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A Commitment to Service

Elections Code Section 9111 Report

Angwin General Plan Amendment Initiative

July 9, 2012

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Executive Summary

Napa County staff and legal experts at the firm Miller Starr Regalia have analyzed the proposed initiative referred to as “the Angwin General Plan Amendment Initiative” and prepared this report pursuant to California Election Code Section 9111 and direction from the Board of Supervisors received on June 5, 2012. The report examines the proposed initiative from planning, fiscal, and legal perspectives.

Description of the Initiative

The Angwin General Plan Amendment Initiative has qualified for the November 6, 2012 ballot and would amend the County’s General Plan, which governs land use and development in unincorporated Napa County. If adopted by the Board of Supervisors or approved by the voters, the Initiative would change the land use designation of three parcels in the unincorporated community of Angwin, converting them from “Urban Residential” to “Agriculture, Watershed and Open Space” (AWOS) or “Public Institutional.” All three parcels are owned by Pacific Union College.

The Initiative would also revise the General Plan policies affecting the AWOS and Public Institutional designations, allowing expansion of Pacific Union College’s existing wastewater treatment plant in the AWOS, and prohibiting subdivisions in the Public Institutional designation county-wide. Three areas of the County include land that is designated Public Institutional and could be affected by the Initiative: Angwin, an area around Napa State Hospital and Skyline Park, and an area around the Napa County Airport. Land in these areas is in private and public ownership.

Conclusions of the Analysis: Legal Flaws

Unlike Measure J (1990) and Measure P (2008), which affected the intensity of development in agricultural areas by establishing minimum parcel sizes for certain land use designations, the Angwin General Plan Amendment Initiative would affect the intensity of development by prohibiting subdivision of existing parcels in the Public-Institutional land use designation. The attorneys at Miller Starr Regalia believe this outright prohibition is inconsistent with State Law (i.e. the Subdivision Map Act), which allows local agencies to regulate, but not to prohibit subdivisions.¹ As a result, the section of the Initiative that would amend General Plan Policy AG/LU-53 to prohibit subdivisions in the Public Institutional land use designation is likely to be invalidated if the Initiative is adopted and then challenged in court.

¹ There are several potential problems with the subdivision prohibition identified in the legal analysis (Appendix D), including (a) a facial conflict with the Subdivision Map Act, (b) preemption by Map Act provisions the “occupy the field” regarding the filing, processing and approval of subdivision maps, to the exclusion of conflicting local legislation; (c) a conflict with State Planning and Zoning law if existing parcels of various sizes are essentially “locked in place,” despite the law’s requirement for uniform zoning provisions, and (d) the possibility that it could violate equal protection rights guaranteed to property owners.

Other provisions of the Initiative are less likely to be challenged successfully, although there is a possibility that the County would have to defend itself against claims related to California Election Law or the federal Religious Land Use and Institutionalized Persons Act (RLUIPA).

Fiscal Impacts

If the Initiative is adopted and then challenged in court, the County could incur costs associated with defending against the legal challenge(s). This report estimates that defending against a challenge in Napa Superior Court and the Court of Appeals could cost the County in the neighborhood of \$400,000 to \$600,000. The cost of defending against a lawsuit in federal court (asserting discrimination pursuant to RLUIPA) is difficult to estimate, but could reach \$500,000–\$750,000 or more, if appealed.

Some administrative costs would be incurred by the County in preparing and adopting zoning changes if the Initiative is adopted, since the County must maintain consistency between the General Plan and zoning. The magnitude of these costs is not known at this juncture.

The Initiative's proposed re-designation of land and prohibition on subdivisions in the Public Institutional land use designation would somewhat reduce development potential, and could therefore affect future tax revenues. It would be unreasonable to speculate on the extent of these impacts without knowing more about future development. No other fiscal impacts to the County are anticipated. (An analysis of potential fiscal impacts to other agencies and private property owners is outside the scope of this report.)

Planning and Land Use Issues

The Initiative proposes map and text changes for the General Plan that would not result in glaring internal inconsistencies or conflicts with any fundamental or mandatory policies in the General Plan. The "urbanized" area of Angwin shown on the County's land use map and zoned Planned Development would still "contain institutional uses (i.e. the college), residential uses, and limited neighborhood servicing non-residential uses" (Policy AG/LU-58). Similarly, the General Plan land use designations in the area would still provide "opportunities for limited commercial services focused on the Angwin community" (Policy AG/LU-57) and "a variety of housing types to support residents, students and employees..." (Policy AG/LU-65).

Nonetheless, various General Plan inconsistencies and conflicts could be asserted in the context of a legal challenge and the experts at Miller Start Regalia have tried to anticipate what potential issues might be raised. Evaluating a General Plan's internal "consistency" or "inconsistency" requires interpretation and local policy makers are given great deference by the courts, such that inconsistencies generally have to be glaring or involve fundamental or mandatory policies before they can be identified with any certainty.

Inconsistencies between the General Plan and zoning are easier to identify and the Initiative calls on the County to amend the zoning ordinance as necessary to resolve any inconsistencies. The Initiative assumes that the Planned Development (PD) zoning designation in Angwin will have to be replaced (presumably with an AW zoning designation) to remain consistent with the AWOS land use designation proposed for two parcels west of Howell Mountain Road and this rezoning would be clearly “desirable,” as stated in General Plan Policy AG/LU-114.

The effect of re-designating the two parcels (24.6 acres) in Angwin from Urban Residential to AWOS would be to disallow multifamily housing, limited commercial, institutional, educational or cultural uses and densities permitted under the Planned Development zoning. One single family home and a second unit would be permitted per parcel, along with agricultural uses. Recreational and religious uses could be allowed with a use permit following environmental review pursuant to the California Environmental Quality Act (CEQA).²

The effect of re-designating one parcel (25.8 acres) in Angwin from Urban Residential to Public Institutional (east of Howell Mountain Road) would be less clear because uses allowed in the Planned Development zoning district would be incompatible with the Public Institutional land use designation under some circumstances and not others. For example, multifamily housing (up to 20 dwelling units to the acre) would be permitted in the Planned Development zoning district and could be allowed with a use permit following CEQA review *if* the housing was “*for use by students, faculty and staff of the College,*” as required by General Plan Policy AG/LU-53. Similarly, limited commercial uses could be allowed with a use permit following CEQA review if the uses are deemed “*essential to the needs of students, faculty, or staff*” as required by Policy AG/LU-53.

The text changes to Policy AG/LU-53 proposed by the Initiative would prohibit subdivision of parcels designated Public Institutional in Angwin, in the Napa State Hospital/Skyline Park area, and in the Napa County Airport area. Parcels in these areas are currently zoned Agricultural Watershed (AW), Public Lands (PL), Planned Development (PD), General Industrial (GI), Industrial (I), and Airport (AV). The effect of the Initiative would be to prohibit subdivision of parcels even if they would otherwise be permitted by the zoning district. In a few instances outlined in the report, this could be construed as a “conflict,” potentially requiring amendments to the zoning map or the text of the zoning ordinance.

The Initiative would not result in obvious or significant conflicts between the General Plan and the Airport Industrial Area Specific Plan or the County’s Airport Land Use Compatibility Plan. Also, while it would somewhat reduce the County’s flexibility when identifying sites for multifamily housing in the future, it would have no appreciable effect on the County’s ability to comply with State housing laws or meet related obligations. The Initiative explicitly avoids impacting housing sites identified in the County’s current Housing Element.

² Under the terms of the Initiative, the parcels could also be used for expansion of the existing wastewater treatment plant and for previously vested development rights. One of the parcels may have vested rights for recreational uses.

A. Introduction

This report evaluates the potential impacts of the “Angwin General Plan Amendment Initiative,” an initiative that has qualified for the ballot in Napa County, California. The full text of the proposed Initiative is included as Appendix A.

If passed, the Initiative would amend the General Plan governing land use and development decisions in unincorporated Napa County. Specifically, the Initiative would (a) amend the Land Use Map of the County (General Plan Figure AG/LU-3) on page AG/LU-67 of the General Plan, (b) amend the detailed map of Angwin on page AG/LU-31 of the General Plan, (c) amend General Plan Policy AG/LU-20 describing uses and intensities in the Agriculture, Watershed and Open Space (AWOS) land use designation, and (d) amend General Plan Policy AG/LU-53 describing the uses and intensities in the Public-Institutional land use designation.

When an initiative is circulated for signatures, Section 9111 of the California Elections Code authorizes a County Board of Supervisors to request a report regarding the potential impacts of the initiative prior to deciding whether to adopt the initiative or to order an election (Section 9111 is reproduced in full in Appendix B).

On June 5, 2012, the Napa County Board of Supervisors received correspondence from an affected property owner and the initiative proponents (Appendix C), and requested that County staff prepare an analysis of the proposed initiative. The Board’s request specified the topics that should be covered in the analysis, as discussed below, and indicated that the report should be prepared for presentation to the Board at its regularly scheduled meeting of August 7, 2012. Subsequently, the Registrar of Voters certified that sufficient signatures had been gathered earlier than originally anticipated, requiring presentation of the report to the Board prior to July 26, 2012.³

B. Scope and Assumptions

The analysis of policy and land use (planning) issues included in this report is conducted under the assumption that the provisions proposed by the Angwin General Plan Amendment Initiative are adopted and not subsequently overturned following judicial review. The planning and fiscal analyses also assume that the Initiative, if adopted, would not preclude the Board of Supervisors from changing the County’s General Plan Land Use Map in the future, with certain exceptions. (The Board could not change the designation of the three parcels re-designated by this initiative, and could not change the designation of parcels designated AR or AWOS pursuant to Measure P, adopted in 2008.) This assumption is based on the Initiative proponents’ intent, as described in correspondence

³ On June 18, 2012, the Registrar of Voters certified that the initiative has qualified for the ballot. July 10 is the latest regularly scheduled Board meeting within 30 days of that date and this report will be presented to the Board on that date.

dated July 2, 2012 (see Appendix D). The fiscal and legal analyses examine potential costs and the likelihood of success should the Initiative be adopted and challenged in court.

Pursuant to direction from the Board of Supervisors received at their meeting of June 5, 2012, this report addresses the following implications of the proposed Initiative:

- potential effects on the use of land, housing, and the County's General Plan (Section 9111(a)(2)&(3))
- potential impacts on the funding and cost of infrastructure (Section 9111(a)(4))
- potential impacts on uses of vacant parcels, agricultural lands, open space, existing business districts and developed areas (Section 9111(a)(6)&(7))
- potential fiscal impacts (Section 9111(a)(1); and
- legal questions such as the ability of an initiative to prohibit subdivisions and the adequacy of the map(s) provided in the initiative (Section 9111(a)(8)).

In assessing these potential implications of the Initiative, the analysis addresses all of the topics included in Elections Code Section 9111 except for business attraction and retention (Section 9111(a)(5)), and also addresses questions posed by the law firm Manatt, Phelps & Phillips in their June 4, 2012 letter to the Board of Supervisors (included in Appendix C).

C. Description of Initiative

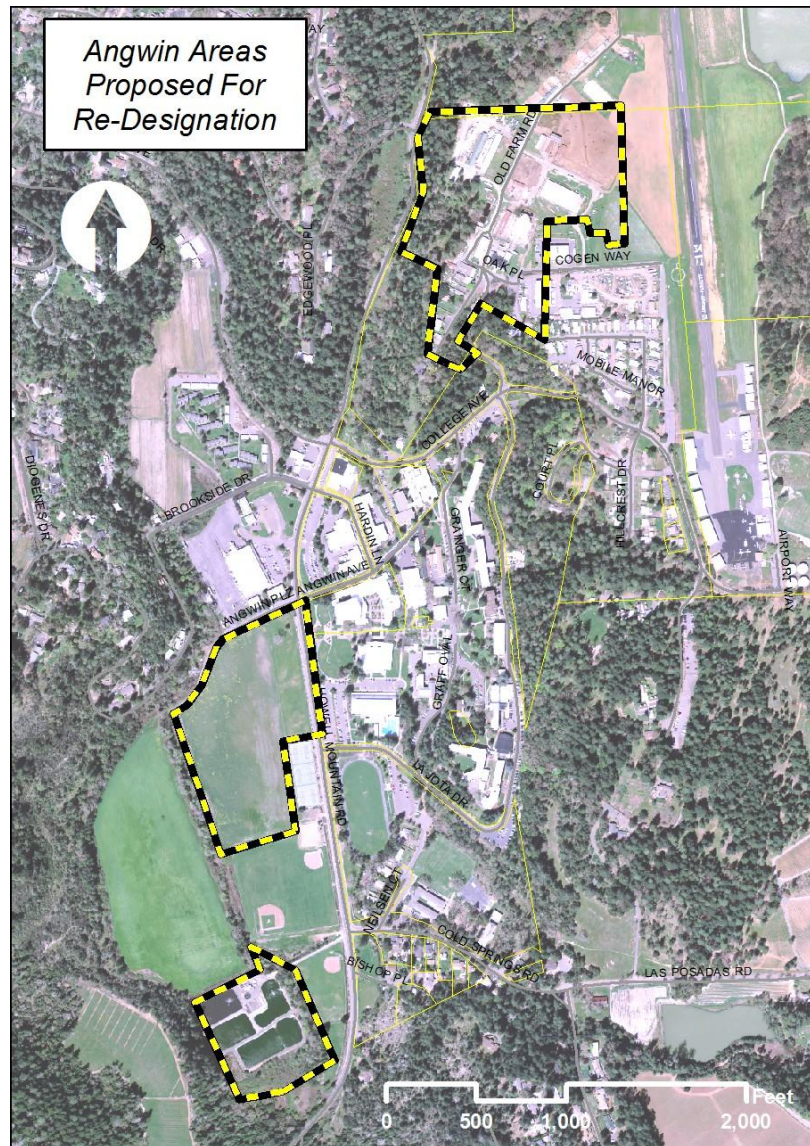
If passed, the Initiative would amend figures and text within the General Plan governing land use and development decisions in unincorporated Napa County. While most of the amendments are aimed at the unincorporated community of Angwin, the Initiative would also amend figures and text related to other areas of the County. Each proposed amendment is described below. (Please see Appendix A for the text of the Initiative.)

