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Planning, Building and Environmental Services

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SEP 16 2015

David Morrison
Director

Agenda Item # 10C

MEMORANDUM

To: Napa County Planning Commission	From: David Morrison, Director
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Date: September 16, 2015	Re: Schedule for Considering Recommendations from the Agricultural Protection Advisory Committee (APAC)
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BOARD DIRECTION:

When the APAC was formed, the Board of Supervisors provided extensive direction to the Committee on conducting its business, including schedule, topics, committee composition, and voting supermajority. On September 15, 2015, staff requested that the Board of Supervisors provide similar direction to the Planning Commission regarding their consideration of the recommendations from the APAC. The Board provided three directives to the Commission:

- Develop draft policies that are supported by the specific action item recommendations;
- Prioritize consideration of those recommendations that received unanimous or support by a supermajority of the APAC;
- Forward recommendations to the Board of Supervisors as soon as possible, so that the Board can provide direction to staff to begin drafting implementation language; and
- Focus on broad brushstrokes, instead of the details. The Board may have different priorities and direction, so it would not be an effective use of Commission time to extensively deliberate on items that have yet to receive Board support. Details can be worked out later, once the Board has provided the overall direction.

SCHEDULE:

Based on the Board of Supervisor's direction, staff is recommending the following draft schedule:

September 16, 2015

Organization for the Commission's consideration of the APAC recommendations:

- Disclosure of conflicts of interest
- Election of Officers, if applicable
- Presentation by Ted Hall, Chair, and John Dunbar, Vice-Chair, of APAC
- Acceptance of draft schedule
- Scope and format of policy recommendations

September 30, 2015

Items that received unanimous support from the APAC:

1. Avoid the use of variances as a principle tool for achieving compliance with land use regulations. Variances may be used only when there is specific evidence supporting all necessary findings.
2. Develop guidelines and benchmarks for consideration of future winery use permits based on the format of Proposal X.
3. Implement an annual self-certification reporting process, requiring a report to be submitted by the principal officer of each winery certifying the amount of wine produced, compliance with the 75% rule, as applicable, and compliance with all conditions of use permit approval. All data collected shall remain confidential to the extent allowed under the law.
4. Prohibit hold and haul of wastewater and related liquid by-products on all AP and AW zoned parcels for new wineries except during winery development, not to exceed one year from certificate of occupancy, or in an emergency situation.
5. Share the County's production reporting methodology with the five other Napa County jurisdictions and encourage annual winery data collection from wineries located in the unincorporated area for the purposes of capturing more complete data.

October 7, 2015

Items that received supermajority support from the APAC:

1. Use the working definition of agriculture.
2. Limit the total development area, for parcels up to 40 acres in the AP and AW zones, to no more than a cumulative total of 20% of a parcel, including new winery, residential and/or permitted uses. The total development area for parcels larger than 40 acres would be capped at a fixed eight (8) acres maximum.
3. Modify the County Code to include outdoor hospitality areas and Type 3 caves in the total area used to determine the maximum square footage for accessory uses for new wineries in the AP and AW zones.
4. Establish a process for the approval of use permits for small wineries as defined in Napa County's Local Procedures for implementing California Environmental Quality Act (CEQA):
 - Include less than 5,000 square feet in size excluding caves
 - Involve either no cave excavation, or excavation sufficient to create more than 5,000 additional square feet with all of the excavated cave spoils to be used on site
 - Produce 30,000 gallons or less per year
 - Generate less than 40 vehicle trips per day and 5 peak hour trips except on those days when marketing events are taking place
 - Hold no more than 10 marketing events per year, each with no more than 30 attendees, except for one wine auction event with up to 100 persons in attendance
 - Hold no temporary events
5. Limit the implementation of the recommended new requirements for winery use permits, including maximum winery development area, small winery use permit approval

processes, and hold and haul restrictions to new use permit applications for wineries submitted after January 1, 2016

6. Strongly encourage elected and appointed of the County, and their staffs, to take the following actions:
 - Implement the land use policies identified in the Napa County General Plan update
 - Enforce all current regulations fairly and consistently.
 - Deny any unrealistic use permit applications and modifications that are depending on the excessive use of variances.
 - Consistently follow existing procedures.
 - Discontinue creative efforts to justify projects on non-conforming parcels.
 - Be consistent in the interpretation, application and enforcement of all use permits.
 - Complete items the County Board of Supervisors and Planning Commission identified at the joint special hearing on March 10, including:
 - County Climate Action Plan
 - Circulation Element of the General Plan
 - Summit of County, City, and Town officials to discuss joint efforts to address regional land use and transportation issues.
7. Adopt a rule that prohibits the net loss of vineyards as a part of new and/or amended winery use permits.

