse effect on the environment, or if an EIR is required by statute, the Planning Director shall notify the project sponsor in writing within thirty (30) days that an EIR must be prepared. The Planning Director's decision may be appealed pursuant to Napa County Code Chapter 2.88. There is a 45 day public comment period required for EIRs.

CEQA documents requiring a formal public review period require a formal response to comments document, which is included as part of the overall approval package. For Negative Declaration or Mitigated Negative Declaration, the responses are more informal and included as part of the overall application approval package. For EIRs the response to comments are contained within the Final EIR.

General Plan Goals and Policies

The majority of the County's General Plan Goals and Policies related to vineyard development are contained within the Conservation Element of the General Plan. The Conservation Element provides goals, policies, and action items related to open space conservation as well as a wide range of other topics that together comprise the natural environment of Napa County, including its natural resources and its water resources. The goals and policies contained in the element also address climate change and sustainable practices for environmental health related to water, energy conservation, air pollutant, greenhouse gas emissions, clean energy generation, and similar issues.

While there are numerous General Plan Goals and Policies relevant to new vineyard development, the following policies are those that tend to have a significant influence on the review of new vineyard ECPAs:

Policy CON-13: The County shall require that all discretionary residential, commercial, industrial, recreational, agricultural, and water development projects consider and address impacts to wildlife habitat and avoid impacts to fisheries and habitat supporting special-status species to the extent feasible. Where impacts to wildlife and special-status species cannot be avoided, projects shall include effective mitigation measures and management plans including provisions to:

- a. Maintain the following essentials for fish and wildlife resources:
 1. Sufficient dissolved oxygen in the water.
 2. Adequate amounts of proper food.
 3. Adequate amounts of feeding, escape, and nesting habitat.
 4. Proper temperature through maintenance and enhancement of streamside vegetation, volume of flows, and velocity of water.
- b. Ensure that water development projects provide an adequate release flow of water to preserve fish populations.
- c. Employ supplemental planting and maintenance of grasses, shrubs and trees of like quality and quantity to provide adequate vegetation cover to enhance water quality, minimize sedimentation and soil transport, and provide adequate shelter and food for wildlife and special-status species and maintain the watersheds, especially stream side areas, in good condition.
- d. Provide protection for habitat supporting special-status species through buffering or other means.
- e. Provide replacement habitat of like quantity and quality on- or off-site for special status species to mitigate impacts to special-status species.
- f. Enhance existing habitat values, particularly for special-status species, through restoration and replanting of native plant species as part of discretionary permit review and approval.

- g. Require temporary or permanent buffers of adequate size (based on the requirements of the subject special-status species) to avoid nest abandonment by birds and raptors associated with construction and site development activities.
- h. Demonstrate compliance with applicable provisions and regulations of recovery plans for federally listed species.

Policy CON-17: Preserve and protect native grasslands, serpentine grasslands, mixed serpentine chaparral, and other sensitive biotic communities and habitats of limited distribution. The County, in its discretion, shall require mitigation that results in the following standards:

- a. Prevent removal or disturbance of sensitive natural plant communities that contain special-status plant species or provide critical habitat to special-status animal species.
- b. In other areas, avoid disturbances to or removal of sensitive natural plant communities and mitigate potentially significant impacts where avoidance is infeasible.
- c. Promote protection from overgrazing and other destructive activities.
- d. Encourage scientific study and require monitoring and active management where biotic communities and habitats of limited distribution or sensitive natural plant communities are threatened by the spread of invasive non-native species.
- e. Require no net loss of sensitive biotic communities and habitats of limited distribution through avoidance, restoration, or replacement where feasible. Where avoidance, restoration, or replacement is not feasible, preserve like habitat at a 2:1 ratio or greater within Napa County to avoid significant cumulative loss of valuable habitats.

Policy CON-24: Maintain 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 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.
- 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.

Policy CON-30: All public and private projects shall avoid impacts to wetlands to the extent feasible. If avoidance is not feasible, projects shall mitigate impacts to wetlands consistent with state and federal policies providing for no net loss of wetland function.

Policy CON-48: Proposed developments shall implement project-specific sediment and erosion control measures (e.g., erosion control plans and/or stormwater pollution prevention plans) that maintain pre-development sediment erosion conditions or at minimum comply with state water quality pollution control (i.e.,

Basin Plan) requirements and are protective of the County's sensitive domestic supply watersheds. Technical reports and/or erosion control plans that recommend site-specific erosion control measures shall meet the requirements of the County Code and provide detailed information regarding site specific geologic, soil, and hydrologic conditions and how the proposed measure will function.

