

Additions are underlined.
Deletions are ~~struck through~~.
Revision markers are noted in left or
right margins as vertical lines.

ORDINANCE NO. 1438

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF NAPA COUNTY, STATE OF CALIFORNIA, AMENDING SECTIONS 18.108.010 (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

WHEREAS, 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 water, soils, fisheries, wildlife, important plant species and habitats; and

WHEREAS, in 1991, the Napa County Board of Supervisors (the Board) adopted the Conservation Regulations (County Code Chapter 18.108) which established procedures for review of earthmoving and grading projects that might have an effect on water quality

or other natural resource issues. The Conservation Regulations were intended to balance the desires for environmental and agricultural sustainability by minimizing erosion from construction and agricultural activities, protecting water quality against excessive soil loss, and guarding against the loss of economic productivity of the County's lands; and

WHEREAS, 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 control plan contents, and a list of additional watercourses; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, a referendum of Ordinance No. 1221 was placed on the March 2004 ballot, known as Measure P, and an initiative known as Measure O, which would have imposed even larger setbacks, also qualified for the 2004 ballot. Measure P passed by sixty-five percent of those who voted, and Measure O failed by seventy-three percent. As a result, no enhanced protections for streams were enacted; and

WHEREAS, 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 fifty-one percent of those who voted; and

WHEREAS, 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 regulations 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 of new regulations, with the public considering two initiatives and a referendum in the past 15 years; and

WHEREAS, over the last several years there has been much discussion and interest in the Conservation Regulations and whether additional measures should be included to further protect natural resources; and

WHEREAS, in the spring of 2017, the Board launched an 18-month public process to create a three-year strategic plan that would serve as a guide for decision-making on targeted community priorities; and

WHEREAS, on January 15, 2019, the Board adopted the Napa County Strategic Plan (2019-2022) and prioritized the following: (1) Strategic Action 12.A: Updating the Conservation Regulations to improve requirements for stream setbacks, to better protect riparian habitat while providing flexibility for farming; (2) Strategic Action 12.B: Improving tree preservation by adopting a separate ordinance increasing canopy protection and mitigation requirements throughout the unincorporated area; and (3) Strategic Action 12.E: Evaluating modification of buffers around municipal reservoirs; and

WHEREAS, the Board directed staff to schedule a workshop on January 29, 2019, for the Board to discuss stream and wetland setbacks, buffers for municipal reservoirs, tree protection and other amendments to the Conservation Regulations consistent with the prioritized Strategic Actions and to hear public comment on these topics; and

WHEREAS, on January 17, 2019, the Planning, Building and Environmental Services (PBES) Department notified stakeholders, members of the public, industry groups and persons who had requested special notice of the upcoming workshop scheduled before the Board on January 29, 2019; and

WHEREAS, on January 29, 2019, the Board held a workshop and received more than six hours of staff and public comment regarding additional watershed and tree protections, amendments to the Conservation Regulations and related matters. After considering all testimony and correspondence, the Board directed staff to prepare an ordinance that would implement the following: (1) prohibit new planting or structures on slopes of thirty percent or

greater, subject to certain existing exemptions; (2) create a minimum buffer of 200 feet around municipal reservoirs; (3) adopt the federal definition of wetlands or the state definition depending on when and if the definition is updated by the California State Water Resources Control Board prior to adoption of the new ordinance; (4) create a 50-foot setback around wetlands with provision for larger requirements; (5) amend the definition of streams to include Class III equivalent streams; (6) create a 35-foot setback from Class III equivalent streams with a provision for larger requirements; (7) maintain the existing definition of tree canopy; (8) increase required tree canopy retention from sixty percent to seventy percent and extend it from development in municipal reservoir watersheds only to development in all unincorporated areas; (9) extend the forty percent shrub canopy retention requirement for development in municipal watershed reservoirs to development in all unincorporated areas (excluding grassland retention outside of municipal watersheds); (10) increase the tree mitigation ratio from 2:1 to 3:1 and prioritize mitigation based on the highest biological value, on-site but allowed off-site, and may take place on slopes greater than thirty percent, but generally not in stream setbacks; (11) continue to exempt vineyard replanting in the same footprint from the new ordinance requirements; (12) continue to exempt fire management and forest management practices from the new ordinance requirements; (13) exempt reconstruction of residences lost to fire or other natural disasters (up to one hundred twenty-five percent of the original footprint) from the new ordinance requirements; (14) exempt new vineyards of five acres or less on slopes of less than fifteen percent, subject to criteria, from the new ordinance requirements; and (15) apply the new ordinance to incomplete applications as of the effective date and all new applications thereafter; and

WHEREAS, the County has an existing robust regulatory framework for reviewing all projects involving earthmoving activities or grading on slopes greater than five percent. These projects are evaluated for compliance with the Conservation Regulations and for consistency with the policies and goals in the Napa County General Plan (2008). The potential environmental impacts resulting from a project are also evaluated and disclosed under the California Environmental Quality Act (CEQA); and

WHEREAS, the Board finds that the Conservation Regulations have a long record of using science in an evidence-based approach to further land use policy and that the Regulations have ensured an unparalleled system of environmental protections for hillside areas, and created a rural landscape that rivals Napa County's 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 lead agency CEQA review of certain projects for the Board of Forestry, and the Green Certified program is a model for other regions; and

WHEREAS, the Board finds that the Conservation Regulations have been successful. They have contributed to protecting water quality, resulted in minimal habitat loss, and have allowed agriculture and rural land uses to expand. However, new challenges have arisen 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); and

WHEREAS, water affects the quality of life of every Napa County resident. The purpose of this ordinance is to provide greater environmental protection for natural environmental

resources including water quality, biological productivity, and the economic and environmental value of Napa County's streams, watersheds, wetlands, sensitive domestic water supply reservoirs, trees, and forests, and to safeguard the public health, safety and welfare of the County's residents. Protecting Napa County's water and natural resources is critical to the long-term health of its residents and their environment; and

WHEREAS, natural areas, trees, and vegetation along streams and wetlands and the County's forests, trees, and shrublands play a critical role in protecting County water resources by reducing erosion, alleviating flooding, filtering water for municipal, rural, and agricultural use, reducing water pollution, slowing runoff, capturing rainfall, providing important habitat for fish and wildlife, and improving water quality. This ordinance provides enhanced protection for these areas by preserving riparian habitat along stream corridors and wetlands and by protecting forest, oak woodland, tree canopy, and shrubland; and

WHEREAS, this ordinance will protect forests, oak woodlands, and other native trees by requiring the permanent preservation or replacement of lost trees or preservation of comparable habitat at specified minimum ratios and by establishing a framework for how preservation or replacement will be implemented so as to maximize environmental protections and benefits; and

WHEREAS, this ordinance and the policies that it implements are critical to the County's land use policy and will manage the County's hillside area and play a central role in determining the quantity and quality of the County's drinking water, ecological health, the scenic beauty that both residents and visitors enjoy, the future growth of the wine industry, and the County's ability to respond to future disasters; and

WHEREAS, on February 20, 2019 and March 6, 2019, the Napa County Planning Commission (the Planning Commission) held public hearings and received staff and public

comment regarding this ordinance and the proposed amendments to the Conservation Regulations; and

WHEREAS, on March 6, 2019, after considering all public and staff comment regarding this ordinance, the Planning Commission recommended that the Board of Supervisors adopt this ordinance; and

WHEREAS, on March 15, 2019, notice of a public hearing on this ordinance including the recommendations of the Planning Commission was provided in accordance with the noticing requirements of County Code Chapter 18.136.040; and

WHEREAS, on March 15, 2019, the PBES Department notified stakeholders, members of the public, industry groups and persons who had requested special notice of the hearing on this ordinance scheduled before the Board on March 26, 2019; and

WHEREAS, on March 26, 2019, the Board held a public hearing on the ordinance and received more than five hours of staff and public comment regarding additional watershed and tree protections, amendments to the Conservation Regulations and related matters. After considering all testimony and correspondence, the Board directed staff to revise the proposed ordinance, which had incorporated the Planning Commission's recommendations, as follows: (1) continue to allow earthmoving and grading on slopes over thirty percent with a use permit as set forth in the existing Conservation Regulations; (2) apply the seventy percent vegetation canopy cover retention requirement to the Agricultural Watershed (AW) zoning district and the municipal reservoir watersheds not Countywide; (3) in the AW zoning district, require preservation or replacement mitigation at a minimum ratio of 3:1 for removal of vegetation on slopes up to fifty percent; (4) allow preservation or replacement mitigation at a minimum 2:1 ratio within stream setbacks with a restoration plan approved by the PBES Director, or

alternatively, where the project includes a substantial public benefit as determined by the PBES Director; (5) allow the 50-foot wetland setback to be reduced in limited circumstances if recommended by a qualified biologist and approved by the PBES Director; (6) prohibit earthmoving within 500 feet of the Kimball Reservoir and Bell Canyon Reservoir, or within 200 feet of any other sensitive domestic water supply; (7) use the definition of shrubland, which includes chaparral and shrub, and delete the separate definitions of chaparral and shrub; (8) clarify that stream and municipal reservoir setbacks are measured from top of bank, not the ordinary high water mark; (9) clarify the fire exemption and revise the definition of defensible space; (10) identify Friesen Lakes as its own watershed and not part of the Lake Hennessey drainage; (11) add a definition of Track II vineyard replants and acknowledge that they are ministerial within the meaning of the CEQA as set forth under the existing Conservation Regulations; (12) exempt certain previously identified affordable housing sites from the new requirements of this ordinance; (13) exempt earthmoving activities associated with an agricultural project of five acres or less on slopes of less than thirty percent from the new requirements of this ordinance; and (14) correct some outdated references in the existing Conservation Regulations; and

WHEREAS, prior to the consideration and adoption of this ordinance, the noticing requirements of County Code Section 18.136.040 were complied with.

