Fair Payment for Public Benefit Act

Napa County
Elections Code Section 9111
Report

September 2005

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Executive Summary
Elections Code Section 9111 Report
Napa County Initiative
"Fair Payment for Public Benefit Act"

- If adopted, the proposed Initiative known as the "Fair Payment for Public Benefit Act" would require Napa County to compensate any owner of real property, in the unincorporated area of the County, who suffers a decrease in value as a result of any new land use restriction enacted by the County Board of Supervisors, unless the restriction is waived, a compromise is negotiated, or certain exceptions apply.

- The Initiative defines a "New County Land Use Restriction" as any action by the Napa County Board of Supervisors to "further limit or restrict the use of real property."

- The Initiative is complex and subject to judicial interpretation. The most likely immediate outcome of its adoption would be a period of uncertainty regarding its validity and effects.

- The substance, deadline, and method for filing claims under the Initiative are not specified, and the Board of Supervisors could choose to adopt implementation procedures by ordinance, although they could not amend or repeal the Initiative.

- If adopted, the Initiative may be interpreted as retroactive to February 17, 2005, the date that proponents of the Initiative filed a notice of intent. Alternatively, the Initiative could be interpreted to take effect the date it is adopted.

- The Initiative would apply to a small subset of the Napa County Board of Supervisor's activities. If the Board's actions in 2004 are used as an example, between five and ten percent of the approximately 250 ordinances and resolutions that the Board adopts in a year would potentially trigger substantive claims for compensation under the Initiative.

Fiscal Impacts

- No successful claims for monetary compensation would occur unless the Board of Supervisors took an action that "further limits or restricts the use of property" and the value of that property suffers "an established decrease in value."

- This report presents hypothetical scenarios to assess potential fiscal impacts associated with compensation under the Initiative. All of the scenarios are illustrative only, and none have been advanced as specific legislative proposals by the Napa County Board of Supervisors, or by others.

- Compensation would be a function of the number and type of new land use regulations enacted by the Board, the number of property owners and parcels affected, in addition to other factors. Total potential claims from the hypothetical scenarios evaluated could range from $14 million to $50 million, or more.

- In addition, the County would incur administrative and legal costs from potential claims as well as from the analysis of potential actions that might trigger the Initiative. These administrative and legal costs would depend on the number of actions taken by the Board, the number of claims filed and resolved through settlement versus trial, their complexity, etc. Annual costs are projected to be between $1.34 million and $2.95 million.

- There could also be substantial legal costs associated with initial challenges to the Initiative's legality. Though these costs have not been estimated, the defense of Measure J in 1990 cost the County in excess of $400,000.

- "The County's primary source of revenue to fund compensation claims, administrative and legal costs come from County "discretionary resources," comprised of the current year's discretionary revenues and any accumulated County fund balance or surplus. The County currently allocates 93% of its budgeted discretionary resources to fund County departmental expenses, and many critical functions and programs are dependant on this funding source. For example, Public Safety and Law/Justice receive more than half of their funding from discretionary resources. The Initiative could have a significant fiscal impact to the County's General Fund.

Other Impacts

- This analysis assumes that if the Initiative passes, the Napa County Board of Supervisors would attempt to avoid adopting any new resolution or ordinance, which could be defined as a "New Napa County Land Use Restriction," in order to avoid the potential fiscal impacts discussed in the preceding section. Many would view the resulting constraint on new regulation as a benefit, since property owners would be confident of a static regulatory environment. However, this static regulatory environment would inevitably result in impacts over time, because the County's environment and the larger State and Federal regulatory context would continue to evolve.

- If the Initiative is adopted, the ongoing update of the County's General Plan would yield a plan with essentially identical or more permissive policies than the current General Plan. This is because any increases in development potential desired (to stimulate affordable housing, for example) could not be off-set by reduced development potential elsewhere, without triggering compensation claims under the Initiative.

- Also, many environmental mitigation measures identified in the course of the General Plan update could not be adopted without triggering compensation claims under the Initiative. For example, future adjustments to the County's transportation impact fee, to ensure that all developers pay their fair share of needed improvements, would not be feasible.

- The County's inability to adjust or expand its transportation impact fee would affect one common source of funding for infrastructure improvements. Similarly, the County would not be able to use commonly applied measures such as adjustments to the housing impact fee and "inclusionary zoning" requirements, in order to address the need for affordable housing.

- Napa County would find it difficult or impossible to meet some current and all new requirements imposed on the County, by the State and Federal governments, without triggering claims for compensation under the Initiative. To avoid compensation claims and meet State and Federal mandates, the County would be forced to place proposals on the ballot in conformance with Exception 5 of the Initiative. Voter rejection of the proposals would expose the County to substantial risk of litigation and/or significant fines for non-compliance with the Clean Water Act or similar State or Federal statutes.

- With no sunset provision, the Initiative would remain in effect forever, compromising the County's ability to respond to inevitable changes in circumstances. While only somewhat problematic in the short term, the long term effects could be debilitating for the County's governance, potentially affecting government services, the overall "image" of the County, and the business climate.

Legal Analysis

- The legal analysis prepared by Kronick, Moskovitz, Tiedemann & Girard suggests that the proposed Initiative is preempted by existing State law (the Government Claims Act), and is likely to be invalidated by the courts.

I. Introduction

A. Purpose of the Report

This report evaluates the potential impacts of the Initiative called "The Fair Payment for Public Benefit Act" that has qualified for the ballot in Napa County, California. (The full text of the "Fair Payment Initiative" is included as Appendix A.) If passed, the Initiative would require Napa County to compensate any owner of real property in the unincorporated area of the county who suffers a decrease in value as a result of any new land use restriction enacted by the County Board of Supervisors. Certain exceptions may apply.

When a proposed initiative is circulated for the ballot, Section 9111 of the California Elections Code allows the County Board of Supervisors to request a report regarding potential impacts of the initiative. (A copy of Section 9111 is included as Appendix B.) On August 9, 2005, the Napa County Board of Supervisors requested county staff and consultants to prepare an analysis of the Initiative and to specifically address the Initiative's potential fiscal impacts, potential impacts on county land use, infrastructure, businesses, and possible legal issues associated with the Initiative's language and implementation. (The full text of the Board's discussion is included within Appendix C.)

B. Organization of the Report

The balance of this chapter reviews the Initiative, describes Napa County's form of government and the Board of Supervisors' role in government, and provides an overview on documents and procedures that govern land use in California.

Chapter II describes possible legal interpretations of the Initiative and presents an analysis of resolutions and ordinances adopted by the Board of Supervisors during 2004 that might be considered restrictive under the Initiative. Chapter II also describes five hypothetical scenarios where County regulations could be affected by the Initiative. These scenarios are presented for illustration purposes only, and none have been advanced as specific legislative proposals by the Napa County Board of Supervisors or by others.

Chapter III analyzes the fiscal impact of the proposed Initiative. The chapter first provides an overview of County fiscal issues and constraints in California. It then discusses the fiscal situation in Napa County, based on a review of the current General Fund budget and the five-year forecast prepared by the County Executive Office. The next three sections describe the methodology and analysis used to evaluate the potential fiscal impact to the County from three likely cost components of the Initiative: 1) compensation claims, 2) administrative costs, and 3) litigation costs. The chapter concludes with a summary of these fiscal costs as well as a description of the limitations of this fiscal analysis.

Chapter IV considers and evaluates other potential effects of the Initiative, as required by Section 9111 of the Elections Code. While the full extent of potential effects can only be speculated at this point, the purpose of this chapter is to address those considerations required by Section 9111, including, but not limited to: the effect of the proposed Initiative on the internal consistency of the County's General Plan and Specific Plans; its effect on land use, the impact and availability of housing and the ability of the County to meet its regional housing needs; its impact on infrastructure funding, including but not limited to transportation, schools parks and open space; its impact on the community's ability to attract and retain business and employment; its impacts on the uses of vacant parcels of land; its impact on agricultural lands, open space, traffic congestion, existing business districts and developed areas designated for revitalization; and other questions raised by the Board of Supervisors at their meeting on August 9, 2005.

C. Proposed Initiative

If approved, the Fair Payment Initiative would require Napa County to compensate property owners for any loss in value associated with new land use regulations, unless those regulations are waived, a compromise is negotiated, or certain exceptions apply. Generally, exceptions relate to (1) actions pursuant to regulations in effect prior tow February 17, 2005; (2) restriction of activities recognized as public nuisances; (3) restrictions inherent in fire and building codes, health and sanitation regulations, or solid or hazardous waste regulations; (4) restrictions mandated by State or Federal law where there is no local discretion; and (5) restrictions mandated by State or Federal Law where there is local discretion and the restrictions are approved by a majority of voters. A summary interpretation of the Initiative's language, including the exceptions, is provided in Chapter II.

The Initiative defines "New Napa County Land Use Restriction" as any action by the Board of Supervisors to further limit the use of real property in a manner or to a degree that it was not previously limited or restricted. Authors of the Initiative have expressed their intent to avoid any impact associated with the "Fair Payment" Initiative until such time as the Napa County Board of Supervisors enacts a new Napa County land use restriction that is more restrictive than existing restrictions and which adversely impacts someone's property value.[1] The Initiative restricts compensation to property owners, who have been affected by land use regulations adopted only after the notice of intent for the initiative was filed (February 17, 2005). In focusing only on actions occurring after the effective date of the Initiative, the authors' approach differs substantially from the approach taken in the State of Oregon by proponents of Measure 37 (adopted by voters in November 2004) and from the one taken by proponents of the "Property Owner Claims Reimbursement Process Initiative" in Nevada County, California (rejected by voters in November 2002).

D. Napa County and Land Use Regulations

Napa County's 513,000 acres of land and water consist mostly of mountain ridges and narrow valleys stretching across the County on a northerly-southerly axis. Scarcely one-third of the land in the County is level enough for conventional development, and only a little of the level land is located along the main east-west route connecting major population centers located outside of the County. Due to these reasons and to County citizens' longstanding commitment to agricultural preservation and growth management, Napa County still retains much of its rural character and agricultural productivity.

In Napa County, "agricultural productivity" mostly means wine grapes, and in 2004, Napa County vineyards produced about 120,000 tons of grapes (over 40 varieties). The impact of the wine industry on the Napa County economy was recently estimated at $9.5 billion annually.[2]

There are five incorporated cities within Napa County that collectively occupy less than five percent of the land area: American Canyon, Calistoga, Napa, St. Helena, and Yountville. The proposed Initiative would not apply within these cities, but would apply within the unincorporated area, which is home to approximately 28,600 people and 18,240 jobs. The incorporated cities currently are home to approximately 105,500 people and 122,500 jobs.

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[1] George Bachich letter to Elizabeth Seifel, August 18, 2005.

[2] For crop data, see the 2004 Crop Report prepared by the County's Agricultural Commissioner. For the economic impact of Napa County wine, see the June 2005 by MKF Research, prepared for the Napa Valley Vintners.

A five member Board of Supervisors governs Napa County, acts as the County's legislative body and also oversees its executive functions. The Board Members are elected to serve for four-year terms, and they represent geographic districts of the County. With input from the County Planning Commission, County staff, and the public, the Board of Supervisors is responsible for enacting and amending plans and regulations governing land use within Napa County. Some of these existing plans and regulations are described briefly below.