Policy CON-50(c): The County shall require discretionary projects to meet performance standards designed to ensure peak runoff in 2-, 10-, 50-, and 100-year events following development is not greater than predevelopment conditions.

Soil loss and Hydrologic Studies are required to demonstrate a given project meets the County's no net increase in erosion and runoff standards are met. The universal Soil Loss Equation (USLE) is the model used to measure and quantify pre- and post-project soil loss rates. Similarly, pre- and post-project changes in runoff are measured using TR-55 (Technical Release 55). The procedures related to the application of the hydrologic modeling are fairly standard. However, the component of the model related to the Hydrologic Soil Group (HSG) of a given soil type has been of recent debate. The HSG is a parameter used to define a soil's ability to infiltrate surface water. Disturbances to the soil, such a deep ripping typical of new vineyard development, can alter the soil profile from its natural state and change the physical properties increasing infiltration. However, there is not consensus among professionals in the field and therefore has become a matter of debate. Particularly, this approach is not supported by the San Francisco Bay Regional Water Quality Control Board staff and their draft Vineyard Property Waste Discharge Requirement program, which is anticipated to be adopted in 2017.

GENERAL OVERVIEW OF THE ECPA REVIEW PROCESS

1. **Pre-application Meeting:** While pre-application meetings are not mandatory, they are highly encouraged to provide an opportunity for planning staff and developers to meet and discuss details of a given project, informational needs specific to the project, discussion of review standards, and overall processing details and timelines. The meeting enables planning staff to identify any issues in advance of application submittal to help ensure a complete application is filed and in turn can be reviewed in an expeditious manner.
2. **Technical Review:** Upon application submittal, the engineered plan and supporting soil loss and hydrologic modeling is referred to the Engineering Division for technical review to confirm the plan design meets the County design standards required pursuant to General Plan Policies CON-48 and CON-50. This component of the application review typical involves the substantial direct interaction between the design engineer and department engineering staff.
3. **30-day Completeness Determination Letter:** Upon application submittal, planning staff conducts a thorough review of the application materials and supporting technical studies to confirm the application is complete. In the event that all application requirements have not been included in the submittal or if there are data gaps or deficiencies in the technical studies, those items are clearly identified and communicated back to the applicant within 30 days of submittal.
4. **Application Complete:** Once the applicant provides the informational needs identified in the completeness determination letter, planning staff can conduct a formal review of the project. Formal review includes compliance with the Conservation Regulations, applicable General Plan Goals and Policies and CEQA.
5. **Preparation of CEQA Document:** All technical reports are reviewed and incorporated into the impact analysis for each respective resource topic. A detailed impacts analysis is provided for each resource topic and feasible mitigation measures are provided when impacts are determined to be significant warranting mitigation. As previously described, there are typically three types of CEQA review associated with new vineyard ECPAs: Categorical Exemption (CX), Initial Study/Negative Declaration or Mitigated Negative Declaration (IS/ND or MND), and Environmental Impact Report (EIR).
6. **Public Notice and Review:** Public notification of the project is provided in the following manner:
 - a. Publication at least one time in a newspaper of general circulation in the area potentially impacted;
 - b. Mailing of the notice to the owners of all parcels within 1,000 feet of the boundaries of the parcel(s) on which the project is located plus those parcel owners adjacent to areas to be disturbed by off-site

- work at their last known address on the latest equalized assessment roll;
 - c. Mailing of the notice to responsible agencies, trustee agencies, the State Clearinghouse, and the County Clerk/Recorder; and
 - d. Mailing of the notice to organizations and individuals who have requested notice in writing.
7. Response to Comments: Comments received on a project are reviewed and evaluated to examine any environmental issues that were raised. The comments are formally responded to in writing with sufficient details and a reasoned analysis.
 8. ECPA Approval: With adoption of the CEQA document, the project is revised to incorporate applicable mitigation measures and conditions of approval, and the ECPA is formally approved.
 9. Project Initiation and Monitoring: Upon project initiation, the project is monitored to ensure all agree upon measures and conditions of approval are followed and the ECPA is implemented according to the design details. The project site is also monitored each fall as part of the County's winterization program to ensure erosion control measures were install correctly and are functioning properly.

There have been two recent items of note regarding the ECPA review process.