The Napa County Board of Supervisors, State of California, ordains as follows:

SECTION 1. Section 18.108.010 (Purpose.) of Chapter 18.108 (Conservation Regulations) of the Napa County Code is amended to read in full as follows:

18.108.010 - Purpose.

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 are also intended to provide greater environmental protection for natural environmental resources, particularly agricultural lands, forests, wildlife habitat, and water. These regulations have been developed in general accord with the policies and principles of the general plan, as specified in the ~~land-use element~~ agricultural preservation and land use element and the 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 and wetland areas and other natural habitat by controlling development near streams, ~~and rivers~~ and wetlands;
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 through vegetation retention and no-development buffers around municipal reservoirs; ~~and~~
7. Reduce the loss of vegetation; by increasing protections for vegetation canopy cover, and vegetation understory countywide, requiring minimum mitigation requirements and prioritizing areas eligible for mitigation.

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 planning 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.

SECTION 2. Section 18.108.020 (General provisions) of Chapter 18.108 (Conservation

Regulations) of the Napa County Code is amended to read in full as follows:

18.108.020 - General provisions.

A. Applicability. These regulations shall apply to all zoning districts within ~~the Napa County county of Napa~~ and to all uses that may involve earthmoving activity permitted in such

districts, with or without use permits, except as may be specifically provided in this chapter. In the event of conflicts among the regulations in this chapter and those elsewhere in this title, the regulations in this chapter shall prevail except where specifically noted otherwise in this chapter.

B. Relationship to the Review of Tentative Parcel Maps and Subdivision Maps. To the greatest extent feasible, no tentative map, parcel map or final map shall be approved which will create lots which would necessitate approval of exceptions to these regulations pursuant to Section 18.108.040. Where a division of land would require an exception to these regulations, precise building envelopes shall be specified on the tentative maps, parcel maps and final maps, to ensure that the maximum feasible conformance with this chapter can be attained and maintained over time.

C. Vegetation Retention Requirements. In the AW zoning district, a minimum of seventy percent vegetation canopy cover as configured on the parcel existing on June 16, 2016 shall be maintained as part of any use involving earth-disturbing activity. Two or more contiguous parcels held and maintained under common ownership or legal control at the time the plan is submitted may be considered combined and treated as one holding for purposes of compliance with the vegetation requirements in this section; provided that: (1) the total vegetation proposed for clearing would not be greater than what could be cleared if each contiguous parcel was treated an individual unit; (2) a report prepared by a qualified professional biologist is submitted to the director which concludes that the proposed vegetation clearing would not result in greater impacts to biological resources than what would occur if the combined parcels were treated as individual units; and (3) a perpetual protective easement or a perpetual deed restriction is recorded for each parcel describing the amount of vegetation to be retained on each of the parcels.

D. Vegetation Removal Mitigation. In the AW zoning district, the removal of any vegetation canopy cover shall be mitigated by permanent replacement or preservation of comparable vegetation canopy cover, on an acreage basis at a minimum 3:1 ratio unless otherwise set forth below. The location for replacement or preservation may be prioritized as follows:

1. Replacement or preservation shall first be accomplished on-site on lands with slopes of thirty percent or less and outside of stream and wetland setbacks.

2. If sufficient vegetation canopy cover cannot be reasonably accomplished under subsection (D)(1) of this section, on-site preservation or replacement may occur on slopes greater than thirty percent and up to fifty percent in areas that result in the highest biological and water quality protections as determined by the director.

3. If sufficient vegetation canopy cover cannot be reasonably accomplished under subsection (D)(1) or under subsection (D)(2) of this section, off-site replacement or preservation may occur if it is within the same watershed and the habitat is of the same or better quality as determined by the director.

4. Replacement of vegetation canopy cover may occur within stream setbacks at a minimum 2:1 preservation ratio where a restoration plan prepared by a qualified professional biologist has been approved by the director, and where consistent with Section 18.108.025 (D) as determined by the director.

5. Alternatively, the removal of any vegetation canopy cover may be mitigated by permanent replacement or preservation of comparable vegetation canopy cover, on an acreage basis at a minimum 2:1 ratio, where the project includes substantial public benefits as determined by the director.

6. Non-native species shall not be subject to the vegetation canopy cover replacement or preservation requirements under subsection (D) of this section.

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

SECTION 3. Section 18.108.025 (General provisions – Intermittent/perennial streams.)

of Chapter 18.108 (Conservation Regulations) of the Napa County Code is amended to read in full as follows:

18.108.025 - General provisions—Intermittent/perennial streams.

A. Applicability. The provisions of this section shall apply to those streams defined by Section 18.108.030. The final administrative determination of whether a particular watercourse is subject to the specific provisions of this section shall rest with the director ~~or designee~~.

B. Setback Requirements. In addition to any requirements of the floodway and floodplain regulations set forth in Title 16, construction of main or accessory structures, earthmoving activity, grading or removal of vegetation or agricultural uses of land (including access roads, avenues and tractor turnaround areas, or other improvements necessary for ongoing agricultural operations) as defined by Section 18.08.040 shall be prohibited within the stream setback areas established below unless specifically permitted in subsection (E) of this section, exempt pursuant to Section 18.108.050, or authorized by the commission through the granting of an exception in the form of a use permit pursuant to Section 18.108.040:

1. Setbacks for New Land Clearings for Agricultural Purposes. No ~~clearing of land clearing or earthmoving activities as defined in Section 18.108.030~~ for new agricultural uses as defined by Section 18.08.040 shall take place within the following minimum setbacks from streams:

Slope (Percent)	Required Setback
< 1	35 feet
1 - 5	45 feet
5 - 15	55 feet
15 - 30	65 feet
30 - 40	85 feet
40 - 50	105 feet
50 - 60	125 feet
60 - 70	150 feet

Ephemeral or intermittent streams that do not meet the criteria for a stream as defined in Section 18.108.030 shall have a minimum 35-foot setback.

~~For the purposes of this section, a new agricultural use shall be defined as the use of a parcel or portion thereof for purposes defined in Section 18.08.040 where the parcel had not been used in a manner authorized by Section 18.08.040 during the twenty four months immediately preceding the effective date of the ordinance codified in this chapter.~~

2. Setbacks for Existing Vineyard Use or Other Permanent Agricultural Crop Use of Land.

a. Except as provided in subsection (B)(2)(b) of this section, the stream setbacks established in subsection (B)(1) of this section shall also be applicable to the replanting of existing vineyards as defined in Section 18.108.030 or other permanent agricultural crop.

b. Stream setbacks shall not be required for the replanting of existing legally planted vineyards or other permanent agricultural crops if the replanting will occur in the same footprint, any recontouring or re-engineering of existing terraces is necessary to correct existing erosion or water quality problem, and no grading is proposed that requires a permit pursuant to Section ~~3306~~ J103.1 of ~~Chapter 33~~ Appendix J of the California Building Code.

3. The stream setbacks established in this chapter shall be measured from the top of the bank on both sides of the stream as it exists at the time of replanting, redevelopment, or new agricultural activity.

4. In the case of those specific streams identified in Resolution No. 94-19, the stream setbacks shall be the distances set forth in subsections (B)(1), (2) and (3) of this section or the vegetation outboard dripline ~~of upper canopy vegetation~~ at the time of replanting, redevelopment, or new agricultural activity, whichever is greater.

C. Required Setbacks for Residential Development. All new residential and nonagricultural structures shall comply with the stream setbacks established by subsection (B)(1) of this section.

D. Revegetation Within Required Setbacks. Revegetation of portions of the streamside setbacks may be required by the director ~~or designee~~ as a part of an erosion-control plan ~~or NPDES program~~ to restore areas where vegetation has been removed as a result of existing or past land use activities. The extent of revegetation shall be based on field review, consultation with the Napa County Flood Control and Water Conservation District, Napa County Resource Conservation District (RCD) and the California Department of Fish and ~~Wildlife Game~~ (CDFWG) to enhance water quality and minimize sedimentation of the affected stream.

E. Uses Permitted Within Required Stream Setbacks. Except to the extent inconsistent with the provisions of Title 16 pertaining to floodway and floodplain regulations, only the following uses shall be permitted within the required stream setbacks, unless specifically authorized by the Planning Ceommission through the use permit process:

1. Maintenance of existing legal vineyards or other agricultural crop, including the prudent use of fertilizers and such pesticides, herbicides, insecticides, fungicides or other techniques for the control of insects, weeds, diseases and pests that are necessary to maintain the productivity of croplands;

2. Use and maintenance of existing tractor turnaround areas, agricultural roads, recreational roads, trails and crossings;

3. Activities which are consistent with agricultural practices in the area and which are intended to protect the security and safety of the surrounding area including, but not limited to, fire, flood protection and bank stabilization, weed control, trespass and nuisance protection;

4. Development and maintenance of those water resources, including pumps, that are necessary for agricultural and domestic purposes;

5. Maintenance and replacement of existing public works facilities such as pipes, cables, culverts and the like;

6. Maintenance of existing or restoration of previously dredged depths in existing flood control projects and navigational channels authorized by a permit issued by the director of public works pursuant to Title 16;

7. Construction of nonmotorized vehicular and pedestrian trails;

8. Construction of new public works projects such as drainage culverts, stream crossings when such projects are specifically authorized and permitted by existing state, federal or local law;

9. Construction activities undertaken by or under the auspices of a federal, state or local agency to preserve or restore existing habitat areas;

10. Removal of vegetation as authorized by the director ~~or designee~~ to alleviate an existing hazardous condition;

11. Other uses similar to the foregoing found by the director ~~or designee~~ to be consistent with the intent of this chapter; and

12. Installation of stream crossings, recreational roads, and equestrian and nonmotorized trails in accordance with appropriate permits from other state, federal and local use permit requirements when it can be determined by the director ~~or designee~~ that the least environmentally damaging alternative has been selected as a part of an approved project.