1. Napa County General Plan

California law requires every city and county in the State to adopt a General Plan with policies and objectives to guide land use and development. The law requires that the General Plan be comprehensive, forward looking, and internally consistent, and also requires that all zoning regulations, capital planning, and individual land use decisions be consistent with that General Plan.

The current Napa County General Plan was adopted in 1976 and comprehensively updated in 1983, although some sections—or elements—have been revised more recently. The Plan is routinely referenced by County staff, local advisory committees, Planning Commissioners, members of the Board of Supervisors, and community participants, and is largely credited with successfully directing urban development into existing communities and protecting the County's farmland over the last twenty-eight years.

The Napa County General Plan is structured with an introduction that provides an overview of fundamental land use issues important to the County, a list of broad and general goals that establish direction for the County, a generalized land use map, and a series of policies within each of ten elements. Some General Plan policies are quite specific, establishing minimum parcel sizes and allowable uses within the various land use designations.

The Housing Element is the section of the Napa County General Plan that was most recently updated. The current version was adopted in 2004 after affordable housing advocates filed a lawsuit. The update brought the County into conformance with State requirements (CGC Section 65580 et seq.). Although non-regulatory, the Napa County General Plan is the foundation of all land use decision-making in the County. From time to time, the Board of Supervisors may amend the General Plan. Measure J (adopted by Napa County voters in 1990) prohibits the Board from re-designating agricultural land for other purposes or altering certain minimum parcel sizes without voter approval. Measure J is currently scheduled to sunset in the year 2020.

2. Airport Industrial Area Specific Plan

In 1986, the County adopted the Napa County Airport Industrial Area Specific Plan (AIASP) for roughly 3,000 acres of unincorporated property along State Highway 29 south of the City of Napa. The plan sets forth detailed land use and circulation standards, capital improvement requirements, associated financing and improvement sequencing measures to guide development within the planning area. Since 1992, as a result of annexations to the City of American Canyon, the overall acreage of the planning area has been reduced by approximately 400 acres.

Excluding annexed areas, the plan includes approximately 1,600 acres designated for business park and general industrial uses with the remaining 800-plus acres encompassing the Napa County Airport. Within the business park areas are two nodes for commercially oriented development, consisting of a 12-plus acre commercial site and a 72-plus acre resort hotel site. Approximately half of the business park and general industrial land has been developed to its full capacity.

3. Napa County Code – Zoning Ordinance

Napa County implements the goals and policies articulated in its General Plan via the Napa County Code, which is a compendium of general ordinances on a wide variety of subjects. Title 18 of the Napa County Code contains the Zoning Ordinance, which was adopted in 1955 and has since been amended extensively. Currently, the Zoning Ordinance contains development standards for all zoning districts indicated on accompanying maps, including standards related to land use, density, lot coverage, and set backs. In addition, the Zoning Ordinance outlines the process for variances, use permits, and other planning-related approvals. Conservation regulations were added by ordinance in 1991 and a Viewshed Protection Program was added by ordinance in 2001.

4. Other Ordinances & Procedures

Some of the other ordinances within the Napa County Code also address subjects that are related to land use and development. For example, Title 15 contains the Building and Construction Ordinance and Title 17 contains the Subdivision Ordinance. In addition, the County has adopted fees and procedures that apply to land use decision-making, usually by resolution. For example, in conformance with the state guidelines for implementation of the California Environmental Quality Act (CEQA), the County adopted updated local procedures for implementing CEQA in 2004.

While this chapter has summarized the proposed Initiative and described some of the major existing land use regulations, the following chapter will offer a legal interpretation of the Initiative and propose some hypothetical scenarios that might trigger compensation by the County. Later chapters will analyze the fiscal impact of this proposed Initiative and describe other potential impacts.

II. Background and Approach to Analysis

This section of the report provides a description of how the Initiative is likely to be interpreted if adopted and provides examples of Board of Supervisor's actions from 2004 that may have qualified as "New Napa County Land Use Restrictions" under the Initiative. It also describes other legal considerations related to CEQA and spot zoning. A separate analysis of the Initiative's constitutionality and conformity to State law is attached as Appendix D. These analyses were provided by lawyers at the firm Kronick, Moscovitz, Tiedemann & Girard. This section also describes five hypothetical scenarios that are used to illustrate the Initiative's potential impacts.

A. Legal Interpretation of the Initiative – County Actions Affected

If approved by the voters or enacted by the Board of Supervisors, the "Fair Payment for Public Benefit Act" ("the Initiative") will create a new category of claims against the County. Under the Initiative, owners of real property in the County's unincorporated area will be able to seek compensation from the County for decreases in the value of their property that results from action by the Board to "further limit or restrict the use" of their property.

The Initiative provides that any owner of real property that suffers a decrease in value as a result of action by the Board of Supervisors to further limit or restrict the use of the property shall be fully compensated for the decrease unless the Board rescinds the action in question or the owner and the Board agree to a settlement.

The amount of the decrease is to be established either by "mutual agreement" between the owner and the County or by a court. If agreement cannot be reached "within 100 calendar days" the owner shall have "the right to have the decrease in value established by a court . . .". This language suggests that the owner will be the plaintiff in a lawsuit seeking compensation. The County will presumably be the defendant. The 100-day period functions as a sort of administrative remedy that must be exhausted before relief can be sought from the courts.

The Initiative does not establish a deadline for filing claims. However, periods of limitation normally begin to run when the obligation or liability arises, regardless of the plaintiff's ignorance of the cause of action. (See Gov't Code § 901 and *Piazza Properties, Ltd. v. Department of Motor Vehicles* (1977) 71 Cal.App.3d 622, 630.) The limited exceptions to this rule involve fraud or mistake coupled with a lack of information that would cause a reasonable person to inquire or investigate. (See Code of Civil Procedure § 338(d), Gov't Code § 901, and *Kline v. Turner* (2001) 87 Cal.App.4th 1369, 1374.) Since the actions that will give rise to claims under the Initiative will be public actions by the Board, it seems likely that the claims will accrue when the Board takes the action on which the claim is based. This could be subject to judicial interpretation.

Although the Initiative appears to contain the substantive provisions that will support a claim, it is silent as to the procedures to prepare, file and process a claim. Questions such as how long an owner has to file a claim, what a claim must consist of, how long the County has to respond to it, and when a lawsuit must be filed, are not answered. It is not clear what procedures will apply. The Board may find it helpful to enact an implementing ordinance that specifies procedures for the filing and processing of claims.

Although the Board may not amend or repeal the Initiative (Elections Code section 9125), it is not prohibited from adopting compatible implementing procedures.

If the Initiative survives legal challenge (see discussion in Appendix 1), the procedures in the Government Claims Act, Government Code section 814 and following, may be applicable. If so, then an owner would have to submit claims to the County within 12 months after the Board's action. (Gov't Code § 911.2.) Depending on whether the courts applied the time limit specified in the Government Claims Act or the 100-day period specified in the Initiative, the Board would have either 45 days or 100 days in which to act on the claim before a lawsuit could be filed. (Gov't Code § 912.4.) If the County sends a written rejection of the claim to the property owner, the owner could file suit after the earlier of the expiration of the 100-day period or the County's written rejection of the claim, and no later than six months after the rejection is mailed to the owner. (Gov't Code § 945.6) If the County fails to send a written rejection of the claim, the property owner could file suit anytime between the expiration of the 100-day period and two years after the Board adopted the new land use restriction.

The Initiative uses the term "New Napa County Land Use Restriction" to describe the actions that would expose the County to damage claims. That term is defined as follows:

> . . . *"<u>New Napa County Land Use Restriction</u>" means any action by the Napa County Board of supervisors to further limit or restrict the use of real property in a manner or to a degree that it was not previously restricted.*

Two elements appear required to perfect a claim under the Initiative. First, there must be action that further limits or restricts the use of property. "Use" means an activity that may be conducted on a property or a purpose to which a property may be devoted. (See, e.g., Government Code section 65302(a).) Second, the value of the property must suffer "an established decrease in value" as a result of the action. Action that restricts the use of property without decreasing the property's value will not support a claim. Similarly, action that reduces the property's value (such as a tax increase) without restricting its use would not support a claim. The Initiative sets no minimum dollar threshold for claims. A property owner may seek compensation for any measurable decrease in value so long as it results from a restriction on use.

When presented with notice of a claim, the Board will have at least five choices: 1) rescind the restriction as to all properties; 2) waive the restriction as to only the property in question; 3) negotiate an "agreement" with the owner; 4) negotiate a "compromise solution"; or 5) allow a court to determine the issue. The Initiative uses both "agreement" and "compromise solution" but does not define either term. It is not clear whether they are the same thing. Clearly any resolution of a claim could include the payment of money, adjustment of the restriction, other consideration, or any combination. Courts will probably interpret the Initiative's requirement that the Board act "immediately" to mean before the expiration of the 100-day period. The County will retain its traditional police powers and will continue to have the right to acquire property on payment of just compensation.

Although the Initiative does not specify what type of evidence is necessary to establish a decrease in value, it is likely that the courts will accept the kind of evidence that is traditionally used for that purpose. In eminent domain proceedings, which involve comparable valuation issues, testimony from appraisers and landowners is typically accepted. (See Evidence Code §§ 810-824.)

It is unlikely that attorney's fees would be awarded in litigation involving claims under the Initiative. The Initiative contains no provision for their award and an owner pursuing compensation for a decrease in value to his or her property presumably has a substantial financial interest in the litigation and is not likely to satisfy the requirements for recovery of fees under the private attorney general theory. (See, Code of Civil Procedure § 1021.5.)

The Initiative recognizes five exceptions that are to be construed "narrowly in favor of a finding of compensation."

Exception 1

Exception 1 excludes "[a]ctions to enforce regulations in effect prior to the date the notice of intention was filed by the proponents of this measure . . .". This exception will apply to permit approvals and denials, conditions imposed and other restrictions on use based on existing regulations.

Exception 1, read in conjunction with the Initiative's definition of "*New Napa County Land Use Restriction,*" appears to give the Initiative retroactive effect back to February 17, 2005. One of the rules of statutory interpretation is that "[l]aws do not operate retrospectively unless the enactors plainly intended them to do so." (*Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, at page 243.) Because Exception 1 appears to evidence an intent for retroactive application, it is expected that this would be upheld by the courts. Thus, if the Initiative is adopted at the June, 2006 general election, the County may be exposed to claims based on actions taken since February 17, 2005. However, giving the Initiative retroactive effect for the entire 16-month period from February 17, 2005 to June, 2006 seems to conflict with the one-year limitations period established by Government Claims Act. It is not clear how a court would resolve this conflict.

Exception 2

Exception 2 excludes restrictions on activities "commonly and historically recognized as public nuisances under common law." California codified common law nuisance in 1872 and, since then, nuisance has been defined legislatively. (See *People ex. rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1104.) As codified in Civil Code section 3479, a nuisance is:

> *Anything which is injurious to health, … or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway….*
>
> *(Civil Code section 3479; Acuna, supra, 14 Cal.4th at 1104.)*

The Initiative provides that County actions to abate nuisances will not create claims for compensation under the Initiative. Disputes might arise as to whether action to abate a specific nuisance exceeded what is permissible under the law of nuisance. Those issues may have to be addressed on a case-by-case basis.

