

ORDINANCE NO. 1219

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE
COUNTY OF NAPA, STATE OF CALIFORNIA, AMENDING SECTIONS
18.108.010, 18.108.027, 18.108.030, AND 18.108.140 OF AND ADDING A
NEW SECTION 18.108.135 TO THE NAPA COUNTY CODE,
SPECIFYING ADDITIONAL PURPOSES, PROVIDING NEW
STANDARDS IN AND EXPANDING THE NUMBER OF DOMESTIC
WATER SUPPLY WATERSHEDS, SPECIFYING GENERAL
OPERATIONAL PROCEDURES, MONITORING AND INSPECTION
REQUIREMENTS, AND AMENDING CURRENT BONDING
PROVISIONS OF THE CONSERVATION REGULATIONS**

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

SECTION 1. Section 18.108.010 (Purpose) of Chapter 18.108 (Conservation

Regulations) of the 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 have been developed in general accord with the policies and principles of the general plan, as specified in the land use element and the open space and conservation element.

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

1. Minimize cut, fill, earthmoving, grading operations and other such man-made effects in the natural terrain;
2. Minimize soil erosion caused by human modifications to the natural terrain;
3. Maintain and improve, to the extent feasible, existing water quality by regulating the quantity and quality of runoff entering local watercourses;
4. Preserve riparian areas and other natural habitat by controlling development near streams and rivers;
5. Encourage development which minimizes impacts on existing land forms, avoids steep slopes, and preserves existing vegetation and unique geologic features; and
6. Protect drinking water supply reservoirs in sensitive domestic water supply drainages from sediment, turbidity, and pollution.

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

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

SECTION 2. Section 18.108.027 (General Provisions-Vegetation Preservation

In Municipal Water Supply Areas) of Chapter 18.108 (Conservation Regulations) of the 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 percent of the tree canopy cover on the parcel existing on June 16, 1993 along with any 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.

C. Winter shut-down. All earth-disturbing activities shall be limited to the period of April 1st through September 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.

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.

SECTION 3.

Section 18.108.030 (Definitions) of Chapter 18.108 (Conservation

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

18.108.030 Definitions.

“**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.

“**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. It also means excavations; fills or grading which of themselves constitute engineered works or improvements.

“**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.

“**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.

“**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).

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

“**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. Lake Hennessey Drainage including Friesen Lakes
6. Lake Curry Drainage
7. Lake Madigan Drainage

“**Slope**” means the inclination of the terrain calculated in accordance with the methodology set forth in Resolution No. 91-61, which is incorporated herein by reference.

“**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 State 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. 91-61 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.

“**Vegetation canopy cover**” means the 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 his/her designee.

“**Vegetation understory**” means 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.

SECTION 4. A new Section 18.108.135 entitled “Oversight and Inspection” of

Chapter 18.108 (Conservation Regulations) of the County Code is added 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 onsite 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 groundcover condition, and erosion control facility operation. The groundcover monitoring shall follow the procedures promulgated by the National Resource 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;
 - 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. re-submit to the County, within 48 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 48 hours of demand;

d. post a security in one of the forms specified by subsection (A)(1)-(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 sub-section 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. **Non-compliance.** 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 1.20.090-1.20.130 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 shall pay all costs associated with these spot-checks.

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 5. Section 18.108.140 (Violation-Penalty) of Chapter 18.108

(Conservation Regulations) of the 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 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 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 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 ten percent of the estimated costs of original installation of the required erosion control measures, which shall be 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,
- b. in the case of a failure any cleanup needed has been completed,
- c. three winters after (a) and (b) have been completed have passed without any substantial problem, and
- d. the Director has made a final inspection and approved the installation

B. Violations. Whenever the Director determines that a violation of this chapter has occurred, the Director may 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. 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.

SECTION 6. If any section, subsection, sentence, clause, phrase or word of this chapter is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors of the County of Napa hereby declares it would have passed and adopted this ordinance and each and all provisions hereof irrespective of the fact that any one or more of said provisions be declared invalid.

SECTION 7. This ordinance shall be effective thirty (30) days from and after the date of its passage.

SECTION 8. A summary of this ordinance shall be published at least once 5 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 the County of Napa, together with the names of members voting for and against the same.

The foregoing ordinance was first introduced and read at a regular meeting of the Conservation Development and Planning Commission, held on the 5th day of March, 2003, and passed at a regular meeting of the Board of Supervisors of the County of Napa, State of

California, held on the 18th day of March, 2003, by the following vote:

AYES:	SUPERVISORS	<u>DODD, DILLON, LUCE, RIPPEY and</u> <u>WAGENKNECHT</u>
NOES:	SUPERVISORS	<u>NONE</u>
ABSTAIN:	SUPERVISORS	<u>NONE</u>
ABSENT:	SUPERVISORS	<u>NONE</u>

BRAD WAGENKNECHT, CHAIRMAN
Napa County Board of Supervisors

ATTEST:

Clerk of the Board

By: _____
Deputy