



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 2/20/2019

Agenda Placement: 7B

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission

FROM: Charlene Gallina for David Morrison - Director
Planning, Building and Environmental Services

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

SUBJECT: Draft Water Quality and Tree Protection Ordinance

RECOMMENDATION

DRAFT WATER QUALITY AND TREE PROTECTION ORDINANCE

CEQA Status: 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.

Request: Recommend that the Board of Supervisors adopt a County sponsored ordinance amending the Conservation Regulations (County Code Chapter 18.108) to increase protections for water quality and trees, and to implement the Napa County General Plan (2008) and the 2019-2022 Strategic Plan (adopted January 15, 2019).

Proposed Ordinance Title: An Ordinance of the Board of Supervisors of Napa County, State of California, Amending Sections 18.108.10 (Purpose), 18.108.020 (General provisions), 18.108.025 (General provisions - Intermittent/perennial streams), 18.108.027 (Sensitive domestic water supply drainages), 18.108.030 (Definitions), 18.108.040 (Exceptions), 18.108.050 (Exemptions), 18.108.060 (Slope regulations - Prohibited uses), 18.108.070

(Erosion hazard areas - Use requirements), 18.108.075 (Requirements for structural erosion control measures), 18.108.080 (Agricultural erosion control plans - Requirements and authorization to prepare - Field modifications), 18.108.090 (Requirements for vineyard replanting programs), 18.108.120 (Existing erosion control), 18.108.135 (Oversight and operations), and 18.108.140 (Security, violations, and penalties), and Related Sections and Adding a New Section 18.108.026 (General provisions - Wetlands), to Chapter 18.108 (Conservation Regulations) of Title 18 (Zoning) of the Napa County Code Regarding Water Quality and Tree Protection.

Staff Recommendation: Recommend that the Board of Supervisors find that the proposed project is exempt from CEQA and is consistent with the Napa County General Plan (2008), and adopt the proposed ordinance.

Staff Contact: David Morrison, Director, at (707) 253-4805 or david.morrison@countyofnapa.org.

EXECUTIVE SUMMARY

Proposed Actions:

That the Planning Commission recommend that the Board of Supervisors:

1. Find that the proposed ordinance is consistent with the Napa County General Plan (2008);
2. Find that adoption of the proposed ordinance is exempt under the California Environmental Quality Act pursuant to Categorical Exemptions Class 7, Class 8, Class 4, Class 5, and the General Rule; and
3. Adopt the proposed ordinance.

Discussion:

The purpose and intent of the proposed ordinance is to expand the existing protections for water quality and trees Countywide by amending the Conservation Regulations (County Code Chapter 18.108). A summary of the proposed changes is provided in the Background and Discussion section of this staff report.

The proposed ordinance would implement three action items of the recently adopted 2019-2022 Strategic Plan. Action Item 12.A requires the County to update the Conservation Regulations to improve requirements for stream setbacks. Action Item 12.B requires the County to improve tree preservation by adopting an ordinance to increase canopy protection and mitigation requirements throughout the unincorporated area. Action Item 12.E requires the County to evaluate the modification of buffers around municipal reservoirs. The proposed ordinance would implement these action items by creating a new setback for streams that are equivalent to a Class 3, increasing tree canopy retention throughout the unincorporated area, and creating new setbacks from municipal reservoirs and wetlands.

The proposed ordinance also would implement two action items in the General Plan (2008). Conservation Action Item CON NR-1 requires the County to amend the Conservation Regulations to offer incentives such as a streamlined review process for new vineyard development and other projects that incorporate environmentally sustainable practices that avoid or mitigate significant environmental impacts. Vineyard projects of less than 5 acres on slopes of less than 15% would be exempt from the requirements of the new ordinance but still subject to CEQA and the Conservation Regulations. Conservation Action Item CON WR-3 requires an update of the Conservation Regulations to establish an appropriate protective buffer in areas that drain toward any intake structure associated with the County's sensitive domestic water supply drainages. The proposed ordinance would implement this action item by establishing new buffers for watercourses that are the equivalent to a Class 3 stream, wetlands, and municipal reservoirs.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

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.

