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MEMORANDUM

To:	Napa County Board of Supervisors	From:	Hillary Gitelman
Date:	October 11, 2011	Re:	Landmark Preservation Ordinance Update – General Plan Conformity

This memorandum supplements a staff report prepared for the Landmark Preservation Ordinance Update, which the Napa County Board of Supervisors is scheduled to consider at a public hearing on October 18, 2011, and specifically analyzes the General Plan conformity of the second ordinance being considered as part of the Update.

Background: The Proposed Ordinance

The Landmark Preservation Ordinance Update consists of two ordinances and one resolution. The first ordinance would update procedures and standards for local landmark designation and offer preservation incentives to the owners of historic residences and agricultural buildings, including five historic farm centers and grange halls. The second ordinance would offer an historic preservation incentive to owners of historic commercial and resort properties that are designated as landmarks by allowing the owners to apply for a use permit authorizing reuse of historic buildings for their historic use or an alternative commercial use if specific findings can be made. The resolution would enact a Mills Act tax incentive program for qualifying residential and agricultural properties.

As explained in the staff report, the Landmark Preservation Ordinance Update is intended to implement policies and action items added to the Napa County General Plan with adoption of the General Plan Update in June 2008. The second ordinance specifically is intended to implement Action Item CC-28.1:

“Amend the Zoning Ordinance to provide a discretionary process such as a use permit by which property owners may seek approval consistent with Policy CC-28, for an additional incentive for historic preservation. The process shall preclude reuse of buildings which have lost their historic integrity and prohibit new uses that are incompatible with the historic building or that require inappropriate new construction.”

Policy CC-28 referred to states:

“As an additional incentive for historic preservation, owners of existing buildings within agricultural areas of the County that are either designated as Napa County Landmarks or listed in the California Register of Historic Resources or the National Register of Historic Places may apply for permission to reuse these buildings for their historic use or a compatible new use regardless of the land uses that would otherwise be permitted in the area so long as the use is compatible with agriculture, provided that the historic building is rehabilitated and maintained in conformance with the U.S. Secretary of the Interior’s Standards for Preservation Projects.

“This Policy recognizes that, due to the small number of existing historic buildings in the County and the requirement the their historic reuse be compatible with agriculture, such limited development will not be detrimental to the Agriculture, Watershed or Open Space policies of the General Plan. Therefore such development is consistent with all the goals and policies of the General Plan.”

The second ordinance described above has been controversial because it would implement the suggested policy and allow commercial uses to be established in agricultural areas of the County without changing the County’s zoning map, without changing General Plan land use designations (General Plan Figure AG/LU-3), and without the need for a vote of the electorate pursuant to Measure P (2008), which is incorporated into the General Plan as General Plan Policy AG/LU-111.

Background: General Plan Conformity Required

State law requires that general plans be internally consistent (CGC Section 65300.5) and that county zoning ordinances be consistent with the applicable general plan (CGC Section 65860). The law also allows any resident or property owner to bring an action to enforce compliance with this requirement, and as a result there is informative case law on the subject. Specifically, the courts have called the general plan the constitution for all future development, and stated that any decision affecting land use and development must be consistent with the general plan. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 570.)

However, a project need not be in perfect conformity with each and every general plan policy, and must be examined to determine whether overall it is in harmony and agreement with the policies stated in the general plan. (*Sequoia Hills Homeowners Ass’n v. City of Oakland* (1993) 153 CA3d 391, 408.) As the Court noted in *Save Our Peninsula v. Monterey County Board of Supervisors* (2001)87 Cal.App.4th 99, 142:

“[w]hen we review an agency’s decision for consistency with its own general plan, we accord great deference to the agency’s determination. * * * Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan’s policies when applying them, and it has broad discretion to construe its policies in light of the plan’s purposes. A reviewing court’s role ‘is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies.”

Nonetheless, a project may not conflict with specific mandatory policies or provisions contained in a general plan. Inconsistency with a single mandatory policy requires denial of a project, even if it is consistent with numerous other provisions. (*Endangered Habitats League v. County of Orange* (2005) 131 CA4th 777, 789.)