F. Construction Fencing to Protect Stream Setbacks, Wetlands and Other Features. Where appropriate, the director may require an applicant to install and maintain construction fencing, or other means of demarcation acceptable to the director, in a manner that protects stream setback areas, wetlands, wildlife corridors, sensitive areas and other protected features from intrusion or disturbance during land clearing and earth-disturbing activities.

SECTION 4. A new Section 18.108.026 entitled “General provisions – Wetlands” is added to Chapter 18.108 (Conservation Regulations) of the Napa County Code to read in full as follows:

18.108.026 - General provisions – Wetlands.

Construction of main or accessory structures, earthmoving activity, land clearing or agricultural uses of land as defined by Section 18.08.040 shall be set back 50 feet from the delineated wetland boundary. In limited circumstances, the 50-foot setback may be reduced if recommended by a qualified professional biologist and approved by the director.

SECTION 5. Section 18.108.027 (Sensitive domestic water supply drainages.) of

Chapter 18.108 (Conservation Regulations) of the Napa County Code is amended to read in full as follows:

18.108.027 - Sensitive domestic water supply drainages.

A. Applicability. The provisions of this section shall apply in sensitive domestic water supply drainages.

B. Vegetation Clearing. A minimum of ~~sixty-seventy~~ percent of the tree canopy cover on the parcel existing on June 16, 1993 along with any vegetation understory-~~vegetation~~, or when vegetation consists of shrub and brush without tree canopy, a minimum of forty percent of the shrub, brush and associated annual and perennial herbaceous vegetation shall be maintained as part of any use involving earth-disturbing activity. Two or more contiguous parcels held and maintained under common ownership or legal control at the time the plan is submitted may be considered combined and treated as one holding for purposes of compliance with the vegetation retention requirements in this section; provided that: (1) the total vegetation proposed for clearing would not be greater than what could be cleared if each contiguous parcel was treated as an individual unit; (2) a report prepared by a qualified professional biologist is submitted to the director which concludes that the proposed vegetation clearing would not result in greater impacts to biological resources than what would occur if the combined parcels were treated as individual units; and (3) ~~a memorandum of understanding a perpetual protective easement or perpetual deed restriction or similar document in a form acceptable to county counsel~~ is recorded for each parcel describing the amount of vegetation to be retained on each of the parcels.

C. Winter Shut-Down. All earth-disturbing activities on any slopes (pursuant to subsection (L) of Section 18.108.070) shall be limited to the period of April 1st through September 1st of each year except earth-disturbing activities that are in compliance with the NPDES program administered by the planning department ~~of public works~~ shall be limited to the period of April 1st through October 1st of each year. No earth-disturbing activities other than installation of winterization measures shall take place during other times of the year. All winterization measures shall be in place by September 15th of any given year or by October 15th for earth-disturbing activities that are in compliance with the NPDES program. However, earth-disturbing activities may be authorized by the director during the winter shut-down period, using the procedures specified for other watersheds in subsection (L) of Section 18.108.070. The applicable water purveyor shall be notified in writing at least seven calendar days prior to the director's decision to grant or deny a grading extension to allow the purveyor to comment on the request.

D. Drainage Facilities. Concentration of runoff shall, wherever feasible, be avoided. Runoff shall instead be spread in small incremental doses into relatively flat buffer areas. Those drainage facilities and outfalls that unavoidably have to be installed shall be sized and designed to handle the runoff from a one hundred-year storm event without failure or unintentional bypassing. Outlets shall be protected against erosion in the one hundred-year storm event.

E. Notice Required. The director shall provide notice to the owner/operator(s) of a public-serving water supply system(s) located in a sensitive domestic water supply drainage of each erosion control plan filed in their drainage. Said notice shall include a copy of the plan submitted and shall provide twenty-one days for a response. If the owner/operator(s) submits

credible evidence within this time period that the delivery of sediment or other pollutants into their reservoir(s) from the drainage will be increased by more than one percent on an individual project basis or by more than ten percent on a cumulative basis, the subject erosion control plan shall not be approved until a public hearing on the matter has been held before the commission and a use permit has been issued.

F. Geotechnical Report Required. A report prepared by a qualified professional specifying the depth and nature of the soils and bedrock present and the stability, both current and projected, of the area potentially effected shall be submitted by the property owner at the time of application for any project located in a sensitive domestic water supply drainage.

G. Setbacks. No earthmoving activities shall take place within 500 feet of the Kimball Reservoir and Bell Canyon Reservoir, or within 200 feet of any other sensitive domestic water supply. The setback shall be measured from the top of bank of the municipal reservoir.

SECTION 6. Section 18.108.030 (Definitions.) of Chapter 18.108 (Conservation Regulations) of the Napa County Code is amended to read in full as follows:

18.108.030 - Definitions.

As used in this chapter:

-“Decorative landscaping” means vegetation, plantings, shrubs, trees and the like established and maintained in proximity to a residential structure, landscape structure or related access road for ornamental or aesthetic purposes. Decorative landscaping does not include agricultural crops established or maintained for commercial use.

“Defensible space” means that area described in the Napa County Defensible Space Guidelines which is adjacent to each side of a building or structure and must be cleared of all brush, flammable vegetation, or combustible growth, subject however to the exceptions set forth in the Napa County Defensible Space Guidelines referenced in County Code Chapter 8.36.

“Delineated wetland boundary” means precise edge of a wetland identified by a wetland delineation study or map.

“Director” means the director of the planning, ~~building and environmental services~~ department ~~or the director’s designee, except for matters related to the NPDES program it shall mean the director of the public works department.~~

“Drainage ditch” means a channel constructed solely for the purpose of providing drainage for agricultural use. A drainage ditch is not a stream as that term is defined in this section.

“Driveway” means a privately owned and maintained access road connecting a parcel to a public or private roadway.

“Earthmoving or earth-disturbing activity” means any activity that involves vegetation clearing, grading, excavation, compaction of the soil, or the creation of fills and embankments to prepare a site for the construction of roads, structures, landscaping, new planting, and other improvements (including agricultural roads, and vineyard avenues or tractor turnaround areas necessary for ongoing agricultural operations). It also means excavations, fills or grading which of themselves constitute engineered works or improvements.

“Environmental Resources Mapping System” means a collection of printed maps, interactive GIS-based (geographic information system) computer maps, and the supporting data

layers and related information maintained by Napa County delineating, among other things, environmental resources and hazards within the county.

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

“Erosion” means the wearing away of the ground surface as a result of the movement of wind or water.

“Erosion hazard area” means those portions of parcels of land having slopes over five percent.

“Failure” or “failed” with respect to an erosion control measure means that the measure has operated in the past or is expected to operate in the future in such a manner that erosion and/or resultant sedimentation have or will be increased above design rates or that flows exceed the capacity of the measure and bypassing has or will occur.

“Grading” shall mean any stripping, cutting, filling, contouring, recontouring or stockpiling of earth or land, including the land in its cut or fill condition.

“Habitat” means a physical area characterized by a unique assemblage of species that constitute the biotic community that utilizes and/or inhabits the area and which provides some subset of essential or preferred ecological and biological needs (i.e., reproduction, feeding/foraging, cover/shelter) for each of those species.

“Habitat of limited distribution” means a vegetation type as delineated in the Napa County Environmental Resources Mapping System that covers less than approximately 0.1% of the county (i.e., 500 acres).

“Hydrophilic vegetation” means vegetation that grows in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content (i.e., plants typically found in wet habitats).

“Improvement” means any man-made, immovable item which becomes part of, placed on, or affixed to, a parcel of land.

“Land clearing” means the removal of tree canopy, understory or herbaceous vegetation down to bare soil, by any method.

“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.

“Major storm event” means a two-year or larger storm (i.e., a storm with a fifty percent or less probability of occurring in any given year).

“Municipal reservoir” or “sensitive domestic water supply” means any of the following: Kimball Reservoir; Rector Reservoir; Milliken Reservoir; Bell Canyon Reservoir; Lake Hennessey; Friesen Lakes; Lake Curry; and Lake Madigan.

“NPDES program” means ~~earth-disturbing activities that are subject to~~ the runoff control requirements that earthmoving activities are subject to and administered by the planning department ~~of public works~~ as outlined in the “Napa County Construction Site Runoff Control Requirements” adopted by the Napa County Board of Supervisors on December 12, 2006, or as may be amended, and the Napa Countywide Stormwater Pollution Prevention Program December 2014, or as may be amended.

“One hundred-year storm” means a storm with a one percent probability of occurring in any given year.