BACKGROUND AND DISCUSSION

On January 15, 2019, the Board of Supervisors approved the Napa County Strategic Plan (2019-2022). As a part of its approval, the Board further 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. Nearly 65 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.

The proposed ordinance implements and includes the Board of Supervisors' specific direction, with no deviations by staff, additions, or new proposals.

Background

History

Napa County's Conservation Regulations have a long record of using science in an evidence-based approach to further land use policy. 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, over-sight of erosion control installations, special geologic stability assessments, and sizing of water conveyance and detention facilities.

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 (thus overturning Ordinance No. 1221), 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 (2008) 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 initiative was placed on the June 2018 ballot as Measure C, which was rejected by 51 percent of those who voted.

It is clear that the County has regularly reviewed the Conservation Regulations over the past 28 years, as new evidence and science becomes available to support changes in regulation that improve water quality and protect the environment. It is also clear that voters are very concerned about these issues, both in support and in opposition, with the public considering two initiatives and a referendum in the past 15 years.

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, while the Green Certified program is a model for other regions. However, Napa County vineyards are also the most regulated agricultural industry in California, which has resulted in significant additional expense and time for local landowners.

Napa County General Plan

The Napa County General Plan (2008) references the Conservation Regulations in numerous policies and action items, as provided below. These policies are furthered by many of the goals and requirements of the Conservation Regulations, including 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.

Policy CON-19:

The County shall encourage the preservation of critical habitat areas and habitat connectivity through the use of conservation easements or other methods as well as through continued implementation of the Napa County Conservation Regulations associated with vegetation retention and setbacks from waterways.

Policy CON-26:

Consistent with Napa County's Conservation Regulations, natural vegetation retention areas along perennial and intermittent streams shall vary in width with steepness of the terrain, the nature of the undercover, and type of soil. The design and management of natural vegetation areas shall consider habitat and water quality needs, including the needs of native fish and special status species and flood protection where appropriate.

Site-specific setbacks shall be established in coordination with Regional Water Quality Control Boards, California Department of Fish and Game, U.S. Fish and Wildlife Service, National Oceanic and Atmospheric Administration National Marine Fisheries Service, and other coordinating resource agencies that identify essential stream and stream reaches necessary for the health of populations of native fisheries and other sensitive aquatic organisms within the County's watersheds.

Where avoidance of impacts to riparian habitat is infeasible along stream reaches, appropriate measures will be undertaken to ensure that protection, restoration, and enhancement activities will occur within these identified stream reaches that support or could support native fisheries and other sensitive aquatic organisms to ensure a no net loss of aquatic habitat functions and values within the County's watersheds.

Policy CON-45:

Protect the County's domestic supply drainages through vegetation preservation and protective buffers to ensure clean and reliable drinking water consistent with state regulations and guidelines. Continue implementation of current Conservation Regulations relevant to these areas, such as vegetation retention requirements, consultation with water purveyors/system owners, implementation of erosion controls to minimize water pollution, and prohibition of detrimental recreational uses.

Policy CON-47:

The County shall comply with applicable Water Quality Control/Basin Plans as amended through the Total Maximum Daily Load (TMDL) process to improve water quality. In its efforts to comply, the following may be undertaken:

...

f) Ensuring continued effectiveness of the County's Conservation Regulations related to vineyard projects and other earth-disturbing activities.

...

h) Amending the County's Conservation Regulations or County Code to address

excessive sediment delivered to waterways as required by state law, particularly as it relates to private roads and rural unimproved (i.e., dirt or gravel) roads.

Policy CON-50:

The County will take appropriate steps to protect surface water quality and quantity, including the following:

a) Preserve riparian areas through adequate buffering and pursue retention, maintenance, and enhancement of existing native vegetation along all intermittent and perennial streams through existing stream setbacks in the County's Conservation Regulations.

