



COUNTY OF SONOMA

575 ADMINISTRATION
DRIVE, ROOM 102A
SANTA ROSA, CA 95403

SUMMARY REPORT

Agenda Date: 12/8/2020

To: Sonoma County Board of Supervisors

Department or Agency Name(s): Agriculture, Weights and Measures, Permit Sonoma

Staff Name and Phone Number: Andrew Smith, 565-2371

Vote Requirement: Majority

Supervisorial District(s): Countywide

Title:

Minor and Technical Revisions to the County Code Provisions Governing New Vineyard and Orchard Development, Vineyard and Orchard Replanting, Agricultural and Construction Grading and Drainage, and Definitions for Water Well Construction Standards, and adoption of a related fee for the Department of Agriculture/Weights & Measures.

Recommended Action:

Conduct a public hearing and adopt (1) a Resolution introducing, reading the title of, and waiving further reading of a proposed Ordinance making minor and technical revisions to Chapter 36 of the Sonoma County Code regulating new vineyard and orchard development, vineyard and orchard replanting, and agricultural grading and drainage, Chapter 11 of the Sonoma County Code regulating construction grading and drainage, and Section 25B-3 of the Sonoma County Code setting forth definitions for water well construction standards, and determining exemption from the California Environmental Quality Act; and (2) a Resolution adopting a fee for the Department Of Agriculture/Weights & Measures to process permit applications for new permits to recommence work started under expired permits under the Sonoma County New Vineyard and Orchard Development, Vineyard and Orchard Replanting, and Agricultural Grading and Drainage Regulations.

Executive Summary:

This agenda item proposes minor and technical revisions to Chapter 36, Chapter 11, and Section 25B-3 of the County Code, consistent with the Board's VESCO Ad Hoc Committee (Ad Hoc Committee) direction to the Department of Agriculture/Weights & Measures (Department) to make minor revisions to the Sonoma County Vineyard and Orchard Development and Agricultural Grading and Drainage Ordinance (VESCO). The Board could hold a study session in 2021 to consider other, larger revisions that were not directed by the Ad Hoc Committee, but have been identified by stakeholders.

Discussion:

BACKGROUND

In 2000, Sonoma County adopted the Vineyard Erosion and Sediment Control Ordinance (original VESCO), becoming one of only three jurisdictions in California to require a permit for vineyard planting or replanting. Adopted in response to a significant landslide in early 1998, the original VESCO imposed ministerial standards

governing vineyard slopes, setbacks, and erosion control. In adopting the original VESCO, the Board determined that discretionary review of vineyards would contravene the General Plan, and therefore included an automatic repeal provision if a future court found any act or determination to be discretionary.

In 2008, the Board adopted an ordinance updating standards and combining the original VESCO with the County's existing grading and drainage regulations in Chapter 11 of the County Code. The ordinance followed a seven-year stakeholder process, and imposed 16 pages of performance standards, including new stream, wetland and pond setbacks; new rainy season requirements; and new limits on floodplain development.

In 2012, the Board adopted an ordinance amending Chapter 11 of the County Code to establish requirements and standards for vineyard and orchard planting where tree removal is involved, and make miscellaneous other minor changes to Chapter 11.

In 2017, the Board adopted an ordinance amending Chapter 11 of the County Code to regulate only construction grading and drainage, add a new Chapter 36 to the County Code to take over regulation of vineyard and orchard development and agricultural grading and drainage, and make miscellaneous other minor changes to both chapters.

In May 2019, through the Chair of the Board, an Ad Hoc Committee was formed with Supervisors Gore and Hopkins as members. The purpose and scope of the Ad-Hoc Committee was to review the Sonoma County Vineyard and Orchard Development and Agricultural Grading and Drainage Ordinance (VESCO) to explore opportunities to reduce the regulatory, time, and financial burdens to grape growers by streamlining the process associated with the replanting of vineyards. Any adjustments to VESCO were to not impact existing applicable environmental standards. The proposed amendments accomplish the Ad Hoc Committee's purpose.

SUMMARY AND ANALYSIS OF PROPOSED AMENDMENTS

The following summarizes the proposed amendments and explains their purpose and need.