“Planning department” or “department” means the Planning, Building and Environmental Services Department.

“Perpetual protective easement” means an easement preserving and conserving the preserved vegetation canopy cover and vegetation understory. The protective easement shall be dedicated to the county, a public agency or a qualified nonprofit organization approved by the county, and shall be in a form acceptable to county counsel and recorded prior to commencement of earthmoving activity.

“Qualified professional biologist” means an individual possessing academic and professional experience in biological sciences and related resource management activities who is able to identify biotic resources and can recognize and is familiar with the habitats and behaviors of listed species that may be present in the county. The individual must have specialized skills and appropriate licenses/permits/certifications specific to the study being conducted (e.g., general botanical, wetland, and wildlife habitat knowledge for biotic resource and stream setback assessments, and certification by the U.S. Army Corps of Engineers in wetland delineation for wetland assessments and wetland delineation studies or maps).

“Resolution” means any resolution duly adopted by the Napa County Board of Supervisors.

“Riparian vegetation” means vegetation commonly occurring adjacent to or within streams and watercourses or along their banks including, but not limited to, such plants as willows, cottonwoods and their associated understory vegetation.

“Sensitive domestic water supply drainage” means any of the following drainages as depicted on the sensitive domestic water supply drainages map(s) maintained and hereafter modified from time to time as necessary by the director:

1. Kimball Reservoir drainage;
2. Rector Reservoir drainage;
3. Milliken Reservoir drainage;
4. Bell Canyon Reservoir drainage;
- ~~5.~~ 5. Lake Hennessey drainage; ~~including~~
- ~~5.6.~~ 6. Friesen Lakes drainage;
- ~~6.7.~~ 7. Lake Curry drainage; and
- ~~7.8.~~ 8. Lake Madigan drainage.

“Roadway” means any surface designed, improved or ordinarily used for vehicle travel that is either publicly owned and maintained, or privately owned and maintained, but dedicated for public use.

“Shrublands vegetation” means areas where shrubs dominate, including chaparral, chenopod scrubs, coastal scrubs, and desert scrubs.

“Slope” means the inclination of the terrain calculated in accordance with the methodology set forth in Resolution No. 94-19, which is incorporated herein by reference.

“Special-status species” means plants and animals that are legally protected under the federal Endangered Species Act (ESA), the California Endangered Species Act (CESA), or other federal, state or local regulations.

“Stream” means any of the following:

1. A watercourse designated by a solid line or dash and three dots symbol on the largest scale of the United States Geological Survey maps most recently published, or any replacement to that symbol;

2. Any watercourse which has a well-defined channel with a depth greater than four feet and banks steeper than 3:1 and contains hydrophilic vegetation, riparian vegetation or woody vegetation including tree species greater than ten feet in height;

3. Those watercourses listed in Resolution No. 94-19 and incorporated herein by reference.

“Structure” means anything which is built or constructed, or any piece of work artificially built up or composed of parts joined in some definite manner whether installed on, above, or below the surface of the land.

“Track II vineyard replants” means vineyard replanting that meets the criteria of Sections 18.108.055(A), 18.108.080(D)(2)(a)(ii), and 18.108.090 of this chapter.

“Vegetation canopy cover” means the biotic communities classified as oak woodland, riparian oak woodland, or coniferous forest based on the current Manual of California Vegetation (MCV) and as described in the Napa County Baseline Data Report (2005 or as amended). crown area of a stand of trees (i.e., upper story vegetation) in a natural stand of vegetation. For the purposes of this chapter, canopy cover is the collective cover of a grouping of trees viewed from an aerial photograph of the latest edition on file with the department, where the tree stand is continuous. Single trees are not considered canopy cover.

“Vegetation outboard dripline” means the furthestmost edge of riparian vegetation, including the dripline of the canopy cover of woody vegetation of a stream visible on the latest edition of aerial photographs on file with the department or as determined by a field inspection conducted by the director ~~or designee~~.

“Vegetation understory” means the biotic communities classified as chaparral/scrub, shrub land, grassland, rock outcrop or vegetated portions of wetlands based on the current Manual of California Vegetation (MCV) -and as described in the Napa County Baseline Data Report (2005 or as amended). shrub or brush vegetation within a natural stand of vegetation that commonly grows to a height below established tree levels, and also includes associated annual and perennial herbaceous vegetation.

“Vineyard replanting” shall mean vine removal, ripping, recontouring or grading or any installation of erosion control measures and replanting of vines where the removal of vines began no more than six years prior to submittal of vineyard replanting program or erosion control plan to the department.

“Watershed” means a defined region draining into a river, river system, or other body of water.

“Wetland” means those areas that meet either the federal definition of wetlands, as set forth in 33 CFR § 328.3 as that section may be amended from time to time, or the State of California definition of wetland as adopted by the State Water Resources Control Board as a State Wetland Definition, as that definition may be amended from time to time. In the event of a conflict between the state or federal definition, whichever definition is more protective shall control.

“Wetland delineation map or study” means a map or study prepared by a qualified professional biologist to identify and precisely map the boundary of wetlands on a site.

“Winter shut-down period” shall mean between October 15 and April 1, except within sensitive domestic water supply drainages, the winter shut-down period shall mean between September 1 and April 1 pursuant to subsection (C) of Section 18.108.027.

SECTION 7. Section 18.108.040 (Exceptions.) of Chapter 18.108 (Conservation Regulations) of the Napa County Code is amended to read in full as follows:

18.108.040 - Exceptions in the form of a use permit.

Upon application by the landowner or leaseholder of a site, an exception in the form of a use permit may be granted to any of the requirements of this chapter other than subsection (B) of Section 18.108.060 if, after a public hearing, findings can be made that:

- A. For structural/road development projects, all of the following are true:
 1. Roads, driveways, buildings and other man-made structures have been designed to complement the natural landform and to avoid excessive grading;
 2. Primary and accessory structures employ architectural and design elements which in total serve to reduce the amount of grading and earthmoving activity required for the project, including the following elements:
 - a. Multiple-floor levels which follow existing, natural slopes,
 - b. Foundation types such as poles, piles, or stepping levels which minimize cut and fill and the need for retaining walls, ~~-and~~
 - c. Fence lines, walls, and other features which blend with the existing terrain rather than strike off at an angle against it;
 3. The development project minimizes removal of existing vegetation, incorporates existing vegetation into the final design plan, and replacement vegetation of appropriate size, quality and quantity is included to mitigate adverse environmental effects;
 4. Adequate fire safety measures have been incorporated into the design of the proposed development;
 5. Disturbance to streams and watercourses shall be minimized, and the encroachment if any, is the minimum necessary to implement the project;
 6. The project does not adversely impact threatened or endangered plant or animal habitats as designated by state or federal agencies ~~with jurisdiction and or~~ identified as special status species, sensitive biotic communities or habitats of limited distribution ~~in the county's~~ Baseline Data Report (2005 or as amended) or eEnvironmental Resources Mapping System; sensitivity maps;
 7. An erosion control plan, or equivalent NPDES stormwater management plan, has been prepared in accordance with Section 18.108.080 and has been approved by the director; and or designee.
 8. The proposed development does not result in a net increase in soil loss and runoff.
- B. For agricultural projects and related agricultural roads (as ~~defined-determined~~ by the planning Napa County ~~department of public works~~), all of the following are true:
 1. The ~~erosion rate that results in two years from completion of the~~ proposed agricultural development does not result in a net increase in soil loss and runoff; exceed the soil tolerance factor approved by the soil conservation service for the soil type, topography and climatic conditions in which the project is located;

2. An erosion control plan has been prepared in accordance with Section 18.108.080 and has been approved by the director ~~or designee~~;
3. Impacts on streams and watercourses are minimized, and adequate setbacks along these drainageways are or will be maintained; and
4. The project does not adversely impact threatened or endangered plant or animal habitats as designated by state or federal agencies or identified as special-status species, sensitive biotic communities or habitats of limited distribution on the county's Baseline Data Report (2005 or as amended) or Environmental Resources Mapping System.

SECTION 8. Section 18.108.050 (Exemptions.) of Chapter 18.108 (Conservation

Regulations) of the Napa County Code is amended to read in full as follows:

18.108.050 - Exemptions.