1. Changes to the General Plan Land Use Map & Angwin Detail

Section 3(B) of the Initiative would amend the General Plan Land Use Map (General Plan Figure AG/LU-3 on page AG/LU-67 of the General Plan), which depicts the land use policy of the County of Napa. Section 3(A) of the Initiative would amend the map of Angwin on page AG/LU-31 of the General Plan, which is a detail (i.e. a larger scale image) of the portion of the General Plan Land Use Map that applies to Angwin. Both amendments would enact the same changes in land use designations within the community of Angwin.

Specifically, the map amendments would achieve three changes in land use designation in Angwin: approximately 16.0 acres south of the Angwin shopping center would be re-designated from Urban Residential to AWOS; approximately 8.6 acres south of the ball fields would be re-designated from Urban Residential to AWOS; and approximately 25.8 acres at the north of the Pacific Union College would be re-designated from Urban Residential to Public-Institutional.

These areas are illustrated in **Figure 1**, and are all owned by Pacific Union College. The area south of the Angwin shopping center currently contains a grass field, some of which is used for the spray/disposal of recycled wastewater. The area south of the ball fields currently contains the College's wastewater treatment plant. The area at the north end of the campus contains a mix of college support uses and commercial tenants of the college.



Source: Napa County Department of Planning, Building & Environmental Services, July 2012

Figure 1: Aerial Photo of Angwin, showing Areas Proposed for Re-Designation from Urban Residential to Agriculture, Watershed & Open Space (AWOS) or Public-Institutional.

In general terms, the re-designation of land from Urban Residential to AWOS would mean that the lands would no longer be available *“for development of a full range of urban housing opportunities”* as provided for in General Plan Policy AG/LU-34. Instead, the land will be designated such that *“the predominant use is agriculturally-oriented... where urban development would adversely impact all such uses”* as provided for in Policy AG/LU-20.

Similarly, the re-designation of land from Urban Residential to Public-Institutional would generally mean that the lands would no longer be available *“for development of a full range of urban housing opportunities”* as provided for in General Plan Policy AG/LU-34. Instead, the land will be designated for *“college uses and facilities consistent with Angwin’s rural character”* (Policy AG/LU-53).

2. Policy AG/LU-20 & the AWOS Land Use Designation

Section 3(C) of the Initiative would amend General Plan Policy AG/LU-20 describing uses and intensities in the Agriculture, Watershed and Open Space (AWOS) land use designation. The amendment would insert one sentence specific to Angwin: *“In Angwin, uses allowed in the Agriculture, Watershed and Open Space designation include modernization and expansion of the existing sewage treatment facility located on the West side of Howell Mountain Road.”*

The proposed amendment inherently acknowledges that intensification of uses in the AWOS land use designation is not allowed if those uses are not permitted by the General Plan and zoning. A new privately-owned sewage treatment facility for the purposes of treating wastewater from a non-agricultural use would not be permitted in the AWOS land use designation (or the associated Agricultural Watershed zoning district), so this amendment allows for future intensification of the existing facility at the location specified.

3. Policy AG/LU-53 & the Public-Institutional Land Use Designation

Section 3(D) of the Initiative would amend General Plan Policy AG/LU-53 describing the uses and intensities in the Public-Institutional land use designation. The amendment would eliminate one sentence and substitute another.

The sentence that would be eliminated is specific to Angwin and reads *“In Angwin, further parcelization is permitted to support the college’s educational mission and reconfiguration of existing parcels is permitted to comply with Policy AG/LU-66.”* Policy AG/LU-66 indicates the County’s support for the ongoing operation of the Angwin airport (Parrett Field) as well as any improvements approved by the Federal Aviation Administration.

The sentence that would be added states: *“No further subdivision of parcels is permitted”* and would apply to properties in the Public-Institutional land use designation throughout unincorporated Napa County.

D. Background Information

This section contains background information regarding State requirements regarding General Plans, including Housing Elements and the Land Use Map, Angwin and Pacific Union College, and parcels currently located in the Public-Institutional land use designation throughout the County.

1. The General Plan and the Land Use Map

State law requires each local jurisdiction to adopt and maintain a General Plan to guide land use, development, and capital expenditures within the jurisdiction (California Government Code Section 65300 et seq.). The law requires that the General Plans include a diagram or diagrams and text, and designate *“the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space...”* (Section 65302). General Plans are policy documents that may be amended by resolution up to four times per year (Section 65358). They are required to be internally consistent (Section 65300.5), consistent with airport land use plans (Section 65302.3) and consistent with the zoning regulations used to implement them (Section 65860).

Napa County completed a comprehensive update of its General Plan in June 2008 and an update of the Housing Element of its General Plan in June of 2009. The Napa County General Plan includes the Land Use Map, which *“depicts the land use policy”* of the County, and is *“presented as a general illustration of the policies of the General Plan”* (Policies AG/LU-112 and AG/LU-113).

As a generalized diagram, the County’s Land Use map is not intended to be parcel-specific, and Policy AG/LU-113 states that it should not be interpreted as such. As a result, determining the precise boundaries and applicability of land use designations can require interpretation by County policy makers. In fact, the map itself contains a caveat: *“This Land Use Map Provides a Generalized Picture... Using Eight Broad Land Use Classifications...[and] Presents a Graphic Overview of the General Distribution and Location of Major Land Use Areas...”*

The generalized nature of the map, its lack of specificity as to parcel boundaries, and the need for interpretation is made apparent in the discussion of parcels that would be affected by the Initiative, below.

2. The Housing Element

Every General Plan must contain a Housing Element, and every jurisdiction must update its Housing Element on a regular schedule, providing sites and programs necessary to accommodate the jurisdiction’s Regional Housing Needs Allocation (RHNA). Unlike other sections of the General Plan, the Housing Element is subject to review and “certification” by a State agency, the Department of Housing and Community Development (HCD).

Napa County’s Housing Element was last updated in June 2009 and was rejected by HCD staff, who felt it did not comply with State law. Housing advocates then filed suit against the County alleging Housing Element deficiencies among other things. In December 2011, Napa County Superior Court rejected the advocates’ arguments and determined that the County’s Housing Element is in substantial compliance with the law. The case is currently on appeal.

The County’s current Housing Element includes two affordable housing sites in Angwin, both of which are designated Urban Residential on the County’s General Plan Land Use Map. The Housing

Element describes the realistic development capacity of the two sites as 191 dwelling units in total. The designation of these sites is not proposed to change in the Initiative. The Environmental Impact Report (EIR) prepared for the Housing Element update in 2009 includes mitigation measures that would apply to affordable housing development on the identified sites, including a requirement that the wastewater treatment system be expanded.

3. Angwin & Pacific Union College

Angwin is a rural community within unincorporated Napa County located on Howell Mountain approximately four miles northeast of the City of St. Helena. The community has approximately 3,000 residents (2010 US Census), and comprises the largest concentration of population in the unincorporated County. The area is known for its vineyards (the Howell Mountain appellation), and as the home of Pacific Union College, a small Seventh Day Adventist college that relocated to Angwin in 1909.

The community is divided north-south by Howell Mountain Road, with the largest concentration of residences lying west of the road, and the majority of college properties to the east. The core campus contains classrooms, dormitories, administration and religious buildings and offices, as well as a cogeneration plant, small private airport and a number of residences and other uses. Current college enrollment is approximately 1,500 students (www.puc.edu accessed June 18, 2012).

There is a commercial shopping center directly across Howell Mountain Road from the campus, along with recreation areas (tennis courts and ball fields), a wastewater treatment plant, and agricultural fields that are used for the disposal of treated wastewater. These areas are all owned by the College, which also owns forested land to the east of the airport. Vineyards and forested areas surround the Angwin community, which has a small town feel.

Angwin has a mix of zoning designations, including areas zoned for single family residential use (RS), areas zoned Planned Development (PD), areas zoned Agricultural Watershed (AW), and the airport zone (AV). The PD zoning was historically used to accommodate the college and nearby commercial uses, and also includes two sites that have been identified for multifamily residential development in the Housing Element of the County's General Plan (see Housing Element discussion above).

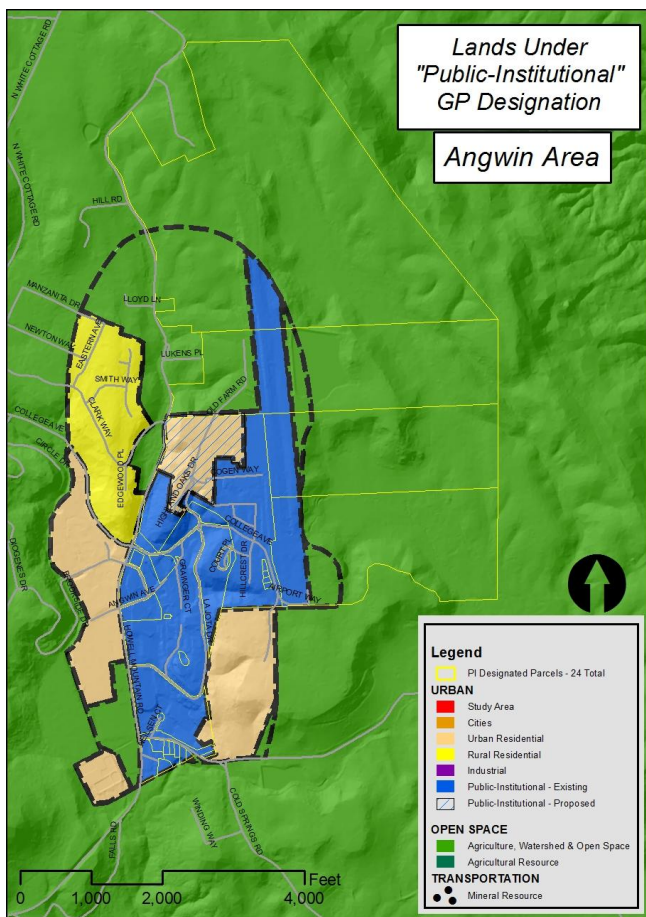
In July 2007, a private developer in partnership with Pacific Union College applied for permission to construct a mixed-use development on College owned lands. As later amended and re-submitted by Pacific Union College, the development application would have resulted in a project called the "Ecovillage" with 275 dwelling units, a 105-unit senior living facility, redevelopment of Angwin's commercial center, infrastructure improvements, and other changes. The application was very controversial and after several years "on hold," was recently withdrawn.

4. Parcels Affected & their Ownership

Figures 2, 3, and 4 below show the three areas of the County where the Public-Institutional land use designation occurs: in Angwin, at Napa State Hospital near Skyline Park, and in the Napa Airport area. These are the areas that would be potentially affected by the Initiative's policy change regarding the Public-Institutional land use designation, as discussed in Section E, below. As noted

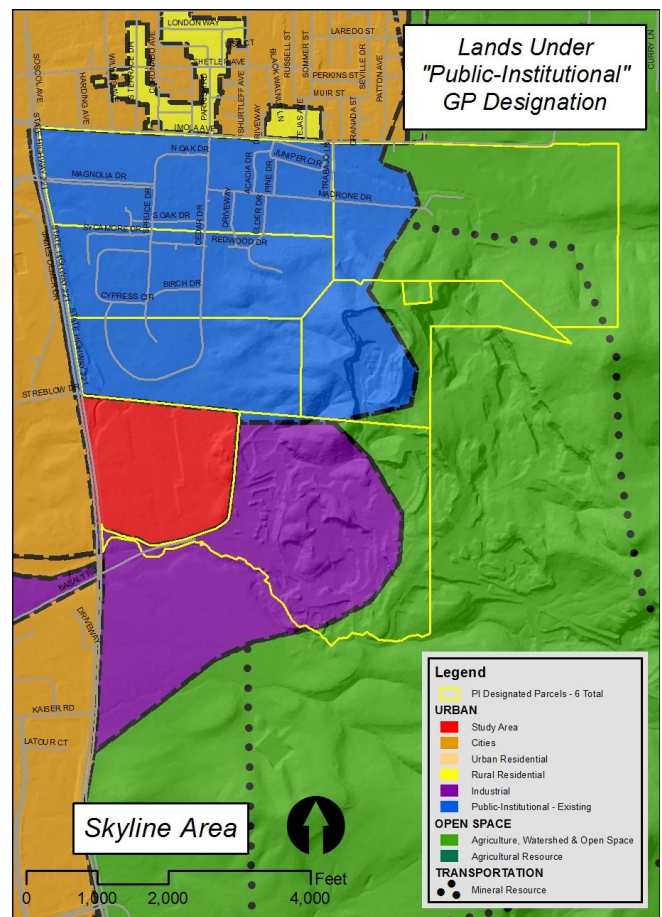
above and clearly illustrated here, the Land Use Map boundaries require some interpretation, and it's possible that some smaller parcels that are not in use for institutional purposes could be interpreted as falling outside the Public-Institutional designation when County policy makers consider decisions affecting their development (e.g. rezoning, subdivision, new uses, etc.).