...

g) Address potential soil erosion by maintaining sections of the County Code that require all construction-related activities to have protective measures in place or installed by the grading deadlines established in the Conservation Regulations. In addition, the County shall ensure enforceable fines are levied upon code violators and shall require violators to perform all necessary remediation activities.

Action Item CON NR-1:

Amend the Conservation Regulations to offer incentives such as a streamlined review process for new vineyard development and other projects that incorporate environmentally sustainable practices that avoid or mitigate significant environmental impacts.

Action Item CON WR-3:

Update the Conservation Regulations to establish an appropriate protective buffer (e.g., a special protection zone) in areas that drain toward any intake structure associated with the County's sensitive domestic water supply drainages, requiring specific development and performance measures to protect water quality and balance property owners' ability to use their land and stipulating that discretionary projects must be located outside of the protective buffer wherever this is feasible.

Implementation of the Conservation Regulations involves many other General Plan policies, some of which are provided below.

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 measure 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.

Conservation Regulations

Reflecting the General Plan, the Conservation Regulations likewise identify a purpose and intent to preserve existing vegetation, riparian areas, and habitat; protect domestic water supplies; improve water quality; and ensure the long-term viability of agriculture, as stated in Section 18.108.010 of the County Code:

A. The purpose and intent of these regulations is to protect the public health, safety and community welfare, and to otherwise preserve the natural resources of the county of Napa. Further, these regulations are intended to ensure the continued long-term viability of county agricultural resources by protecting county lands from excessive soil loss which if unprotected could threaten local water quality and quantity and lead ultimately to loss of economic productivity. These regulations have been developed in general accord with the policies and principles of the general plan, as specified in the land use element and the open space and conservation element.

B. It is furthermore intended that these regulations accomplish the following:

1. Minimize cut, fill, earthmoving, grading operations and other such man-made effects in the natural terrain;
2. Minimize soil erosion caused by human modifications to the natural terrain;

3. Maintain and improve, to the extent feasible, existing water quality by regulating the quantity and quality of runoff entering local watercourses;

4. Preserve riparian areas and other natural habitat by controlling development near streams and rivers;

5. Encourage development which minimizes impacts on existing land forms, avoids steep slopes, and preserves existing vegetation and unique geologic features; and

6. Protect drinking water supply reservoirs in sensitive domestic water supply drainages from sediment, turbidity, and pollution.

C. It is not the intent of these regulations to provide that compliance with these regulations shall provide a defense to a charge of violating Section 5650 of the California Fish and Game Code.

D. It is also the intent of these regulations to further the intent and purpose of Section 1600 of the California Fish and Game Code.

E. Napa County, through the department of public works, has implemented the National Pollution Discharge Elimination System (NPDES) program, which requires the county to ensure that stormwater and erosion control measures are provided for all applicable structural (i.e., nonagricultural) projects. As such, technical aspects of providing erosion control measures for structural projects shall be administered by the department of public works via the NPDES program. The remaining applicable requirements of this chapter shall still apply to structural projects. For agricultural projects (which are not covered by the NPDES program), all the requirements of this chapter remain in full effect.

The Conservation Regulations apply to all County zoning districts and all uses that may involve earthmoving activity, with or without Use Permits. Earthmoving activities associated with agricultural development on slopes greater than 5% are subject to agricultural erosion control plan requirements, while earthmoving activities related to structural (non-agricultural) projects are subject to the Napa Countywide Stormwater Pollution Prevention Program (NCSPPP).

Implementation of the Conservation Regulations

Pursuant to the Conservation Regulations, an Erosion Control Plan (ECP) is required for any agricultural project involving grading and earthmoving activities on slopes over 5%. The Director of the Planning, Building and Environmental Services (PBES) Department must review and approve an engineered ECP prior to development. Approval of the plan is subject to review and process under CEQA. Each ECP must incorporate development and maintenance standards for applicable new and replanted vineyards. Soil loss and hydrologic studies are required to demonstrate that all ECPs meet the County's performance standards, including the requirement for no net increase in erosion and runoff. The Conservation Regulations provide ongoing environmental benefits far beyond those related to soil loss. The Conservation Regulations protect valuable natural resources by requiring stream setbacks based on a sliding scale directly correlated to the slope of the land adjacent to the stream or waterway. These setbacks protect water quality, aquatic habitats, and special-status fish species, and also provide for significant terrestrial habitat preservation and wildlife movement.