Chapter 36 (VESCO) Revisions:

Separate Permits for New Vineyard and Orchard Development and Vineyard and Orchard Replanting. The ordinance establishes separate permits for new vineyard and orchard development and vineyard and orchard replanting. The ordinance relocates the permit requirements applicable to vineyard and orchard replanting to the permit for vineyard and orchard replanting, and revises the permit requirements for new vineyard and orchard development to simplify and clarify the designation criteria for new vineyard and orchard development. Having separate permits for new vineyard and orchard development and vineyard and orchard replanting simplifies and makes clear which permit requirements apply to new development and which apply to replanting. Having separate permits will also simplify making future changes to requirements for each type of permit.

Biotic Resource and Focused Species Assessments for New Vineyard and Orchard Development. The ordinance revises the permit requirements for new vineyard and orchard development to clarify that the requirement for biotic resource assessments only applies to uncultivated land, and to add a requirement for focused species assessments for cultivated land in designated critical habitat areas. The ordinance adds definitions of “cultivated land” and “uncultivated land” to the glossary. Cultivated land is defined as land that has been under active cultivation of perennial or row crops for at least five years immediately preceding the filing of a permit application. Uncultivated land is defined as land that does not qualify as cultivated land. These amendments recognize that cultivated land is already intensively managed and that requiring a biological study for such land when converting to vineyard or orchard is not necessary, except in designated critical habitat areas.

Expiration of Permit Applications. The ordinance revises the provisions governing the expiration of permit applications to specify that where a new permit application is filed within 180 days following the expiration of an original permit application, the original plans and specifications may be resubmitted and the new permit application shall be processed based on the provisions of Chapter 36 in effect at the time the expired permit application was initially submitted. The ordinance further limits the use of this renewal provision to one time per expired permit application. This amendment clarifies the rules governing permit applications filed after the expiration of the original permit applications by creating a one-year extension for permit application processing, provided that the extension is requested within 180 days following expiration of the original permit application. This amendment gives applicants the ability to have an additional year to obtain approval of their permit applications under the same plans and rules and without having to obtain an additional biological study. In order to recover costs related to work done for the renewal applications, the Department proposes charging hourly rate for work done processing the application renewals.

Time Limits for Permits. The ordinance revises the time limits for permits to establish a five-year term for vineyard and orchard replanting permits and change the term for agricultural grading and drainage permits from three years to five years. This amendment makes the duration of all permits five years.

Extensions of Time. The ordinance revises the provisions governing extensions of time for permits to limit the number of extensions to one extension per permit. This amendment clarifies the rules governing extensions of time for permits by creating a one-time 180-day extension for active permits, provided that the extension is requested prior to expiration of the permit. This amendment recognizes that other methods of extending the time for completing projects are now available.

Effect of Expiration of Permits. The ordinance revises the provisions governing the effect of expiration of permits to provide that a new permit issued to recommence work started under an expired permit shall be based on the provisions of Chapter 36 in effect at the time the expired permit was issued, and that a new permit issued to commence work under an expired permit shall be based on the provisions of Chapter 36 in

effect at the time the new permit application is submitted. This amendment clarifies the rules governing new permits to recommence or commence work under expired permits by creating a one-time 5-year extension for expired permits, provided that work was commenced prior to expiration of the expired permit. The Department proposes a fee of \$678 for permit renewal work. This amount is based on the time and hourly rates of staff performing the renewal work. It would cover costs related to intake of paperwork and confirmation that the application matches the original permit and meets the requirements of the ordinance in place when the original permit was issued. The Department's hourly rate would be charged for any additional work related to the permit such as multiple reviews and re-inspections.

New Standards. The ordinance adds new standards for protection of listed species and agricultural road networks. The new standard for protection of listed species codifies existing requirements currently in the Department's BMP Manual and provides the basis for the requirement for biotic and focused species assessments for new vineyard development and vineyard and orchard replanting. The new standard for agricultural road networks provides the basis for the road requirements in the Department's new BMP Manual.

