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Agenda Date: 4/9/2019

Agenda Placement: 6Q

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors

**FROM:** David Morrison - Director  
Planning, Building and Environmental Services

**REPORT BY:** David Morrison, Director, Planning, Building & Environmental Servi - (707) 253-4805

**SUBJECT:** Second Reading of Water Quality and Tree Protection Ordinance

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### **RECOMMENDATION**

Second reading and adoption of Ordinance No. 1438 amending the following sections of Chapter 18.108 (Conservation Regulations) of Title 18 (Zoning) of the Napa County Code regarding Water Quality and Tree Protection:

1. 18.108.010 (Purpose);
2. 18.108.020 (General Provisions);
3. 18.108.025 (General Provisions-Intermittent/Perennial Streams);
4. 18.108.027 (Sensitive Domestic Water Supply Drainages);
5. 18.108.030 (Definitions);
6. 18.108.040 (Exceptions);
7. 18.108.050 (Exemptions);
8. 18.108.060 (Slope Regulations-Prohibited Uses);
9. 18.108.070 (Erosion Hazard Areas-Use Requirements);
10. 18.108.075 (Requirements for Structural Erosion Control Measures);
11. 18.108.080 (Agricultural Erosion Control Plans-Requirements and Authorization to Prepare-Field Modifications);
12. 18.108.090 (Requirements for Vineyard Replanting Programs);
13. 18.108.120 (Existing Erosion Control);
14. 18.108.135 (Oversight and Operations);
15. 18.108.140 (Security, Violations, and Penalties); and
16. Adding a new Section 18.108.026 (General Provisions-Wetlands).

**ENVIRONMENTAL DETERMINATION:** Consideration and possible adoption of Categorical Exemptions Class 7, Class 8, Class 4, Class 5 and the General Rule. It has been determined that this type of project does not have a

significant effect on the environment and is exempt from the California Environmental Quality Act. [See Categorical Exemption Class 7 (“Actions by Regulatory Agencies for Protection of Natural Resources”) which may be found in the guidelines for the implementation of the CEQA at 14 CCR §15307]; Categorical Exemption Class 8 (“Actions by Regulatory Agencies for Protection of the Environment”) which may be found in the guidelines for the implementation of the CEQA at 14 CCR §15308]; Categorical Exemption Class 4 (“Minor Alterations to Land”) which may be found in the guidelines for the implementation of the CEQA at 14 CCR §15304; see also Napa County’s Local Procedures for Implementing the California Environmental Quality Act, Appendix B]; Categorical Exemption Class 5 (“Minor Alterations in Land Use Limitations”) which may be found in the guidelines for the implementation of the CEQA at 14 CCR §15305; see also Napa County’s Local Procedures for Implementing the California Environmental Quality Act, Appendix B]; and General Rule in that it can be seen with certainty that there is no possibility the proposed action may have a significant effect on the environment and therefore CEQA is not applicable. [See Guidelines for the Implementation of the CEQA 14 CCR 15061(b)(3)]. This project is not on any lists of hazardous waste sites enumerated under Government Code Section 65962.5.

### **EXECUTIVE SUMMARY**

On March 26, 2019, the Board of Supervisors opened the public hearing and received testimony from members of the public and County staff regarding the proposed Water Quality and Tree Protection Ordinance. Board members raised questions and comments and requested edits to the proposed Ordinance regarding development on slopes of more than thirty percent, application of new vegetation retention requirements only within the Agricultural Watershed (AW) zone, revised mitigation ratios for vegetation canopy cover removal and consideration of public benefit in the AW zone, wetland setbacks, municipal reservoir setbacks, fire management exemptions, vineyard replants, and affordable housing. After the close of the public hearing, the Board read the title, waived reading the balance of the Ordinance, and declared its intention to adopt the Ordinance, with certain modifications as summarized by staff, at the next regularly scheduled meeting.

This item requests that the Board conduct its second reading and take final action on the Ordinance. Both clean and tracked versions of the final Ordinance are attached.

The Ordinance will become effective 30 days following adoption.