Table 1 includes a list of all of the parcels currently shown as being designated Public-Institutional, including their size and ownership. As noted above, some of the smaller parcels may be interpreted as falling in another land use designation.



Source: Napa County PBES, July 2012

Figure 2: Land Designated Public Institutional in the Angwin Area (shown in blue)



Source: Napa County PBES, July 2012

Figure 3: Land Designated Public Institutional in the Skyline Park Area (shown in blue)

Angwin Area

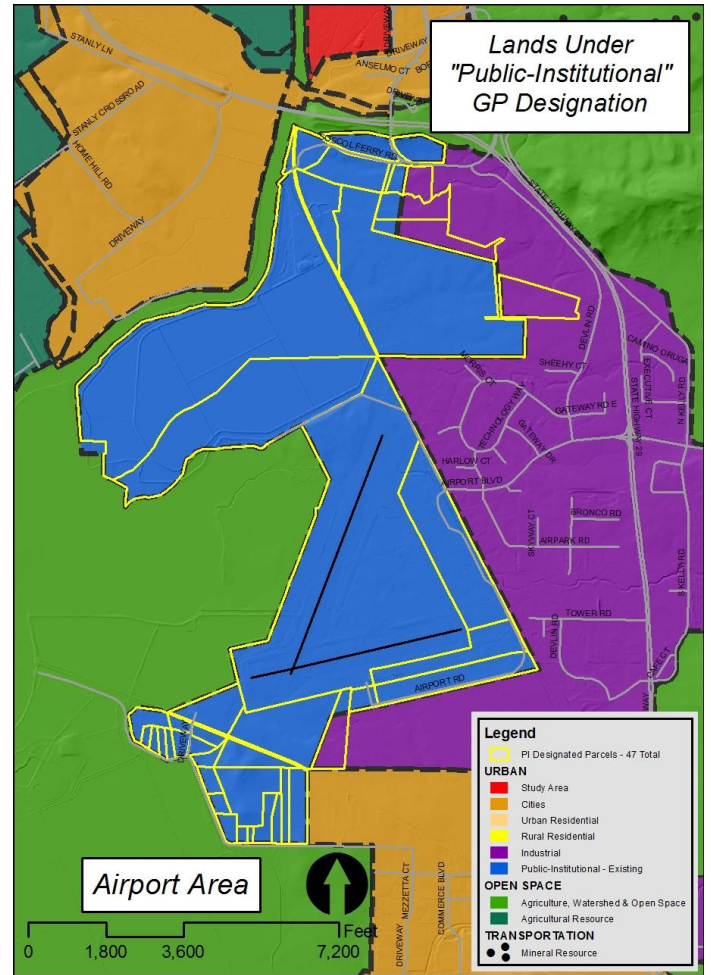
ASMT	Owner	Acres	Acres within PI	Zoning	Minor Zoning
24080003000	PACIFIC UNION COLLEGE ASSN	118.67	12.49	AV:AC	
24080018000	PACIFIC UNION COLLEGE ASSN	303.31	8.63	AV:AC	
24080021000	PACIFIC UNION COLLEGE ASSN	74.36	47.72	PD:AC	AV:AC
24080022000	PACIFIC UNION COLLEGE ASSN	88.61	11	AV:AC	
24080027000	PACIFIC UNION COLLEGE ASSOCIATION	98.65	14.7	AV:AC	
24311006000	RIVERO JOSE L & SONIA E	0.29	0.29	PD:AC	
24311007000	PACIFIC UNION COLLEGE	0.43	0.43	PD:AC	
24311008000	PACIFIC UNION COLLEGE ASSN	0.21	0.21	PD:AC	
24311019000	PACIFIC UNION COLLEGE	0.34	0.34	PD:AC	
24311021000	PACIFIC UNION COLLEGE	0.73	0.73	PD:AC	
24311022000	PACIFIC UNION COLLEGE	2.31	2.31	PD:AC	
24311023000	PACIFIC UNION COLLEGE	0.71	0.71	PD:AC	
24311024000	PACIFIC UNION COLLEGE	0.36	0.36	PD:AC	
24311025000	PACIFIC UNION COLLEGE	0.58	0.58	PD:AC	
24312002000	PACIFIC UNION COLLEGE ASSN	0.26	0.26	PD:AC	
24410002000	PACIFIC UNION COLLEGE ASSN	0.12	0.12	PD:AC	
24410003000	NORTHERN CALIF CONF OF 7TH DAY ADVENTISTS	2.96	2.96	PD:AC	
24410006000	PACIFIC UNION COLLEGE ASSN	0.89	0.89	PD:AC	
24410010000	PACIFIC UNION COLLEGE ASSN	1.85	1.85	PD:AC	
24410011000	PACIFIC UNION COLLEGE ASSN	75.13	73.88	PD:AC	
24480001000	PACIFIC UNION COLLEGE	0.22	0.22	PD:AC	
24480002000	PACIFIC UNION COLLEGE	0.18	0.18	PD:AC	
24480003000	PACIFIC UNION COLLEGE	0.19	0.19	PD:AC	
24480004000	PACIFIC UNION COLLEGE	0.22	0.22	PD:AC	
Total		771.58	181.27		

Skyline Area

ASMT	Owner	Acres	Acres within PI		
46370025000	SYAR INDUSTRIES INC	157.15	3.1	I	
46450020000	CALIFORNIA STATE OF	138	138	PD	
46450041000	CALIFORNIA STATE OF	201.71	40.02	PD	AW
46450069000	CALIFORNIA STATE OF	105.73	105.73	PD	AW
46450070000	CALIFORNIA STATE OF	77.54	77.54	PD	AW
46450071000	SYAR INDUSTRIES INC	103.13	56.52	AW	
Total		783.26	420.91		

Airport Area

ASMT	Owner	Acres	Acres within PI		
46400011000	NAPA SANITATION DISTRICT	15.85	15.85	AW:AC	
46400012000	BLUE CANARY INC	13.23	13.23	IP:AC	
46400015000	NAPA SANITATION DISTRICT	13.01	13.01	AW:AC	
46400016000	NAPA SANITATION DISTRICT	27.6	27.6	AW:AC	
46400025000	SOUTHERN PACIFIC R/R	3.02	3.02	AW:AC	
57010010000	NAPA SANITATION DISTRICT	327	327	AW:AC	
57010038000	NAPA SANITATION DISTRICT	32.77	32.77	PL:AC	
57010039000	NAPA SANITATION DISTRICT	232.95	232.95	PL:AC	
57020017000	HCV NAPA ASSOC LLC	31.99	31.99		
57040005000	LYALL HELEN TR	22.7	22.7	GI:AC	
57040006000	NAPA COUNTY OF	52.95	52.95	AV:AC	
57040007000	ATKINS LARRY G ETAL	25.44	4.05	I:AC	
57050003000	NAPA SANITATION DISTRICT	163.59	163.59	AW:AC	
57050009000	NAPA COUNTY OF	111.45	111.45	AV:AC	
57050011000	NAPA COUNTY OF	43.32	43.32	AV:AC	
57050012000	NAPA COUNTY OF	467.65	467.65	AV:AC	
57090063000	NAPA COUNTY OF	45.57	45.57	I:AC	AV:AC
57090064000	NAPA COUNTY OF	6.32	6.32	I:AC	
57170001000	GILES KIMBAL GRIGGS & BLODGETT-GILES THERESE	22.39	7.62	IP:AC	
57170010000	CARPENTER PHILLIP BRUCE & ANNE MARIE TR	27.55	4.32	IP:AC	
57170017000	MT LASSEN MOTOR CO	5.16	5.16	GI:AC	
57170018000	FENNEL MICHAEL L & ANNE E ETAL	10.32	10.32		
58010007000	SONOMA-MARIN AREA RAIL TRANSIT DISTRICT	0	0	AV:AC	GI:AC
58060001000	GREEN ISLAND ENTERPRISES LLC	9.42	9.42	GI:AC	
58060002000	WRIGHT ROBERTA L	3.43	3.43	GI:AC	
58060003000	CAMPAINHA DALE A & KATHRYN B	2.5	2.5	GI:AC	
58060004000	NOORZAY FAHIM ETAL	3	3	GI:AC	
58060005000	ABBOTT BRIAN C AND ROSE E	2.55	2.55	GI:AC	
58060006000	LAPPOINT MICHAEL TR	2.53	2.53	GI:AC	
58060007000	GENTRY JAMES L	5.25	5.25	GI:AC	
58060008000	YONASH RICHARD F TR	3.55	3.55	GI:AC	
58060009000	CAMPBELL CHARLES W & PHYLLIS M TR	4.2	4.2	GI:AC	
58060010000	YONASH RICHARD F TR	5.71	5.71	GI:AC	
58060011000	NAPA COUNTY OF	15.99	15.99	AV:AC	
58070001000	LEE E HIEW & CHAN CHOY	5.38	5.38	GI:AC	
58070003000	NAPA COUNTY OF	33.23	33.23	AV:AC	
58070005000	FRAZIER ALICE L	8.34	8.34	GI:AC	
58070006000	BAKER CHARLES F	16.8	16.8	GI:AC	
58070008000	NAPA COUNTY OF	4.57	4.57	AV:AC	
58070013000	NAPA COUNTY OF	6.01	6.01	AV:AC	
58070014000	NAPA COUNTY OF	2.28	2.28	AV:AC	
58070015000	NAPA COUNTY OF	1.15	1.15	AV:AC	
58070026000	NAPA COUNTY OF	8.25	8.25	AV:AC	
58070027000	HACKER W SHAWN	5	5	GI:AC	
Total		1851	1791.58		



Source: Napa County PBES, July 2012

Figure 4: Land Designated Public Institutional in the Napa Airport Area (shown in blue)

Table 1: Size and Ownership of Parcels Shown As Public Institutional on the Land Use Map

Source: Napa County PBES, July 2012

E. Policy & Land Use Issues

This section examines the potential impacts of the Angwin General Plan Amendment Initiative from a policy and land use perspective. Specifically, the four sections below consider whether the proposed changes to the text and maps of the General Plan would create internal inconsistencies, affect the use of land and the availability of housing, or cause other impacts related to the use of land, vested development rights, agriculture, traffic, etc.

1. Internal Consistency within the County's General Plan & Consistency between the General Plan and Zoning

As noted earlier, State law requires that General Plans be internally consistent (California Government Code Section 65300.5), consistent with airport land use plans (Section 65302.3) and consistent with the zoning regulations used to implement them (Section 65860). The Angwin General Plan Amendment Initiative acknowledges these requirements in a number of ways:

- Section 5(A) requires that the County not “enforce” any provisions of the zoning ordinance that are inconsistent with the General Plan amendments contained in the Initiative.
- Section 5(B) requires the County to revise any amendments to the General Plan adopted prior to passage of the Initiative so as to ensure consistency with its provisions.
- Section 5(D) directs the County to “amend the Napa County General Plan, all specific plans, the Napa County Zoning Ordinance, the Napa County Zoning Map, and other ordinances and policies... as soon as possible... to ensure consistency between the policies adopted by this initiative” and these other documents.
- Section 5(E) requires the County to ensure that decisions affecting the use and development of property (General Plan amendments, rezoning, specific plans, tentative subdivision maps, parcel maps, conditional use permits, building permits, etc.) following passage of the initiative be consistent with its “policies and provisions.”
- Exhibit B contains a note explaining that “for illustrative purposes, this map eliminates a PD zoning designation that would be inconsistent with a new General Plan designation enacted by this initiative.”

Viewed as a whole, the Initiative implies that the map and text changes proposed for the General Plan have been crafted so as to maintain the General Plan’s internal consistency, at the same time that it asserts that changes to the zoning map will be required.

Evaluating a General Plan’s internal “consistency” or “inconsistency” is a difficult matter because so much interpretation is involved and County policy makers typically examine the General Plan in its entirety rather than focusing on a few maps and policies to make their determination. Yet

local policy makers are given great deference by the courts, and inconsistencies generally have to be glaring or involve fundamental or mandatory policies before they can be identified with any certainty.

a. Internal General Plan Consistency: Changes to the Land Use Map

Existing land uses are not affected by changes in land use designation since existing uses may continue similar to uses that are “non-conforming” under current zoning regulations. So in considering whether proposed Land Use Map changes would create internal inconsistencies within the General Plan, the question is whether the map changes are inconsistent with the character of the area as specified by General Plan policy, or with any future uses (including the use location, extent and intensity) called for in the Plan.

In this case, proposed changes to the Land Use Map would not themselves create glaring inconsistencies or conflict with any fundamental or mandatory policies in the General Plan. The “urbanized” area of Angwin shown on the County’s land use map and zoned Planned Development will still “contain institutional uses (i.e. the college), residential uses, and limited neighborhood servicing non-residential uses” (Policy AG/LU-58). Similarly, the General Plan land use designations in the area would still provide “opportunities for limited commercial services focused on the Angwin community” (Policy AG/LU-57) and “a variety of housing types to support residents, students and employees...” (Policy AG/LU-65). The housing sites identified in the Housing Element would also remain in place, as discussed further in Section E.2, below.

b. Internal General Plan Consistency: Changes to Policy AG/LU-20 Regarding the AWOS Designation

Proposed changes to the text of Policy AG/LU-20 concerning the AWOS land use designation would carve out a specific exception to that policy for expansion of the existing wastewater treatment plant. While some could argue that such a special exception is inconsistent with the intent of the AWOS designation,⁴ there are a multitude of examples throughout the General Plan – and even in Policy AG/LU-20 -- where such special exceptions exist. (For example, the last paragraph in Policy AG/LU-20 provides an exception specific to the Stanley Lane farm stand.) Thus, County policy makers have clearly found such exceptions to be useful – and not inconsistent – within the framework of the General Plan.