Exception 3

Exception 3 excludes from the Initiative restrictions "inherent in fire and building codes, health and sanitation regulations, or solid or hazardous waste regulations." The use of the term "inherent" appears intended to limit the exemption to actions that implement traditional fire, building or health regulations. Actions that imposed restrictions outside the scope of traditional regulation could be met with claims for compensation. The County typically adopts annual amendments to the standard codes. So long as the annual amendments implement restrictions that are consistent with traditional code regulation, they should not support claims under the Initiative.

Exception 4

Exception 4 addresses restrictions "mandated by State or Federal law where the State or Federal law provides no discretion of any kind to the Board of Supervisors as to the manner by which the restrictions are implemented." These circumstances are rare and actions fitting within Exception 4 are not expected to occur often.

Exception 5

Exception 5 addresses restrictions mandated by State or Federal law where the Board of Supervisors has discretion as to the manner of their implementation. Exception 5 includes language limiting the exception to circumstances where the voters approve the manner of the Board's implementation. In certain circumstances, this limiting language may conflict with state and federal preemption or supremacy doctrines and may be subject to challenge.

Article XI, section 7 of the California Constitution provides that a county "may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." A conflict exists when local legislation contradicts general law. (*Shea Homes Limited Partnership v. County of Alameda* (2003) 110 Cal.App.4th 1246, 1259.) Local laws that conflict with State law are invalid. Similarly, State and local laws that conflict with Federal law are invalid under the Supremacy Clause of Article 6 of the United States Constitution. (See *Jevne v. Superior Court* (2005) 35 Cal.4th 935, 949.)

Ten years ago, the California Supreme Court upheld the Napa County voters' enactment of the Measure J initiative against a challenge that it conflicted with State planning and zoning laws. (*DeVita v. County of Napa* (1995) 9 Cal.4th 763.) The Court recognized that Measure J made it more difficult for the County to comply with state law and that it might cause the County's general plan to eventually fall out of compliance with state requirements. The Court nevertheless upheld Measure J because its enactment did not necessarily violate state law. The Court reasoned that the Board of Supervisors could ask the electorate to override Measure J if that became necessary to avoid violating State law. (*DeVita v. County of Napa*, 9 Cal. 4th at 792-793.) In essence, the Court held that it would be premature to invalidate Measure J simply because it carried the potential of a conflict with state law. (*Id.* at 792-794.)

Exception 5, in this respect, presents a similar issue. It could lead to a conflict with State or Federal law if the voters refused to approve mandated action. However, according to *DeVita*, that potential conflict is not sufficient reason to invalidate the language in Exception 5 now. However, the courts would very likely invalidate at least the voter-approval provision in Exception 5 if it resulted in an actual failure to comply with state or federal law.

1. Analysis of 2004 Board Resolutions & Ordinances

This section provides a brief summary and analysis of the resolutions and ordinances that the Board adopted in 2004 that seem to satisfy the definition of "New Napa County Land Use Restriction." The calendar year 2004 was selected because it is the most recent year for which there is complete data. In 2004, the Board adopted 225 resolutions and enacted 18 ordinances. Of these 243 actions, 17 were considered as potentially satisfying the definition. Table II-1 summarizes these 17 actions.

Table II-1
Board of Supervisor Actions that Satisfy
Definition of "New Napa County Land use Restrictions"

Calendar Year 2004

Resolution or Ordinance	Number	Date	Description
Resolution	04-13	2/10/04	Environmental Management Fees
Resolution	04-41	4/6/04	AIA Specific Plan Amendment
Resolution	04-105	7/13/04	CDPD, EM, and PW Fees
Resolution	04-110	7/27/04	AIA Specific Plan Amendment
Resolution	04-132	8/17/04	AIA Traffic Mitigation Fee Admin. Changes
Resolution	04-149	8/31/04	Amendment of Road & Street Standards
Resolution	04-150	8/31/04	AIA Traffic Mitigation Fee Report/Findings
Resolution	04-180	10/26/04	General Plan Amendments (Housing, LU, Growth Management)
Resolution	04-206	12/7/04	Adoption of Local CEQA Procedures
Ordinance	1233	1/13/04	Temp Event & Zoning Code Changes
Ordinance	1234	3/23/04	Technical Changes to Zoning Code; Update Signage Regulations
Ordinance	1240	6/22/04	Stormwater Mgmt/Discharge Control Ordinance
Ordinance	1242	7/20/04	Restrictions of airports and heliports
Ordinance	1243	7/27/04	Affordable Housing Impact Fees
Ordinance	1244	7/27/04	Commercial Accessory Uses in Industrial Zones
Ordinance	1246	10/26/04	Create Affordable Housing Combination District
Ordinance	1249	12/7/04	Adoption of Local CEQA Procedures

a. Actions that Reduce Intensity or Impose Costs

Resolutions 04-41 and 04-110 (AIA specific plan amendments), 04-149 (amendment of road and street standards), and 04-180 (General Plan amendments), and Ordinances 1233 (temporary event and zoning code changes), 1234 (technical changes in zoning code/update signage regulations), 1240 (stormwater mgmt/discharge control ordinance), 1242 (restrictions of airports and heliports), 1244 (commercial accessory uses in industrial zones), 1246 (creation of affordable housing combination district), and 1249 (adoption of local CEQA procedures) all seem to satisfy the definition of *New Napa County Land Use Restriction* to the extent they reduced the intensity of previously allowable property uses or imposed additional costs on the use of properties. It is not known whether any of these restrictions would have caused a decrease in value.

b. Actions that Impose or Increase Fees

Resolutions 04-13 (environmental management fees), 04-105 (CDPD, EM, and PW fees), 04-132 (AIA traffic mitigation fee admin changes), and 04-150 (AIA traffic mitigation fee report/finding), and Ordinance 1243 (affordable housing impact fees) imposed or increased fees on development and could be construed as restricting the use of property. It is not known if any of them would have decreased the value of any property.

c. Actions that Impose Additional Requirements

Whether Resolution 04-206 and Ordinance 1249 (adoption of local CEQA procedures) would qualify as restrictions on use would depend on the procedural changes they implemented. If these actions imposed additional requirements for environmental studies, increased fees or resulted in significant delays in project approvals, they might be construed as restrictions on use. It is not known whether they caused any decrease in the value of any properties.

2. Additional Legal Considerations

The Board's option to rescind or waive a restriction raises the question of whether doing so would constitute a "project" under the California Environmental Quality Act ("CEQA"). CEQA defines "project" to include issuance of a permit or entitlement that has the potential to cause a direct or reasonably foreseeable indirect physical change in the environment. (Pub. Res. Code § 21065.) All discretionary permit approvals that are not categorically exempt are "projects" under CEQA. (Pub. Res. Code § 21080(a).) Rescinding or waiving a land-use restriction to resolve a claim under the Act would appear to be a discretionary act equivalent to granting a permit or entitlement and might be considered a "project."

The time periods for CEQA review can greatly exceed the 100-day period the Initiative allows for negotiation of an agreement to resolve a claim. If rescission or waiver of a newly enacted restriction would require an Environmental Impact Report under CEQA, the County might be unable to approve an agreement before the 100 days expired. However, the County may be able to anticipate and mitigate this risk by incorporating consideration of rescission or exemption of some properties in the initial CEQA review of proposed new land use restrictions.

Another question raised by the rescission or waiver of a restriction is whether doing so would constitute "spot zoning." Spot zoning is illegal and is said to exist:

> *" '[w]here a small parcel is restricted and given less rights than the surrounding property....' " (Ross v. City of Yorba Linda (1991) 1 Cal.App.4th 954, 960.) When the zoning ordinance appears to subject a property owner to a special restriction not applicable to similarly situated adjacent property, courts will conduct a more searching inquiry into the reasons and motives of the legislative body to determine if the zoning is arbitrary and discriminatory. [Citations]; As explained in Arnel Development Co. [v. City of Costa Mesa (1981) 126 Cal.App.3d 330]: "The usual test when a zoning ordinance is attacked as being in excess of the police power is whether or not the ordinance bears a substantial and reasonable relationship to the public welfare. [Citations.] However, '[t]he principle limiting judicial inquiry into the legislative body's police power objectives does not bar scrutiny of a quite different issue, that of discrimination against a particular parcel of property. "A city cannot unfairly discriminate against a particular parcel of land, and the courts may properly inquire as to whether the scheme of classification has been applied fairly and impartially in each instance." ' " (Ehrlich v. City of Culver City (1996) 12 Cal. 4th 854, 900, quoting Arnel, supra, 126 Cal.App.3d at 336.)*

Rescission or waiver of a restriction under the Initiative would involve eliminating restrictions, rather than imposing them, and would benefit the property owner. For that reason, it does not appear that spot zoning would result.

B. Hypothetical Scenarios of Potential County Actions which could Trigger Compensation under the Initiative

The "Takings Clause" of the Fifth Amendment to the U.S. Constitution states that private property shall not "be taken for public use, without just compensation." Article I, Section 19 of the California Constitution states "Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner." In addition to direct physical takings by eminent domain and takings by damage or other physical invasion of property ("inverse condemnation"), compensation is also required for "regulatory takings" – i.e. the imposition of regulations that deprive the owner of substantially all the value of the property. *(Lucas v. South Carolina Coastal Council (1992) 505 U.S. 1003, 1009.)* Regulation that merely decreases the value of a property does not amount to a taking under either the state or federal constitutions and, therefore, does not require payment of compensation. In contrast, the Fair Payment Initiative requires compensation to a property owner for any reduction in the property's fair market value resulting from new land use restrictions imposed by the Board of Supervisors, regardless of the extent of the reduction.

The proposed Fair Payment Initiative requires that the County pay compensation for any action by the Napa County Board of Supervisors that "further limits the use of real property in a manner or to a degree that was not previously limited or restricted." Although the exact extent of the County's potential liability depends in part on how various provisons of the Initiative are interpreted, it is clear that the Initiative would create a new obligation to pay compensation in situations where no compensation is currently required.

The following is a list of five different kinds of actions that could meet the definition of a "*New Napa County Land Use Restriction*" and could warrant compensation to affected property owners. In each case, one or more examples are presented to facilitate analysis and discussion in the following chapters. All five scenarios and related examples are hypothetical, as none have been advanced as specific legislative proposals by the Napa County Board of Supervisors or by others.

1. Hypothetical Scenario A: New Environmental Mitigation

If the County Board of Supervisors were to adopt an ordinance addressing a new environmental condition, their action could require compensation of affected property owners. For example, the County might determine through its monitoring programs, neighbor complaints, or studies by the US Geological Survey, that a new area of the County should be designated as groundwater deficient similar to the Milliken-Sarco-Tulocay (MST) area. If this occurs, the Board of Supervisors might choose to extend the ordinance that currently applies in the MST to this new area, making it subject to the same procedures, and effectively limiting development until an alternate source of water is identified.[1] In this instance, the County could be required to compensate affected property owners, negotiate compromise solutions, or rescind/waive the procedures. Chapter III quantifies the potential impacts to local property owners of extending the MST ordinance to a new area in the County. This analysis assumes that the newly designated area has the same approximate size and composition of land use designations as the existing MST area.