The Conservation Regulations also provide for enhanced protections and benefits for projects 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 study 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. These

requirements protect drinking water and also preserve habitat and generate other environmental benefits.

Two programs implement the Conservation Regulations, for non-agricultural projects, such as grading for structures. The NCSPPP is a joint effort of the County of Napa, cities of American Canyon, Napa, St. Helena and Calistoga, and the Town of Yountville to: prevent storm water pollution; protect and enhance water quality in creeks and wetlands, preserve beneficial uses of local waterways, and comply with State and federal regulations. Though the entities of the NCSPPP carry out their own individual storm water pollution prevention programs, the NCSPPP provides for the coordination and consistency of approaches between the individual participants and documents their efforts in annual reports. Specifically, building and grading permits are reviewed to ensure consistency with the Construction General Permit Order No. 2009-009-DWQ issued by the San Francisco Regional Water Quality Control Board (SFRWQCB).

In addition, staff also review building and grading permits for compliance with National Pollution Discharge Elimination System (NPDES) requirements, including the General Permit for Discharges of Storm Water Associated with Construction Activity, as well as the Phase II NPDES Municipal General Permit. These permits establish Best Management Practices (BMPs) for both Construction Site Runoff and Post-Construction Runoff.

In carrying out these various duties, PBES Department staff work closely with staff from the County Public Works Department, the Napa County Resource Conservation District, the SFRWQCB, the California Department of Fish and Wildlife, private consultants, community members, and applicants to ensure that all regulatory requirements are fully addressed and enforced.

Additional Requirements for Agricultural Projects

Napa County has the most regulated agricultural practices in California, but owners must also comply with additional State and Federal programs.

In July 2017, the SFRWQCB adopted a water quality control permit (General Permit) for vineyard properties in the Napa River and Sonoma Creek watersheds. The General Permit regulates parcels developed to include a 5-acre-or-larger vineyard that are located in these two watersheds. All vineyard parcels subject to the General Permit – regardless of slope of the planted area – must achieve performance standards for soil erosion in the farm area, and for discharge of nutrients and pesticides. Hillslope vineyard parcels (those where the average slope of the planted area is greater than 5 percent) also must achieve performance standards for vineyard storm runoff and for sediment discharge from unpaved roads.

Specifically, the General Permit requires property owners or operators to:

1. Enroll in the General Permit;
2. Develop a farm plan to protect water quality;
3. Have the farm plan verified by a Third-Party Program or by the Water Board;
4. Implement the farm plan to achieve applicable performance standards for discharge;
5. Report annually on progress toward achievement of performance standards; and
6. Participate in a group-or-individual water-quality monitoring program.

The Farm Plan must include a comprehensive inventory of vineyards, roads, reservoirs, and waterways located throughout the vineyard property to document the BMPs already in place and/or to prescribe additional BMPs that shall be implemented and maintained to comply with all conditions of the General Permit, including but not limited to attainment of all applicable Performance Standards for discharge and documentation of the actions implemented to protect and/or enhance stream-riparian habitat complexity and connectivity. The Farm Plan also must include a specific time schedule and corresponding milestones to measure progress toward attainment of the Performance Standards and a monitoring plan to document BMP implementation and assess effectiveness.

Vineyard property owners are further required to submit an Annual Compliance Form to the Water Board. The Annual Compliance Form certifies that the vineyard property meets the conditions of the General Permit and that the Farm Plan is being implemented according to the schedule established in the Farm Plan and in compliance with established dates in the General Order.