This chapter shall not apply to the following activities, whether or not permits are presently required therefor, which this board hereby finds have less potential to significantly alter the present environment; are preempted by state law; or are publicly-supervised projects necessary for the protection of the immediate health and safety of the residents of the county of Napa:

A. Additions to existing legally constructed single-family residences or other structures allowed without a use permit where the proposed addition is attached and when no earthmoving or grading is required with the exception of that necessary to install a foundation system and the location of the project has not been identified ~~in~~ on the Napa County ~~e~~Environmental Resources Mapping System ~~sensitivity maps~~ as a landslide area or within required stream, wetland or municipal reservoir setbacks as provided in subsection (B) of Section 18.108.025, Section 18.108.026 and subsection (G) of Section 18.108.027;

B. Land Cclearing ~~of vegetation, earthmoving,~~ and/or grading in connection with the construction, remodeling or other improvements of a single-family residence and/or associated accessory structures, where application for all permits required for such activities for that project have been received on or before May 13, 1991 by the county departments responsible for the issuance of such permits;

C. Land Cclearing, earthmoving ~~of vegetation~~ 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 ~~or his designee~~, and temporary erosion control measures are installed by the winter shut-down period applicable to the project site; October 15th if planting and or landscaping continues beyond October 15th;

D. Maintenance of private access roads, such as resurfacing (rock or asphalt), cleaning inside ditches and culvert inlets, removing or installing waterbars, construction and maintenance of all public roads and any other public facilities, including flood control facilities, required by and completed under the direction of any public agency;

E. Land Cclearing ~~of vegetation, construction clearing, construction~~ of improvements, grading, and/or earthmoving activity for projects specifically authorized by any use permit or other

administrative or discretionary permit, including small winery exemptions, issued by the ~~county of Napa~~ Napa County or Napa County Flood Control and Water Conservation District ~~water conservation and flood control district~~ prior to June 11, 1991; provided that this exemption shall continue to apply only to such areas for which an approved erosion control plan is on file with the department or erosion control measures were included in the use permit or other permit, and this exemption affects only those areas identified in the approved plan or permit;

F. ~~Land Clearing, of Clearing, of vegetation~~ earthmoving and/or grading necessary for the construction of: (1) any septic or wastewater system, or water well; (2) other facilities necessary for the protection of public health; (3) in connection with correction of any problem involving hazardous wastes or materials, where such construction or corrective activity is required by, and completed under the supervision of the department to comply with federal, state or local standards; and (4) minor trenching (so long as such work is conducted and restored outside the winter shutdown period and outside the required stream setbacks);

G. ~~Land Clearing, and earthmoving and~~/or grading necessary for preliminary testing for site suitability for septic systems or water wells, where such testing is approved by the department and does not involve the construction of roads for access to the parcel or testing sites and disturbed areas are revegetated or otherwise treated for erosion control;

H. Creation and/or maintenance of defensible space for legally constructed structures or the implementation of fire management strategies firebreaks required by, and completed under the ~~direction~~ guidance of the California Department of Forestry and Fire Protection; ~~;~~

I. ~~Land Clearing,~~ earthmoving and/or grading specifically authorized by a state timber harvesting permit where erosion measures were included in the project as necessary; provided, however, that this exemption shall not apply if a state timber conversion permit is a part of or included as a component of the state timber harvesting permit;

J. ~~Land Clearing, earthmoving of vegetation~~ and/or grading pursuant to a permit other than a timberland conversion permit or a notice of less than three-acre conversion exemption (or similar exemption process) issued by: (1) a state or federal agency in compliance with applicable provisions of state or federal laws or regulations where adequate erosion control measures as determined by ~~the county of~~ Napa County have been incorporated as part of the project or (2) by a city in relation to city-owned property exempt from the zoning regulations of ~~the county of~~ Napa County. This exception only applies to those portions of the project specifically authorized by the state or federal permit involved. Components or parts of the project not specifically authorized by a state or federal permit shall be subject to this chapter;

K. ~~Land Clearing, earthmoving of vegetation~~ and/or grading in connection with the abatement of a public nuisance as determined by a court of competent jurisdiction and then only in accordance with recommendations of, and under the advisory supervision of, the Natural Resources Conservation Service and California Department of Fish and ~~Game~~ Wildlife;

L. Clearing of temporary erosion control cover crops and/or grading activities, but only in conjunction with the planting of agricultural crops or installation of erosion control measures on land cleared of vegetation and/or graded prior to May 13, 1991; provided that this exemption shall continue to apply only to such areas for which an approved erosion control plan is on file with the department or the soil conservation service and applies only to areas prepared pursuant to the approved plan;

M. Completion of multi-year phased agricultural, vegetation and/or grading activities approved pursuant to Ordinances 956, 957, 962, 965 or 987 and “used” pursuant to Section 18.124.080 of the Napa County Code so long as the approved plans substantially conform with the erosion control standards approved through the adoption of the ordinance codified in this chapter;

N. ~~Activities which are consistent with existing agricultural practices, including but not limited to, post hole digging, fire protection and prevention, and weed control [Reserved.];~~

O. Maintenance operations for ongoing agricultural activities, including, but not limited to, maintenance of existing roads, existing erosion and sediment control devices, and activities involving minimal soil disturbance such as discing, spraying, fertilizer applications, shallow ripping for root stimulating, trellising, installation of irrigation, fencing, post hole digging, weed control and minor trenching for repair work;

P. Earthmoving activity associated with mining and mining-related activities conducted pursuant to and in compliance with an approved surface mining and reclamation permit (Chapter 16.12);

Q. Earthmoving activity and construction of improvements authorized by a final map or development agreement approved and recorded by ~~the county of~~-Napa County after January 1, 1986, and before the effective date of the ordinance codified in this chapter;

R. Earthmoving activity and construction of improvements authorized by use permit, site plan approval and building permit approval where provisions for erosion control were included as part of the approved permit for projects located within the industrial park or the general industrial zoning districts;

S. Replanting of existing legally planted vineyards when the area to be replanted involves less than one acre, and the footprint of the replanting area does not change, and any recontouring, grading or re-engineering is necessary to correct existing erosion or water quality problem, regardless of slope percent of the area to be replanted;

T. Repair and maintenance of existing water storage facilities when no permit is required from any federal, state or local agency;

U. ~~Land Clearing, earthmoving of vegetation~~ and/or grading necessary for the construction of a water tank in connection with an existing dwelling where no construction of a roadway is necessary and the slope is fifteen percent or less; and

V. Reconstruction of existing legally constructed structures lost to fire or other natural disaster when the rebuild area of disturbance does not exceed 125% of the original footprint, does not encroach any further into the stream setback area than the original footprint and any recontouring, grading, earthmoving or re-engineering is necessary to correct existing erosion or water quality problem, regardless of slope percent of the original footprint. This rebuild exemption may only be used once.

SECTION 9. Section 18.108.060 (Slope regulations – Prohibited uses.) of Chapter 18.108 (Conservation Regulations) of the Napa County Code is amended to read in full as follows:

18.108.060 - Slope regulations—Prohibited uses.

A. Uses Prohibited Without an Exemption or an Exception. To minimize the risks associated with project development in areas characterized by steep slopes, high erosion potential, unstable soils, combustible vegetation and other sensitive environmental resource areas as defined by Section 18.08.270 or designated in the conservation element, and the recreation and open space element and the ~~seismic and~~ safety elements of the general plan, no construction, improvement, grading, earthmoving activity or vegetation removal associated with the development or use of land shall take place on those parcels or portions thereof generally having a slope of thirty percent or greater as defined in Section 18.108.060(BC) unless exempt under Sections 18.108.050 or 18.108.055 or unless an exception through the use permit process is granted pursuant to Section 18.108.040 ~~(A)~~.

B. Uses Prohibited Without an Exemption. No structure, improvement, grading, earthmoving activity, vegetation removal or development shall be permitted on a slope greater than fifty percent unless exempt under Section 18.108.050 or 18.108.055 of this chapter.

BC. Slope determination methodology. The percent slope for a proposed project is described as the ratio of the vertical distance to the horizontal distance, or the elevation change in feet divided by distance in feet measured perpendicular to the contours. The percent slope of the development area described herein is the natural slope of the existing terrain, not the finished or proposed percent slope resulting from the project.

1. Structural Development.

a. The percent slope of the structural development area is measured perpendicular to the contours across the building pad and driveway when the driveway is less than 50 feet in length. The slope determination shall be made by evaluating a plot plan identifying contour intervals of two (2) to five (5) feet, with a scale of 1"=20' or better.

b. When a driveway exceeds 50 feet in length, the slope of the structural development area is measured perpendicular to the contours across the foundation and area of ground disturbance around the foundation of the proposed structure. The driveway slope shall be measured separately as identified in subsection (BC)(2) of this section.

2. Road/Access Development. The analysis for slope determination for grading involving a roadway longer than 50 feet shall be determined using the following criteria and shall be based on mapping with a maximum scale of 1" = 50' with contour intervals of five (5) feet or less.

a. The approximate centerline of the proposed roadway shall be stationed with 0+00 being assigned to the point where grading commences.

b. Cross sections shall be taken at each station 100 feet apart, i.e. 1+00, 2+00 etc., extending to the outer limits of grading. When the road is less than 200 feet long, then three equally spaced cross sections shall be taken. The axis of each cross section shall be perpendicular to the contours pertinent to the section. These sections shall be drawn to a scale of 1" = 10' horizontal and vertical. An average cross section slope shall be calculated by dividing the difference in elevation of the cut and/or fill catch points by the intervening distance.

c. The average slope of the project is to be determined by averaging all of the cross sections excluding those measured at less than five percent slope. The average slope shall not exceed thirty percent and no more than three (3) cross sections shall exceed fifty percent.

3. General Land Clearing. When earth-disturbing activities, land clearing or grading involves 30 acres or less, the slope of contiguous lands (i.e., not separated by streams, roads, or noncleared areas) is measured from a map with a scale of 1"=100' (maximum) with contour

intervals of 20 feet, or at a contour interval acceptable to the director. When earth disturbing activities, grading or removal of vegetation involves greater than 30 acres, a contour interval of two (2) feet in the Napa River Watershed and five (5) feet in other areas shall be applied. If any portion within the contiguous area to be cleared is greater than thirty percent slope, then the following standards apply:

a.- If the total area of any contiguous earthmoving, grading or land clearing is larger than one (1) acre, subareas up to one acre in size in the thirty to fifty percent slope range may be cleared subject to administrative approval by the director. No earthmoving activities, grading or land clearing exceeding one (1) acre shall occur on slopes greater than thirty percent.

b. If the total contiguous area to of proposed earthmoving, land clearing and/or grading is less than one (1) acre, no more than 1/3 (one third) of the project area to be cleared or graded may exceed thirty percent slope, subject to administrative approval by the director.