The effect of the text change proposed for AG/LU-20 would be to allow expansion of the existing wastewater treatment plant despite the plant’s location within the AWOS land use designation. The exception is needed because the County has traditionally interpreted the General Plan as

⁴The June 4, 2012 letter from Manatt, Phelps & Phillips, LLP attempts to make this argument by suggesting that voters have to amend the text of Measure P (Policy AG/LU-111) in order to allow expansion of infrastructure within the AWOS. As explained here and demonstrated by past ballot measures, the voters may create special exceptions in the AWOS designation by amending the General Plan without amending the text of Measure P.

prohibiting infrastructure expansions in the AWOS designation if those expansions are intended to serve uses outside the AWOS.

c. Internal General Plan Consistency: Changes to Policy AG/LU-53 Regarding the Public Institutional Designation

Proposed changes to the text of Policy AG/LU-53 about the Public-Institutional land use designation would limit the intensity of development allowed in areas with that designation by prohibiting future subdivisions, but would leave the “maximum building density” unchanged (“50% coverage and buildings/facilities necessary to support a student population of approximately 2,300”). There is no policy in the General Plan requiring subdivisions in the Public Institutional designation, and thus prohibiting subdivisions would not inherently conflict with the intent of the Public-Institutional designation, which is:

“To indicate those lands set aside for those existing and future uses of a governmental, public use, or public utility nature such as a public hospital, public use airport, sanitation district facilities, government equipment yard, state or federal administrative offices, recycling-composting facilities, or any other facilities for which the determinations set forth, pertaining to criteria for eminent domain in the California Code of Civil Procedures Section 1245.230(c)(1) through (3) can be made.”⁵

Consistent with Policy AG/LU-64, in Angwin, the intent of the Public-Institutional designation is to acknowledge the presence of Pacific Union College and lands appropriate for college uses and facilities consistent with Angwin’s rural character. Uses allowed include agriculture (including research), classrooms and other educational uses (including to serve pre-K, elementary and secondary students), meeting rooms, offices, maintenance and utility facilities, and residences for use by students, faculty and staff of the College, the Angwin Airport (Parrett Field) and limited commercial, community-service, medical, cultural, religious, recreational, and accessory uses essential to the needs of students, faculty, or staff.” (General Plan Policy AG/LU-53)

d. Relationship between the General Plan and Airport Land Use Compatibility Plan

State law requires general plans to be consistent with airport land use compatibility plans, and requires local agencies to refer proposed general plan amendments to the Airport Land Use Commission for a determination of consistency prior to approval.

The proposed initiative has not been reviewed by the Napa County Airport Land Use Commission and the Airport Land Use Compatibility Plan for the Angwin airport and the Napa Airport is not mentioned by name in the proposed initiative. Nonetheless, Section 5(D) of the initiative directs

⁵ Determinations cited include: (1) The public interest and necessity require the proposed project. (2) The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury. (3) The property described in the resolution is necessary for the proposed project.

the County to amend “other ordinances and policies” if required to maintain General Plan consistency.

Conflicts between the General Plan and the Airport Land Use Compatibility Plan generally occur when a General Plan allows or promotes a use (including its location, intensity and extent) that is not “compatible” with the Airport Land Use Compatibility Plan. It is also possible that policies within one plan can contradict another.

In the current instance, the Airport Land Use Compatibility Plan identifies land use designations within proximity to Parrett Field in Angwin as “Planned Development” and describes over flight areas that are north, south, and east of the airport.⁶ While it could be argued that the “Planned Development” designation is not consistent with the AWOS and Public-Institutional areas proposed by the Initiative, there are already areas designated AWOS and Public-Institutional in the General Plan that fall within areas shown as “Planned Development” in the Airport Land Use Compatibility Plan. “Planned Development” is a designation derived from the zoning of the area and is generally more permissive, rather than less permissive, than the AWOS and Public Institutional land use designations. This suggests that airport land use compatibility would not be compromised despite the change from Urban Residential to AWOS and Public Institutional proposed by the Initiative.

There are no obvious conflicts between the policy changes proposed by the Initiative and policies in the Airport Land Use Compatibility Plan. Nothing in the Initiative would, for example, prevent “the ongoing operation of Angwin Airport (Parrett Field), including any improvements approved by the Federal Aviation Administration...” (General Plan Policy AG/LU-66).⁷

e. Relationship between the General Plan and Airport Industrial Area Specific Plan

State law requires specific plans to be consistent with general plans. Napa County has one specific plan that governs land use and development in the Airport Industrial Area (AIA). The plan has been in place since 1986 and includes lands that are designated Public Institutional on the General Plan Land Use Map.⁸ These lands are zoned General Industrial (GI), Industrial (I) or for airport use (AV).

The AIA specific plan provides goals and policies for the area, as well as a list of required capital improvements and related financing methods. Nothing in the Airport Industrial Area Specific Plan provides for the subdivision of parcels, and therefore the plan would not conflict with the changes to General Policy Policy AG/LU-53 proposed by the Initiative.

⁶ Napa County Airport Land Use Commission, Airport Land Use Compatibility Plan, as amended December 15, 1999. Figure 7-3 shows land use designations around the Angwin airport; Figure 7-8 shows over flight areas.

⁷ As discussed in Section E.3 and 4 below, the Initiative might somewhat affect the value of Pacific Union College’s property by reducing the allowed uses in areas re-designated from Urban Residential to AWOS or Public Institutional, but nothing in the Initiative would directly impinge on airport operations or prevent airport improvements from being undertaken if funding was available.

⁸ Napa County Airport Industrial Area Specific Plan and EIR, adopted July 29, 1986. (The plan has been amended several times.)

f. Relationship between the General Plan and Zoning

In considering the consistency of the General Plan amendments proposed by the initiative with the underlying zoning, it's important to consider General Plan Policy AG/LU-114, which states:

"Zoning shall be consistent with this General Plan. In areas where the zoning and the land use designation shown on the Land Use Map are not identical, rezoning is desirable but not mandated, since consistency is achieved by reviewing the stated policies of the General Plan in addition to the Land Use Map. Table AG/LU-B shall be used to determine consistency for rezoning applications" (Policy AG/LU-114).

General Plan Table AG/LU-B identifies AV-Airport and PL-Public Lands as the "Appropriate Zoning Designation" for the Public-Institutional land use category, and AW-Agriculture Watershed and PT-Timberland Preserve as the "Appropriate Zoning Designation" for the AWOS land use category. But Table AG/LU-B also contains the following caveat:

"In addition to the zones listed above, AW-Agriculture Watershed uses and/or zoning may occur in any land use designation. Note: Multiple additional zoning designations currently existing within each General Plan Land Use Category and may remain in place. This table is not intended to constrain the legal use of property consistent with both zoning and General Plan Land Use Category...."

If one read Table AG/LU-B without this caveat, it would be easy to conclude that rezoning to AV or PL would be required for areas designated Public Institutional to maintain consistency between the General Plan and zoning, and areas designated AWOS need to be rezoned AW. In fact, the Initiative itself assumes that the Planned Development (PD) zoning designation in Angwin will have to be replaced (presumably with an AW zoning designation) to remain consistent with the AWOS land use designation proposed for the two parcels east of Howell Mountain Road.

This rezoning would be clearly "desirable," as stated in Policy AG/LU-114, even though it might not be immediately necessarily given the policy and text cited above. Read together, the General Plan's text and policies clearly allow existing uses to remain in place and allow land use and development activities that are consistent with both the zoning and the General Plan land use designation where these differ from each other.

The intent of the Planned Development zoning designation is to apply to "areas of the county shown as "urban residential" or "rural residential" in the General Plan (Napa County Code Section 18.48.010), although there are a number of vestigial Planned Development zones throughout the County. Most of these exist where there are uses that pre-date the County's restrictions on development in agricultural areas. For example, Meadowood resort, the mobile home park adjacent to the Hall Winery, and portions of the Napa State Hospital all have Planned Development zoning and can continue in their current use. (As State-owned property, Napa State Hospital is not subject to Napa County zoning restrictions or the Napa County General Plan.)

The effect of re-designating two parcels (24.6 acres) in Angwin from Urban Residential to AWOS (west of Howell Mountain Road) would be to disallow uses and densities permitted under the Planned Development zoning. Specifically, the two parcels could no longer be used for multifamily housing, limited commercial, institutional, educational, or cultural uses. One single family home and a second unit would be permitted per parcel, along with agricultural uses. Recreational and religious uses could be allowed with a use permit following environmental review pursuant to the California Environmental Quality Act (CEQA).

The effect of re-designating one parcel (25.8 acres) in Angwin from Urban Residential to Public Institutional (east of Howell Mountain Road) would be less clear because uses allowed in the Planned Development zoning district would be incompatible with the Public Institutional land use designation under some circumstances and not others. For example, multifamily housing (up to 20 dwelling units to the acre) would be permitted in the Planned Development zoning district and could be allowed with a use permit following CEQA review if the housing was “*for use by students, faculty and staff of the College,*” as required by General Plan Policy AG/LU-53. Similarly, limited commercial uses could be allowed with a use permit following CEQA review if the uses are deemed “*essential to the needs of students, faculty, or staff*” as required by Policy AG/LU-53.

The text changes to Policy AG/LU-20 proposed by the Initiative would allow expansion of the existing wastewater treatment facility in an area that is currently zoned Planned Development. Since the Planned Development zoning designation allows infrastructure improvements necessary to support residential and commercial uses with a development plan approval this would not create a conflict between the General Plan and zoning. There would be a potential problem, however, if the wastewater treatment facility expansion involved lands outside the Planned Development zoning or lands outside the area described in the Initiative as “west of Howell Mountain Road.”

The text changes to Policy AG/LU-53 proposed by the Initiative would prohibit subdivision of parcels designated Public Institutional in Angwin, in the Napa State Hospital/Skyline Park area, and in the Napa County Airport area. As shown in Table 1, parcels in these areas are currently zoned Agricultural Watershed (AW), Public Lands (PL), Planned Development (PD), General Industrial (GI), Industrial (I), and Airport (AV). The effect of the Initiative would be to prohibit subdivision of parcels even if they would otherwise be permitted by the zoning district. In a few instances, this could be construed as a “conflict,” potentially requiring amendments to the zoning map or the text of the zoning ordinance:

- The Public Lands zoning district has a minimum parcel size of 10 acres, but only in areas designated for agriculture in the General Plan, so this minimum would not apply in the Public Institutional designation. There are two parcels in the Napa Airport area zoned PL, and both are owned by the Napa Sanitation District. Public agencies like the Napa Sanitation District may generally convey property without subdividing, so it’s unlikely that the Initiative would impact these parcels unless the property were conveyed to a private party at some point in the future.

- The Planned Development zoning does not have a minimum lot size, per se, but Planned Development districts must be not less than 30 acres in a single parcel or in two or more parcels under common ownership. There is one large parcel (i.e., greater than 30 acres) zoned PD in the Angwin area and four in the Napa State Hospital/Skyline area. The Angwin parcel is owned by Pacific Union College and would be affected by the Initiative (i.e. it could not be subdivided). The other parcels are owned by the State of California, which is not subject to local zoning, so the Initiative would have no impacts on those parcels unless the property were conveyed to another party at some point in the future.
- The General Industrial and Industrial districts have a minimum parcel size of 20,000 square feet with certain conditions. There are over 20 parcels in the Napa Airport area zoned GI or I, and these could potentially be affected by the Initiative (i.e. they could not be subdivided), although many of the parcels are small and likely to have other constraints on development (e.g., existing uses, water availability) that would preclude further subdivision.
- The Airport (AV) district does not have a minimum lot size, but requires that uses be evaluated in terms of their compatibility with safe and efficient airport operations. Parcels zoned AV in the Napa Airport area are owned by Napa County. Parcels zoned AV in the Angwin area are owned by Pacific Union College. The later parcels would be affected by the Initiative (i.e. they could not be subdivided), but no inherent conflict exists between the Public Institutional land use designation and the AV zoning because both allow for operation and support of (public or private) airport uses.

2. Effect on the Use of Land, the Availability and Location of Housing, and the County's ability to meet its State Housing Obligations

As noted earlier, the Housing Element of the County's General Plan identifies two sites in Angwin as available for multifamily housing consistent with State requirements. The two sites – one south of the campus off of Los Pasados Road, and one near the fire station northeast of campus – are designated Urban Residential on the General Plan Land Use Map, and would not be changed by the Initiative.

The two sites are owned by Pacific Union College and are zoned Planned Development with an Affordable Housing Combination District (AHCD) overlay. Together they allow for development of 191 dwelling units at densities of 12 dwelling units per acre "by right" (i.e., without a use permit or other discretionary approval) provided that affordability requirements and other development standards and mitigation requirements are met. Higher densities are allowed with approval of a use permit following CEQA review. Mitigation requirements include ensuring that sufficient wastewater treatment capacity is available, since it's expected that upgrades to Pacific Union

College's existing wastewater treatment facility would be required to serve additional housing in the area.