Setbacks. The ordinance revises the setback requirements for areas of slope instability to clarify that the requirements apply to development areas for new vineyard and orchard development and to deep ripping for vineyard and orchard replanting. This amendment recognizes the need for different requirements for new vineyard and orchard development and vineyard and orchard replanting. This amendment allows growers to replant within the setback if they do not deep rip. The ordinance revises the setback requirement for lakes, ponds, reservoirs, ridgetops, streams, and wetlands to clarify that the requirements apply to development areas for all proposed development. This amendment recognizes need for the requirements to apply to all ground disturbance related to proposed development. The ordinance adds a definition of "development area" to the glossary. Development area is defined as all areas subject to ground disturbance related to new vineyard or orchard development, vineyard or orchard replanting, or agricultural grading or drainage, including the new planting, replanting, grading, or drainage alteration area, agricultural road network and other vineyard or orchard infrastructure, staging areas for vehicles, supplies, and equipment, and material storage areas. Together, these amendments make clear how setbacks around sensitive environmental features are to be determined.

Work During the Rainy Season. The ordinance revises the requirements for work during the rainy season to consolidate text and show permitted and prohibited work periods in table rather than text form. The ordinance also authorizes the Agricultural Commissioner to extend the permitted work period in the fall for new vineyard and orchard development to no later than October 31st based on precipitation forecast information from the National Weather Service or other good cause. This amendment simplifies and clarifies the rules governing work during rainy season. This amendment grants growers up to 16 additional days to complete work when the agricultural commissioner determines conditions permit.

Winterization of Sites. The ordinance revises the requirements for winterization of sites to eliminate unnecessary text, specify property owner responsibility for installation and maintenance of winterization measures, and show winterization deadlines in table rather than text form. The ordinance also authorizes the Agricultural Commissioner to extend the winterization deadline for new vineyard and orchard development to no later than November 1st based on precipitation forecast information from the National Weather Service or other good cause. This amendment simplifies and clarifies the rules governing winterization of sites.

Glossary. The ordinance makes miscellaneous changes to definitions. In addition to the new definitions discussed above (cultivated and uncultivated land and development area), noteworthy changes include:

- Replacement of the term “natural slope” with the term “slope” and revision of the definition of slope to specify that the method used to calculate slope must be acceptable to the Agricultural Commissioner. This amendment eliminates possible confusion over how previously graded or otherwise altered landscapes are treated and allows for the inclusion of new technologies such as LIDAR to determine slope gradients.
- Revision of the definition of “stream” to clarify that a stream may have a natural or modified channel. This amendment clarifies setback requirements and riparian corridor protections along managed or manipulated streams, such as streams along valley floor vineyard blocks.
- Revision of the definition of “wetland” to clarify that wetlands are those areas that meet either the federal definition of wetlands or the state definition of wetland, and that in the event of a conflict between the federal and state definitions, whichever definition is more protective shall control. This amendment aligns the County definition of wetland with federal and state definitions.

Chapter 11 (Construction Grading and Drainage) Revisions:

Construction Grading Permit Exemption for maintenance and restoration of ponds and reservoirs. The ordinance adds an exemption from construction grading permit requirements for maintenance and restoration of ponds and reservoirs. This amendment recognizes the need for an exemption from permit requirements for maintenance and restoration of existing, lawfully constructed ponds and reservoirs, where the original dimensions and design capacity are not increased, and the structural integrity is not compromised.

Effect of Expiration of Permits. The ordinance revises the provisions governing the effect of expiration of permits to provide that a new permit issued to recommence work started under an expired permit shall be based on the provisions of Chapter 11 in effect at the time the original expired permit was issued, that a new permit issued to commence work under an expired permit shall be based on the provisions of Chapter 11 in effect at the time the original expired permit was issued if the new permit application is submitted within six years following the issuance of the original expired permit, and that a new permit issued to commence work under an expired permit shall be based on the provisions of Chapter 11 in effect at the time the new permit application is submitted if the new permit application is submitted more than six years following the issuance

of the original expired permit. This amendment clarifies the rules governing new permit applications to recommence or commence work under an expired permit and makes the provisions of Chapter 11 consistent with the County Building Code and Well and Septic regulations.