October 14, 2015 - Evening

Items that did not receive supermajority support from the APAC:

1. Retain the existing 10-acre minimum parcel size for all new wineries.
2. Increase the minimum parcel size for new wineries to 40 acres in both the AP and AW zones.
3. Establish a small winery use permit for new facilities on parcels of 10 to 40 acres.
4. Require a minimum amount of estate grapes for all new and/or amended winery use permits.

October 28, 2015 – Evening

Items that were not specifically considered by the APAC:

1. Should a majority of winery employees be engaged in vineyard and/or production operations?
2. Should temporary events be included as a part of winery use permits?
3. Should there be different development standards for AP and AW zoning?

November 4, 2015

Approve final recommendations and final report.

**Presentation to the Planning Commission
by Ted W. Hall, Chair
Agricultural Protection Advisory Committee
September 16, 2015**

Planning Commission Mtg.

SEP 16 2015

Agenda Item # 10c

Good Afternoon.

Thank you, Commissioners, fellow committee members, and interested members of the public for this opportunity to speak to you.

I am here on behalf of the Agricultural Protection Advisory Committee that was appointed by the Board Supervisors, which is now infamously known by its acronym, APAC. I served as its Chair.

I am here with the Vice Chair of the committee, John Dunbar, who is the mayor of Yountville. As you know, APAC was directed by the Board of Supervisors to make recommendations to the Planning Commission, which, in turn, was directed to make recommendations to the Board of Supervisors.

But, before we get into the recommendations, I would like to offer a little context for today's discussion.

You will recall that on March 10th the Board of Supervisors and the Planning Commission held a joint special hearing to discuss and provide direction regarding concerns about the cumulative impacts of new development on the County.

Over 400 people attended the hearing.

As I think we all know, the concerns revolved largely around water, traffic, and the jobs/housing imbalance. These were the big topics. Traffic was probably the key irritant. However, there were also concerns expressed about the perceived rapid expansion of the wine industry and the intensification of use in the Ag Preserve.

From that meeting, four actions were taken by the Board of Supervisors:

1. Direct staff to return with a draft resolution and guidelines to establish an ad hoc advisory committee to review the Winery Definition Ordinance and Conservation Regulations;
2. Form a Board of Supervisors ad hoc committee to plan a forum with the cities to discuss joint efforts to address regional land use issues
3. Direct staff to revise the Circulation Element of the General Plan, including preparation of a draft traffic mitigation fee
4. Direct staff to complete the Climate Action Plan.

So, as Item One of the response to the joint hearing, the Board of Supervisors created the Agricultural Protection Advisory Committee (APAC) on March 24th.

Twelve representatives were appointed, two each from the six arenas of Agriculture, Business, Community, Environment, Municipalities and Wineries. Five at-large members were also appointed directly by the Board. Thus, total membership of the committee was seventeen (17). Further, APAC was required to reach a super majority to make any recommendations.

(Easy structure to work with, don't you think?)

Our 17-member committee was tasked with a mandate to develop recommendations regarding some specific questions, for example:

- What should be the minimum parcel size for new wineries
- Should we establish a minimum percentage of the grapes used in a winery to be grown on-site ("estate grapes")
- Should there be a requirement that new or expanded wineries result in no net loss of vineyards; and so on.

One of the areas of frustration – especially early in the committee's process – was that APAC was not addressing the "higher level" issues of water, traffic, and housing imbalance (the so-called "real issues"). In fact, many – including committee members – called for us to define "the problem" before we took any action.

But, the mandate from the Board of Supervisors was clear. Our charter was to focus on the preservation of agriculture and the implementation of the Agricultural Preserve and the related Winery Definition Ordinance (WDO).

So, to be very clear, we are not here today to discuss water, traffic or the jobs/housing imbalance directly.

We are here today to talk about land use and the patterns of land use in the Agricultural Preserve. These questions are not insignificant. Consider for a moment the landscape and the pattern of use across the Napa Valley in your mind's eye. For most of us, it is a beautiful scene – one well worth preserving in its current form.

