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Agenda Date: 8/19/2015

Agenda Placement: 9A

## Napa County Planning Commission Board Agenda Letter

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**TO:** Napa County Planning Commission

**FROM:** Lawrance Florin - Director  
Housing and Intergovernmental Affairs

**REPORT BY:** Lawrance Florin, DIR HOUSING AND INTERGOVERNMENTAL AFFAIRS - 253-4621

**SUBJECT:** Amendment Number 1 to Development Agreement with Napa Redevelopment Partners for Napa Pipe

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### **RECOMMENDATION**

#### **NAPA PIPE PROJECT: RECOMMENDATION TO BOARD OF SUPERVISORS TO ADOPT AN ORDINANCE AMENDING THE NAPA PIPE DEVELOPMENT AGREEMENT (NAPA COUNTY AGREEMENT NO. 8264)**

**CEQA Status:** A Final Environmental Impact Report (EIR) was previously prepared for the Napa Pipe Project (State Clearinghouse No. 2008122111) and certified by the Board of Supervisors on January 14, 2013. The proposed ordinance is within the scope of the previously certified EIR and would not result in any substantial changes to the previously approved project which will require major revisions of the previously certified EIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified significant effects; there are no substantial changes with respect to the circumstances under which the project is undertaken which will require major revisions of the previously certified EIR; there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable due diligence at the time the previously certified EIR was adopted. No new potential environmental effects or mitigation measures have been identified and therefore no further environmental documentation is necessary pursuant to State CEQA Guidelines Section 15162.

**Request:** That the Planning Commission recommend to the Board of Supervisors adoption of an ordinance approving a First Amendment to Development Agreement (Napa County Agreement No. 8264) between the County and Napa Redevelopment Partners, LLC. The proposed First Amendment would (i) amend the Development Agreement to be consistent with City of Napa approvals, including provisions addressing the membership warehouse store, clarifying open space phasing, and for construction of improvements at Kaiser Rd./SR 221, and (ii) make technical corrections to the legal description. The Napa Pipe project is proposed on a 154 acre site located at 1025 Kaiser Road, Napa, approximately ¼ mile west of State Highway 121 and ¼ mile north of State Highway 29 (APN's: 046-400-030 & 046-412-005). The Napa River adjoins the west side of the site. The site is bisected by railroad tracks running north-south.

**Staff Recommendation:** Conduct a public hearing and (1) recommend that the Board of Supervisors find that the First Amendment to the Development Agreement is within the scope of the previously certified EIR; and (2) recommend that the Board of Supervisors adopt an ordinance approving the First Amendment to the Development Agreement.

**Staff Contact:** Larry Florin, 253-4621 or larry.florin@countyofnapa.org or Sean Trippi, 299-1353 or sean.trippi@countyofnapa.org

**Applicant Contact:** Keith Rogal, Napa Redevelopment Partners, (707) 252-7000

## **EXECUTIVE SUMMARY**

### **Proposed Actions:**

That the Planning Commission:

- (1) recommend that the Board of Supervisors find that the First Amendment to the Development Agreement is within the scope of the previously certified EIR; and
- (2) recommend that the Board of Supervisors adopt an ordinance approving the First Amendment to the Development Agreement.

### **Discussion:**

A Development Agreement between the County and the Developer was approved by the Board of Supervisors on December 16, 2014, and the County and Napa Redevelopment Partners, LLC ("NRP") entered into the Development Agreement as of January 13, 2015. The Development Agreement memorializes the rights, obligations, and contractual matters by establishing the terms and conditions for development of the site, including phasing, installation of infrastructure, housing requirements, fees, financing, approval processes and procedures. The proposed Development Agreement is a statutory development agreement as authorized by state law (Govt. Code Section 65864 et seq.). The purpose of the Development Agreement is to provide NRP" with a vested right to development of the Project for a period of years in accordance with the applicable laws and entitlements in effect at the time of Project approval in exchange for NRP's agreement to provide a package of public benefits in excess of that which could have been required under applicable laws.

At the Planning Commission hearings on October 15 and October 29, 2014, on the Development Agreement, the City commented with a number of issues it considered unresolved. The Planning Commission recommended approval to the Board of Supervisors, but directed staff to resolve the issues to the extent feasible. City and County staff continued to work together so that at the Board hearing, only two issues remained unresolved: the timing of construction of the membership warehouse store and NRP's obligation for certain roadway improvements to Kaiser Rd./State Route (SR) 221. The Board adopted the Development Agreement despite the City's objection of these two issues.

To address the City's unresolved concerns with the Development Agreement, the City's agreement to provide water service to the project included a provision by which NRP will be required to request an amendment to the Development Agreement in order to implement the modifications to the Phasing Plan and traffic infrastructure improvements described below. The City Council resolution authorizing the approval of all of the City/County Agreements provides that the City Council's authorization to submit an application to LAFCO to extend the sphere of influence is conditioned on the approval and execution of a First Amendment to Development Agreement by the County and the Developer that addresses the City's phasing and roadway improvement issues.