2. Hypothetical Scenario B: New Impact Fees

If the County Board of Supervisors were to adopt a new impact fee, affected property owners could argue that the value (i.e. "use") of their property is diminished and seek equivalent compensation, effectively negating the fee. For example if the program Environmental Impact Report (EIR) being prepared for the County's general plan update concludes that there will be significant traffic congestion due to increases in population and employment expected in the future, it might also include a mitigation measure that would later be adopted as a resolution requiring private developers to pay an impact fee for every new dwelling unit and every new square foot of commercial or industrial development.[2]

Impact fees are assessed on new developments to cover the cost of infrastructure, or public facilities necessitated by that new development. Subsequent to the passage of Proposition 13, local governments have had significantly less money available to fund infrastructure[3]. Cities and counties have thus increasingly relied on new development to contribute impact fees to fund its "fair share" of specified infrastructure improvements. Impact fees are generally used in combination with other available local, state and federal funding for major infrastructure and transportation improvements.

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[1] The MST groundwater ordinance limits water withdrawal from the aquifer until the situation can be resolved most likely by extending a pipeline for recycled water. The ordinance states that owners of vacant parcels may apply for ministerial permits associated with one home using <0.6 acre-ft. of water. Any other new use (second units, vineyards) requires a discretionary groundwater permit, which in turn requires environmental review under the California Environmental Quality Act (CEQA). The net result of this requirement is that the County can fairly easily review and approve any groundwater permit that involves a single house or that would result in "no net increase" in groundwater use. Other proposals can require preparation of an Environmental Impact Report (EIR), which is costly and time consuming, and may result in a finding of significant impact, making it difficult for the project to be approved.

[2] Currently, similar transportation impact fees are in place only in the County's Airport Industrial Area. Some cities in the County also have such fees.

[3] As discussed in Chapter III, prior to the passage of Proposition 13, counties were able to annually adjust the local property tax rate to accommodate changes in demands for both state and local services. Proposition 13 imposed constitutional limits on both the property tax rate and assessed value growth, which severely curtailed cities and counties funding capacity for local services and capital improvements.

The imposition of a new impact fee generally decreases the value of any developable property by the approximate amount of the fee. As a result, adoption of a new impact fee by the Board of Supervisors would instantly create claims of equal value for the owners of all parcels subject to the new fee. Since the County would face claims approximately equal to any new fee, the Initiative would essentially eliminate the County's ability to fund new infrastructure or public facilities through impact fees. (In fact, the addition of associated administrative and litigation costs would likely render any attempt to impose a new fee a money losing proposition.) Thus, the Initiative would require the County to find other funding sources for new infrastructure and public facilities or simply live without improvements that could only have been funded by new impact fees.

3. Hypothetical Scenario C: Extension of Existing Growth Control Measures

If the County Board of Supervisors were to adopt an ordinance extending the growth control measures established by Measure J in 1990, their action could require the County to compensate affected property owners.[4] Measure J currently prevents the Board of Supervisors from re-designating agricultural lands identified in the County's General Plan for other uses without voter approval. It also establishes minimum parcel sizes in agricultural areas that cannot be reduced without voter approval. Measure J will sunset in the year 2020 unless it is extended by the Board of Supervisors or by voter initiative. If Measure J or any other existing growth control measure is extended by ordinance rather than initiative, property owners could argue that the extension constitutes a "new" restriction on use and seek compensation from the County.

If Measure J sunsets, agricultural lands could potentially be re-designated to accommodate residential or commercial development, and minimum parcel sizes in agricultural areas could potentially be reduced, without voter approval. On the other hand, while future land use decisions could be at the discretion of the Board of Supervisors, there is no guarantee that the Board would necessarily re-designate agricultural lands or reduce minimum parcel sizes. For example, depending upon the political climate at that time, the Board might decide to increase rather than decrease minimum parcel sizes.

Since Measure J's sunset is fifteen years away, the potential fiscal impact from any future decisions made by the Board of Supervisors regarding properties currently affected by Measure J is extremely speculative. As the sunset date approaches, it is possible that agricultural acreage with the potential for a higher valued use after the sunset date (for example, property located near existing urban areas that could be re-designated to residential uses) could command a value premium. Property owners could then potentially argue that if the Board of Supervisors were to extend Measure J by ordinance, their potential value would be diminished by the extension of the current land use restrictions in Measure J. Given these many uncertainties, it is not possible to assign a quantitative value to the potential fiscal impacts of this hypothetical scenario.

[4] There is a precedent for extending a voter initiative by ordinance. In 2004, the County Board of Supervisors extended Measure A, a growth control measure adopted by the voters in 1980.

4. Hypothetical Scenario D: New Land Use Regulations – Restrictions on Use

If the County Board of Supervisors were to adopt a new land use regulation restricting the use of property in any way, their action could require compensation of affected property owners. For example, the Board might respond to neighbors, who live on small, rural roads and complain about winery traffic, by adopting an ordinance increasing the minimum parcel size for wineries in areas zoned AWOS from 10 acres to 40 acres. Thus, in the AWOS zones, which generally contain more small rural roads than AR zones, no new winery would be permitted unless it were proposed on a site of 40 acres or more. Another way the Board could address potential land use conflicts between wineries and their neighbors would be to prohibit new winery development within 1,000 to 1,500 feet of an existing residence and conversely, prohibit new residential development within 1,000 to 1,500 feet of an existing winery. In either instance, the County could be required to compensate property owners whose ability to develop their property was constrained or eliminated. Fiscal impacts of this hypothetical scenario are discussed in Chapter III, focusing on the potential value diminution resulting from the inability to develop residential uses within 1,000 feet of an existing winery.

5. Hypothetical Scenario E: New Regulations Adopted in Response to State or Federal Mandates

If the County Board of Supervisors were to adopt a new regulation in response to a State or Federal mandate that was broadly worded to allow for local agency discretion, the Board's action could require compensation of affected property owners. For example, if the Regional Water Quality Control Board's (RWQCB's) Total Maximum Daily Load (TMDL) process ultimately concludes with a Basin Plan amendment that obligates Napa County to address soil erosion associated with public and private roads in the Napa River watershed, the Board of Supervisors could (in addition to improving public roads) adopt regulations requiring certain physical erosion control measures be implemented for private roads. The regulations could require that new private roads incorporate these measures before being permitted, and require existing private roads be inspected and improved within the next 10 years. The Board's action, to institute new regulations in response to the State mandate, could require the County to compensate affected property owners, negotiate compromise solutions, or rescind/waive the fee. Alternatively, under the proposed initiative, the Board of Supervisors would have to place the new regulation before County voters for approval. Chapter III provides a quantitative analysis of a scenario where the County would require implementation of soil erosion control measures for private roads within the unincorporated County. In this scenario, the County might incur costs if property owners were to challenge the imposition of new rules and regulations that resulted in additional cost burdens to property owners to construct improvements along private roads.

III. Fiscal Impacts

A. Overview and Chapter Organization

The first two sections of this chapter provide a general overview of County fiscal issues and constraints in California and a discussion of fiscal situation in Napa County, based on a review of the current General Fund budget and the five-year forecast prepared by the County Executive Office. The next three sections describe the methodology and analysis used to estimate the potential fiscal impact to the County from three potential cost components of the proposed Fair Payment for Public Benefit (Fair Payment) Initiative: 1) compensation claims, 2) administrative costs, and 3) litigation costs. These three cost components are each briefly described below and the analysis of each cost component is contained in Sections C, D and E of this chapter, respectively. The chapter concludes with a summary of these fiscal costs as well as a description of the limitations of this fiscal analysis.

1. Compensation Claims

If the Fair Payment Initiative is adopted, the greatest cost to the County would result from compensation of potential claims filed by property owners. The Initiative describes this restriction as "any action by the Napa County Board of Supervisors to further limit or restrict the use of real property in a manner or to a degree that it was not previously limited or restricted."

In addition, although the wording of the Initiative is not specific regarding how future claims would be processed by the County or how compensation would be specifically calculated, it states that the "amount of decrease in value shall be established by mutual agreement between the property owner and the Board of Supervisors. If agreement cannot be reached within 100 calendar days, the property owner shall have the right to have the decrease in value established by a court of competent jurisdiction." Alternatively, the Board of Supervisors could reach a compromise solution with the property owner to avoid paying compensation, but this might require the County to assume fiscal responsibility for the action that provoked the claim. For example, the County might have to fully assume the cost burden for transportation improvements triggered by the General Plan update or for erosion control measures along private roads in order to meet Regional Water Quality Control Board standards.

Thus, County staff would need to work on behalf of the County Board of Supervisors to reach a compromise solution or a mutual agreement regarding the decrease in value with the property owner. If an agreement could not be reached, litigation would be the final option to be pursued by the property owner. Thus, the Initiative does not specify how compensation claims would be calculated, but rather describes a process whereby the compensation would either be resolved through negotiations and agreement with the property owner or through litigation.

The compensation claim estimates in this chapter are based on three of the five potential hypothetical scenarios of potential restrictions that might further limit or restrict the use of real property and thus trigger compensation, as discussed in Chapter II. The amount of compensation is estimated to be the amount that would be determined either through negotiation or as determined by a court of competent jurisdiction.

2. Administrative Costs

The County would incur administrative costs because County staff would need to analyze potential actions that might trigger the Initiative and administer potential claims triggered by the Initiative. As described in the prior chapter, 225 resolutions and 18 ordinances were adopted by the County Board of Supervisors during 2004. Between five and ten percent of these actions, consisting of nine resolutions (4 percent) and eight ordinances (44 percent), were deemed to potentially meet the definition contained in the proposed initiative and potentially trigger compensation. If the Initiative were passed, County staff would need to analyze any potential future actions of the Board of Supervisors in order to determine if these actions might trigger compensation or if an alternative action could be pursued that would reduce or eliminate the County's potential liability for compensation.

In addition, County staff would need to develop and then administer a process by which the property owner and the Board of Supervisors could either reach a compromise solution or mutual agreement regarding the potential decrease in value. (If an agreement cannot be reached, then litigation could occur as summarized in the next section.) This fiscal analysis assumes that County Counsel would assign one full-time and one half-time attorney who would have major responsibility for monitoring and administering actions potentially triggered by this ordinance, working in close cooperation with technical staff from other County Departments, including the Public Works and Planning Departments, and others as needed. Depending upon the number of cases and the workload of County staff, outside legal counsel might need to be retained to work on these cases. In addition, technical experts, such as appraisers and rights of way consultants, would need to be retained in order to perform the valuation estimates for the County related to each potential action or claim.

3. Litigation Costs

The County is anticipated to incur additional litigation costs as a result of implementing the Initiative. Since the number of claims that might be filed as a result of the Initiative cannot be precisely estimated, the litigation cost estimates are based on a number of assumptions relating to the number of cases that might be tried, number of potential appeals, and typical caseloads, as detailed below. These assumptions are based on the experience of the Office of County Counsel with other cases related to property owner compensation where litigation has occurred, consisting of cases that have gone to trial, as well as settled prior to trial.