### **FISCAL IMPACT**

Is there a Fiscal Impact?                      No

### **ENVIRONMENTAL IMPACT**

Consideration and possible adoption of Categorical Exemptions Class 7, Class 8, Class 4, Class 5 and the General Rule. It has been determined that this type of project does not have a significant effect on the environment and is exempt from the California Environmental Quality Act. [See Categorical Exemption Class 7 (“Actions by Regulatory Agencies for Protection of Natural Resources”) which may be found in the guidelines for the implementation of the CEQA at 14 CCR §15307]; Categorical Exemption Class 8 (“Actions by Regulatory Agencies for Protection of the Environment”) which may be found in the guidelines for the implementation of the CEQA at 14 CCR §15308]; Categorical Exemption Class 4 (“Minor Alterations to Land”) which may be found in the guidelines for the implementation of the CEQA at 14 CCR §15304; see also Napa County’s Local Procedures for Implementing the California Environmental Quality Act, Appendix B]; Categorical Exemption Class 5 (“Minor Alterations in Land Use Limitations”) which may be found in the guidelines for the implementation of the CEQA at

14 CCR §15305; see also Napa County's Local Procedures for Implementing the California Environmental Quality Act, Appendix B]; and General Rule in that it can be seen with certainty that there is no possibility the proposed action may have a significant effect on the environment and therefore CEQA is not applicable. [See Guidelines for the Implementation of the CEQA 14 CCR §15061(b)(3)]. This project is not on any lists of hazardous waste sites enumerated under Government Code §65962.5.

## **BACKGROUND AND DISCUSSION**

The efforts and contributions of hundreds of people have gone into creation of this Ordinance, including those who offered comments at the Strategic Plan workshops, those who testified and sent letters to the Planning Commission and Board of Supervisors during the public hearings, and informal conversations throughout the County. Napa includes many stakeholders with diverse interests, each of whom are passionate about their issues and advocated strongly for their positions. This public process has resulted in a lively and respectful debate, which is the hallmark of a healthy and engaged community. In respect of such broad community interests, the Ordinance reflects a carefully crafted series of compromises that will improve protections for our water quality and our forests, while not severely disrupting private property or the local economy. It provides important safeguards for the natural resources that we rely upon, while maintaining housing and agricultural opportunities to support the quality of life we all enjoy.

### **Board of Supervisors Action**

The Board of Supervisors held a public hearing on March 26, 2019, and considered the recommendations of the Planning Commission that resulted from their hearing on March 6, 2019. After considering testimony presented at the March 26 hearing, the Board unanimously passed a motion of intent to adopt the Ordinance including several changes as summarized by staff in a memo presented during the hearing.

Upon closing the public hearing, the Board read the title, waived reading the balance of the Ordinance, and declared its intention to adopt the Ordinance at the next regularly scheduled meeting. The Ordinance is now before the Board for formal adoption.

Clean and tracked versions of the Ordinance are attached.

### **Correction**

As currently drafted, Section 18.108.030 - Definitions includes the following:

"Landscape structure" means a structure, object and/or feature for human use and enjoyment of the land associated with decorative landscaping in relationship to a residential structure, which does not require issuance of a ministerial or discretionary permit by the county, and does not require earth-disturbing or grading.

Upon further review, staff believes that there is a conflict with a portion of Section 18.108.050 - Exemptions, which states:

C. Land clearing, earthmoving and/or grading in connection with the planting and/or maintenance of decorative landscaping and/or construction of landscape structures as defined in Section 18.108.030 for which no building or grading permits are required as part of an existing or approved residential structure; and the clearing and/or grading does not involve more than one acre per legal parcel, and the clearing and/or grading does not involve removal of any living tree from the ridge line or hilltop visible from any public roadway unless such tree is replaced in a manner approved by the director, and temporary erosion control measures are installed by the winter shut-down period applicable to the project site;

The definition as currently written would subject landscape structures that require earth-disturbing or grading to the requirements of the Ordinance, while section 18.108.050 exempts land clearing, earthmoving and or grading in connection with maintenance and/or construction of landscape structures. To correct this inconsistency, staff recommends the following revision:

“Landscape structure” means a structure, object and/or feature for human use and enjoyment of the land associated with decorative landscaping in relationship to a residential structure, which does not require issuance of a ministerial or discretionary permit by the county, ~~and does not require earth-disturbing or grading.~~

**Recommendation**

Staff and County Counsel recommend adoption of the Ordinance, as revised per the correction above.

**SUPPORTING DOCUMENTS**

- A . Attachment B - Final Ordinance (clean version)
- B . Attachment A - Final Ordinance (track changes version)

CEO Recommendation: Approve

Reviewed By: Leigh Sharp