Because the Initiative would not affect the General Plan land use designation or zoning of the two affordable housing sites in Angwin and would also allow for expansion of the existing wastewater treatment facility, it would not directly affect the two housing sites or the County's current Housing Element.⁹

The Initiative could, however, make it less likely that Pacific Union College will pursue affordable housing development on the two affordable housing sites, since the College may choose to pursue more lucrative development on sites that retain the Urban Residential land use designation instead. In other words, if the College wishes to sell or develop property as a way to raise revenues, the Initiative would limit the lands available for that purpose, and make it more likely that the affordable housing sites, with their Urban Residential designation, will be proposed for market rate and commercial development rather than affordable housing development.

The Initiative would also reduce the County's overall supply of land designated Urban Residential in the General Plan and therefore reduce the limited supply of land available for multifamily housing in unincorporated Napa County. There are currently 869 acres designated Urban Residential on the County's Land Use Map, and the Initiative would affect 5.8% of this total.¹⁰ While the lands that would be re-designated by the Initiative have never been planned as affordable housing, their re-designation from Urban Residential to AWOS and Public Institutional would somewhat reduce the County's flexibility in the future when it needs to identify additional housing sites,¹¹ and thus could make it somewhat more difficult for the County to meet its State housing obligations in future housing cycles. The Initiative does, however, include a provision that would theoretically allow the Board of Supervisors to re-designate land in Angwin if needed to meet the County's housing obligations under State law. (See Initiative Section 4(C).)

3. Effect on the Uses of Vacant Parcels and Vested Rights

The Initiative would affect the uses of vacant parcels that would be re-designated from Urban Residential to AWOS and Public Institutional in Angwin, and could also potentially affect the uses

⁹ Interestingly, after accepting the two sites in Angwin in 2004, the State Department of Housing and Community Development (HCD) rejected them in 2009 because their "by right" density was 12 du/ac rather than the 20 du/ac specified in CGC Section 65583.2(c)(3)(B)(iii). In December 2011, Napa Superior Court found that the sites were "deemed appropriate" under the statute even though a use permit is required to achieve 20 du/ac density.

¹⁰ Without a more detailed analysis, it would be difficult to estimate the amount of land designated Urban Residential that is vacant or underutilized and therefore available for development.

¹¹ The loss of about 50 acres in the Urban Residential designation would be all or partially offset if a portion of the Napa Pipe site is designated for multifamily housing as currently proposed. The 154-acre Napa Pipe site is located south of the City of Napa and the County committed in its Housing Element to rezone at least 20 acres for multifamily housing. Public hearings on the applicant's current proposal are expected later this year.

of vacant parcels in the three areas of the County that are designated Public Institutional. Each is discussed below, along with the issue of vested rights.

a. Effect of Map Changes on the Uses Of Vacant Land

As noted earlier, re-designating the 16 acre field south of the Angwin commercial center from Urban Residential to AWOS means that this vacant site could only be developed for uses that are permitted in the AWOS designation, such as a single family home and second unit by right, and recreation or religious uses with approval of a use permit.

It is more difficult to characterize ways in which the Initiative would affect the uses of vacant portions of the 25.8 acre parcel north of the campus that would be re-designated from Urban Residential to Public Institutional. This is because many of the uses permitted by the Urban Residential designation (e.g. multifamily housing and limited commercial uses) would still be allowed in the Public Institutional designation if they were provided for the use by college students, faculty or staff.

b. Effect of Public Institutional Text Changes on the Uses Of Vacant Land

By changing the text of General Plan Policy AG/LU-53, the Initiative could potentially affect the uses of vacant land in all areas of the County with the Public Institutional land use designation. These include the Napa State Hospital area near Skyline Park, the Angwin area, and the Napa County Airport area.

In the Napa State Hospital area, the State property (i.e. the Hospital itself and Skyline Park) is not subject to County policies, and would not be affected by the Initiative unless the property was ever sold to another party. Syar Corporation owns two parcels which overlap with the Public-Institutional designation on the Land Use Map, and these parcels could be interpreted as falling under that land use designation or the adjacent AWOS designation. Even if the parcels are interpreted as falling within the Public Institutional land use designation, the Initiative's effect on the uses of the Syar property would be negligible, since the parcels are zoned Agricultural Watershed, which has a minimum parcel size of 160 acres (i.e. the owner would need 320 acres to divide a parcel).

In the Napa Airport area, the lands owned by the County and the Napa Sanitation District are subject to County policies in the sense that proposed actions must be evaluated for consistency with the County's General Plan (California Government Code Sections 65401 and 65402). However, public agencies under the Map Act may generally convey portions of their property without need of a subdivision map approval, so the Initiative's impact on the use (i.e. potential disposal) of vacant land is not entirely clear.

Privately owned parcels in the airport area that are shown within the Public Institutional designation on the land use map could be interpreted as falling under that land use designation or an adjacent designation. The private parcels are generally smaller parcels zoned for industrial use, and many fall within the area governed by the Airport Industrial Area Specific Plan. Because these

parcels are already smaller in size and are most likely to be interpreted as falling within the Industrial land use designation, the Initiative's change to General Plan Policy AG/LU-53 about the Public Institutional designation is expected to have a negligible effect.

In the Angwin area, the change to Policy AG/LU-53 would prevent Pacific Union College and the affiliated organizations holding title to the parcels within the Public Institutional land use designation from subdividing those parcels. There are already over 20 parcels within the approximately 180 acres designated Public Institutional, however, and these existing parcels could possibly be merged and/or reconfigured through the use of lot line adjustments.¹²

c. Effect of the Initiative on Vested Uses

Initiative Section 4(A) contains an "exemption" stating that the initiative "shall not apply to any development project or ongoing activity that has obtained... a vested right pursuant to State or local law." However determining which development rights in Angwin are "vested" is not a simple matter.

Based on research conducted by County planning staff in conjunction with staff of the College, the initial Master Plan for Pacific Union College was approved by the Planning Commission on April 18, 1966. The four square mile master plan boundary later became the boundary of the land use plan adopted in 1977 when it was rezoned from PC to PD (Ordinance #531). Since the adoption of the 1966 Master Plan and the subsequent rezoning of the area to Planned Development, all development proposals have required modifications to the master plan.

The initial master plan has been amended by three major modifications: one in 1968, one in 1972 (for additional lecture halls), and one in 1975 (for the Master Plan Update). The 1975 Master Plan Update included the adoption of a tentative parcel map for the Woodside Subdivision and updated the College's General Development Plan to increase enrollment and designate areas for residential, commercial, open space, agriculture, and semi public (church and schools) uses.

The current master plan consists of the 1975 master plan map, as explained in the related environmental impact report (EIR), supplemented by a list of all modifications approved since that date. Not all of the approved uses have been constructed, however, and a portion of the approved but unbuilt uses are thought to be "vested" in the sense that they have been entitled and the College has expended sufficient resources on their development to secure the right to complete the development. **Table 2** presents County planning staff's opinion as to the unbuilt and vested uses at Pacific Union College. A final determination as to whether these or other uses are vested would require further research/evidence and more formal County agreement.

¹² There is one privately owned parcel within the Public Institutional land use designation in Angwin, but at 0.29 acres the parcel is so small that the Initiative's prohibition on subdivisions would have a negligible effect.

Table 2: Summary of Potentially Vested Uses at Pacific Union College

Location	APN	Use Permit	Potential Development Rights
Airport	024-080-017 sfap	U-428081	Construction of (3) additional tee hangers, a 3,000 sq. ft. addition next to flight center, and (2) 400,000 gallon water tanks.
Medical Facility	024-080-004; 024-400-003	U-707576	Construction of a 750 sq. ft. addition to the medical facility.
Commercial center	024-400-006 sfap	U-88182	Installation of (2) 3,200 sq. ft. metal storage containers.
Commercial center	024-400-006 sfap	U-70-66	Construction of 7,500 sq. ft. addition to the market.
Women's Dorm	024-080-017 sfap	U-37677	Construction of (4) additional dormitories (96 students each), campus center, and dining hall.
Recreational field	024-410-008	U-4369	Construction of 4 tennis courts, 4 handball courts, maintenance equipment building, restrooms, parking and a 20' x 30' athletic equipment storage building.

Source: Napa County PBES, July 2012

It should be noted that one of the potentially vested development rights involves recreational uses of Assessor's Parcel Number 024-410-008, which the Initiative would re-designate from Urban Residential to AWOS.

4. Effect on Agricultural Lands, Open Space, Traffic Congestion, Existing Business Districts, and Developed Areas Designated for Revitalization

The proposed Initiative would preserve the 16 acre open space parcel south of the Angwin commercial center by designating it AWOS. This parcel may have some vested development rights, as described above, and was identified for commercial development in Pacific Union College's 1975 Master Plan Update. More recently, this parcel was considered for mixed use development as part of the "Ecovillage" proposal. Specifically, the "Ecovillage" proposal envisioned redevelopment of the Angwin commercial center and expansion of the center onto this 16 acre parcel in order (a) to accommodate a mix of residential and commercial uses, and (b) to align the commercial center with the central staircase of Pacific Union College, across Howell Mountain Road.

Development of residential, commercial, or college uses on the 16 acre parcel would be prohibited by the Initiative, and therefore the existing business district could not be expanded and any related traffic congestion would be avoided. Following re-designation as AWOS, the parcel could continue in use for agriculture, and/or support development of a single family house and second unit by right (i.e. without a use permit). If a use permit is obtained, the parcel could also support

religious or recreational uses. (Some recreational uses may already be “vested” as shown in Table 2.) Thus, if the College desires to redevelop the Angwin commercial center, it would have to do so without expanding it to the south.

Other than re-designating 16 acres in Angwin for agricultural open space, the Initiative would have no appreciable effect on existing agricultural lands, open space, or traffic congestion. In the Airport Industrial Area, the prohibition on subdivisions affecting approximately 20 parcels designated Public Institutional could constitute a constraint on the development of some vacant land within the business district, however the Land Use Map is subject to interpretation as discussed earlier, and the presence of vacant parcels in the business park demonstrates that other constraints on development are already at play.

F. Fiscal Impacts

This fiscal analysis specifically addresses impacts to the County and does not address any impacts to other public entities or private citizens.

1. Short Term Fiscal Impacts

The principal short term fiscal impact of the proposed Angwin General Plan Amendment Initiative would be litigation costs that the County could occur in defending itself from a potential lawsuit alleging that the Initiative is invalid or discriminatory. Any such lawsuit could involve allegations that an initiative may not explicitly prohibit subdivisions and that the initiative conflicts with RLUIPA by targeting Pacific Union College.

If the County Board of Supervisors chose to defend the Initiative in State court through the Court of Appeals, costs could range between \$400,000 and \$600,000. If the County has to defend the Initiative in federal court, an additional \$500,000 to \$750,000 or more could be involved.¹³

Another fiscal impact to the County would involve administrative costs incurred as the County legal and planning staff work to incorporate the General Plan text required by the Initiative, to ensure that the resulting plan is both internally consistent and consistent with the County’s zoning ordinance. The magnitude of the zoning regulation changes required and the costs involved would depend on whether the Initiative’s prohibition on subdivisions in the Public Institutional land use designation is challenged and set aside. (See legal discussion below.) It would take further analysis to determine the total cost of these administrative and legal tasks.

¹³ When the County defended the challenge to Measure J in 1991 (DeVita v. County of Napa), which went all the way to the State Supreme Court in 1995, the litigation took place over four years and eventually cost the County approximately \$400,000. No federal court case was involved.

2. Impacts on the Funding & Cost of Infrastructure

The Initiative proposes to prevent subdivision of Public Institutional lands in Angwin, in the Napa State Hospital/Skyline Park area, and near the Napa County Airport. It would also re-designate land in Angwin, while allowing for expansion/upgrade of the existing (privately owned) wastewater treatment plant there. Reducing development potential in Angwin could reduce potential funding for any (privately financed) infrastructure improvements that are needed in the future.

The Initiative would not directly affect public infrastructure, although the prohibition on subdivisions in Public-Institutional land use designation could make it difficult for the County to purchase surplus land from Napa State Hospital or the Napa Sanitation District, and for the County to dispose of excess property it owns in the Airport area.

3. Other Potential Fiscal Impacts

If future subdivisions are prevented, there is a potential for future lost revenues due to development restrictions, in the form of potential property tax, sales tax, permitting and impact fees. It is unreasonable to speculate the degree of potential loss at this time without knowing future development plans.

G. Legal Analysis

A thorough analysis of legal issues associated with the Angwin General Plan Amendment Initiative has been prepared by attorneys at Miller Starr Regalia, and is attached as Appendix D. In summary, the analysis concludes that the proposed Initiative has a number of potential legal flaws which could form the basis of litigation challenges if it were enacted. These potential legal defects are as follows:

- The Initiative's permanent prohibition of subdivisions in PI-designated lands is likely preempted, in whole or in significant part, by the Subdivision Map Act, and other state laws governing subdivisions, and there is a significant likelihood this provision of the Initiative would be invalidated if challenged on this basis.
- The Initiative's permanent prohibition of subdivisions in PI-designated lands effectively creates a non-uniform, parcel-by-parcel minimum lot size that is arbitrary and arguably violates the State Planning and Zoning Law's statutory uniformity requirement, and there is a significant likelihood this provision of the Initiative would be invalidated if challenged on this basis.
- The Initiative may constitute "spot zoning" and violate equal protection rights guaranteed to local property owners, and there is a significant likelihood the Initiative is legally defective, at least in part, on this basis.

