

**FILED**

JUL 21 2016

CLERK OF THE NAPA SUPERIOR COURT  
BY *[Signature]* DEPUTY

SUPERIOR COURT FOR THE STATE OF CALIFORNIA,  
COUNTY OF NAPA

JAMES P. WILSON and MICHAEL  
HACKETT,

Petitioners,

vs.

COUNTY OF NAPA, et al.,

Respondents.

Case No.: 16CV000457

ORDER DENYING VERIFIED PETITION  
FOR WRIT OF MANDATE; STATEMENT  
OF DECISION

The Verified Petition for Writ of Mandate came on for hearing on July 15, 2016. Having read and considered the papers submitted in support of and in opposition to the Petition and having heard oral argument, the court took the matter under submission, and now rules as follows:

The Petition is DENIED. The proposed measure in this case – the “Water, Forest and Oak Woodland Protection Initiative of 2016” (the “Initiative”) – seeks to establish a mandatory permitting program for oak tree removals on certain parcels of property. The Initiative would amend and add sections to the Napa County Zoning Code for the mandatory permitting program. Proposed County Code section 18.20.060 would prohibit the approval of an Oak Removal Permit if “[p]roposed remediation measures are not adequate under subsection (E)[.]” Subsection E.1 then specifically requires “at a minimum” “[c]ompliance with the best management practices for

tree protection during construction activities set forth in Appendix D, Section 1 of the Napa County Voluntary Oak Woodland Management Plan (2010).” Subsection E.2.b requires “at a minimum” “[r]eplanting and monitoring of replacement oak trees on-site pursuant to a plan that ensures replacement of failed plantings and complies with the best management practices for Maintenance, Restoration, and Rehabilitation of Oak Woodlands set forth in Appendix D, Section 3 of the Napa County Voluntary Oak Woodland Management Plan (2010).” Other than these references, there is no further description or summary in the Initiative of the best management practices (BMPs) contained in Sections 1 and 3 of Appendix D of the Napa County Voluntary Oak Woodland Management Plan (2010).

Section 1 of Appendix D contains a short list of more detailed guidelines for tree protection during construction, including directives on fencing, irrigation, grading, storage, and planting. Section 3 of Appendix D consists of approximately two and a half pages of detailed guidelines for maintenance, restoration, and rehabilitation of oak woodlands. Section 3 addresses acorn collection and storage procedures, methods of sowing acorns of rangeland oaks in the field, procedures for planting rangeland oaks, weed control procedures, methods of protecting trees from animals, procedures for tree-shelter installation and maintenance, fertilization, irrigation and top pruning. None of the text of Sections 1 and 3 were included in or attached to the Initiative.

Elections Code section 9201 provides, in pertinent part: “Any proposed ordinance may be submitted to the legislative body of the city by a petition filed with the elections official of the legislative body, in the manner hereinafter prescribed, after being signed by not less than the number of voters specified in this article. The petition may be in separate sections . . . . The first page of each section shall contain the title of the petition and *the text of the measure.*” (Italics

added.) “The purpose of the full text requirement [in section 9201] is to provide sufficient information so that registered voters can intelligently evaluate whether to sign the initiative petition and to avoid confusion.” (*Mervyn’s v. Reyes* (1998) 69 Cal.App.4th 93, 99.)

The issue presented here is whether the Initiative is “enacting” or “adopting” the BMPs. If the BMPs simply affect the Initiative or are merely referenced in the Initiative, the BMPs need not be included in the “full text” of the Initiative. (*We Care – Santa Paula v. Herrera* (2006) 139 Cal.App.4th 387, 390 (*We Care*).) If, on the other hand, the BMPs are being “enacted” or “adopted,” they must be included in the “full text.” (*Id.*)

Petitioners argue that they have complied with the full text requirement because the Initiative includes all of the language that will be enacted into law should the voters approve the Initiative. Petitioners contend that the Initiative is not enacting or adopting the BMPs and that the Napa County Board of Supervisors can still amend, weaken or even repeal the BMPs if the Initiative passes. Respondents argue that the Initiative fails to include the full text because it omits the language of Sections 1 and 3 of Appendix D, and those sections, which are now part of a voluntary county policy that does not have the force of law, *will* be enacted into legal requirements by the plain language of the Initiative.