So, we are here to discuss issues, policies, and specific recommendations that will shape that landscape going forward. Importantly, we are not going to try to alter – or unwind – the pattern of land use that has already evolved, but we are here to address the future pattern of land use in the Ag Preserve.

With this mandate, APAC held nine meetings and conducted public discussion totaling more than 30 hours.

Perhaps not surprising to you, much of the public comment was directed at the past actions of the Planning Commission. In the early days I felt like I was chairing meetings of a kind of "truth and reconciliation committee" regarding the Planning Commission.

Many differing views were expressed, but several important themes clearly emerged as expressed by the public (Sorry, but this will be a little rough for the Commission):

- The Planning Commission has been primarily focused on individual projects, one at a time, without consideration for the precedent of its previous decisions, the cumulative impacts of its decisions, nor the resulting pattern of land use
 - The culture of “every project is unique” is deeply imbedded and jealously guarded as a prerogative of the Commission
 - Variances are granted frequently with varying levels of analytic support for the findings, with a bias to finding a path to approval
 - Use permits conditions (for example, visitation, production, hours of operation) are granted unevenly, seemingly conveying advantage to some wineries over others without a clear rationale
 - Few overall policy statements have been created to guide the Commission and the Commission has not sought policy guidance nor clarification from the Board of Supervisors
 - No consistent policy can be discerned from the cumulative body of “case law” as reflected in the decisions of the Planning Commission
 - Lack of consistency raises significant uncertainty for applicants and, as a result, the cost of making a application to the Commission
- Compliance with existing use permits is uneven and there is no broad-based systematic process to enable or encourage compliance; furthermore, the level of compliance is not transparent
- An intensification of use is occurring in the Ag Preserve, partially as a result of many wineries undertaking direct marketing to consumers, but also as a result of an expansion of activities which may not be directly related to agriculture
 - Permissible and non-permissible activities in the Ag Preserve are not well understood and are subject to wide interpretation (for example, extent of food service, range of retail products, site rentals, role of temporary events)
 - The change in the preamble to the WDO in 2010 created confusion regarding the definitions of permissible activities and the changes to the preamble language have been largely been viewed as loosening restrictions (although there were no changes to specific provisions defining permissible activities)
- The use permit process is expensive, time-consuming and a significant obstacle to potential small winery entrepreneurs and the process has the

unintended consequence of causing applicants to seek large, high-impact projects.

Significantly, after this initial period of public venting, APAC solicited written proposals from its own membership – and from the public – for policies and measures that addressed areas of concern. This solicitation of written proposals was a very significant part of our process as it moved us from listening to concerns – often expressed with high emotion – to the consideration of specific proposals. In the course of its work the committee addressed each of these proposals, although it did not take action on all of them.

As we now turn to the APAC recommendations (You might want to follow along in a copy of the report.), the report is organized by the degree of consensus reached by the committee. The committee made twelve (12) affirmative recommendations by super majority and one (1) negative recommendation by super majority vote.

However, if you look more closely, the recommendations can be grouped into four categories, which largely correspond to the comments we heard during the public hearings.

- I. Establish a consistent set of guidelines and processes for use permits
 - Limit the use of variances (#1)
 - Adopt a structured framework for consideration of use permit conditions (#2)
 - Implement a process for small winery use permit approval (#8)
 - Apply guidelines and new measures only to new winery use permit applications after January 1, 2016 (#9)
 - Do not adopt a guideline regarding no net loss of vineyards (#1, not recommended)
- II. Ensure consistent and transparent compliance
 - Employ a specific definition of agriculture (#3)
 - Establish a self-certification process (#4)
- III. Adopt measures that limit the intensification of use in the Ag preserve
 - Limit aggregate development footprint (#5)
 - Alter the calculation of area assigned to accessory uses (#6)
 - Do not permit hold and haul (#7)
- IV. Recommend that the Board of Supervisors take other actions
 - Complete actions from March 10th (#10)
 - Engage other jurisdictions (#10 & #11)

John and are prepared to answer your questions today about the specific recommendations contained in the report as well as to discuss those items on which the committee did not reach agreement.

However, before we do so, we want to caution you about looking at each of the recommendations as a stand-alone item.

As you go forward, we are concerned that you might engage in a process that attempts to redo or reexamine the work of APAC on a disaggregated, issue-by-issue basis. We are particularly concerned that you lack the time and the balanced perspective that was an essential part of the design of APAC. Please remember that we cast a wide net in soliciting proposals and that a supermajority was a very high hurdle for a diverse, representative group to achieve for a recommendation.