- The Initiative may be misleading regarding the extent of its impact on the County's future exercise of its police power to achieve broad land use planning objectives. If the scope of the Initiative were held to encompass the entirety of the Land Use Map, thus permanently restricting the County's future exercise of its police power authority to amend its Land Use Map in any way without a further vote of the people, there would be a strong likelihood it is legally defective. If this is not the case, as the Proponents' attorney has indicated in a post-submittal letter intended to clarify the intent (see Appendix A of Miller Starr Regalia memorandum in Appendix D), and the Initiative is thus construed to "lock in" only the amended portions of the Map, this potential legal defect will be avoided.
- Certain parts of the Initiative, on their face, technically violate California Initiative Law's prohibition of "indirect" legislation and the use of precedence clauses. Whether a significant legal defect exists on this basis depends on whether the Initiative creates internal inconsistencies in the County's General Plan. While there is some potential for internal inconsistency (see Appendix B), much depends on how the County's Board interprets existing policies in its General Plan. On the basis of available evidence, there is only a weak possibility that the Initiative would be held legally defective on this basis.
- The Initiative may, in its future application, give rise to claims of discrimination against Pacific Union College, including that the Initiative violates the federal Religious Land Use and Institutionalized Persons Act ("RLUIPA"; see analysis of RLUIPA, attached as Appendix C). At this time, there appears to be insufficient evidence to support a viable challenge on this basis, but the possibility of future litigation exists.

Given these potential defects, if the Initiative is enacted by the Board, or is placed on the ballot and passes, a number of consequences could ensue. The Initiative could subject the County to lawsuits from property owners claiming they are being arbitrarily and unlawfully precluded from subdividing, using, or changing the designated uses of their properties, and the Initiative would likely be partially invalidated on this basis.

With regard to the claims of Pacific Union College, which is affiliated with the Seventh Day Adventist Church, enactment of the Initiative may engender lawsuits based on claims of discrimination and, if and when the college submits a development proposal on affected parcels in the future, a lawsuit based on claims that the prohibition of subdivisions substantially burdens its religious exercise.

As a general matter, the Board's ability to bring a pre-election challenge to the Initiative is limited. Assuming the Initiative substantially complies with the procedural and substantive requirements of the Elections Code for local initiatives, the Board generally may not withhold an initiative from the ballot since its legal duty to either enact or place a qualifying initiative on the ballot is considered ministerial. Thus, even though the Board may conclude that all or a portion of the Initiative is likely or potentially invalid, and that it will not enact the measure, the Initiative

generally must be placed on the ballot; this is particularly true where, as here, the Initiative measure contains a severance provision and at least portions of it would likely survive legal challenge.

APPENDICES

- A. Angwin General Plan Amendment Initiative**
- B. Elections Code Section 9111**
- C. Correspondence to the Board of Supervisors, June 4-5, 2012**
- D. Legal Analysis by Miller Starr Regalia**

Appendix A

Angwin General Plan Amendment Initiative

To the Honorable Registrar of Voters of the County of Napa: We, the undersigned, registered and qualified voters of the County of Napa, hereby propose an initiative measure to amend the County of Napa General Plan. We petition you to submit this measure to the Board of Supervisors of the County of Napa for submission of the measure to the voters of the County of Napa at the earliest general or special election for which it qualifies. The measure provides as follows:

The people of the County of Napa do hereby ordain as follows:

Section 1. Findings.

A. For the past forty years, land use policy in Napa County has been guided by two complementary principles: that agricultural and open space land should be protected and that development should occur in urban areas.

B. Large tracts of agricultural and open space land in the Angwin area have no protection from urban development. It is not consistent with Napa County land use principles to tolerate this planning oversight. The proposed amendments to the General Plan in this initiative would protect these lands in Angwin, as elsewhere in Napa County, and would recognize the desire of residents to preserve their rural community.

Section 2. Declaration of Purpose.

In enacting this General Plan amendment, it is the purpose and intent of the People of Napa County to:

A. Apply the same appropriate General Plan land use designations and principles in the Angwin area as applied in the rest of Napa County to ensure the long-term protection of agricultural and open space land and the prevention of urban sprawl.

B. Amend the text of the General Plan's Agricultural Preservation and Land Use Element to ensure no further subdivision of Public-Institutional parcels and to permit modernization of a private sewage treatment facility.

C. Maintain affordable housing overlay zoning, which allows significant affordable housing development in Angwin.

Section 3. General Plan Amendments.

This initiative hereby amends the Napa County General Plan adopted June 3, 2008, as amended through June 23, 2009, as follows:

A. The land use map of Angwin, adopted by the Napa County Board of Supervisors by Resolution No. 09-54 on May 5, 2009 (a copy of which is attached hereto as Exhibit A), is hereby amended as set forth in Exhibit B, attached hereto. (See Exhibit C for a legend of land use designations.)

Assessor-Recorder-County Clerk
Election Division

APR 26 2012



B. The Napa County Land Use Map, adopted June 3, 2008, as amended by the Napa County Board of Supervisors by Resolution No. 09-88 on June 23, 2009 (a copy of which is attached hereto as Exhibit C), is hereby amended as set forth in Exhibit D, attached hereto. This amendment incorporates the changes to the General Plan designations for Angwin adopted by this initiative, as shown in Exhibit B.

C. Policy AG/LU-20 of the Agricultural Preservation and Land Use Element of the Napa County General Plan adopted June 3, 2008, as amended through June 23, 2009, is hereby amended as shown below. Additions to the existing policy are shown in ***bold italic*** text. Text in standard type denotes the existing General Plan policy.

Policy AG/LU-20: The following standards shall apply to lands designated as Agriculture, Watershed, and Open Space on the Land Use Map of this General Plan.

Intent: To provide areas where the predominant use is agriculturally oriented; where watersheds are protected and enhanced; where reservoirs, floodplain tributaries, geologic hazards, soil conditions, and other constraints make the land relatively unsuitable for urban development; where urban development would adversely impact all such uses; and where the protection of agriculture, watersheds, and floodplain tributaries from fire, pollution, and erosion is essential to the general health, safety, and welfare.

General Uses: Agriculture, processing of agricultural products, single-family dwellings.

In Angwin, uses allowed in the Agriculture, Watershed, and Open Space designation include modernization and expansion of the existing sewage treatment facility located on the West side of Howell Mountain Road.

Minimum Parcel Size: 160 acres, except that parcels with a minimum size of 2 acres may be created for the sole purpose of developing farm labor camps by a local government agency authorized to own or operate farm labor camps, so long as the division is accomplished by securing the written consent of a local government agency authorized to own or operate farm labor camps that it will accept a conveyance of the fee interest of the parcel to be created and thereafter conveying the fee interest of such parcel directly to said local government agency, or entering into a long-term lease of such parcels directly with said local government agency.

Every lease or deed creating such parcels must contain language ensuring that if the parcel is not used as a farm labor camp within three years of the conveyance or lease being executed or permanently ceases to be used as a farm labor camp by a local government agency authorized to develop farm

labor camps, the parcel will automatically revert to, and merge into, the original parent parcel.

Maximum Building Intensity: One dwelling per parcel (except as specified in the Housing Element). Nonresidential building intensity is non-applicable.

Pursuant to Measure Z (1996), the sale to the public of agricultural produce, fruits, vegetables, and Christmas trees, grown on or off premises, and items related thereto, as well as the recreation and educational uses by children of animals, such as children's pony rides and petting zoos, and construction of buildings to accommodate such sales and animals shall be permitted on any parcel designated as agricultural produce stand combination district. (See Policy AG/LU-132.)

D. Policy AG/LU-53 of the Agricultural Preservation and Land Use Element of the Napa County General Plan adopted June 3, 2008, as amended through June 23, 2009, is hereby amended as shown below. Additions to the existing policy are shown in ***bold italic*** text and deletions are shown in ~~strike through~~ text. Text in standard type denotes the existing General Plan policy.

PUBLIC-INSTITUTIONAL POLICIES

Policy AG/LU-53: The following standards shall apply to lands designated as Public-Institutional on the Land Use Map of this General Plan.

Intent: To indicate those lands set aside for those existing and future uses of a governmental, public use, or public utility nature such as a public hospital, public use airport, sanitation district facilities, government equipment yard, state or federal administrative offices, recycling-composting facilities, or any other facilities for which the determinations set forth, pertaining to criteria for eminent domain in the California Code of Civil Procedures Section 1245.230(c)(1) through (3), can be made.⁵

Consistent with Policy AG/LU-64, in Angwin, the intent of the Public-Institutional designation is to acknowledge the presence of Pacific Union College and lands appropriate for college uses and facilities consistent with Angwin's rural character. Uses allowed include agriculture (including research), classrooms and other educational uses (including to serve pre-K, elementary and secondary students), meeting rooms, offices, maintenance and utility facilities, and residences for use by students,

⁵ Determinations cited include: (1) The public interest and necessity require the proposed project. (2) The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury. (3) The property described in the resolution is necessary for the proposed project.

faculty and staff of the College, the Angwin Airport (Parrett Field) and limited commercial, community-service, medical, cultural, religious, recreational, and accessory uses essential to the needs of students, faculty or staff.

Minimum Parcel Size: Not applicable. *No further subdivision of parcels is permitted.* ~~In Angwin, further parcelization is permitted to support the college's educational mission and reconfiguration of existing parcels is permitted to comply with Policy AG/LU 66.~~

Maximum Building Density: 50% coverage and building/facilities necessary to support a student population of approximately 2,300.

Section 4. Exemptions for Certain Projects.

A. This initiative shall not apply to any development project or ongoing activity that has obtained, as of the effective date of this initiative, a vested right pursuant to state or local law.

B. This initiative shall not be interpreted to apply to any land or use that, under state or federal law, is beyond the power of the local voters to affect by the initiative power reserved to the people via the California Constitution. Nothing in this initiative shall be applied to preclude the County's compliance with state laws governing second units or the use of density bonuses where authorized by state law.

C. Nothing in this initiative shall be construed or applied to prevent the County from complying with its housing obligations under State law. The Board of Supervisors may, without voter ratification, approve a change to the amendments of the General Plan set forth in this initiative for the sole purpose of complying with the County's housing obligations if it (1) makes a finding that such a change is necessary to comply with the County's housing obligation and there is no suitable land available elsewhere in the County that may be used to satisfy that obligation, and (2) makes such a change only to the extent necessary to comply with the applicable State law housing obligation.

Section 5. Implementation.

A. Upon the effective date of this initiative, the provisions of Section 3 of the initiative are hereby inserted into the Agricultural Preservation and Land Use Element of the Napa County General Plan as amendments thereto, except that if the four amendments of the mandatory elements of the General Plan permitted by state law for any given calendar year already have been utilized in the year in which the initiative becomes effective, these General Plan amendments shall be the first amendments inserted into the Napa County General Plan on January 1 of the next year. At such time as these General Plan amendments are inserted in the Napa County General Plan, any provisions of the Napa County Zoning Ordinance, as reflected in the ordinance itself or on the Napa

County Zoning Map, that are inconsistent with these General Plan amendments shall not be enforced.

B. The date that the notice of intention to circulate this initiative measure was submitted to the elections official of the County of Napa is referenced herein as the “submittal date.” The Napa County General Plan in effect on the submittal date and the General Plan as amended by this initiative comprise an integrated, internally consistent and compatible statement of policies for the County of Napa. In order to ensure that nothing in this initiative measure would prevent the County of Napa General Plan from being an integrated, internally consistent and compatible statement of the policies of the County, as required by state law, and to ensure that the actions of the voters in enacting this initiative are given effect, any amendment to the General Plan that is adopted between the submittal date and the date that the General Plan is amended by this initiative measure shall, to the extent that such interim-enacted provision is inconsistent with the General Plan provisions adopted by Section 3 of this initiative measure, be amended as soon as possible and in the manner and time required by state law to ensure consistency between the provisions adopted by this initiative and other elements of the Napa County General Plan.

C. The Napa County General Plan, including the provisions amended by this initiative, may be reorganized, and individual provisions may be renumbered or reordered, in the course of ongoing updates of the General Plan in accordance with the requirements of state law.

D. The County of Napa is hereby authorized and directed to amend the Napa County General Plan, all specific plans, the Napa County Zoning Ordinance, the Napa County Zoning Map, and other ordinances and policies affected by this initiative as soon as possible and in the manner and time required by any applicable state law, to ensure consistency between the policies adopted in this initiative and other elements of the Napa County General Plan, all specific plans, the Napa County Zoning Ordinance, the Napa County Zoning Map, and other County ordinances and policies.

E. Except as provided in Section 4 of this initiative or as otherwise required by state or federal law, upon the date of insertion of the provisions of Section 3 of this initiative into the Napa County General Plan, all General Plan amendments, rezonings, specific plans, tentative subdivision maps, parcel maps, conditional use permits, building permits or other ministerial or discretionary entitlements for use not yet approved or issued shall not be approved or issued unless consistent with the policies and provisions of this initiative.

Section 6. Severability and Interpretation.

This initiative shall be interpreted so as to be consistent with all federal and state laws, rules, and regulations. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion of this initiative 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 initiative. The voters hereby declare that this initiative, and each section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion thereof would have been adopted or passed even if one or more sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, parts, or portions are declared invalid or unconstitutional. If any provision of this initiative is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this initiative that can be given effect without the invalid application. This initiative shall be broadly construed in order to achieve the purposes stated in this initiative. It is the intent of the voters that the provisions of this initiative shall be interpreted by the County in a manner that facilitates the protection for agriculture, open space, and the rural character of the Angwin area.

Section 7. Effect of Alternative Measure on the Same Ballot.