The court agrees with Respondents. The Initiative, in referencing Sections 1 and 3 and deeming them mandatory, will enact them into binding legal requirements under proposed County Code section 18.20.060. Petitioners’ argument that the BMPs are not being enacted or adopted is belied by the plain and specific language of the Initiative. It provides “[t]he director *shall not approve* an Oak Removal Permit” if, among other things, “[p]roposed remediation measures are not adequate under subsection (E)[.]” (Initiative, section 18.20.060 D.3, emphasis added). Subsection E specifically requires compliance with the referenced BMPs. The Initiative

further provides that language adopted in the Zoning Ordinance amendments “may be changed only by a vote of the people.” (Initiative, Section 4 preamble). There is nothing in the Initiative that states or implies that the BMPs can be modified or repealed by the Board of Supervisors and Petitioners’ argument to the contrary is unsupported by any authority. In fact, the court’s acceptance of that argument would undermine one of the primary purposes of an initiative – to prevent a future hostile legislative body from changing the provisions of legislation adopted by initiative. (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 788.)

In support of the current Initiative, Petitioners cite to other initiative and referendum cases where simple cross-references to other legislation, without including the actual text of the legislation, were allowed. However, in those cases the cross-referenced legislation had already been enacted into law.<sup>1</sup> Here, the Napa County Voluntary Oak Woodland Management Plan (2010) is nothing more than a voluntary policy; it has never been enacted into law. It is the Initiative itself that would be enacting portions of it into the mandated oak removal permitting law.

For the foregoing reasons, the court finds that because the text of Sections 1 and 3 in Appendix D of the Napa County Voluntary Oak Woodland Management Plan (2010) was omitted from the Initiative petition that was circulated for signatures, the Initiative does not contain “the full and complete text of everything that will be enacted if the voters approve it” as is required by Elections Code section 9201. (*We Care, supra*, 139 Cal.App.4th at p. 390.)

“Local elections officials may refuse to certify a proposed measure if noncompliance is manifest

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<sup>1</sup> *We Care – Santa Paula v. Herrera* (2006) 139 Cal.App.4th 387; *San Mateo County Coastal Landowners’ Assn. v. County of San Mateo* (1995) 38 Cal.App.4th 523; *Costa v. Superior Court* (2006) 37 Cal.4th 986; *Brosnahan v. Brown* (1982) 32 Cal.3d 236. The court notes that the initiative in *Pala Band of Mission Indians v. Board of Supervisors* (1997) 54 Cal.App.4th 565 did cross-reference requirements that were not laws, but no “full text” challenge was raised in that case, and therefore the Court of Appeal did not address it.

on the face of the submitted petition.” (*Alliance for a Better Downtown Millbrae v. Wade* (2003) 108 Cal.App.4th 123, 133.) Here, the Initiative’s failure to include the referenced sections that it was enacting was manifest on its face, and the Registrar properly refused to certify the Initiative.

At the hearing, Respondent requested the court issue a statement of decision; the instant order is deemed to be the statement of decision.

Dated: 7/21/16

  
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Diane M. Price, Judge

**NAPA SUPERIOR COURT  
CERTIFICATE OF MAILING/SERVICE**

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**James P. Wilson and Michael Hackett vs. County of Napa, et al.,      16CV000457**

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**Minh C. Tran  
Napa County Counsel  
1195 Third Street – Suite 301  
Napa, CA 94559**

**Arthur F. Coon  
A Professional Law Corporation  
1331 N. California Blvd., - Fifth Floor  
Walnut Creek, CA 94596**

**Catherine C. Enberg  
Peter J. Broderick  
Shute, Mihaly & Weinberger LLP  
396 Hayes Street  
San Francisco, CA 94102**

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**\*\*\*\*CERTIFICATION\*\*\*\***

I hereby certify that I am not a party to this cause and that a copy of the **ORDER DENYING  
VERIFIED PETITION FOR WRIT OF MANDATE; STATEMENT OF DECISION** was:

- ☒ **Mailed** (first class postage pre-paid) in a sealed envelope  
☐ **Personal service:** personally delivered to the party listed above  
☒ **Placed in attorney/agency folders** in the ☒ Criminal Courthouse ☐ Historic Courthouse  
\*\*\*\*☐ **Fax:** a true and correct copy sent by facsimile machine to the party listed above.  
At Napa, California on this date and that this certificate is executed at Napa, California this date.

I am readily familiar with the Court's standard practice for collection and processing of correspondence for mailing within the United States Postal Service and, in the ordinary course of business, the correspondence would be deposited with the United States Postal Service on the day on which it is collected at the Courthouse.

Date: **JUL 21 2016**

Richard D. Feldstein, Court Executive Officer

By 

Deputy Court Executive Officer

\*An Assistive listening system is available upon request pursuant to Section 54.8(a) of the Civil Code