As an alternative value-adding approach, the Planning Commission might want to first develop policies that could guide your decision-making processes going forward - policies that will provide the context and purpose for any individual measure that you or the Board of Supervisors chooses to adopt. We urge to you to spend your time in developing proposed policies and, in turn, seeking the approval by the Board of Supervisors of those policies.

We have prepared a two-page document, *Proposed Recommendations to the Board of Supervisors by the Planning Commission*, for your consideration, which might guide your work going forward. The first section contains ten (10) policy statements, which are largely implied by the body of work that APAC has completed, and which provide a rationale for the specific measures recommended. These policy statements might be good starting points for the Planning Commission's discussion and debate.

To be clear, this supplemental document is not a formal work product of APAC. However, it is supported by the subcommittee that was charged with preparing the final report. We offer it as an example of the kind of work product that the Planning Commission might want to present to the Board of Supervisors.

We look forward to answering your questions.

SEP 16 2015

Agenda Item # 10C

By APAC

PROPOSED RECOMMENDATIONS TO THE BOARD OF SUPERVISORS
BY NAPA COUNTY PLANNING COMMISSION

I. The Board of Supervisors shall adopt the following policy statement:

The Planning Commission of Napa County and its staff are hereby directed by the Board of Supervisors to:

1. To protect and preserve the agricultural lands of Napa County by consistently interpreting and applying the zoning ordinances created by the Napa County Agricultural Preservation District and the Winery Definition Ordinance.
2. To adopt guidelines for granting use permits in the agriculturally zoned areas which reduce uncertainty for applicants and the public regarding potential development and assists staff and the commission in implementing consistent treatment of applicants
3. To support projects that minimize the impact of accessory uses of agricultural land and that do not result in intensification of non-agricultural uses
4. To strictly apply the adopted definition of agriculture to ensure that non-agricultural commercial uses do not occur in the agriculturally zoned areas
5. To support projects which result in diversified agricultural uses and the development of locally grown food in the agriculturally zoned areas
6. To grant variances only when the required findings are fully supported and to not use variances as a mechanism to permit, support, or encourage non-conforming agricultural uses
7. To seek a pattern of land use in the agriculturally zoned areas through its guidelines and subsequent decisions which results in large contiguous areas of uninterrupted agricultural use
8. To honor the established uses of agricultural lands from duly granted use permits
9. To not confer commercial advantage to projects by differentially and inconsistently applying requirements for maximum production, visitation, and other commercially valuable entitlements from one project to the next.
10. To adopt use permit conditions that are well defined and unambiguous with regard to the appropriate metrics with which to judge compliance.

II. The Board of Supervisors shall direct staff to prepare the required changes to applicable County ordinances to implement the following:

1. Establish an annual self-certification reporting process, requiring a report to be submitted by the principal officer of each winery certifying the amount of wine produced, compliance with the 75% rule, as applicable, and compliance with all conditions of use permit approval. All data

collected shall remain confidential to the extent allowed under the law.

2. Limit the total development area, for parcels up to 40 acres in the AP and AW zones, to no more than a cumulative total of 20% of a parcel, including new winery, residential and/or other permitted uses. The total development area for parcels larger than 40 acres would be capped at a fixed eight (8) acres maximum.
3. Modify the County code to include outdoor hospitality areas and Type 3 caves in the total area used to determine the maximum square footage for accessory uses for new wineries in the AP and AW zones.
4. Prohibit hold and haul of wastewater and related liquid by-products on all AP and AW zoned parcels for new wineries except during winery development, not to exceed one year from certificate of occupancy, or in an emergency situation
5. Establish a process for the approval of use permits for small wineries as defined in Napa County's Local Procedures for Implementing California Environmental Quality Act (CEQA) that:
 - Include less than 5,000 square feet in size excluding caves
 - Involve either no cave excavation, or excavation sufficient to create no more than 5,000 additional square feet with all of the excavated cave spoils to be used on site
 - Produce 30,000 gallons or less per year
 - Generate less than 40 vehicle trips per day and 5 peak hour trips except on those days when marketing events are taking place
 - Hold no more than 10 marketing events per year, each with no more than 30 attendees, except for one wine auction event with up to 100 persons in attendance
 - Hold no temporary events.
6. Limit the implementation of the recommended new requirements for winery use permits, including maximum winery development area, small winery use permit approval processes, and hold and haul restrictions to new use permit applications for wineries submitted after January 1, 2016.
7. Share the County's production reporting methodology with the five other Napa County jurisdictions and encourage annual winery data collection from wineries located in the incorporated areas for the purposes of capturing more complete production data.