Performance of the Conservation Regulations

The Conservation Regulations have been successful. As discussed below, they have contributed to cleaner water quality, resulted in minimal habitat loss, and have allowed agriculture to expand. However, new challenges have arisen since 1991 and 2002 that merit additional consideration, including increased frequency of natural disasters (wildfires and droughts), gradual loss of our forests, stricter water quality standards, climate change, and increasing intrusion into the hillside areas of the County by development (housing, wineries, and vineyards).

Land Use

According to the Agricultural Commissioner, in 1991 (the year the Conservation Regulations were adopted) there were 29,993 producing acres of vineyards within Napa County. In 2017, there were 43,584 producing acres of vineyards. This represents an overall increase of 45.3%, but an annual increase of 1.5% in vineyard growth over 26 years. (Note that 66% of the growth in acreage since 1991 occurred in the years 1999-2002, immediately prior to the adoption of the updates to the Conservation Regulations.)

More recently, the Baseline Data Report (BDR) shows that County-wide there were 64,423 acres of total agriculture in 2005 (the beginning of the 2008 General Plan timeframe), including both fallow and non-producing vineyard acreage. In 2017, that number had increased to 70,019 acres, an overall increase of 8.7% and an annual increase of 0.7% in total agricultural acreage.

The BDR showed 204,960 acres of oak/conifer forest and 161,289 acres of grasslands/ chaparral. County GIS (Geographic Information System) analysis of 2017 (pre-fire) vegetation mapping shows 202,541 acres of oak/conifer forest and 154,683 acres of grassland. This indicates an overall decrease of 1.2% of forest with an annual loss of 0.1% of forest. During the 12-year period, there was an overall decrease of 4.1% of grasslands, with an annual change of 0.4%.

Water Quality

The SFRWQCB has proposed the Napa River as eligible for delisting as an impaired water body for nutrients related to algae growth. A decision on the delisting is expected by the State Water Board and United States Environmental Protection Agency (USEPA) in 2020. The Napa River remains an impaired water body due to sediment and Total Maximum Discharge Limits (TMDLs) have been adopted to address sediment.

A variety of contributors play a role in water quality and the health of our watersheds. For example, the Bell Canyon Reservoir Watershed Sanitary Survey 2014 Update, approved by the City of St. Helena, states that fires and vineyards/ wineries are activities of the most concern in the Bell Canyon watershed. It goes on to state that the County already regulates vineyards, wineries, and vineyards, which helps to protect Bell Canyon Reservoir from erosion, storm water, and septic system impacts.

Similarly, the 2012 watershed survey conducted by the City of Napa identified potential contaminants including but not limited to wastewater from the Pacific Union College treatment plant, urban runoff from Angwin, wildfire, invasive species, recreational uses (swimming, boating, and trail use), and agricultural activities.

The Rector Creek Reservoir Watershed Sanitary Survey 2009 Update approved by the State of California Veterans' Home identified fire, agriculture (sediment, nutrients, and pesticides), and landslides as areas of concern.

The 2009 Napa River Sediment TMDL and Habitat Enhancement Plan approved by the Regional Water Quality Control Board - San Francisco Bay Region also identified multiple contributors to sediment concerns in the Napa River, including livestock grazing, agriculture, roads, urban storm water runoff, and channel incision.

Overall, the County's landmark Conservation Regulations have improved water quality and serve as the model for other jurisdictions to follow. While measures can improve their effectiveness, particularly regarding erosion and sediment control, water quality protection involves far more than a focus solely on agriculture and building construction.

Discussion

Staff notes that the issues of mitigation ratio, mitigation location, and tree retention rate are all interdependent in determining how much land is possible to develop within a project. For example, if a new vineyard proposal must meet the requirements for 70% tree canopy retention and 3:1 tree replacement, and must exclude stream setbacks from mitigation, the amount of land available for vineyard planting will be greatly reduced. As one or more of these standards are relaxed, the amount of tree protection will be reduced and the area for vineyards will increase, although the amount will vary depending on each site's unique characteristics.