B. Overview of County Fiscal Constraints in California

Counties play a dual role in providing services to residents, acting as both a local government entity and as an agent of the state. As a local government entity, counties are responsible for providing municipal services to the unincorporated areas within their jurisdiction. Such municipal services include public safety, libraries, planning and land development, and public works programs such as road construction and maintenance, among others. Many counties (including Napa County) also operate enterprise programs that charge fees to users of their services and are organized like businesses, such as the Napa County Airport.

As agents of the state, counties are responsible for administering many of the state's health and welfare and criminal justice and rehabilitation programs, such as the California Work Opportunity and Responsibility to Kids (CalWORKs) program. Counties also provide general assistance and health care for the indigent in their communities. Because counties are obligated by statute to provide these programs, they are typically referred to as "state-mandated programs."

Counties generally have limited ability to alter the level of expenditures for state-required programs. In some cases, counties are constrained by "maintenance of effort" (MOE) restrictions, which require counties to maintain a certain level of funding for programs or departments, such as health and public safety programs. For example, counties have extremely limited control over expenditures in CalWORKs, because the state and federal governments establish eligibility criteria and funding levels, while caseloads vary with economic and demographic factors. Moreover, in difficult economic times, caseloads can typically be expected to increase at the same time that discretionary revenues to counties (such as property taxes and sales taxes) could be decreasing.

The state also imposes "county match" requirements in which counties must contribute a share of their own resources to receive state funds. These requirements limit the ability of county officials to allocate general purpose (discretionary) revenues according to local preferences.

As both a local government entity and an administrative arm of the state, county governments experience an inherent tension as they seek to meet their dual responsibility to the state and local citizens. County officials are accountable to local voters and must provide locally desired services. Yet they must also provide services of statewide concern. In seeking to provide both local services and state-required programs, county officials face significant fiscal constraints on their ability to allocate resources according to local preferences and on their ability to raise revenues to pay for these programs.

In addition to constraints on the ability of county officials to make expenditures according to local preferences, counties face constitutional and statutory restrictions on their ability to raise revenues to fund both state-required and county discretionary programs. Property taxes are generally the largest source of discretionary revenues to counties in California. Prior to the passage of Proposition 13, counties were able to annually adjust the local property tax rate to accommodate changes in demands for both state and local services. However, Proposition 13 limited the property tax rate to a maximum of one percent of assessed value and limited annual increases in base year value to a maximum of two percent per year, unless a property is sold, or there has been an increase in value due to the construction of improvements or renovation to a property.

In addition to the constitutional limits placed on the property tax rate and assessed value growth under Proposition 13, the State determines the allocation of the property tax collected in a county among the various local taxing entities. Each year, within certain limitations (which were strengthened by Proposition 1A, described below), the State may alter the relative share of the property tax going to an individual local taxing entity. For example, in response to acute budget shortfalls in FY 1992/93 and FY 1993/94, the State Legislature modified the allocation of the property tax revenues among taxing entities and permanently shifted a portion of property tax revenues from cities, counties and special districts to school entities, thereby reducing the State's funding obligation for education by the same amount.

This shift of property tax revenue is referred to as the "Educational Revenue Augmentation Fund" (ERAF). In Napa County, this ERAF shift translates into an estimated loss of approximately $17.8 million annually. (The amount paid to ERAF increases each year as property taxes increase.) In addition, the State Legislature imposed a supplemental two-year shift of property tax revenues from cities, counties and special districts to ERAF in FY 2004/05 and FY 2005/06. In Napa County, this supplemental ERAF shift is approximately $1.1 million each year. The County's ERAF revenue loss has been partially mitigated by Proposition 172, which provides a one-half cent sales tax to cities and counties for public safety purposes. However, it is important to note that funds provided by Proposition 172 must only be used for public safety purposes, and are not discretionary revenues for counties.

The State-Mandated ERAF shifts continue to erode the County's largest discretionary revenue source (property taxes). In FY 2004/05, State statutes implemented two additional programs, which impacted funding to local governments. The first program, known as the "Triple Flip," shifts 25 percent of the local one percent sales and use tax from the County to the State to fund the deficit bonds approved by voters in the March 2004 election. The County then receives an equal amount of property tax revenue from the County's ERAF pool. The schools are fully compensated for the lost ERAF from the state's general fund, thus the "triple flip."

The "Vehicle License Fee (VLF)/Property Tax Swap" backfills property taxes to cities and counties from the ERAF pool to offset their loss of revenues resulting from the permanent reduction in vehicle license fees. Revenues received by the County from both these programs are now treated as property taxes, subject to sales tax growth (for the "Triple Flip") and property assessed valuation growth (for the "VLF/Property Tax Swap"). The impact of the VLF swap and the "Triple Flip" will depend on the relative growth rates of property tax revenues, sales tax revenues and vehicle license fees, which cannot be determined at this time.

Proposition 1A, approved by voters in November 2004, amended the State Constitution to significantly reduce the State's authority over major local government revenue sources. As of July 1, 2005, Proposition 1A required the State to either fully fund each mandate affecting local governmental entities, or to suspend the mandate's requirements for that fiscal year[1]. With two important exceptions (described below), this measure prohibits the State from:

- Reducing local sales tax rates or altering the method of allocation to local governments,
- Shifting any additional property taxes from local governments to schools or community colleges (above the share in effect as of November 3, 2004), or
- Decreasing Vehicle License Fee revenues without providing replacement funding.

There are two significant exceptions to the above restrictions: (1) beginning in FY 2008/09, the State may shift a limited amount of local government property tax revenues to schools and community colleges, if a) the Governor proclaims that the shift is needed due to a severe state financial hardship, b) the Legislature approves the shift with a two-thirds vote of both houses, and c) certain other conditions are met; and (2) the measure allows the State to approve voluntary exchanges of local sales tax and property tax revenues among local governments within a county.

While Proposition 1A provides some protection to local governmental entities, it still leaves potential loopholes. For example, in years where funding is insufficient to cover mandated programs, the State might suspend mandates for the County to provide certain programs which, as a practical matter, could not really be suspended without disrupting local services. The County provision of absentee ballots to anyone who requests them is one such example. If the State were to suspend the mandate to provide this service, Napa County would still likely need to provide it as a convenience to the local electorate, but would no longer receive any state funding for its provision.

Counties have limited ability to increase existing taxes or raise new revenues. Propositions 13 and 62 limit the ability of counties to raise taxes without a vote of the general electorate. Proposition 13 requires a two-thirds vote of the people to raise special taxes (taxes for specific purposes), while Proposition 62 requires a majority vote of the people to raise general taxes. In addition, Proposition 218, enacted in November 1996, limits the ability of local government agencies to fund improvements and activities

[1] Source: California Legislative Analyst Office website: www.lao.ca.gov/ballot/2004/1A_11_2004.htm

which were traditionally funded through assessment district financing, by imposing several conditions on new (and some existing) assessment districts.

While the largest discretionary revenue source for most counties is property tax revenues, the largest single revenue source is generally intergovernmental transfers from the state and federal governments. These revenues are typically tied to a specific program and can only be allocated for the stated purpose. In addition, State and Federal budget processes determine the level of funding, which can vary from year to year. As a result, it is difficult for local policymakers to engage in effective longer-term planning, when a significant portion of a county's funding is not under local control.

As counties in California lack control over both expenditures and revenues, they run the ongoing risk of potential budget shortfalls. State policy changes, reductions in an anticipated revenue source, or increases in demands for services can produce a county budget deficit. With the majority of county resources allocated to State and Federally mandated programs, any significant variation in either the costs or the revenues available to fund County programs can create a budgetary shortfall. As will be described in the next section, Napa County has experienced similar challenges, and County budget forecasts indicate a potential growing shortfall between County revenues and expenditures.

C. Napa County Budgetary Considerations

Despite these budgetary constraints, Napa County currently is in good fiscal condition due to prudent fiscal planning and County reserves. The County is prepared to maintain current levels of service to its citizens, based on the funding and service levels indicated in the adopted FY 2005/06 County Budget. The total Napa County Adopted Budget for FY 2005/06 is approximately $232 million. Of this total, the County has true local control of approximately $76.9 million in "discretionary resources," or about 33 percent of the total budget.

"Discretionary Resources" are comprised of the current year's anticipated "Discretionary Revenues" ($61.2 million), in addition to the accumulated prior years' surplus of revenues over expenditures ($15.7 million). Unlike other funding, which must be spent on specific programs, the Board can allocate "Discretionary Resources" to various local programs and services on a discretionary basis. If the County needed to pay compensation claims or any other costs as a result of this Initiative, these costs would need to be paid out of discretionary resources.

Over the past 10 to 15 years, the County has generally benefited from increases in discretionary revenue on a per capita basis. In FY 1989/90, the County received about $279 per capita in discretionary revenues, as compared to $454 per capita in FY 2004/05. However, after adjusting for the decrease in spending power due to inflation over this same time period, the discretionary revenue per capita has actually remained fairly constant over the past fifteen years, at $279 per capita in FY 1989/90 as compared to $287 per capita in FY 2004/05.

1. Napa County FY 2005/06 Discretionary Revenues

Similar to most counties statewide, Napa County's largest component of discretionary revenues is derived from property taxes. Property tax revenues are projected to be $46.4 million, or 76 percent of the County's total $61.2 million in projected discretionary revenues for FY 2005/06, according to the County's adopted budget.

Property taxes are anticipated to remain the primary source of discretionary revenues in Napa County. However, future growth in property tax revenues is dependent on a variety of economic and fiscal factors.

For example, if the State continues to shift additional property tax revenues from the County to ERAF, this could result in a potential decrease in future property tax revenues based on a lowered property tax share remitted to the General Fund.

An economic recession could also negatively impact property values and resulting property taxes. In an economic slow down, the pace of new development slows and properties do not typically sell at the same prices or at the same rate as during a time of economic prosperity. This can result in a slower growth in assessed values and a resultant slow down in growth in property taxes.

The next largest components of Discretionary Revenues (after property taxes) are hotel tax (also known as Transient Occupancy Tax) and sales tax revenues. FY 2005/06 Transient Occupancy Tax revenues are projected to be $5.9 million, or about 9 percent of Discretionary Revenues. FY 2005/06 sales tax revenues are projected at $4 million, or about 7 percent of total discretionary revenues. Both sales tax and Transient Occupancy Tax revenues are projected to remain relatively flat over the next few years.

The remaining eight percent of discretionary revenues to the County are comprised of franchise fees, penalties, interest and other miscellaneous taxes and fees. The Adopted FY 2005/06 Budget projects these revenue sources will increase nominally over FY 2004/05 levels. In summary, discretionary revenue sources to the County, other than property taxes, are anticipated to either increase only nominally or remain constant over the next few years.

2. County Departments Receiving Discretionary Resources

In FY 2005/06, over 93 percent (or $72.2 million) of the County's total $76.9 million in budgeted discretionary resources is projected to be needed to fund County departmental expenses, as shown in Table III-1. Viewed another way, approximately one-third of the FY 2005/06 Countywide budget (excluding contingencies, general reserves and designations, discussed below) is funded through discretionary resources.[2]

As shown in Table III-1, the County has twenty-three budget categories that are organized according to six functional areas: Non-Departmental, Public Safety, Health and Human Services, Law/Justice, Community Resources/Infrastructure and General Administration/Finance. Each department and functional area receives a varying percentage of its budget from discretionary resources, and Table III-1 displays the County budget units in descending order according to their funding level from discretionary resources. For example, the Non-Departmental budget unit (comprised of costs which cannot be allocated to specific departments, such as debt service and insurance costs) is scheduled to receive the greatest share of discretionary resources at $11.6 million, or 16 percent of the total allocation of discretionary resources.