SECTION 10. Section 18.108.070 (Erosion hazard areas-Use requirements.) of Chapter 18.108 (Conservation Regulations) of the Napa County Code is amended to read in full as follows:

18.108.070 - Erosion hazard areas—Use requirements.

All uses not otherwise prohibited within erosion hazard areas shall comply with all of the following requirements:

A. Erosion Control Measures. No otherwise permitted earthmoving activity, grading, improvement, or construction of a structure for nonagricultural activity shall commence until the activity is in compliance with the requirements of the NPDES program. The project shall be submitted to the applicable lead department and approved by the planning director ~~of public works~~ or designee.

B. Erosion Control Plans. No otherwise permitted agricultural earthmoving activity, grading, or improvement, shall commence on slopes over five percent until an erosion control plan which complies with the requirements of Section 18.108.080 has been submitted to and approved by the director ~~or designee~~.

C. Vineyard Replanting Programs. No vineyard replanting on slopes over five percent shall commence until a vineyard replanting program which complies with the requirements of Section 18.108.090 or, if found necessary, an erosion control plan which complies with Section 18.108.080 has been submitted and approved by the director ~~or designee~~.

D. Minimization of Erosion Potential. Site development shall be conducted in a manner, based upon the topography and soil type, which creates ~~the least potential for no net increase in~~ erosion.

E. Phasing. The site shall be developed in phases of workable size which can be completed in a single construction season. Vineyard or other agricultural crop development shall comply with the phasing identified in an approved erosion control plan on file with the director. Erosion and sediment control measures shall be coordinated with the sequence of grading, development, and construction operations so as to avoid leaving any portion of a disturbed site unprotected from erosion during the winter shutdown period.

F. **Vegetation Removal.** Vegetation removal shall be limited to the minimum amount necessary to accommodate the project and then only if in compliance with the NPDES program or as indicated on the approved erosion control plan or vineyard replanting program or grading or plot plan if standard erosion control measures were applied. The project shall not adversely impact threatened or endangered plant or animal habitats as designated by state or federal agencies or identified as special-status species, sensitive biotic communities or habitats of limited distribution in the county's Baseline Data Report (2005 or as amended) or Environmental Resources Mapping System. ~~affect sensitive, rare, threatened, or endangered plants or animals or their habitats as designated by state or federal agencies with jurisdiction, and as mapped on the county's environmental sensitivity maps.~~

G. **Temporary Measures.** As the permanent vegetation cover is maturing, temporary vegetation or other erosion control measures sufficient to stabilize the soil shall be established on all disturbed areas as needed as each stage of grading is completed. New planting shall be protected by using such measures as jute netting, straw mulching and fertilizing or other means which are specified in the approved erosion control plan or vineyard re-planting program or grading or plot plan pursuant to subsection (A) of Section 18.108.070.

H. **Permanent Measures.** Where building permits are required, final clearance shall not be issued until all permanent erosion control measures have been installed which are required by the approved plans pursuant to subsection (A) of Section 18.108.070.

I. **Maintenance of Erosion Control Facilities.** All required erosion control facilities, both temporary and permanent, shall be maintained in accordance with the approved plans or vineyard replanting program pursuant to subsection (A) or (B) of Section 18.108.070.

J. **Completion Deadline for Drainage Facilities and Sediment Retention Devices.** All drainage facilities and sediment retention devices specified in the approved plans or vineyard replanting program pursuant to subsection (A) or (B) of Section 18.108.070 shall be completed by the grading deadline, pursuant to subsection (L) of Section 18.108.070, of the calendar year in which the erosion control plan is approved or clearing and/or grading activity has commenced, whichever is later.

K. **Deadline for Winterization and Temporary Measures.** Notwithstanding any other provision of this chapter, grading activity associated with "winterization" and installation of temporary erosion control measures specified on the approved plans or vineyard replanting program pursuant to subsection (A) or (B) of Section 18.108.070, other than sediment retention devices, may continue until the grading deadline of any calendar year and may occur after such date if approval by the director is granted.

L. **Grading Deadline (Winter Shutdown).** Grading and earthmoving activities on slopes greater than five percent shall be limited to the period between April 1 and October 15 (or April 1 to September 1 pursuant to subsection (C) of Section 18.108.027 for work on any slopes within sensitive domestic water supply drainages) except that earthmoving or grading activity may occur during the winter shutdown period, providing it is in compliance with the NPDES program or an agricultural erosion control plan, vineyard replanting program or erosion control measures have been approved by the applicable director which specifically addresses grading and earthmoving activities during the winter shutdown period, and further provided that adequate winterization (temporary) erosion control measures have been installed before other work on the project in accordance with the approved plan or vineyard replanting program pursuant to

subsection (A) or (B) of Section 18.108.070, and field checked by the director ~~or designee~~. The director, in approving plans involving grading or earthmoving activities during the shutdown period, is authorized to condition such approvals in a manner that will ensure that grading and earthmoving activities will not occur during periods of inclement weather. It shall be the responsibility of the permittee to contact the planning director ~~or designee~~ for a field check at least three working days prior to continuing activity within the "winter shut-down period." Applications to conduct work during the winter shutdown period shall be submitted to the planning department ~~(for agricultural projects) or the public works department (all other projects)~~ at least two weeks before work is planned to commence. Applications not so submitted will be processed by the county as time allows, and will be required to pay two times the required processing fees in effect at the time of submittal. No work may be conducted in the shutdown period until an application is approved.

SECTION 11. Section 18.108.075 (Requirements for structural erosion control measures.) of Chapter 18.108 (Conservation Regulations) of the Napa County Code is amended to read in full as follows:

18.108.075 - Requirements for structural erosion control measures.

- A. Submission of Evidence of Erosion Control Measures. Erosion control measures shall be incorporated as part of a project and shall appear on the applicable building, grading, septic, or other plan required to be submitted; or plot plan, if no other plan is required.
- B. Contents. The erosion control measures indicated shall contain the information and be prepared in conformance with guidelines provided by the ~~Department of Public Works~~ planning department pursuant to Chapter 16.28 of this code.

SECTION 12. Section 18.108.080 (Agricultural erosion control plans-Requirements and authorization to prepare-Field modifications.) of Chapter 18.108 (Conservation Regulations) of the Napa County Code is amended to read in full as follows:

18.108.080 - Agricultural erosion control plans—Requirements and authorization to prepare—Field modifications.

- A. Submission of Plan. Five sets of each erosion control plan shall be submitted to the director ~~or designee~~. The plans shall be drawn to scale and shall be of sufficient clarity to indicate the nature and extent of the work proposed.
- B. Contents. The erosion control plan shall contain the information and be prepared in accordance with the format in Resolution No. 94-19, which is incorporated herein by reference.
- C. Conformance With Guidelines. To the extent relevant to the activity proposed, the erosion control plan shall substantially conform to the guidelines contained in the excerpts from the Hillside Vineyard Unit Redwood Empire Target Area Manual (Soil Conservation Service/Napa County Resource Conservation District, 1985) and the most current Manual of Standards for

Erosion and Sediment Control Measures (published by the Association of Bay Area Governments), which are incorporated herein by reference.

D. Persons Authorized to Prepare Plans. The erosion control plan shall be prepared only by the following persons:

1. (Reserved.)

2. Agricultural Projects.

a. Vineyard replant projects-erosion control plans shall be prepared by one of the following:

i. Erosion control plans prepared by any of the following persons are subject to review by the county and/or county's consultant:

(A) A certified professional in soil erosion and sediment control specialist (CPSESCS), or an NRCA soil conservation service employee working under the direction of a CPSESCS;

(B) A licensed civil engineer;

(C) A registered professional forester (RPF);

(D) A licensed landscape architect;

(E) A certified engineering geologist; or

(F) A licensed architect; ~~or~~

~~(G) The property owner or owner's designee, provided that the plan is reviewed and approved in writing by the Napa County Resource Conservation District (RCD) prior to submittal to the Napa County planning, building and environmental services department.~~

ii. Any persons on a pre-qualified list of consultants made available by the county with no technical review of plan by the county or county's consultant.

b. All other agricultural development projects-erosion control plans shall be prepared by one or more of the persons designated in subsection (D)(2)(a)(i) of this section, all subject to review by the county and/or county's consultant.

E. Field Modifications. Subsequent to approval/confirmation of the erosion control plan, the director ~~or designee~~ or in the case where subsection (D)(2)(a)(ii) of this section is used, then the consultant may require field adjustments to the plan to address site-specific issues or field conditions which arose after the commencement of the activity. Such field modifications shall be confirmed in writing by the director ~~or designee~~ or in the case where subsection (D)(2)(a)(ii) of this section is used by the consultant (with a copy to the director) and when so confirmed shall be deemed to be incorporated into the approved plan.

F. Field Modifications. Subsequent to approval/confirmation of the erosion control plan, the permittee may request a field adjustment to the plan to address site-specific issues or field conditions which arose after the commencement of the activity. The permittee shall be responsible to contact the director ~~or designee~~ or in the case where subsection (D)(2)(a)(ii) of this section is used, the consultant, within twenty-four hours of the changed field condition. Changes, as deemed appropriate by the director ~~or designee~~, or in the case where subsection (D)(2)(a)(ii) of this section is used, the consultant, shall be confirmed in writing and deemed incorporated into the approved plan.