The amount of future vineyard land that is developed will have a direct impact on the future growth of wineries. New and existing wineries wishing to expand are subject to the County's 75% rule (County Code Section 18.104.250). This requires that at least 75% of the grapes used to make the winery's still wine, or the still wine used by the winery to make sparkling wine, shall be grown within the County of Napa. As new vineyard development becomes more limited, the grape supply will also grow more slowly, eventually constraining the future ability of new wineries to be established and/or existing wineries to grow.

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, our ecological health, the scenic beauty that both residents and visitors enjoy, the future growth of our wine industry, and our ability to respond to future disasters.

Summary of Changes:

The following is a summary of major changes to the County Code recommended by staff, consistent with the direction of the Board of Supervisors on January 29, 2019. Minor changes that correct or clarify existing text are not included in the summary below.

Section 18.108.010 – Purpose

The County Code currently describes the purpose of the Conservation Regulations as protecting public health, safety, and welfare; as well as preserving natural resources and ensuring the long-term viability of agriculture. The proposed section includes the protection of environmental resources as part of the purpose of the Conservation Regulations, specifically as they relate to agricultural land, forest, habitat, and water.

The County Code currently provides a number of goals that the Conservation Regulations are intended to accomplish. These include minimizing changes to the terrain, minimizing erosion, improving water quality, and preserving habitat. The proposed section expands these goals to include the preservation of wetlands and reducing the loss of vegetation. It also includes as its purpose minimum mitigation requirements and prioritizing areas eligible for mitigation.

Section 18.108.020 – General provisions

The County Code currently requires that an applicant proposing any earth-disturbing activity must retain 60% of the tree canopy within each parcel as established in 1993 aerial photos for projects located within sensitive domestic water supply drainages. The proposed revisions would establish a new requirement that applicants must retain 70% of the tree canopy within each parcel throughout the unincorporated area including sensitive domestic water supply drainages. Parcels outside of sensitive domestic water supply drainages would be evaluated based on 2016 aerial photos. Parcels inside sensitive domestic water supply drainages would continue to be evaluated based on 1993 aerial photos.

The County Code currently requires that an applicant proposing any earth-disturbing activity must retain 40% of the chaparral, shrub lands, and grasslands within each parcel as established in 1993 aerial photos for projects located within sensitive drainages. The proposed revisions would establish a new requirement that applicants must retain 40% of the chaparral and shrub lands within each parcel throughout the unincorporated area. There would be no minimum retention for grasslands outside of sensitive drainages. Parcels outside of sensitive drainages would be evaluated based on 2016 aerial photos. Parcels inside sensitive domestic water supply drainages would continue to be evaluated based on 1993 aerial photos.

The County Code currently does not identify specific mitigation requirements for vegetation removal. There are, however, General Plan policies requiring applicants to mitigate a minimum of 2 acres for every 1 acre removed of any oak woodlands, oak woodland habitat, sensitive biotic communities or habitats of limited distribution in the event they cannot be avoided. Mitigation may occur by preservation and/or replacement/replanting. Preserved areas are subject to a deed restriction or permanent conservation easement. The proposed revisions would establish a new requirement that applicants must mitigate at a 3:1 ratio for any vegetation removed through earth-disturbing activities. This requirement would include earth-disturbing in connection with both new agricultural development and building construction.

The County Code currently does not include any guidance on where mitigation for the removal of vegetation may occur. Consistent with the requirements of CEQA, staff practice is to prioritize the preservation of areas with the highest biological value located on-site, and then to allow off-site mitigation where appropriate. The proposed revisions would establish criteria for determining the location of mitigation lands. Prioritization may occur as follows: (1) land located on-site with slopes of less than 30% and outside of stream setback areas; (2) land located on-site greater than 31% and up to 50% slope in areas that result in the highest value for biological or water quality protection; and (3) land located off-site replacement or preservation within the same watershed where the habitat is the same or better quality than that being removed. Mitigation may occur within stream setbacks when part of an erosion control or vegetation restoration plan and consistent with Section 18.108.025 (D), as

approved by the PBES Director.