**FISCAL IMPACT**

Is there a Fiscal Impact?                      No

**ENVIRONMENTAL IMPACT**

A Final Environmental Impact Report ("EIR") was prepared for the Napa Pipe Project and certified by the Board of Supervisors on January 14, 2013. Prior to taking action to recommend Board of Supervisors adoption of the Development Agreement and related zoning and general plan amendments, the Planning Commission adopted recommended CEQA findings to document the reasons why the County has determined that the EIR provided coverage for the proposed actions and that additional environmental review, in the form of a subsequent or supplemental EIR, is unnecessary prior to Board approval of the Development Agreement. Staff has concluded that the terms of the proposed First Amendment to Development Agreement primarily affect the timing and payment obligations under the Development Agreement and the NPIIP Supplement concludes that NRP's agreement to pay the full cost of the proposed intersection improvement at Kaiser Road/SR 221 will fully satisfy NRP's obligation toward a fair-share contribution toward mitigating cumulative impacts at this intersection.

Therefore, the proposed First Amendment to Development Agreement is within the scope of the previously certified EIR and would not result in any substantial changes to the previously approved project which will require major revisions of the previously certified EIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified significant effects; there are no substantial changes with respect to the circumstances under which the project is undertaken which will require major revisions of the previously certified EIR; there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable due diligence at the time the previously certified EIR was adopted. No new potential environmental effects or mitigation measures have been identified and therefore no further environmental documentation is necessary pursuant to State CEQA Guidelines Section 15162.

**BACKGROUND AND DISCUSSION**

On October 15 and October 29, 2014, at duly noticed public hearings, the Planning Commission considered and recommended to the Board of Supervisors a Development Agreement between the County and Napa Redevelopment Partners ("NRP") pursuant to Government Code Sections 65864, et seq. (the "Development Agreement"). The Board of Supervisors approved the Development Agreement on December 16, 2014 and the County and NRP entered into the Development Agreement as of January 13, 2015.

The Development Agreement sets forth terms and conditions under which NRP will develop an approximately 154-acre site commonly known as "Napa Pipe", located at 1025 Kaiser Road (APNs 046-412-005 and 046-400-030). The project approved by the Development Agreement and various other County approvals consists of the following: (1) 700 dwelling units (up to 945 units with State required density bonus); (2) a 150-unit continuing care retirement center for seniors; (3) 40,000 square feet of neighborhood serving retail uses; (4) 10,000 square feet of office; (5) a 150-room hotel with supporting uses; (6) a 154,000 square foot membership warehouse store (such as a Costco) with a gas station; (7) publicly accessible and privately-maintained parks and open space; (8) community facilities/farm; (9) publicly accessible and privately-maintained roads; and (10) infrastructure.

At the Planning Commission hearing on the Development Agreement, the City commented with a number of issues it considered unresolved. The Planning Commission recommended approval to the Board of Supervisors,

but directed staff to resolve the issues to the extent feasible. The City and County staff continued to work together so as at the Board hearing, only two issues remained unresolved: the timing of the membership warehouse store and NRP's obligation for certain roadway improvements to Kaiser Rd./State Route (SR) 221. The Board adopted the Development Agreement despite the City's objection on these issues.

On July 21, 2015, the Napa City Council amended the City's General Plan, approved a first reading of zoning amendments in anticipation of annexation of the Napa Pipe property consistent with the County's General Plan Land Use designations for the Napa Pipe site and the zoning established by the County's Napa Pipe Zoning District (Zoning Code Chapter 18.66) and approved the Napa Pipe Development Plan and Design Guidelines previously approved by the County. At the same hearing, the City Council approved various agreements between the City and County, including a Sphere of Influence Agreement; Tax Sharing Agreement; Regional Housing Needs Assessment Agreement; Municipal Services Agreement; and Professional Services Agreement. The City Council also approved an Annexation Consent, Protest Waiver and Water Service with NRP (the "Water Agreement"), under which the parties agreed to submit an application to LAFCO for the annexation of the property in two phases and the City agreed to provide water under certain conditions.

To address the City's unresolved concerns with the Development Agreement, the Water Agreement included a provision by which the Developer will be required to request an amendment to the Development Agreement in order to implement the modifications to the Phasing Plan and traffic infrastructure improvements described above. The City Council resolution authorizing the approval of all of the City/County Agreements provides that the City Council's authorization to submit an application to LAFCO to extend the sphere of influence is conditioned on the approval and execution of a First Amendment to Development Agreement by the County and the Developer that addresses the City's phasing and roadway improvement issues.