G. No permit for activities conducted pursuant to this chapter shall be issued by the director until the erosion control plan required by this section has been approved by the director ~~or designee~~, unless the erosion control plan was prepared according to subsection (D)(2)(a)(ii) of this section where no approval is required.

SECTION 13. Section 18.108.090 (Requirements for vineyard replanting programs.) of Chapter 18.108 (Conservation Regulations) of the Napa County Code is amended to read in full as follows:

18.108.090 - Requirements for vineyard replanting programs.

A. Submission of Replant Program. Four sets of each vineyard replant program shall be submitted to the director ~~or his designee~~. The program shall be of sufficient clarity to indicate the nature of the work proposed.

B. Contents. The vineyard replant program shall contain the information and be prepared in accordance with the format in Resolution No. ~~94-19~~, which is incorporated herein by reference.

C. Persons Authorized to Submit and Prepare Vineyard Replanting Programs. The property owner or property owner's designee is authorized to submit a vineyard replanting program.

D. Field Modifications. Subsequent to approval of the vineyard replanting program, the director ~~or his designee~~ may require field adjustments to the program to address site-specific issues or field conditions which arose after the commencement of the activity. Such field modifications shall be confirmed in writing by the director ~~or his designee~~ and when confirmed shall be deemed to be incorporated into the approved program.

E. Field Modifications. Subsequent to approval of the vineyard replanting program, the permittee may request a field adjustment to the program to address site-specific issues or field conditions which arose after the commencement of the activity. The permittee shall be responsible to contact the director ~~or his designee~~ within twenty-four hours of the changed field condition. Changes as deemed appropriate by the director ~~or his designee~~ shall be confirmed in writing and deemed incorporated into the approved program.

F. No permit for activities conducted pursuant to this chapter shall be issued by the director until the vineyard replanting program required by this section has been approved by the director, ~~or his designee~~.

G. Track II vineyard replants shall be ministerial within the meaning of the California Environmental Quality Act, as set forth in subsection (A) of Section 18.108.055 and Napa County's Local Procedures for Implementing the California Environmental Quality Act.

SECTION 14. Section 18.108.120 (Existing erosion control.) of Chapter 18.108 (Conservation Regulations) of the Napa County Code is amended to read in full as follows:

18.108.120 - Existing erosion control.

No person shall cause or allow the continued existence of a condition on any site that is causing substantial erosion or runoff due to human-induced alteration of the vegetation, land surface, topography or runoff pattern.

SECTION 15. Section 18.108.135 (Oversight and operation.) of Chapter 18.108

(Conservation Regulations) of the Napa County Code is amended to read in full as follows:

18.108.135 - Oversight and operation.

A. Installation Oversight. The qualified professional preparing an erosion control plan shall oversee its implementation. Prior to the first winter rains after construction begins and each year thereafter until the project has received a final inspection from the county or its agent and been found complete, the qualified professional shall inspect the site and certify in writing to the director that all of the erosion control measures required at that stage of development have been installed in conformance with the plan and related specifications.

B. Maintenance. The property owner is responsible for insuring that the erosion control measures installed operate properly and are effective in reducing to a minimum erosion and related sedimentation. The property owner shall either personally or have personnel inspect and repair/clean as necessary the erosion control measures installed at least weekly during the period between October 1st and April 1st of each year. Moreover, the property owner shall either be on-site ~~him/herself~~ or have personnel on site as required when it is raining to inspect the erosion control measures present and take those actions necessary to keep them functioning properly.

C. Monitoring. For projects disturbing more than one acre of land or with an average slope greater than fifteen percent, the property owner shall implement, prior to the first winter rains after installation of the planned facilities is commenced, a permanent, on-going program of self-monitoring of ground cover condition, and erosion control facility operation. The ground cover monitoring shall follow the procedures promulgated by the ~~National~~ Natural Resources Conservation Service (NRCS), ~~formerly the SCS~~ for determining rangeland condition for hydrologic assessment.

For projects involving disturbance of more than forty acres of land or containing areas with slopes greater than thirty percent totaling a quarter acre or more, an Annual Erosion Control Plan Operation Status Report specifying ground cover condition and how the erosion control measures involved are operating shall be provided to the director and, if in a sensitive domestic water supply drainage, the owner/operator(s) of any public-serving drinking water supply reservoir present by September 1st of each year. This report shall specify the proposed management and cultural measures to be used the following year to return or maintain the ground cover in good condition in all parts of the area disturbed including vineyard avenues and any remedial actions that will be taken to get the other erosion control measures present to operate in such a manner as to minimize erosion and resultant sedimentation.

D. Failures. The following provisions shall apply where erosion control measures have failed or are in imminent danger of failing.

1. Property Owner Duties— Temporary Measures. The property owner shall:
 - a. Notify the director in writing of the failure or pending failure of any erosion control measures within twenty-four hours of discovery and indicate the temporary measures taken to stabilize the situation; and
 - b. Modify, within twenty-four hours of the time that they receive comments from the independent engineer hired by the county to review the adequacy of these temporary measures, the

temporary measures in the manner deemed necessary by the property owner's engineer so as to make them adequate to prevent further damage and problems;

2. Property Owner Duties ~~—~~Permanent Remedial Measures. The property owner shall:
 - a. Submit within ninety-six hours after the discovery of a failure or pending failure:
 - i. An engineered plan for the remedial measures necessary to permanently correct the problem and an engineer's estimate of the cost thereof, and
 - ii. A plan for cleanup of the damage done with an engineer's estimate for the cost of this work;
 - b. Resubmit to the county, within forty-eight hours of the time comments are received from the independent engineer hired by the county to review the temporary measures installed, the plan, and engineer's cost estimates revised plans and estimates;
 - c. Pay the county the costs of this review within forty-eight hours of demand;
 - d. Post a security in one of the forms specified by subsection (A)(1) through (4) of Section 17.38.030 in the amount equal to one hundred percent of the accepted estimated total cost to do the work required to correct the situation and cleanup the damage done within forty-eight hours of demand; and
 - e. Insure that the revised plan prepared is fully implemented within ninety-six hours of its approval.

The time frames specified in this subsection are maximums. The director may in the case of an immediate threat to public health and/or safety require performance in shorter time periods.

3. Plan Preparer Duties. The plan preparer shall provide a notice to the county within twenty-four hours of full implementation of the plan prepared to permanently correct the problem certifying that the measures shown have been installed in conformance with said plan and related specifications.

4. Noncompliance. Failure to adhere to the provisions of subsections (D)(1) and (2) above may be considered a threat to public health and safety. The director may in such instances take immediate action without further notice or hearing to remedy the situation and bill the property owner for the remedial work done. The director shall keep an itemized account of the costs incurred in remedying the situation. The board shall conduct a hearing on the costs in accordance with Sections 1.20.090 through 1.20.130 of this code and shall give the property owner an opportunity to object to the costs prior to recording a lien against the property or pursuing other cost-recovery actions.

E. Inspection.

1. Each project requiring an erosion control plan that has not received a final inspection and been found complete by the director ~~or his/her agent~~ shall be inspected by the county or its agent after the first major storm event of each winter until the project has been completed and stable for three years. If it is found that the erosion control program implemented is not functioning properly or is ineffective the property owner shall take such remedial measures as the director deems necessary to reduce erosion and related sedimentation to minimal levels. The full costs of said measures and the related inspections shall be borne by the property owner.

2. Five percent of projects that have received a final inspection and been found complete by the director ~~or his/her agent~~ shall be spot checked by the director ~~or his/her agent~~ each year to confirm groundcover condition and the proper operation of other erosion control measures. The director, in cooperation with the Napa County Resource Conservation District (RCD) and

other county departments and agencies, will develop a remedial program to address any deficiencies that may be identified as the result of these spot checks. The property owner shall implement this program, which may include re-seeding all or some portions of the site or changing agricultural or management practices. ~~He/she~~ The property owner shall pay all costs associated with these spotchecks.

F. Right of Entry. With the property owner's consent, with a warrant, or in an emergency, the property owner shall give the director ~~and his/her agents~~ full and complete access to and throughout the project area so as to allow:

1. Inspection of the erosion control and any remedial measures installed there to insure that they are functioning properly,
2. The making of necessary repairs or corrections to alleviate an erosion control problem or potential erosion control problem, or
3. The performance of needed maintenance.

SECTION 16. Section 18.108.140 (Security, violations, and penalties.) of Chapter 18.108 (Conservation Regulations) of the Napa County Code is amended to read in full as follows:

18.108.140 - Security, violations, and penalties.

A. Security.

1. No earthmoving activity, grading, improvement, or construction of a structure for which an erosion control plan is required or for which compliance with the NPDES program is required by this chapter shall commence until the property owner has filed security in the form, specified in subsection (A)(2) of this section if any of the proposed earth moving activities:

- a. May pose a significant safety or public health risk,
- b. May result in a potential water quality impairment,
- c. Is located in an area determined to have a severe soil erosion hazard as determined by the director ~~in consultation with the Napa County Resource Conservation District~~ based on the Napa County Soil Survey prepared by the ~~NRCS Federal Resource Conservation Service~~, incorporated herein by reference,
- d. Is located in a sensitive domestic water supply drainage,
- e. Involves a failure or potential failure of existing erosion control measures, or
- f. Is otherwise deemed warranted by the director.