Glossary. The ordinance makes miscellaneous changes to definitions. Noteworthy changes include:

- Addition of a definition of “private road.” This amendment ensures that the provisions of Chapter 11 are consistent with the County’s Fire Safe Standards.
- Revision of the definition of “wetland” to clarify that wetlands are those areas that meet either the federal definition of wetlands or the state definition of wetland, and that in the event of a conflict between the federal and state definitions, whichever definition is more protective shall control. This amendment aligns the County definition of wetland with federal and state definitions.

Section 25B-3 (Definitions for Water Well Standards):

The ordinance revises the definition of “wetland” to clarify that wetlands are those areas that meet either the federal definition of wetlands or the state definition of wetland, and that in the event of a conflict between the federal and state definitions, whichever definition is more protective shall control. This amendment aligns the County definition of wetland with federal and state definitions.

OTHER AGENCY AND COMMUNITY STAKEHOLDER INVOLVEMENT

The Agricultural Commissioner and the Ad Hoc Committee conducted outreach to stakeholders to develop the proposed amendments. The Ad-Hoc Committee met with industry representatives on July 29, August 12, and September 19, 2019, to gather information on industry concerns. The Department of Agriculture/Weights & Measures also conducted a VESCO workshop on August 8, 2019 to provide information to engineers and geologists on how to streamline the permitting process. That workshop was attended by the Ad-Hoc Committee, engineers, geologists, resource agencies, and environmentalists. The Board met on November 19, 2019, and discussed the Ad Hoc Committee’s goals and the decision was made that additional stakeholder outreach should continue with the full range of stakeholders. On February 6, the Ad Hoc Committee met with environmental groups, resource agencies, and Department staff. The results of this series of meetings as well as written recommendations is outlined below.

BOARD STUDY SESSION

The stakeholders requested various other ordinance revisions that were not directed by the Ad Hoc Committee. These proposed revisions could be considered by the Board at a study session to be held in 2021. The comment letters received to date are attached to this report, and provide a complete record of the revisions requested by stakeholders. Some of the major proposed revisions are summarized below:

Permit exemptions and requirements

- Exemption from VESCO permitting requirements for low-impact Level I vineyard replanting projects where vineyard infrastructure is kept in place (end posts, trellising, drainage infrastructure, etc.) and

vines are removed manually, not mechanically, and no deep ripping takes place. "Pluck and plant".

- Apply a moratorium, CEQA requirements, or slope stability requirements similar to those approved for tree removal projects in 2012 to new vineyard or orchard development on slopes steeper than 30%, 35%, or 40%.

Monitoring and Enforcement

- Increase post-development monitoring and analysis to verify that VESCO BMPs are in fact producing the desired erosion and sediment control. Verification monitoring could be conducted by Department staff, by property owners, or a combination of the two.

Other Revisions

- Apply greater protections for trees in new vineyard and orchard development projects.
- Apply water conservation standards for vineyards and orchards in the 5 listed critical watersheds (Mill Creek, Green Valley Creek, Dutch Bill Creek, Mark west Creek, and Grape Creek).

CEQA

As set forth in Attachment C, the proposed action is categorically exempt from CEQA under Sections 15307 and 15308 of the State CEQA Guidelines (Actions by Regulatory Agencies for Protection of Natural Resources and the Environment). These exemptions cover actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of natural resources or the environment where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environmental degradation are not included in these exemptions. The proposed action is also exempt from CEQA under Section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that this ordinance may have a significant effect on the environment. The basis for these determinations is that the proposed action only makes changes to clarify and strengthen permit requirements, standards, and definitions in Chapter 36, Chapter 11, and Section 25B-3 of the Sonoma County Code, and does not involve construction or any other activity that could physically change the environment.

ALTERNATIVES

The alternative to adopting these proposed minor and technical revisions as drafted would be to postpone any changes until the Board conducts additional study sessions with staff and stakeholders to review additional proposed ordinance revisions as requested by stakeholders. Following the study sessions, staff could bring back any proposed additional revisions as directed by the Board.

RECOMMENDATION

Staff recommends that the Board conduct a public hearing, direct any specific changes it wishes to make in the proposed ordinance, and adopt a resolution introducing, reading the title of, and waiving further reading of the ordinance. Staff would place the final ordinance on the December 15, 2020 consent calendar for final

adoption.

STEPS FOLLOWING APPROVAL

If approved, staff could return to the Board in 2021 for a study session to discuss recommendations from stakeholders.