Anne Cottrell

DRAFT Policy Recommendations to the Board of Supervisors
incorporating proposals from APAC
September 15, 2015

Planning Commission Mtg.

SEP 16 2015

Agenda Item # 10C

Preamble / Background

-1st reference point: March 10, 2015 meeting.

Issues voiced there: cumulative impacts of new development

-2nd reference point: since mid-2014, the Planning Commission has been discussing the need to develop guidelines for winery visitation.

Policy issues: (1) regulations require that visitation / marketing be subordinate and incidental to primary use; how can PC ensure that new applicants' requests comply?
(2) also, understanding the need for consistency in reviewing and issuing use permits.

-3rd reference point: At their Sept 15 meeting, the BOS indicated that they would like the PC to provide overarching policy recommendations gleaned from the specific proposals produced by APAC.

The Planning Commission has reviewed the recommendations and proposals provided by APAC. The following policy recommendations are intended to provide high-level policy direction, based on APAC's input, on the public input that the Planning Commission has received, and on the Planning Commission's own public discussion. Below each policy recommendation is a reference to one or more specific proposals from APAC (and one from the PC itself). Those proposals are followed by examples of specific actions that the BOS may choose to take.

Recommendations

I. Policy recommendation: Need consistency and clarity in carrying out County rules and regulations. Recommend the BOS direct the Planning commission and staff to enforce the existing regulations as written, and to make consistency a priority and a hallmark in following, interpreting, and applying regulations, including the General Plan, the WDO, and the county code.

A. APAC proposal in support: (#1) "Avoid the use of variances as a principal tool for achieving compliance with land use regulations. Variances may be used only when there is specific evidence supporting all necessary findings."

Example of specific action: Direct staff to draft a document for potential applicants that spells out problems with variances and discourages their use; require planning commission to make more specific findings if approving any variance.

B. APAC proposal in support: (#2) "Develop guidelines and benchmarks for consideration of future winery use permits based on the format of Proposal X."

Example of specific action: Direct staff to develop draft figures for insertion into Proposal X (as modified by BOS), to be reviewed by PC / BOS

C. PC proposal in support: Adopt guidelines for winery visitation that achieve the following goals: (1) ensuring that visitation and marketing, as accessory uses, remain incidental and subordinate to the primary use, as set out in the county regulations; and (2) providing applicants with clearer expectations about what levels of visitation are appropriate.

Example of specific action: Direct staff and Planning Commission to use the proposed template (Appendix **) in evaluating winery visitation requests; or, direct staff and Planning Commission to modify the proposed template according to BOS input.

Example of specific action: Direct staff to provide the proposed or modified template to prospective applicants to educate them about the guidelines that will be applied to any prospective project.

II. Policy recommendation: Need some increased focus on compliance, and need procedures that expand compliance review to be an industry-wide effort.

A. APAC proposal in support: (#4) “Implement an annual self-certification process, requiring a report to be submitted by the principal officer of each winery certifying the amount of wine produced, compliance with the 75% rule, as applicable, and compliance with all conditions of use permit approval. All data collected shall remain confidential to the extent allowed under the law.”

III. Policy recommendation: End reliance on hold and haul as an option for wineries (*spell out rationale here; traffic and carbon footprint impacts from trucking water; idea that if a site does not have capacity for processing a project's waste, then the project is not appropriate for that site*)

A. APAC proposal in support: (#7) “Prohibit hold and haul of wastewater and related liquid by-products on all AP and AW zoned parcels for new wineries except during winery development, not to exceed one year from certificate of occupancy, or in an emergency situation.”

IV. Policy recommendation: Continue to work on gathering and sharing information about the state of the wine industry. Data alone is never the answer, but improving our data collection and understanding that data can help us get a better picture of the state of the wine industry in Napa County. And a shared understanding of that data throughout our community – for residents, municipalities, industry, and the County – will make for more informed decisions moving forward.

A. APAC proposal in support: (#11) “Share the County's production reporting methodology with the five other Napa County jurisdictions and encourage annual winery data collection from wineries located in the incorporated areas for the purposes of capturing more data.”