This initiative adopts a comprehensive set of policies regarding land use in the Angwin area. By voting for this initiative, the voters expressly declare that any other measure that appears on the same ballot as this initiative and conflicts with or purports to address the same subject matter of this initiative, or would affect in any way land use in the Angwin area, shall be deemed to conflict with the entire set of policies adopted by this initiative. Because of this conflict, if this initiative and any such other measure receive a majority of votes by the voters voting thereon at the same election, then the measure receiving the most votes in favor shall prevail in its entirety and no provision of the other measure shall take effect.

Section 8. Amendment or Repeal.

Except as otherwise provided herein, this initiative may be amended or repealed only by the voters of the County of Napa.

Exhibit List:

Exhibit A – The land use map of Angwin, adopted by the Napa County Board of Supervisors by Resolution No. 09-54 on May 5, 2009, as shown in the Napa County General Plan adopted June 3, 2008, as amended through June 23, 2009

Exhibit B – The land use map of Angwin as proposed to be amended by this initiative

Exhibit C – The Napa County Land Use Map, adopted June 3, 2008, as amended by the Napa County Board of Supervisors by Resolution No. 09-88 on June 23, 2009

Exhibit D – The Napa County Land Use Map as proposed to be amended by this initiative

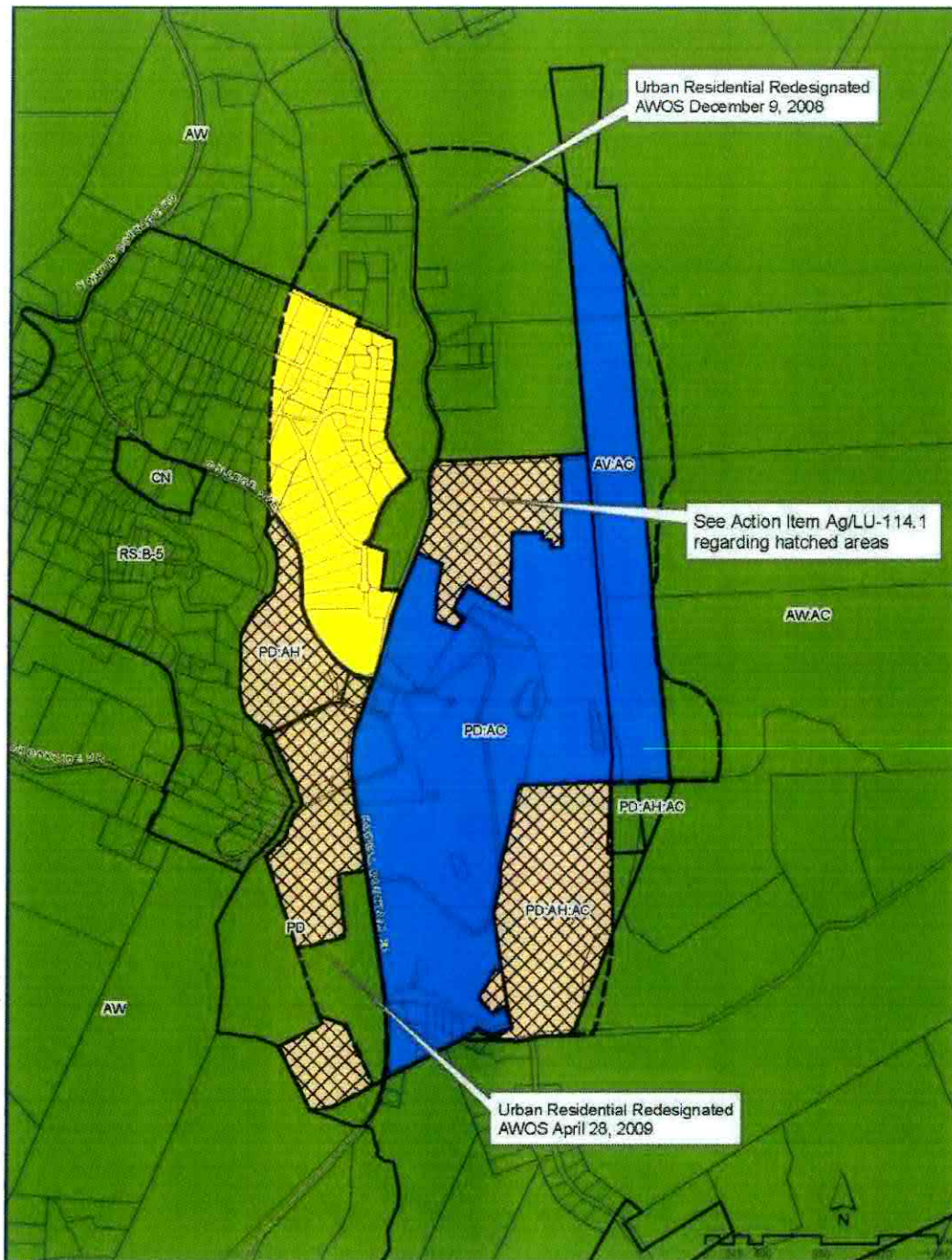
Exhibit A

The land use map of Angwin, adopted by the Napa County Board of Supervisors by Resolution No. 09-54 on May 5, 2009, as shown in the Napa County General Plan adopted June 3, 2008, as amended through June 23, 2009

AGRICULTURAL PRESERVATION
AND LAND USE



ANGWIN



Note: See Figure AG/LU-3 on Page AG/LU-67 for the location of this area.

The land use map of Angwin as proposed to be amended by this initiative



*For illustrative purposes, this map eliminates a PD zoning designation that would be inconsistent with a new General Plan designation enacted by this initiative. (See Section 5.D. of this initiative requiring County to amend zoning to ensure consistency with the policies adopted in this initiative.)

Exhibit C

The Napa County Land Use Map, adopted June 3, 2008, as amended by the Napa County Board of Supervisors by Resolution No. 09-88 on June 23, 2009

AGRICULTURAL PRESERVATION
AND LAND USE



FIGURE AG/LU-3: LAND USE MAP

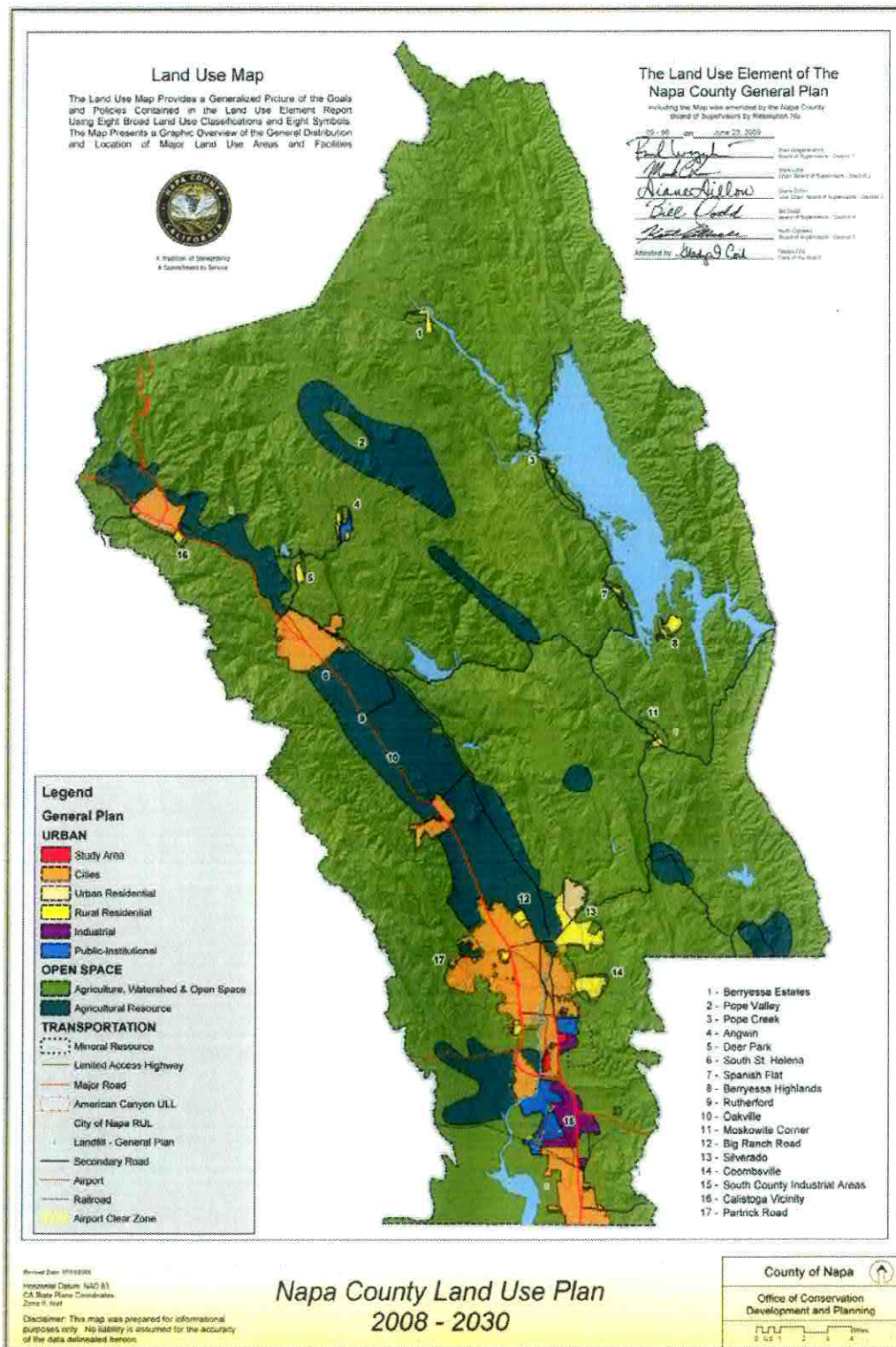
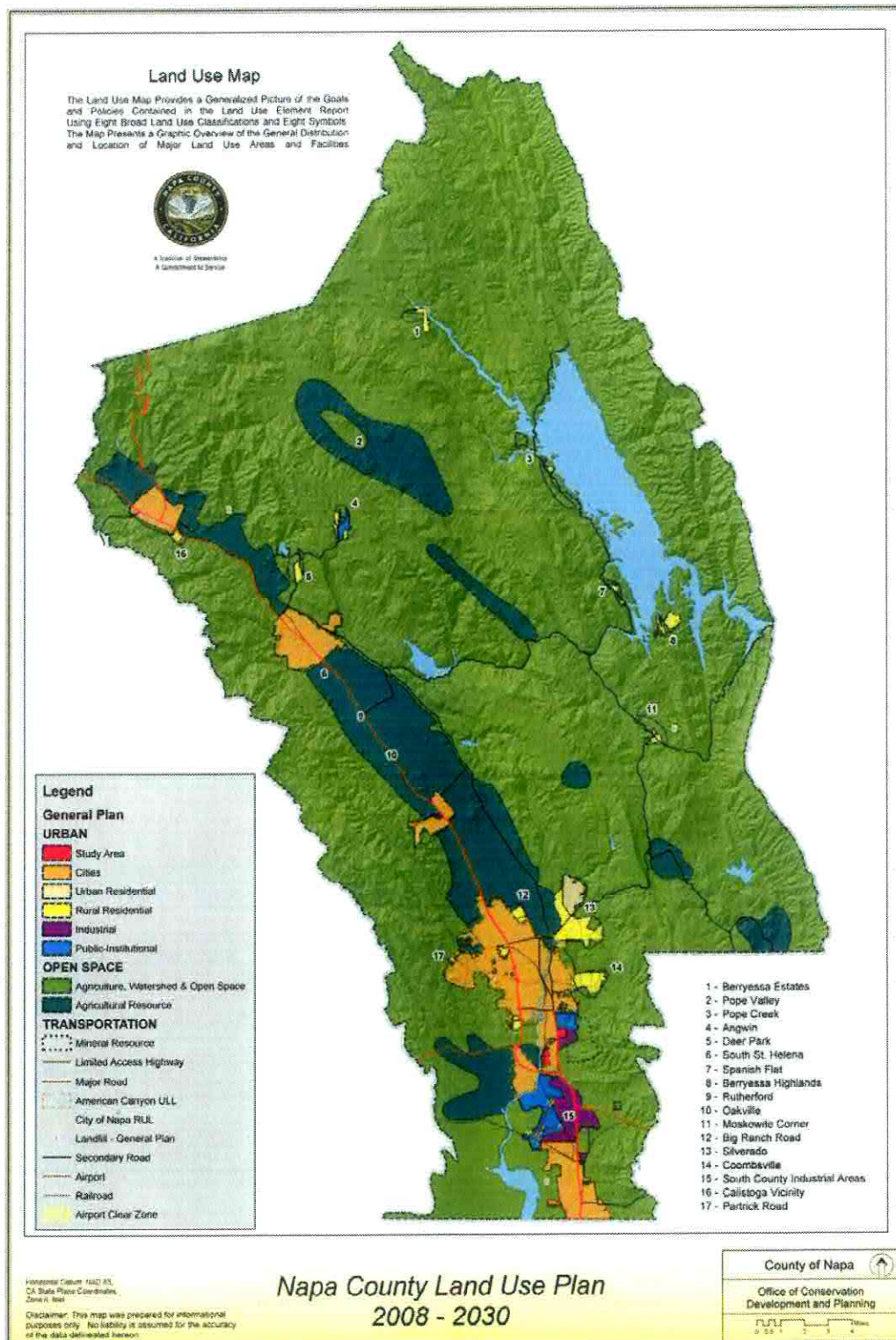


Exhibit D

The Napa County Land Use Map as proposed to be amended by this initiative



Appendix B

Elections Code Section 9111

Election Code Section 9111

9111. (a) During the circulation of the petition or before taking either action described in subdivisions (a) and (b) of Section 9116, or Section 9118, the board of supervisors may refer the proposed initiative measure to any county agency or agencies for a report on any or all of the following:

(1) Its fiscal impact.