Section 18.108.025 – General Provisions – Intermittent/perennial streams

The County Code currently establishes setbacks for streams with adjoining slopes of between 1% and 70%. Section 18.108.060 (discussed later in the staff report) proposes to prohibit development on slopes of more than 30%, except where exempt. The proposed revisions would eliminate the setback requirements for streams with adjoining slopes of more than 30%, to be consistent Section 18.108.060.

The County Code currently establishes varying setbacks streams (as defined in Section 18.108.030) that are generally equivalent to Class 1 or 2 watercourses. There are no setbacks established for Class 3 equivalent streams. Instead, staff evaluates Class 3 watercourses and setbacks through the CEQA process. The proposed revisions would establish a minimum setback of 35 feet for ephemeral or intermittent streams, generally equivalent to Class 3 watercourses, which do not meet the current County definition for streams.

The County Code currently exempts from the requirements of the intermittent/ perennial stream section those agricultural lands that were fallow for up to two years before adoption of the Conservation Regulations. As the regulations have been in effect for over 25 years, the proposed revisions would eliminate this provision. [\[BB3\]](#) [\[SL4\]](#) [\[MD5\]](#)

New Section 18.108.026 – General provisions – Wetlands

The County Code currently does not identify a setback for wetlands. Instead, staff evaluates wetlands and setbacks through the CEQA process and through consistency with General Plan policies. The proposed revisions would add a new section to the Code to establish a minimum 50-foot setback for wetlands.

Section 18.108.027 – Sensitive domestic water supply drainages

The County Code currently requires that an applicant proposing any earth-disturbing activity must retain 60% of the tree canopy within each parcel as established in 1993 aerial photos for projects located within sensitive domestic water supply drainages. The proposed revisions would require applicants to retain 70% of the tree canopy within each parcel in sensitive domestic water supply drainages.

The County Code currently requires that new septic systems or leach lines maintain a minimum setback of 200 feet from domestic water supplies (Section 13.028.040). The proposed revisions would add a new Paragraph G to this section to establish a minimum setback of 200-feet for all earth-moving activities.

Section 18.108.030 – Definitions

The County Code currently includes several definitions to be used in interpreting the Conservation Regulations. As described throughout this summary, proposed revisions involve new terms that would benefit from their definition. The proposed revisions would provide definitions for chaparral, delineated wetland boundary, environmental resources mapping system, ephemeral or intermittent stream, habitat, habitat of limited distribution, municipal reservoir, planning department, perpetual protective easement, qualified professional biologist, special-status species, watershed, wetland, and wetland delineation map or study.

Section 18.108.040 – Exceptions in the form of a use permit

The County Code currently describes those activities that may receive an exception in the form of a use permit to any of the Conservation Regulations. The proposed revision removes the ability of applicants to seek an exception in the form of a use permit for earthmoving on slopes greater than 30%, consistent with the revisions in Section 18.108.060. The proposed revisions also would add a requirement, consistent with General Plan policies, that projects not result in a net increase in soil loss or storm water runoff.

For structures and roads, projects must complement the natural landform; avoid excessive grading; minimize vegetation removal; incorporate fire prevention measures; minimize stream disturbance; not adversely affect sensitive species; and have an approved erosion control or storm water plan. For agricultural projects and related roads, projects must not exceed the soil tolerance factor for the site; have an erosion control plan approved by the County; minimize stream disturbance; and maintain setbacks along drainage ways. The proposed revisions would add a requirement that projects not result in a net increase in soil loss or storm water runoff; and not adversely affect sensitive species. These revisions are consistent with General Plan policies regarding the same.

Section 18.108.050 – Exemptions

The County Code currently provides that the Conservation Regulations do not apply to the following activities: limited additions to residences and structures; remodeling of residences and structures before May 13, 1991; landscaping up to one acre where no visible trees are removed; maintenance of private roads; projects approved by the County prior to June 11, 1991; facilities for the protection of public health; preliminary testing of septic systems and wells; creation and maintenance of fire breaks; timber harvest plans; federal and state vegetation clearing; abatements of public nuisances; clearing of erosion control cover crops for projects approved prior to June 11, 1991; multi-year phased projects pursuant to adopted ordinances; existing agricultural practices; maintenance of ongoing agricultural activities; permitted mining and reclamation activities; final maps and development agreements approved before June 11, 1991; permitted activities within the industrial park or industrial zoning; replanting of less than 1 acre of vineyard that does not increase the footprint of the vineyard; repair and maintenance of water storage facilities; and construction of residential water tanks on slopes of less than 15%.