The Sheriff's Department is budgeted to receive the next largest share of discretionary resources at $8.6 million (12 percent), representing over 46 percent of its total budget. Although the Health & Human Services budget receives the next largest allocation of discretionary resources ($7.4 million), it only represents 13 percent of its total budget. Twelve departments are budgeted to receive over half of their departmental funding from discretionary resources, and four of these twelve departments are entirely funded through discretionary resources. Graph III-1 shows the proportion that discretionary resources represent for each of the six functional areas. As Graph III-1 illustrates, Public Safety and Law/Justice receive more than half of their funding from discretionary resources.

[2] The total $221.5 million budget appropriation shown on Table III-1 represents the County's Adopted All Funds Budget for FY 2005/06, excluding contingencies, reserves, designations and any additions to reserves.

Table III-1
Departmental Budgets and Allocated Discretionary Resources
Napa County, FY 2005/06

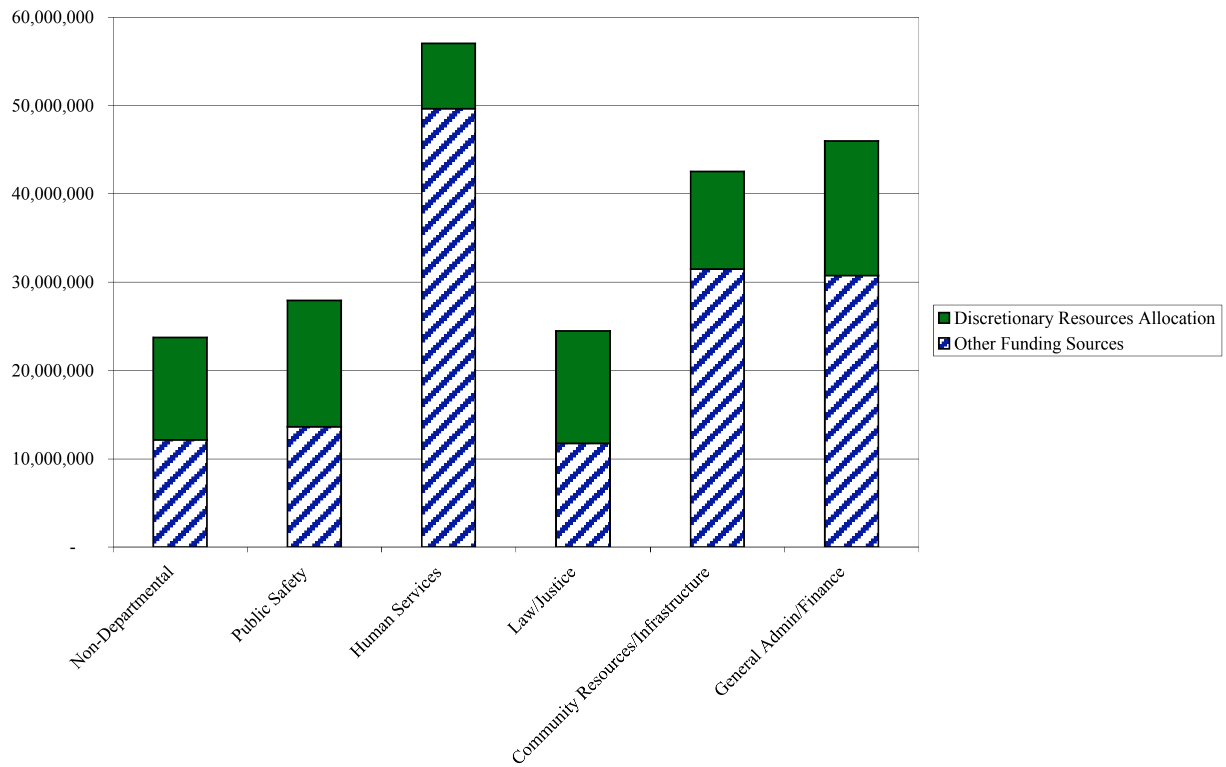
Department	Functional Area	Total Budget Appropriation[1]	Discretionary Resources	Discretionary Resources % of Total Dept Budget	% of Total Discretionary Resource Allocation
Non-Departmental	Non-Departmental	$ 23,705,327	$ 11,578,450	48.8%	16.0%
Sheriff	Public Safety	18,461,010	8,573,571	46.4%	11.9%
Health & Human Svcs.	Human Services	57,025,654	7,403,024	13.0%	10.3%
Corrections	Public Safety	9,416,900	5,677,952	60.3%	7.9%
Probation	Law/Justice	10,130,334	5,759,277	56.9%	8.0%
Cons., Devel. & Planning	Comm. Resources/Infrastructure	8,605,474	4,256,292	49.5%	5.9%
District Attorney	Law/Justice	6,558,400	4,224,701	64.4%	5.9%
Public Works	Comm. Resources/Infrastructure	21,970,933	4,104,838	18.7%	5.7%
County Executive Office	General Admin/Finance	11,726,841	4,013,537	34.2%	5.6%
Assessor-Recorder-Clerk	General Admin/Finance	5,067,357	2,969,352	58.6%	4.1%
Capital Improvement Program	General Admin/Finance	22,384,584	2,531,500	11.3%	3.5%
County Counsel	General Admin/Finance	2,669,094	2,321,144	87.0%	3.2%
Public Defender	Law/Justice	2,874,350	1,938,507	67.4%	2.7%
Auditor-Controller	General Admin/Finance	2,129,633	1,823,733	85.6%	2.5%
Agriculture Commissioner	Comm. Resources/Infrastructure	2,807,827	1,209,641	43.1%	1.7%
Treasurer-Tax Collector	General Admin/Finance	1,475,591	1,053,591	71.4%	1.5%
Environmental Mgt.	Comm. Resources/Infrastructure	3,173,940	789,695	24.9%	1.1%
Conflict Defender	Law/Justice	714,831	714,831	100.0%	1.0%
Board of Supervisors	General Admin/Finance	527,733	527,633	100.0%	0.7%
U.C. Coop. Extension	Comm. Resources/Infrastructure	341,703	341,703	100.0%	0.5%
Library	Comm. Resources/Infrastructure	5,598,948	320,406	5.7%	0.4%
Grand Jury	Law/Justice	27,867	27,867	100.0%	0.0%
Child Support Services	Law/Justice	4,135,777	-	0.0%	0.0%
TOTALS		**$ 221,530,108**	**$ 72,161,245**	**32.6%**	**100.0%**

Notes:
1. Based on FY 2005/06 County's All Funds Budget less contingencies and increases in reserves or designations.
2. Discretionary Resources includes discretionary revenues and General Fund undesignated/unreserved beginning balance. Discretionary Resources Allocation reflects Discretionary Resources allocated to operating/capital departments, but does not include Contingency, General Reserves, Designations or increases in Reserves or Designations.

Source: County of Napa.

Many of the costs in the Non-Departmental budget are relatively fixed, so, if discretionary revenues are to be used to fund potential claims resulting from the Initiative, the other departments and functional areas would likely be most negatively impacted as their budgets cannot be substantially reduced without eliminating staff and delivering less service. Furthermore, as described in the next chapter, the establishment and administration of a County property owner claims reimbursement process will require reallocation of budget funds and/or staff to implement the claim procedures.

Graph III-1
Composition of Departmental Funding
Napa County FY 2005/06 Adopted Budget



3. General Fund Reserves and Contingencies

The Adopted FY 2005/06 Budget includes a total of $7.8 million in total General Fund reserves, $18.3 million in General Fund designations and a $5 million General Fund contingency. General Fund reserves cannot be spent during the fiscal year and must be held for future needs and/or emergencies.

The Board's budget policy calls for moving toward a goal of having General Fund reserves equal to five percent of General Fund appropriations, which is a prudent fiscal planning measure. In FY 2005/06 the General Fund reserves represent approximately four percent of General Fund appropriations.

General Fund reserves could be used to cover compensation claims. However, in order to use reserve funds to settle compensation claims, the Board of Supervisors would have to appropriate these funds in accordance with the regularly scheduled annual budget cycle. Furthermore, if reserve funds were spent on compensation claims, they could not be replenished through any currently known funding source. The preservation of reserve funds is critical to the County's long-term budgetary health as they enable the County to withstand an unanticipated loss of revenue or increase in costs. As described earlier, the County's fiscal health is not entirely within its local legislative control.

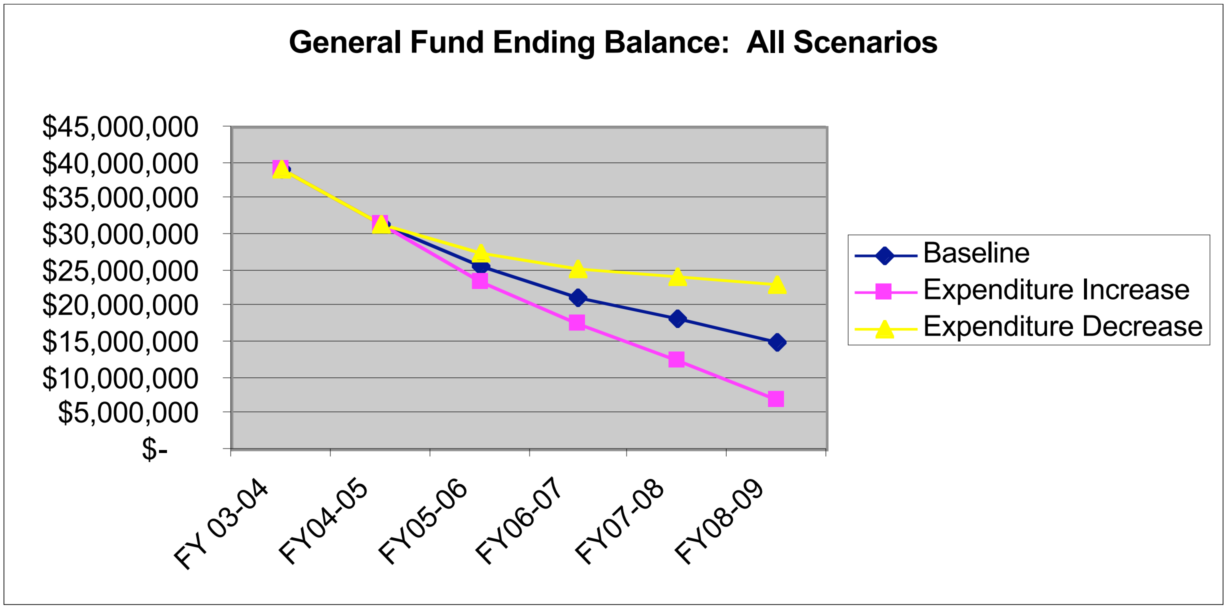
General Fund designations represent money set aside for specific purposes (such as refunds owed to the State, unspent grant revenues earmarked for specific programs, or funds set aside to cover future employee health insurance cost increases). Due to the specific funding purpose of 32 percent of the designations, approximately $6 million could not be reallocated to any other purpose. Subject to approval by at least four of the five members of the Board of Supervisors, the remaining designations could potentially be reallocated to help cover the cost of any claims that might be filed under the Initiative. However, this would leave a shortfall of funds to cover future increases in employee benefit costs and other obligations.