(2) Its effect on the internal consistency of the county's general and specific plans, including the housing element, the consistency between planning and zoning, and the limitations on county actions under Section 65008 of the Government Code and Chapters 4.2 (commencing with Section 65913) and 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

(3) Its effect on the use of land, the impact on the availability and location of housing, and the ability of the county to meet its regional housing needs.

(4) Its impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space. The report may also discuss whether the measure would be likely to result in increased infrastructure costs or savings, including the costs of infrastructure maintenance, to current residents and businesses.

(5) Its impact on the community's ability to attract and retain business and employment.

(6) Its impact on the uses of vacant parcels of land.

(7) Its impact on agricultural lands, open space, traffic congestion, existing business districts, and developed areas designated for revitalization.

(8) Any other matters the board of supervisors request to be in the report.

(b) The report shall be presented to the board of supervisors within the time prescribed by the board of supervisors, but no later than 30 days after the county elections official certifies to the board of supervisors the sufficiency of the petition.

Appendix C

Correspondence to the Board of Supervisors, June 4-5, 2012

June 4, 2012

Client-Matter: 45973-031

BY E-MAIL AND FACSIMILE (707) 253-4176

Honorable Chairman Keith Caldwell and
Members of the Board of Supervisors
County of Napa
County Administration Building
1195 Third Street
Suite 310
Napa, CA 94559

**Re: June 5, 2012 Board of Supervisors Regular Meeting, Agenda Item 10.E. -
Consideration and possible action directing staff to prepare a report
addressing the effect of the Angwin General Plan Amendment (GPA)
Initiative on some or all of the those matters set forth in Elections Code
section 9111 and identifying the date the report will be presented to the
Board of Supervisors which cannot be later than 30 days after the county
elections official certifies to the board of supervisors the sufficiency of the
petition**

Dear Honorable Chairman Caldwell and Members of the Board of Supervisors:

This firm represents Pacific Union College in connection with matters relating to the college's real property interests in the Angwin community of unincorporated Napa County. Pacific Union College is the oldest college in Napa County, and has been located in Angwin for more than 100 years. The college's real property holdings include the college campus, an airport (Parrett Field), key area infrastructure and utilities, campus residences, and a small commercial and retail center. The County's General Plan acknowledges the significance of the college to the County, both as an educational institution and an employer. (See Napa County General Plan Policy AG/LU-63.)

As you know, three residents of Napa County have circulated an initiative petition that seeks to downzone land currently owned by Pacific Union College. While the proponents contend that the initiative's geographic reach is limited to the Angwin area, the measure has significant consequences for the entire County. In addition to targeting Pacific Union College, the initiative also targets the Napa County Airport and the Napa State Hospital. If the initiative

Honorable Chairman Keith Caldwell and Members of the Board of Supervisors
June 4, 2012
Page 2

is approved, the consequences will be far reaching and potentially devastating to these key County resources.

We understand that the Board of Supervisors is considering requesting preparation of a report pursuant to section 9111 of the Elections Code to evaluate the various potential impacts of the initiative. We urge the Board of Supervisors to direct preparation of such a report so that all of the citizens of Napa County can be objectively informed of the consequences of the initiative and we respectfully request the following matters be analyzed in the report.

1. Potential Fiscal Impacts

From a purely economic perspective, the initiative could harm both public and private interests. The initiative targets land that is privately held by Pacific Union College, and other parcels owned by the County of Napa and the State of California. We respectfully request that the report evaluate the fiscal impacts to the County of a land use initiative targeted at the County's major educational, airport, and healthcare uses.

If adopted, the measure would significantly restrict the ability of the college to expand or modernize the existing wastewater treatment facility and associated infrastructure. It is possible that the college would not be permitted to expand or modernize the facility and associated infrastructure, even if it could afford to do so without new customers. We respectfully request that the report include an analysis of the potential fiscal impacts, as well as the health and safety impacts, to the County if this utility service cannot be modernized.

If adopted, the initiative will restrict the development of both affordable and market-rate housing in Napa County. We respectfully request that the report include an analysis of the potential fiscal impacts to the County if the County cannot satisfy its fair share housing obligations.

We also believe it is likely that the initiative will be subject to legal challenge and will require judicial interpretation, and therefore respectfully request that the report include an estimate of the County's anticipated legal costs.

2. Effect on Napa County General Plan and Zoning Ordinance

Section 3.B. of the initiative purports to amend the Napa County Land Use Map "as set forth in Exhibit D." Exhibit D is a map that includes all of Napa County. The map's size, scale, and reproduction in the initiative make it impossible to decipher. Section 8 of the proposed initiative states that the measure - which expressly includes this and other maps - may be amended or repealed only by the voters of the County of Napa. We respectfully request that the report include an analysis of the legal implications of these two sections when read together. As

Honorable Chairman Keith Caldwell and Members of the Board of Supervisors

June 4, 2012

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we read the measure, because the measure proposes to re-adopt the Napa County Land Use Map in whole, *any* future changes to the Napa County Land Use Map would require voter approval. Such a requirement would fundamentally change the manner in which the County approves future General Plan amendments and would significantly restrict the Board's land use authority.

In addition, Section 3.C. of the initiative would amend Policy AG/LU-20 of the General Plan to purportedly allow for certain land uses (wastewater treatment facilities) within the County's Agriculture, Watershed, and Open Space designation to occur only "[i]n Angwin." Policy AG/LU-20 contains the standards that apply to all lands designated AWOS on the Napa County Land Use Map. It is the apparent intent of the measure to first redesignate the sewage treatment facility AWOS and then amend the policy that applies to all AWOS lands to allow for the continued use and expansion of a sewage treatment plant on AWOS lands. As the Board of Supervisors is well aware, the cornerstone of Measure J (Measure P) is that agriculture should remain as the primary use on lands designated as both AWOS and AR and that the density and intensity of agriculturally designated lands shall not be changed without a vote of the people. We respectfully request that the report evaluate whether Section 3.C. of the initiative is a violation of Measure J, as it permits a primary use (sewage treatment) that is clearly inconsistent with all other aspects of the AWOS land use criteria. The initiative does not propose any amendment to the text of Measures J or P.

Section 3.D. of the initiative would amend Policy AG/LU-53 to prohibit future subdivision of any and all parcels designated Public-Institutional. In addition to property owned by Pacific Union College, both the Napa County Airport and the Napa State Hospital are designated as Public-Institutional. This outright prohibition appears to be in direct conflict with other General Plan policies, including policies that are specific to Angwin. We respectfully request that the report analyze whether the prohibition on future subdivision of the college, the airport, and the state hospital, is consistent with the General Plan's vision for these sites.

3. Effect on the Use of Land in Napa County

Section 1.B. of the initiative states that the purpose of the measure is to protect large tracts of agricultural and open space land in the Angwin area. However, the proposed General Plan amendment does nothing to protect land with existing agricultural or open space designations in the Angwin area. We respectfully request that the report evaluate the existing land use designations in the Angwin area, and analyze the impact of the initiative on the existing designations.

Section 2.B. of the initiative states that it is the purpose of the measure to "ensure no further subdivision of Public-Institutional parcels." We respectfully request that the report

Honorable Chairman Keith Caldwell and Members of the Board of Supervisors

June 4, 2012

Page 4

evaluate the effect of the subdivision prohibition on the use of land throughout the County, as well as any potential conflicts with controlling state law regulating subdivisions.

Section 2.B. of the initiative states that it is the purpose of the measure “to permit modernization of a private sewage treatment facility.” We respectfully request that the report evaluate whether, in light of other applicable regulations (including Measure J) the private sewage treatment facility will be able to be modernized if the initiative passes.

Section 3.A. of the initiative purports to amend the land use map of Angwin. We respectfully request that the report contain a list describing the changes made to the land use map and the implications, legal and otherwise, of those changes. We also request that the report study and evaluate the initiative’s use of General Plan land use maps (as opposed to zoning maps, which show specific parcels) to make the proposed changes, and the potential legal and other impacts the lack of detail/specificity may cause.

Section 3.B. of the initiative purports to amend the Napa County Land Use Map “as set forth in Exhibit D.” The initiative does not include a list or other description of the proposed changes, notwithstanding that the map itself includes a disclaimer that it “was prepared for informational purposes only” and that “[n]o liability is assumed for the accuracy of the data delineated hereon.” Moreover, Exhibit D (which is simply a graphical representation of information) is not presented at a scale where the changes can be understood and/or evaluated. It is therefore unclear what changes appear on Exhibit D. We respectfully request that the report evaluate the adequacy of the map provided and address the legal and land use planning impacts of Exhibit D.

4. Effect on Existing Entitlements for Pacific Union College

Pacific Union College has vested rights pursuant to certain approvals and entitlements granted to the college by the County beginning in 1966. We respectfully request that the report include an analysis of the impacts of the initiative on these vested rights, including whether the initiative would require the County to pay Pacific Union College just compensation.

5. Effect on the Location and Availability of Housing and the Ability of Napa County to meet its Regional Housing Needs

Section 2.C. of the Proposed Initiative states that it is the purpose of the measure to “maintain affordable housing overlay, which allows significant affordable housing development in Angwin.” As set forth above, the initiative will restrict the development of both affordable and market-rate housing. We respectfully request that the report include an analysis of the potential effect of the initiative on the availability of housing in Napa County and the ability of Napa County to meet its regional housing needs.

Honorable Chairman Keith Caldwell and Members of the Board of Supervisors
June 4, 2012
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6. Other Legal Analysis

In addition to the matters set forth above, the proposed initiative raises a significant number of complex legal questions including, but not limited to, whether the initiative: (1) violates the court-approved settlement in *DeHaro v. County of Napa*, (2) violates the provisions of the federal Religious Land Use and Institutionalized Persons Act, (3) would subject the County to monetary or other penalties, (4) includes matters that are not the proper subject of an initiative, (5) conflicts with the Napa County Airport Land Use Compatibility Plan and other airport-related legal requirements, which are in many cases controlled by state and federal law, (6) constitutes arbitrary and discriminatory zoning in excess of the County's police power, and (7) creates internal General Plan inconsistencies. We respectfully request that the report include a comprehensive legal analysis of the initiative, including an analysis of whether the initiative places the County at risk of a legal challenge.

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Pacific Union College greatly appreciates the County's consideration of this letter, and looks forward to reviewing the section 9111 report once it is prepared. Please do not hesitate to contact the undersigned should you have any questions or require further information.

Very truly yours,



Kristina Lawson

KXL:kl

cc: Robert Westmeyer, County Counsel (via email robert.westmeyer@countyofnapa.org)
Martin Pehl, County Airport Manager (via email martin.pehl@countyofnapa.org)
Dolly Matteucci, Executive Director, Napa State Hospital (via fax (707) 253-5513)
John Collins, Pacific Union College
Sean Welch, Nielsen Merksamer, Parrinello, Gross & Leoni, LLP
Beth Painter, Balanced Planning
Sean Matsler, Manatt, Phelps & Phillips, LLP

LAW OFFICES OF
MOSCONE EMBLIDGE & SATER LLP
220 MONTGOMERY STREET, SUITE 2100
SAN FRANCISCO, CALIFORNIA 94104
TELEPHONE: (415) 362-3599 FAX: (415) 362-2006

June 5, 2012

VIA FAX AND MAIL

Napa County Board of Supervisors
County Administration Building
1195 Third Street, Suite 310
Napa, CA 94559

Re: ***Agenda Item 10E - Consideration and Possible Direction to Staff to
Prepare a Report Pursuant to Elections Code Section 9111 Regarding
Angwin General Plan Initiative***

Dear Honorable Chairman Caldwell and Members of the Board:

This firm represents the proponents of the Angwin General Plan Initiative (Initiative). Shortly before close of business yesterday, we received a letter from counsel for Pacific Union College (PUC), Kristina Lawson, regarding a possible 9111 report for the Initiative. We were pleased to see that PUC, like the project proponents, supports the County's preparation of a thorough 9111 report.

Ms. Lawson's letter includes a lengthy list of issues of concern to PUC. While time does not permit a detailed response to these issues prior to the Board's hearing this morning, we would like to clarify a few points raised in the letter in order to avoid unnecessary confusion. First, the Initiative does not affect any parcels designated for affordable housing in the County's General Plan. Second, the Initiative does not affect the Angwin Airport parcel or any other airport property. Finally, the Initiative expressly permits the modernization of the sewage treatment facility in Angwin.

We have confidence that the Board will direct, and County staff will prepare, an appropriate 9111 report that will enhance the County's understanding of the initiative.

Thank you for your attention.

Sincerely,
MOSCONE EMBLIDGE & SATER LLP

A handwritten signature in black ink, appearing to read 'Rachel Sater', written over the printed name and firm name.

Rachel J. Sater



A Tradition of Stewardship
A Commitment to Service

Elections Code Section 9111 Report

Angwin General Plan Amendment Initiative

July 9, 2012

Appendix D – Legal Analysis

Prepared by the Napa County Department of Planning, Building & Environmental Services
Hillary Gitelman, Director
and
Robert Westmeyer, County Counsel
Tracy Schulze, Auditor Controller
with assistance from
the firm of Miller Starr Regalia