Prior Board Actions:

12/17/2017: Adoption of Ordinance No. 6219 to establish separate chapters for construction grading and drainage and vineyard and orchard development and agricultural grading and drainage, an additional enforcement mechanism, incorporate Riparian Corridor setbacks, and make legal clarifications.

5/15/2012: Adoption of Ordinance No. 5988 to establish requirements and standards for vineyard and orchard planting where tree removal is involved, and making other miscellaneous other minor changes to Chapter 11 of the Sonoma County Code.

12/9/2008: Adoption of Ordinance No. 5819 to consolidate all grading, drainage and vineyard and orchard development related code provisions into one Sonoma County Code chapter.

FISCAL SUMMARY

Expenditures	FY 20-21 Adopted	FY21-22 Projected	FY 22-23 Projected
Budgeted Expenses	\$12,150		
Additional Appropriation Requested			
Total Expenditures	\$12,150		
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other	\$12,150		
Use of Fund Balance			
Contingencies			
Total Sources	\$12,150		

Narrative Explanation of Fiscal Impacts:

In order to recover costs related to work done for renewal applications, the Department proposes charging hourly rate for work done processing the application renewals.

Department proposes a fee of \$678 for permit renewal work. This amount is based on the time and hourly rates of staff performing the renewal work. It would cover costs related to intake of paperwork and confirmation that the application matches the original permit and meets the requirements of the ordinance in place when the original permit was issued. Department's hourly rate would be charged for any additional

work related to the permit such as multiple reviews and re-inspections.

Department projects a revenue increase of \$12,150. This is based on 10% of the last three-year average number of expiring permits opting for the new extension process.

Staffing Impacts:			
Position Title (Payroll Classification)	Monthly Salary Range (A-I Step)	Additions (Number)	Deletions (Number)

Narrative Explanation of Staffing Impacts (If Required):

N/A

Attachments:

Attachment A: Notice of Public Hearing

Attachment B: Resolution of the Board of Supervisors of the County of Sonoma, State of California, Introducing, Reading the Title of, and Waiving Further Reading of an Ordinance Making Minor and Technical Revisions to Chapter 36 of the Sonoma County Code Regulating New Vineyard and Orchard Development, Vineyard and Orchard Replanting, and Agricultural Grading and Drainage, Chapter 11 of the Sonoma County Code Regulating Construction Grading and Drainage, and Section 25B-3 of the Sonoma County Code Setting Forth Definitions for Water Well Construction Standards, and Determining Exemption from the California Environmental Quality Act

Attachment C: Pre-Adoption Summary of Proposed Ordinance of the Board of Supervisors of the County of Sonoma, State of California, Making Minor and Technical Revisions to Chapter 36 of the Sonoma County Code Regulating New Vineyard and Orchard Development, Vineyard and Orchard Replanting, and Agricultural Grading and Drainage, Chapter 11 of the Sonoma County Code Regulating Construction Grading and Drainage, and Section 25B-3 of the Sonoma County Code Setting Forth Definitions for Water Well Construction Standards, and Determining Exemption from the California Environmental Quality Act

Attachment D: An Ordinance of the Board of Supervisors of the County of Sonoma, State of California, Making Minor and Technical Revisions to Chapter 36 of the Sonoma County Code Regulating New Vineyard and Orchard Development, Vineyard and Orchard Replanting, and Agricultural Grading and Drainage, Chapter 11 of the Sonoma County Code Regulating Construction Grading and Drainage, and Section 25B-3 of the Sonoma County Code Setting Forth Definitions for Water Well Construction Standards, and Determining Exemption from the California Environmental Quality Act

Agenda Date: 12/8/2020

Attachment E: Exhibit A - Draft Chapter 36 of the Sonoma County Code

Attachment F: Exhibit B - Draft Chapter 11 of the Sonoma County Code

Attachment G: Exhibit C - Draft Section 25B-3 of the Sonoma County Code

Attachment H: Resolution Establishing Fee for Processing Permit Applications

Attachment I: Draft CEQA Notice of Exemption.

Attachment J: Comment letters received to date.

Attachment K: Presentation

Related Items “On File” with the Clerk of the Board:

N/A