The proposed revisions would move the exemption in Paragraph (N) regarding existing agricultural practices for weed control, fire protection and prevention, and posthole digging and include those activities in Paragraph (O) along with other activities that are already included in the exemption for the maintenance of ongoing agricultural activities. The proposed revisions would also add a new Paragraph (V) that would exempt, on a one-time basis, the reconstruction of structures lost to fires or natural disasters, up to 125% of the original footprint, so long as the expansion does not encroach into any setbacks.

Section 18.108.060 – Slope regulations – prohibited uses

The County Code currently allows earth-moving activities on slopes between 30% and 50% with prior approval of a use permit, except where otherwise exempt. The proposed revisions would eliminate the ability to obtain a use permit for development or construction on slopes of more than 30%. Exempt activities would continue to be allowed on slopes of more than 30%.

The County Code currently does not include methodologies for calculating slopes to determine where earth-moving activities may occur and instead refers to Resolution No. 94-19. The proposed revisions would generally incorporate the slope determination methodology language from Resolution No. 94- into Paragraph B to this section to provide guidance on calculating slopes in various development scenarios.

Section 18.108.070 – Erosion hazard areas – Use requirements

The proposed revisions are limited to minor edits that correct or clarify existing text and do not result in any substantive change.

Section 18.108.075 – Requirements for structural erosion control measures

The proposed revisions are limited to minor edits that correct or clarify existing text and do not result in any substantive change.

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

The County Code currently allows the following persons to prepare an erosion control plan: certified professional soil erosion and sediment control specialist (CPSESCS); a soil conservation service employee working under a CPSESCS; licensed civil engineer; registered professional forester; licensed landscape architect; certified engineering geologist; licensed architect; or the property owner when the plan has been reviewed by the Resource Conservation District. The proposed revisions would add qualified storm water pollution prevention plan (SWPPP) practitioner and qualified SWPPP developer to this list. The proposed revisions would also eliminate the property owner from this list of qualified preparers.

Section 18.108.090 – Requirements for vineyard replanting programs

The proposed revisions are limited to minor edits that correct or clarify existing text and do not result in any substantive change.

Section 18.108.120 – Existing erosion control

The proposed revisions are limited to minor edits that correct or clarify existing text and do not result in any substantive change.

Section 18.108.140 – Securities, violations, and penalties

The County Code currently allows the Director to require that the applicant post security with the County whenever an erosion control plan meets specific criteria. The security must equal 125% of the cost of the installation of erosion control measures. The security may take several forms, including bond; cash or negotiable bond; instrument of credit; letter of credit; or a lien on the property. The proposed revisions would eliminate a lien on the property as an acceptable form of security for erosion control plans.

Section 17 of the Ordinance

The new requirements would apply to all applications received by the County after the effective date of the ordinance, as well as all pending applications determined by the County to be incomplete at the effective date of the ordinance. This section also provides a one-time exemption for earthmoving activities associated with an agricultural project of five acres or less on slopes less than 15%. These projects would not be subject to the requirements of the new ordinance but are still subject to the Conservation Regulations in effect prior to adoption of the new ordinance and are subject to CEQA.

SUPPORTING DOCUMENTS

- A . Final Draft Water Quality & Tree Protection Ordinance - Track Change Version
- B . Final Draft Water Quality & Tree Protection Ordinance - Clean Version
- C . Summary Comparison of Existing Regulations & Proposed Ordinance
- D . CEQA Memo
- E . Public Comments

Napa County Planning Commission: Approve

Reviewed By: Charlene Gallina