As a general rule, the arbiter regarding interpretation of County land use policies is the Board of Supervisors. (*San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 CA4th 656, 668.) And courts will defer to an agency's decision on consistency with its own plans unless, based on the evidence before the decision-making body, a reasonable person could not have found the project to be consistent. (*No Oil, Inc. v. City of Los Angeles* (1987) 196 CA3d 223, 242.)

Analysis: General Plan Conformity

As an acknowledgement of the requirement for general plan conformity, the staff report for the Landmark Preservation Ordinance Update – which proposes zoning text amendments -- addresses general plan conformity by identifying goals, policies, and action items from the County's General Plan that relate to historic preservation. These sections of the General Plan, which are summarized again below, offer support for the conclusion that the proposed ordinance is consistent with the General Plan:

- Goal CC-4: Identify and preserve Napa County's irreplaceable cultural and historic resources for present and future generations to appreciate and enjoy.
- Policy CC-17: Significant cultural resources are sites that are listed in or eligible for listing in either the National Register of Historic Places or the California Register of Historic Resources due to their potential to yield new information regarding prehistoric or historic people and events or due to their intrinsic or traditional cultural value.
- Policy CC-18: Significant historical resources are buildings, structures, districts, and cultural landscapes that are designated Napa County Landmarks or listed in or eligible for listing in either the National Register of Historic Places or the California Register of Historic Resources. Owner consent is a prerequisite for designation as a County Landmark.
- Policy CC-19: The County supports the identification and preservation of resources from the County's historic and prehistoric periods.
- Action Item CC-19.2: Consider amendments to the County zoning and building codes to improve the procedures and standards for property owner-initiated designation of County Landmarks, to provide for the preservation and appropriate rehabilitation of significant resources, and to incorporate incentives for historic preservation.
- Policy CC-24: Promote the County's historic and cultural resources as a means to enhance the County's identity as the nation's premier wine country and a top tourist destination, recognizing that "heritage tourism" allows tourists to have an authentic experience and makes good business sense.
- Goal CC-5: Encourage the reuse of historic buildings by providing incentives for their rehabilitation and reuse.
- Policy CC-26: Projects which follow the Secretary of the Interior's Standards for Preservation Projects shall be considered to have mitigated their impact on the historic resource.

- Policy CC-27: Offer incentives for the appropriate rehabilitation and reuse of historic buildings and disseminate information regarding incentives available at the state and federal level. Such incentives shall include but are not limited to the following: a) Apply the State Historical Building Code when building modifications are proposed. b) Reduce County building permit fees when qualified preservation professionals are retained by applicants to verify conformance with the SHBC and the Secretary of the Interior's Standards. c) Use of the federal historic preservation tax credit for qualified rehabilitation projects. d) Income tax deductions for qualified donations of historic preservation easements.
- Policy CC-28: As an additional incentive for historic preservation, owners of existing buildings within agricultural areas of the County that are either designated as Napa County Landmarks or listed in the California Register of Historic Resources or the National Register of Historic Places may apply for permission to reuse these buildings for their historic use or a compatible new use regardless of the land uses that would otherwise be permitted in the area so long as the use is compatible agriculture, provided that the historic building is rehabilitated and maintained in conformance with the U.S. Secretary of the Interior's Standards for Preservation Projects. This policy recognizes that, due to the small number of existing historic building in the County and the requirement that their historic reuse be compatible with agriculture, such limited development will not be detrimental to the Agriculture, Watershed or Open Space policies of the General Plan. Therefore, such development is consistent with all of the goals and policies of the General Plan.