**II. FIRST AMENDMENT TO DEVELOPMENT AGREEMENT:** NRP has agreed to the proposed First Amendment to Development Agreement substantially in the form attached as Exhibit 1 that addresses the City's concerns as follows:

**A. Project Phasing (Membership Warehouse First and Phasing Generally):** The Development Agreement contains a Phasing Plan that governs the phasing of project development, including the timing for affordable housing, traffic improvements, mitigations required by the Project EIR, infrastructure and other obligations. City staff has continually objected that the proposed Development Agreement does not adequately address its concerns that the membership warehouse store be constructed in Phase 1 of the Project, that the payment plan provided in the Phasing Plan (relating to the timing and amount the Developer would pay if the Costco was not completed and opened as planned) was inadequate and that certain Phasing Plan improvements were unclear as to when they must be started and/or completed before other beneficial Project components began (e.g., wetlands restoration, construction of a round-about, traffic signal at Napa Valley Corporate Drive/Anselmo Court, Soscol Ferry Road/Devlin Road median improvements, etc.).

To address these issues, the City Council has recommended that the Development Agreement (Phasing Plan) be amended to significantly increase the payments for the loss of the membership warehouse store to serve as a deterrent to allowing the deal to fail. As described in the First Amendment to Development Agreement (Phasing Plan), if the Costco is not opened in the timeframe as planned, the payments to the City to offset the loss of the Costco (until the Costco or a hotel is built) will be significantly more than proposed in the existing Development Agreement.

**B. Traffic Infrastructure Improvements (Kaiser Road/SR 221)**

There were two outstanding traffic infrastructure issues reviewed by the City Council – one relating to the timing of

improvements to Kaiser Road and one relating to the timing and responsibility of improvements to the intersection of Kaiser Road and State Route 221. The Phasing Plan attached to the Development Agreement provides that the Developer will design and construct a landscape median on Kaiser Road between State Route 221 and Syar Road, including any roadway improvements such as restriping necessary to accommodate the installation of the Kaiser Road 6 improvements, and complete these improvements before issuance of a certificate of occupancy for the first residential unit in Phase 3. However, the City objected to the development triggers for completion of this work. To address the City's concern, NRP has agreed to complete construction of the Kaiser Road improvements not later than the 351st residential permit, which obligation is reflected in the First Amendment to Development Agreement.

In addition, the City Council was also concerned about the Developer's responsibility for the construction of improvements to Kaiser Road/SR 221 to mitigate project impacts. The mitigation measure adopted by the County (as set forth in the Napa Pipe Intersection Improvement Plan, attached to the Development Agreement as Exhibit C) required NRP to pay its fair share 34% for the following Kaiser Road/SR 221 improvements:

*Extend the turn-pocket in the northbound left-turn lane on SR 221 to 500 feet from its current length of approximately 280 feet or create a dual left- turn the length of the current turn-lane to adequately store the expected queues. In addition, construct the following improvements:*

- Northbound: a third through lane and a second left-turn lane*
- Southbound: a third through lane and free right-turn lane*
- Eastbound: a second and third left-turn lane and a free right-turn lane*

The City concluded under its policy guidelines that NRP should bear the entire cost of the construction of dual left-turn lanes on northbound SR 221 that are equal in length to the existing two hundred eighty (280) foot single left turn lane, and that construction should be completed as follows:

(A) If the first building permit issued for a structure on the Property is for a Membership Warehouse Store on Block F, construction shall be completed before the issuance of any other building permits for any other structures on the Property;

(B) If the first building permit issued for a structure on the Property is not for a Membership Warehouse Store on Block F, construction shall be completed before either one (but not both) of the following occurs:

- i. a building permit is issued for the structure that will contain the three hundredth (300th ) residential unit on the Property; or
- ii. a Certificate of Occupancy is issued for a Membership Warehouse Store on Block F.

The City has acknowledged that NRP's construction of these turn-lane improvements would fully satisfy NRP's obligation to mitigate the Project's contribution to a cumulative impact at Intersection #17 pursuant to the Mitigation Monitoring and Reporting Program, the Napa Pipe Intersection Improvement Plan (NPIIP) and the Development Agreement.

Both the Phasing Plan and the NPIIP (by Supplement prepared by Fehr & Peers dated August 3, 2015) have been updated in the proposed Development Agreement amendment to reflect this modified intersection obligation. The

NPIIP Supplement concludes that implementation of this revised mitigation measure would fully and completely address the construction of the turn-lane improvements required by Section 4.4 of the NPIIP in lieu of a fair share contribution.

C. **Legal Description.** In addition to the foregoing, the First Amendment to Development Agreement includes a clerical change to Exhibit A (Legal Description) that fixes a typographical error in the legal description of the property.

**SUPPORTING DOCUMENTS**

- A . Ordinance
- B . First Amendment to Development Agreement

Napa County Planning Commission: Approve

Reviewed By: John McDowell