The General Fund contingency represents funds set aside to cover unanticipated downturns in revenues or cost increases during the fiscal year. Money spent from this source to cover any claims filed under the initiative would not be available to deal with other budget problems that typically arise during the year. In addition, the County has historically relied on not spending the full contingency amount to help provide an unreserved/undesignated beginning balance for the next fiscal year.

4. General Fund Five Year Forecast

In both the 2003/04 and 2004/05 fiscal years, General Fund expenditures exceeded revenues, thus reducing the General Fund ending fund balance. As part of the FY2005/06 budget process, County staff prepared a Five Year Revenue/Expenditure Baseline Forecast, in part to help evaluate the potential longer-term impact of this trend. The Baseline Forecast, which essentially assumed the status quo in terms of County revenue sources, known employee compensation levels and known capital projects, indicated that expenditures would continue to exceed revenues at least through FY2008/09, and the General Fund balance would decrease from approximately $39 million to approximately $15 million. County staff also prepared "Expenditure Increase" and "Expenditure Decrease" scenarios, both of which showed expenditures exceeding revenues, with the FY 2008/09 ending balance ranging from $23 million to $7 million. Graph III-2 shows the forecasted General Fund balance for each of these scenarios.

Graph III-2
Napa County General Fund Balance Forecast Through FY 2008/09



In fact, the fiscal situation would likely be even worse than shown in these projections. None of the three scenarios set aside any funds for major new capital improvements (or related debt service,) such as new or remodeled correctional facilities as a result of the ongoing study of future correctional facility needs. To address this issue, the Board has directed staff to begin preparation of a County Strategic Financial Plan as well as a Capital Improvement Plan. Even without the obligation to pay any claims or any administrative or litigation costs that might result from the Fair Payment Initiative, the County will need to reduce expenditures or increase revenues in the near future to maintain fiscal solvency.

D. Potential Compensation Claims

As discussed previously, compensation claims from the proposed Initiative would result only if the Board of Supervisors enacts a "New Napa County Land Use Restriction" that is more restrictive than existing regulations. Chapter II described five different Board actions that could be considered more restrictive than existing regulations. This section estimates the potential dollar range of compensation that could satisfy claims resulting from three of those five hypothetical scenarios:

- Scenario A: New Environmental Mitigation
- Scenario D: New Land Use Regulations Restricting Use
- Scenario E: New Regulations Adopted in Response to State or Federal Mandates

Since these scenarios are based on hypothetical future actions of the Board, there is clearly a degree of conjecture inherent in establishing assumptions for this analysis. Accordingly, the assumptions utilized in this analysis are based on the best information available at the present time, and actual compensation paid to claimants could be higher or lower than the estimates presented herein.

1. Scenario A: New Environmental Mitigation – Designation of Groundwater Deficient Area

This hypothetical scenario assumes that the County would designate a new area within the unincorporated County as groundwater deficient, making it subject to the same or similar procedures as the existing Milliken-Sarco-Tulocay (MST) area, and effectively limiting development until an alternate source of water is identified. This analysis assumes that the newly designated groundwater deficienct area has the same approximate size and composition of land uses as those within the existing MST area.

a. Background

The MST Groundwater Basin is an area of existing groundwater deficiency, which includes both open space and urban designations in the Napa County General Plan. Other areas of potential deficiency include, but are not limited to the Pope Valley, Chiles Valley, Capell Valley and Carneros Creek groundwater basins. The Groundwater Protection Ordinance is intended to ensure the availability of sufficient groundwater for agricultural uses in the County, to ensure its long-term viability, and currently contains requirements that are specific to the MST Area.

The Groundwater Ordinance conserves the County's existing water supply by effectively limiting its use for future development. Prior to issuance of a building permit within the MST area, a groundwater permit must be obtained for that parcel, (unless otherwise exempt as discussed below). Applications for a single family residence in the MST Area require ministerial approval only, provided the residence is the only use on the parcel (i.e. there is no second unit, accessory uses or agricultural development) and the water usage is limited to 0.60 acre feet of water per year.

Existing agricultural uses (i.e. replants) within the MST may also qualify for a ministerial groundwater permit exemption, provided they are limited to 0.3 acre-feet per year. Development that is able to connect to a public water supply and can use this source exclusively is exempt from the groundwater permit process.

Other new development (e.g., a second dwelling unit) or expansion of existing agricultural development in the MST Area requires discretionary approval for a groundwater permit. This in turn requires environmental review under the California Environmental Quality Act (CEQA), which could necessitate preparation of an Environmental Impact Report (EIR). The process can be very expensive and time consuming, and if there is finding of significant impact, the project may not be approved. On the other hand, the County can fairly readily approve a groundwater permit for a single family home (where there is no other development) or for development that results in no net increase in groundwater use.

b. Assumptions and Methodology

Limitation of potential development on properties within the MST Area effectively lowers the utility and thus theoretically the value of a property (at least until the groundwater situation is resolved). As noted above, parcels are effectively limited to development of one residence (with maximum water use at 0.6 acre-feet per year), regardless of the size of the parcel. This limitation on water use severely restricts and potentially prohibits any agricultural planting on larger parcels, which might otherwise be developed with a home and a private vineyard. This restriction diminishes the economic value of the overall parcel for those property owners who purchased their property with this intent.

This analysis assumes that all residential parcels of 4.0 acres or more could potentially accommodate a single family residence and ancillary private vineyard. (Parcels with less than four acres are assumed to be of insufficient size to make agricultural planting economically feasible.) It further assumes that 25 percent to 50 percent of these residential parcels are restricted from any agricultural planting, due to insufficient groundwater. (Based on the existing Groundwater Ordinance, it is assumed that one single family residence could be developed on these parcels.)

Based on a survey of properties throughout Napa County by Stahr & Associates, the average range of value per "plantable acre" for land with agricultural capacity is estimated between $50,000 and $100,000.[3] This value represents the component of value attributable to the underlying land only (excluding any plantings), and excludes the home site component of the parcel's value. Areas outside the MST with possible water deficiencies (such as Carneros and southeast Napa) are generally at the lower end of this value range, while higher values are more typical from Big Ranch Road and north through St. Helena.

The estimated value attributable to the loss of potential agricultural planting is thus conservatively estimated at $50,000 per "plantable" acre, based on the range of values described above. For each parcel that suffers a loss of agricultural planting, one acre is assumed to be developed with a single family residence. For example, a four acre parcel would set aside one acre for the house, and the remaining three acres would lose $50,000 in potential value, due to loss of potential agricultural capacity, representing a total loss of $150,000 (3 acres x $50,000/acre = $150,000).

In the unincorporated portion of the existing MST Area, there are approximately 244 residential parcels with 4.0 or more acres and a total potential agricultural capacity of 2,085 acres (assuming one acre in each parcel is set aside for a residence, as described above). Assuming 25 percent to 50 percent of these parcels are restricted from any agricultural planting, this represents a potential loss in value of $26 million to $52 million, calculated as follows:

2,085 acres x $50,000 x 25 percent = $26.0 million
2,085 acres x $50,000 x 50 percent = $52.1 million

An additional, lesser limitation results from the inability to construct a second dwelling unit on the residential parcels, which would otherwise be allowed under Residential Country (RC) and Agricultural Watershed (AW) zoning within the County. Since the zoning of parcels within the MST Area was not readily available in the time allotted, the proportion of vacant parcels that might otherwise be allowed an additional residential unit if they were not located within the MST cannot be precisely determined. Thus, the potential loss in value for these parcels cannot be estimated. Similarly, this analysis does not include any potential loss of value attributable to existing agricultural, commercial or industrial development within the MST, since it cannot be readily quantified based on available data within the time constraints imposed on this study.

c. Findings

Assuming a new Groundwater Deficient Area with the same acreage and other characteristics as the existing MST Area is identified, and the County were to apply the same restrictions to the new area as currently apply within the MST, the County could face potential compensation claims ranging from $26 million to $52 million, based solely on the potential loss agricultural planting on one quarter to one half of the existing residential parcels. This would represent between one-third and two-thirds of the County's total available discretionary resources in FY 2005/06 ($76.9 million), which is the primary funding source available to the County (outside of reserves and designations) to pay compensation claims, as described previously in Section C.

[3] Seifel Consulting subcontracted with Stahr & Associates, Inc. Certified General Real Estate Appraiser, OREA CA #AG002085, located in Napa County to obtain appraisal advice on the hypothetical scenarios. Mr. Kurt Stahr, Principal of Stahr & Associates, Inc., conducted a survey of recent property transactions. Sales and listings of rural properties were reviewed that had both residential and agricultural capability. The survey included Napa County's main valley floor and extended into the east and west hills and south below the City of Napa.

2. Scenario D: New Restrictions on Land Use – Winery Example

This hypothetical scenario assumes that the Board would adopt a new ordinance that would either:
a) increase the minimum parcel size for wineries in areas zoned AWOS from 10 acres to 40 acres or
b) prohibit new winery development within 1,000 to 1,500 feet of an existing residence and conversely, prohibit new residential development within 1,000 to 1,500 feet of an existing winery. This section provides a qualitative discussion of the impacts of increasing the minimum acreage from 10 to 40 acres, based on a review of the County's existing approved and producing wineries. It then provides a quantitative analysis of the impacts of prohibiting new residential development within 1,000 to 1,500 feet of an existing winery.

a. Background

Based on an analysis of countywide winery permits, there are 369 producing or approved wineries in Napa County. The winery facilities are located on parcels ranging in size from less than one acre to over 700 acres, with a median size of approximately 28 acres. The majority of the existing wineries (estimated between 97 and 98 percent) are within the unincorporated area of the County. Current County guidelines require a minimum lot area for winery development of 10 acres and a 600-foot setback for winery structures from State highways and arterial county roads.

Based on the permit data, about 20 percent of the County's wineries, or 77 wineries, are on parcels that are less than 11 acres. (Even though the minimum lot area is currently 10 acres, it is assumed that new wineries applying under the minimum acreage requirement actually include slightly more than 10 acres, due to site configuration and minimum setback requirements.) About 40 percent of the county's wineries, or 150 wineries are on parcels sized between 11 acres and 39.5 acres, or just over 40 percent of the total.

Since 1995 (including partial year of 2005 data), a total of 121 new winery permits have been approved. Sixteen (13 percent) of the wineries approved during this period were on parcels under 11 acres in size, while 58 (48 percent) were between 11 and 39.5 acres. As shown in Table III-2 below, the number of winery applications and approvals varies significantly from year to year, and the median acreage has ranged from between 18.7 acres to 45.4 acres over the past decade.