It is also possible to identify individual general plan goals, policies, and action items that could be inconsistent with the proposed action, including the following:

- Goal AG/LU-1: Preserve existing agricultural land uses and plan for agriculture and related activities as the primary land uses in Napa County.
- Goal AG/LU-2: Concentrate urban uses in the County's existing cities and town and urbanized areas.
- Goal AG/LU-5: With municipalities, other governmental units, and the private sector, plan for commercial, industrial, residential, recreational, and public land uses in locations that are compatible with adjacent uses and agriculture.
- Policy AG/LU-3: The County's planning concepts and zoning standards shall be designed to minimize conflicts arising from encroachment of urban uses into agricultural areas...
- Policy AG/LU-4: The County will reserve agricultural lands for agricultural use including lands used for grazing and watershed/open space, except for those lands which are shown on the Land Use Map as planned for urban development.
- Policy AG/LU-12: No new non-agricultural use or development of a parcel located in an agricultural area shall be permitted unless it is needed for the agricultural use of the parcel, except as provided in Policies AG/LU-2, AG/LU-5, AG/LU-26, AG/LU-44, AG/LU-45, and ROS-1.

As discussed in the Background section above, a zoning ordinance must be in harmony with the General Plan as a whole, and in considering the proposed Landmark Ordinance Update, the Board of Supervisors has an opportunity to consider whether the ordinance would disrupt that harmony or pose an unacceptable conflict with mandatory policies of the plan. This is a matter of interpretation for the Board, and it is firmly within the Board's discretion to decide whether or not the proposed ordinance is *on balance* consistent with the General Plan.

In staff's view, the proposed ordinance *is* on balance consistent with the General Plan because incorporation of Policy CC-28 in the General Plan Update adopted on June 3, 2008 (Board of Supervisors Resolution 08-86) provides evidence that the Board of Supervisors -- at that time -- believed that the policy's incorporation in the General Plan did not create an internal inconsistency in violation of CGC Section 65300.5 despite the presence of the agriculture-related goals and policies listed above.

In addition, General Plan policies addressing non-conforming uses (Policy AG/LU-46) and existing commercially-zoned parcels (Policy AG/LU-44 & 45) demonstrate that it is possible to allow isolated commercial uses in agricultural areas without disrupting the harmony of the General Plan and without explicitly calling out those activities as permitted in the Agricultural Resource (AR) or Agriculture, Watershed and Open Space (AWOS) districts. Thus, although Policies Ag/LU-20 and AG/LU-21, which define the AR and AWOS districts, do not identify commercial uses among the "General Uses" that are allowed, other policies of the General Plan permit very limited commercial uses under very specific circumstances and the plan as a whole is still in harmony. As stated in Policy AG/LU-45:

"due to the small numbers of such parcels, their limited capacity for commercially-viable agriculture due to pre-existing uses and/or size, location and lot configuration, and the minimal impacts such commercial operations and expansions will have on adjacent agriculture or open space activities or the agricultural and open space character of the surrounding area, such limited development will not be detrimental to Agriculture, Watershed or Open Space policies of the General Plan. Therefore such development is consistent with all of the goals and policies of the General Plan."

Other non-agricultural uses allowed in agricultural areas may be found in the General Plan provisions related to schools and churches, which are permitted under certain circumstances pursuant to General Plan Policies AG/LU-120 through 125 although not explicitly referred to in Policy AG/LU-20 and 21. Recreational facilities (Policy ROS-3), home occupations (Policy AG/LU-48), and historic buildings (Policy CC-28) are similar examples.

For the reasons discussed here, staff believes that actions taken to implement Policy CC-28 should not be viewed as creating an unacceptable and inherent conflict with the General Plan as a whole, as long as the reuse of historic resources is compatible with agriculture as stated within the policy. The proposed ordinance would accomplish this by requiring an explicit finding regarding compatibility with agriculture and -- like Policy AG/LU-45 -- would affect "small numbers" of parcels with "limited capacity."

If the Board concurs with staff's analysis, they should so indicate in taking their action on the proposed Landmark Preservation Ordinance Update. If the Board disagrees, they should either reject the proposed ordinance or pass a motion of intent to place the ordinance on the ballot with a conforming General Plan amendment and direct staff to prepare ballot language for their consideration.

Placing an item on the ballot requires review pursuant to the California Environmental Quality Act (CEQA) unless it is achieved through signature gathering. In this case, staff has suggested use of the General Plan program-level EIR for ordinance adoption, and the same strategy could be used to place a measure on the ballot if the Board agrees that the proposal was adequately analyzed in the program-level EIR. (See the memo and checklist dated August 15, 2011.)