On January 20, 2017, staff sent a notice to stakeholders and interested parties indicating that PBES would no longer accept hydrologic analyses and vineyard ECPAs designed in reliance on modified hydrologic soil group (HSG) assumptions. The HSG methodology is no longer recommended by either the Resource Conservation District or the Regional Water Quality Control Board, and is not supported by Department engineering staff. We are working with those applicants who have not yet transitioned to the preferred approach.

Recently, CalFire held a training exercise on private property in the Soda Canyon area. It generated complaints from nearby residents who were concerned that illegal brush clearing and/or grading was occurring. Section 18.108.050.(H) of the County Code exempts the creation and/or maintenance of firebreaks required by, and completed under the direction of the California Department of Forestry. However, the exemption does not specifically address fire training exercises. Similarly, work to create fuel breaks (not fire breaks) is being proposed by Napa Firewise. Staff is working closely with both Firewise and CalFire to ensure that necessary fire prevention work is allowed to move forward, in a way that does not impact the environment or create violations of County Code.

ISSUE

Under CEQA, the "lead agency" is the government agency that has primary responsibility for approving a project when it may have a significant effect on the environment. Generally, Napa County acts as lead agency for nearly all of the permits and approvals it issues. However, in some circumstances the County functions as a "responsible agency," which is a government agency that has the responsibility for approving a portion of the overall project when more than one public agency is involved. By way of example, when a new vineyard project involves a surface water rights permit to provide the irrigation source, the State Water Resources Control Board (SWRCB) functions as lead agency and prepares the appropriate CEQA document. The County in turn functions as a responsible agency and relies on the State's CEQA document in approving the ECPA. When the County acts as a responsible agency, it may supplement the lead agency's CEQA analysis in its decision and all applicable aspects of the Conservation Regulations and General Plan Goals and Policies would continue to apply.

Until recently, Napa County functioned as a responsible agency in the consideration of ECPAs for new vineyard projects that involve Timberland Conversion Permits (TCPs) and Timber Harvest Plans (THPs). In such cases, the California Department of Forestry and Fire Protection (CalFire) acted as the lead agency, since the TCP and THP were a necessary to occur before the vineyard could be developed.

However, in December 2016, CalFire informed the County that they are relinquishing their role as lead agency for new vineyard projects involving THPS/TCPs going forward (see Attachment A). The reasons given by CalFire for

making this change are: (1) the County's ECPA review process goes beyond the level of review and approval of the State; and (2) the end use of the property is regulated by the County, so the CEQA analysis should be focused on the ultimate development proposal. CalFire indicated that they will be completing the CEQA review of four pending projects for THPs/TCPs currently in process that also involved proposed vineyard development.

Typically the lead agency is the agency with general government powers such as a city or county. Agencies with limited powers tend to be responsible agencies. If there is a dispute over which of several agencies should be the lead agency for a project, the disputing agencies would consult to resolve the dispute. If resolution among the contending agencies is not achieved, then the dispute may be submitted to the State Office of Planning and Research (OPR) for a final determination. OPR's decision is governed by the following criteria:

- | If the project will be carried out by a public agency, that agency shall be the lead agency even if the project would be located within the jurisdiction of another public agency.
- | If the project is to be carried out by a nongovernmental person or entity, the lead agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole.
- | The lead agency will normally be the agency with general governmental powers, such as a city or county, rather than an agency with a single or limited purpose such as an air pollution control district or a district which will provide a public service or public utility to the project.
- | Where more than one public agency equally meet the above criteria, the agency which will act first on the project in question shall be the lead agency.
- | Where the above provisions leave two or more public agencies with a substantial claim to be the lead agency, the public agencies may by agreement designate an agency as the lead agency. The agreement may also provide for cooperative efforts by two or more agencies by contract, joint exercise or powers, or similar devices.

OPR is required to make their determination within 21 days of receiving a request to resolve lead agency status.

It is staff's understanding that CalFire is considering designating cities and counties throughout the state as lead agency, when there are local permitting requirements. CalFire is particularly looking at the potential for local jurisdictions to establish a permitting process for the outdoor growing of recreational marijuana in timber areas.

According to CalFire staff, fees are not charged to applicants for the CEQA review of THPs and TCPs. PBES charges fees to recover the full costs of processing all applications. If the County assumes lead agency status, the cost to the applicant would likely increase.

Staff is requesting that the Board of Supervisors provide direction as to whether staff should seek consultation with CalFire regarding the lead agency status, and/or pursue resolution with OPR.

SUPPORTING DOCUMENTS

A . Attachment A - CDF Letter on Lead Agency Status

CEO Recommendation: Approve

Reviewed By: Helene Franchi