2. The security required by subsection (A)(1) of this section shall be submitted within ten days of approval of an erosion control plan, approval of the activity subject to the NPDES program or prior to earthmoving, whichever comes first, and shall be comprised of both of the following:

a. Security in the amount of the estimated cost of original installation of the required erosion control measures, which shall be posted with the director in one or more of the forms specified by subsections (A)(1) through (4) of Section 17.38.030.

b. Security in the amount of twenty-five percent of the estimated costs of original installation of the required erosion control measures, which shall be posted with the director in one

or more of the forms specified by subsections (A)(1) through (4) of Section 17.38.030 ~~or in the form of recorded lien as specified in subsection (A)(5) of Section 17.38.030 against the parcel on which the measures are installed~~ for the purpose of ensuring ongoing maintenance of the required erosion control measures in the manner specified in the erosion control plan.

3. The security required under subsection (A)(2)(a) of this section shall not be released by the director until:

a. All required measures have been installed/implemented, and

b. The director has made a final inspection and confirmed the installation of required erosion control measures.

4. The security required under subsection (A)(2)(b) of this section shall not be released by the director until:

a. Three winters after subsections (3)(a) and (3)(b) of this section have passed without any substantial problem,

b. In the case of a substantial problem or failure, any needed cleanup has been completed, erosion control measures have been corrected, and three winters have passed without any substantial problem, and

c. The director has made a final inspection and confirmed ongoing maintenance of the erosion control measures.

B. **Violations.** Whenever the director determines that a violation of this chapter has occurred, the director shall notify the violator in writing of the violation and require that certain conditions be implemented or adhered to in a reasonable amount of time to correct the erosion problem. Conditions may include applying for approval of an erosion control plan, implementation of remedial erosion control actions, removal of agricultural crops and related infrastructure planted without an approved erosion control plan or use permit, removal of structures constructed in violation of the NPDES program, and/or revegetation of disturbed areas. Each failure to comply with the director's notice or meet the deadlines specified therein shall constitute a separate and distinct violation, punishable as set forth in subsection (C) of this section. Moreover, the county and its agents may with the property owner's consent, with a warrant, or in an emergency enter the property and make necessary repairs or corrections, or perform needed maintenance. The property owner shall fully and completely reimburse the county for the costs associated with this remedial work.

C. **Penalties.** It is unlawful and a public nuisance for any person to violate any of the provisions of this chapter for any purpose or to cause any other person to do so. Such a violation shall be enforceable as a misdemeanor pursuant to Napa County Code Sections 1.20.150 and 1.20.160. Such a violation may also be abated as a public nuisance by judicial action or by administrative enforcement in accordance with the procedures set forth in Chapter 1.20, commencing with Section 1.20.010, including those pertaining to treble damages for multiple judgments. In addition administrative penalties may be imposed in the manner specified in Chapter 1.28 (Administrative Penalty) of the Napa County Code. In addition, the director may issue a stop work order, report the violator to the appropriate licensing agencies (such as the State Contractor's Licensing Board), report the violator to applicable responsible and trustee agencies, require that the violator apply for and obtain all required permits, refer the matter to the district attorney's office for civil or criminal prosecution and any such other remedies the director deems appropriate.

SECTION 17: ~~The provisions of this Ordinance No. 1438~~ ~~_____~~ ~~[insert number]~~ shall apply to all applications for uses that may involve earthmoving activity that are filed on or after the effective date of this ordinance. The provisions of this ordinance shall also apply to any applications for uses that may involve earthmoving activity that were filed prior to the effective date of the ordinance, but that were ultimately not accepted by the County as complete for processing as filed. Qualified permit applications must be substantially conforming and must be received by the PBES Department prior to the effective date of this ordinance. A “substantially conforming” application must include a substantially complete set of the documents required in the application checklist, and information responsive to the requirements. Applicants must make a good faith effort to make the application as complete as possible. A “substantially conforming” application need not include technical studies where the applicant demonstrates studies could not be completed by the effective date of this ordinance due to seasonal conditions or other extenuating circumstances. All excluded technical studies must be submitted as soon as possible, not to exceed 120 days from the effective date of this ordinance. Any substantially conforming applications for uses that may involve earthmoving activity that were filed prior to the effective date of this ordinance, and that were ultimately accepted by the County as complete for processing as filed, shall continue to be reviewed and decided upon under the provisions of the Napa County Code in effect as of ~~_____~~ ~~[insert date]~~ May 9, 2019, the day prior to the effective date of this ordinance.

The provisions of this Ordinance No. ~~1438~~ ~~_____~~ ~~[insert number]~~ shall not apply to earthmoving activities associated with an agricultural project of five acres or less on slopes of less than ~~fifteen~~ ~~thirty~~ percent; however the project is still subject to the CEQA and must comply with the Conservation Regulations in effect prior to the effective date of Ordinance No. 1438

~~_____~~ ~~[insert number]~~. This exemption may only be used once per parcel and any subsequent earthmoving activities shall be subject to the provisions of Ordinance No. 1438 ~~_____~~ ~~[insert number]~~.

~~The provisions of this Ordinance No. 1438 shall not apply to earthmoving, land clearing or grading activities associated with development of any of the Specified Priority Housing Development Sites identified in County Code Chapter 18.82 of the AH Affordable Housing Combination district, however those Specified Priority Housing Development Sites must comply with the Conservation Regulations in effect as of May 9, 2019, the day prior to the effective date of Ordinance No. 1438.~~

SECTION 18. The Board finds that pursuant to Chapter 4, Title 7, commencing with Section 65800, of the California Government Code, this ordinance is consistent with the following policies and goals of the Napa County General Plan (2008) as set forth in the staff report and materials accompanying this ordinance.

SECTION 19. This ordinance shall be interpreted so as to be consistent with all applicable federal, State, and County laws, rules, and regulations. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion of this ordinance is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. If any provision of this ordinance is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this ordinance that can be given effect without the invalid application. Any singular term shall include the plural and any plural term shall include the singular. All references to County and State code sections shall mean those code sections, including any amendments, in effect at the time of their application. The title and captions of the various

sections in this ordinance are for convenience and organization only, and are not intended to be referred to in construing the provisions of this ordinance. The provisions of this ordinance shall be liberally interpreted in order to give effect to its purposes.

SECTION 20. The provisions of this ordinance shall not be applicable to the extent, but only to the extent, that they would violate the constitution or laws of the United States or of the State of California. In the event a property owner contends that application of this ordinance effects an unconstitutional taking of property, the property owner may request, and the Board of Supervisors may grant, an exception to application of any provision of this ordinance if the Board of Supervisors finds, based on substantial evidence, that both: (1) the application of any aspect of this ordinance would constitute an unconstitutional taking of property; and (2) the exception will allow earthmoving only to the minimum extent necessary to avoid such a taking.

The provisions of this ordinance shall not be applicable to any person or entity that has obtained, as of the effective date of this ordinance, a vested right, pursuant to State law, to undertake any activities that would be prohibited by this ordinance.

SECTION 21. As further set forth in the staff report accompanying this ordinance, the Board of Supervisors finds that adoption of this ordinance is exempt from the provisions of the CEQA pursuant to 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 the 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 the CEQA is not applicable. [See guidelines for the implementation of the CEQA 14 CCR § 15061(b)(3)].

The Board further finds that this ordinance will not impact an environmental resource of hazardous or critical concern, has no cumulative impact, there is no reasonable possibility that the activity may have a significant effect on the environment due to unusual circumstances, will not result in damage to scenic resources, is not located on a list of hazardous waste sites, cause substantial adverse change in the significance of a historical resource or extract groundwater in excess of the Phase 1 groundwater extraction standards as set by the Department of Public Works.

SECTION 22. This ordinance shall be effective thirty (30) days from and after the date of its passage.

SECTION 23. A summary of this ordinance shall be published at least once ~~5~~five days before adoption and at least once before the expiration of 15 days after its passage in the Napa Valley Register, a newspaper of general circulation published in Napa County, together with the names of members voting for and against the same.

The foregoing ordinance was recommended for adoption and public hearing held thereon before the Napa County Planning Commission at a regular meeting of the Commission on the 6th day of March, 2019. The Planning Commission’s recommendation was considered by the Board

of Supervisors and this ordinance was introduced and read at a regular meeting of the Napa County Board of Supervisors (the Board), State of California, held on the 26th day of March, 2019, and passed at a regular meeting of the Board held on the ____ day of _____, 2019, by the following vote:

AYES: SUPERVISORS _____

 NOES: SUPERVISORS _____

 ABSTAIN: SUPERVISORS _____

 ABSENT: SUPERVISORS _____

NAPA COUNTY, a political subdivision of the State of California

 RYAN GREGORY, Chair of the Board of Supervisors

APPROVED AS TO FORM Office of County Counsel	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS	ATTEST: JOSE LUIS VALDEZ Clerk of the Board of Supervisors
By: _____ Deputy County Counsel	Date: _____	By: _____
By: _____ County Code Services	Processed By: _____ Deputy Clerk of the Board	
Date: _____		

I HEREBY CERTIFY THAT THE ORDINANCE ABOVE WAS POSTED IN THE OFFICE OF THE CLERK OF THE BOARD IN THE ADMINISTRATIVE BUILDING, 1195 THIRD STREET ROOM 310, NAPA, CALIFORNIA ON _____, _____, DEPUTY JOSE LUIS VALDEZ, CLERK OF THE BOARD