Table III-2
Napa County Winery Approvals by Year

Year	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Number of Permits	4	5	2	10	10	8	9	30	21	14	8
Median Acres	39.9	39.8	45.4	32.2	18.7	35.8	40.0	20.1	20.1	22.8	27.7

Note: 2005 data represents a partial year only, from January through June 15.
Source: County of Napa.

b. Increasing Minimum Acreage of Wineries

Based on the available data, about 60 percent of recent applications have been from wineries under the potential 40-acre minimum parcel size. If the County were to increase the required land area for new wineries to a minimum of 40 acres, it is reasonable to conclude that the number of future applications could potentially be reduced by at least half of recent historical levels.

The value of winery acreage is dependent upon a number of factors (location, soil, drainage, micro climate conditions, etc), but does not generally increase (on a per acre basis) with increased acreage. On the contrary, provided there is sufficient acreage to make grape production economically feasible (generally four to five acres), smaller parcels could potentially carry a value premium as compared to larger parcels on a per-acre basis. Therefore, in light of the many factors impacting value, a quantitative analysis of the potential compensation claims is not feasible under this scenario. However, owners of parcels between 10-40 acres could conceivably file claims for millions of dollars in lost revenue due to this potential regulation.

c. Increasing Minimum Distance Between Existing Wineries and New Residential Development

This section attempts to quantify potential compensation claims resulting from a Board action, which would prohibit new winery development within 1,000 to 1,500 feet of an existing residence and prohibit new residential development within 1,000 to 1,500 feet of an existing winery. Given the dispersion of existing residential development throughout the County, the most practical scenario to evaluate is the one whereby new residential development would be prohibited within 1,000 to 1,500 feet of an existing winery. As discussed previously, there are 369 producing or approved wineries in Napa County, with a median size of approximately 28 acres. The site configuration and location of existing structures at the existing wineries cannot be readily determined with available data within the required timeframe of the study.

Assuming all structures are located in the center of the site, if a separation of 1,000 feet is required between residential structures and winery buildings, the winery would require a minimum lot area of approximately 92 acres to maintain setbacks from all adjoining properties. There are currently 56 wineries in excess of 90 acres, which for purposes of this analysis are assumed to remain unaffected by this increased setback requirement, and therefore excluded in the compensation claim calculation.

Stahr & Associates evaluated prototypical wineries that are of a similar size to the countywide median of 28 acres.[4] Based on this evaluation, the required minimum separation of 1,000 feet appears to prohibit future residential development on at least four parcels surrounding one winery, in the more remote areas of the County, and potentially exceeding ten parcels surrounding one winery, in the more densely populated areas. Depending upon site configuration of the winery and adjacent parcels, an existing winery with less acreage (e.g., 10 acres) could impact a significantly greater number of parcels, while a larger winery might impact fewer parcels.

If the setbacks were increased, vacant parcels previously intended for residential development would no longer be allowed to be used as home sites. The home site value component is a significant portion of total property value. The resultant loss in value (resulting from the lost ability to develop a residence) is estimated to average from $500,000 to over $1,000,000 per affected parcel. The lower-end of this value range is associated with home sites in south Napa County and outlying areas, while the upper-end values are primarily seen in mid-valley areas.

Due to the limited available data, the number of potential residential parcels that would be impacted by an increased setback requirement of 1,000 feet cannot be precisely determined. However, based on the analysis of a median sized winery, the impacts on surrounding parcels could be substantial.

For purposes of this fiscal analysis, an existing winery under 90 acres is assumed to potentially impact one adjacent residential parcel by removing its ability to construct a single family home. Thus, based on the winery permit data described above, about 313 wineries countywide are estimated to be sized 90 acres or less, equal to the countywide total of 369 existing wineries less the 56 wineries larger than 90 acres.

[4] Based on a survey of recent values conducted by Kurt Stahr, Principal and Certified Appraiser with Stahr & Associates.

Assuming 97 percent of these 313 wineries are located in unincorporated areas, then 303 wineries (rounded to 300 wineries for the purpose of this calculation) could be impacted by this Board action.

Assuming 25 percent to 30 percent of these 300 wineries were to impact one adjacent residential parcel, preventing its development as a home site, the potential decrease in value would be:

300 wineries x 25% x $500,000 = $37.5 million
300 wineries x 30% x $500,000 = $50.0 million

d. Findings

This scenario has evaluated the potential compensation claim resulting from an action by the Board that prohibits new residential development within 1,000 of an existing winery. Assuming 25 percent to 30 percent the existing wineries with less than 90 acres in the unincorporated area were to impact one adjacent parcel, the resulting compensation claim is estimated to range between $37.5 million and $50 million. This represents approximately one-half and two-thirds of the County's total available discretionary resources in FY 2005/06 ($76.9 million). As noted previously, this is the primary funding source available to the County (outside of reserves and designations) to pay compensation claims.

Conversely, if the Ordinance were to prohibit development of a new winery within 1,000 feet of existing residential structures, it would virtually preclude new winery development on the valley floor, since the majority of parcels on the valley floor appear to be already improved with some type of residential structure. The most likely outcome would be that winery development would be forced onto larger parcels in outlying areas or into industrial parks, resulting in potentially negative impacts on traffic patterns and agricultural processing capabilities.

3. Scenario E: New Regulations in Response to State or Federal Mandates – Erosion Control Improvements required on Private Roads

This hypothetical scenario assumes the County would require implementation of soil erosion control measures for private roads within the unincorporated County, as a result of the Regional Water Quality Control Board's (RWQCB's) ongoing Total Maximum Daily Load (TMDL) process, which may obligate Napa County to address soil erosion associated with public and private roads in the Napa River watershed. In this scenario, the County might incur costs if property owners were to challenge the imposition of new rules and regulations that resulted in additional cost burdens to property owners to construct improvements along private roads. The amount of the compensation claim is assumed to be equal to the additional cost burden imposed on private property owners.

a. Methodology and Assumptions

Based on a County staff review of available mapping of roads and road ownership in Napa River watershed, approximately 1400 miles of upland roads are estimated to produce the vast majority of road-related erosion delivered to channels. Staff further estimates that 12 percent of the total road length is owned and maintained by Napa County, and 88 percent is owned and maintained primarily by private landowners.

The current draft of the TMDL Technical Report (June 2005) regarding sedimentation suggests that property owners, including those in Napa County, will be obligated to cut human-caused future sediment delivery from roads by 60 percent.[5] At this time, the County has not proposed an administrative policy

[5] California Regional Water Quality Control Board, San Francisco Bay Region, Napa River Sediment Total Maximum Daily Load; Draft Technical Report, dated June 28, 2005. The Draft Technical Report is currently being circulated for public review. See www.swrcb.ca.gov/rwqcb2/mapariversedimenttmdl.htm.

for implementing the TMDL requirements for reducing sediment from roads. However, it is possible that the County's National Pollutant Discharge Elimination System (NPDES) permit could be amended to include additional land development requirements to ensure that new roads do not increase sediment delivery to streams. This could impact property values by potentially limiting development on hillsides or near sensitive waterways. The County's NPDES permit could also be amended to require additional design and maintenance requirements for the re-grading of existing roads in order to meet the 60 percent reduction of sediment delivery criteria. Based on recent road assessments conducted for the Sulphur Creek, Dry Creek, and Carneros Creek watersheds, it is estimated that the human-caused sediment yields is approximately 950 cubic yards per mile of road.[6]

Multiplying the approximate 1,400 miles of upland roads in the watershed times the estimated 950 cubic yards per mile (human-caused sediment yield factor) yields 1.33 million cubic yards of human-caused sediment. The TMDL calls for cutting human caused sediment by 60 percent, which would be a reduction of 798,000 cubic yards.

Based on a review of recent road erosion control inventories conducted in three Napa River tributary watersheds (Carneros Creek, Dry Creek, Sulphur Creek) and two similar watersheds located elsewhere in the Bay Area (Pescadero Creek in western San Mateo County, and Redwood Creek in western Marin County), the typical cost of storm-proofing rural earth-surfaced roads in Bay Area watersheds, including road erosion inventories, is estimated to be about $20 per cubic yard.

Multiplying the reduction of 798,000 cubic yards by the cost of reduction at $20 per cubic yard yields a total cost of over $15.9 million. Assuming that 88 percent of the affected roads are private roads, this yields a total potential cost burden of $14.0 million, which could be argued by the property owners to result in a commensurate decrease in value resulting in potential claims of this amount. The total potential compensation claim of $14.0 million would represent 18 percent of the County's total available discretionary resources in FY 2005/06.

E. Administrative Costs

In addition to compensation costs, the County will incur administrative costs as a result of the Initiative. At a minimum, the Initiative will require additional staff time to evaluate the County's potential liability prior to making decisions. Additional staff support would likely be needed from the County Counsel's office, Assessor's Office, Auditor-Controller's Office, Budget Office, Public Works and Planning Departments as well as other County departments.

In addition, as stated at the beginning of this report, the Initiative directs the County to establish the amount of the decrease in value caused by the "New Napa Land Use Restriction" by mutual agreement or compromise between the property owner and the Board of Supervisors. Thus, the Initiative implies that the County will need to establish an administrative claims process by which a property owner and the County can reach an agreement or compromise solution The establishment and administration of this claims process would impose additional costs to the County.

Based on consultation with County staff and County Counsel, this fiscal analysis assumes that the Initiative would result in the following administrative costs: an upfront cost of County staff to design the administrative claims process, initial staff evaluation of potential future Board actions and the processing

[6] The Sulphur Creek Road Assessment, surveyed 23.7 miles of public and private roads in the Sulphur Creek watershed. The public road length was 1.8 miles (or 7.59 percent) of the total 23.7 miles surveyed, which is representative of many watersheds in the County. The Study estimated the future yield of sediment from the 23.7 miles at 22,501 total cubic yards, or approximately 950 cubic yards per mile.

of property owner claims each year. This analysis assumes the Board would adopt 17 new actions per year that might trigger compensation, equivalent to the number of actions during calendar 2004 that were identified as potentially triggering compensation, described previously in Chapter II.

As discussed previously, it cannot be estimated how many claims would be filed as the result of a new land use regulation enacted by the Board. The number of property owner claims is highly dependent on the number and type of future actions the County will take, how these actions affect property owners and whether or not the County can quickly reach a compromise solution or mutual agreement with property owner(s) related to a potential decrease in value. For example, as described in the first hypothetical scenario, the application of the MST-type restrictions on ground water use to a new area in the County, could result in a number of property owner claims solely related to this one action by the Board. The County would have to decide if it individually addresses these claims or addresses them as a group through a compromise solution. This analysis assumes twenty claims per year, of which ten claims could not be resolved expeditiously through a compromise solution or mutual agreement.

Staffing

In order to handle the administrative burden described above, County staff would likely need to be increased to include the following staffing levels:

1. At least one full-time and one half-time Deputy Attorney to prepare legal analyses of potential actions the Board of Supervisors is considering and to help administer and negotiate claims.
2. One half-time Public Works Engineer to prepare right of way and infrastructure analyses of potential actions the Board of Supervisors is considering and to help administer and negotiate claims.
3. One quarter-time Planner to prepare planning and land use analyses of potential actions the Board of Supervisors is considering and to help administer and negotiate claims.
4. One quarter-time Budget Analyst to perform fiscal analyses of potential actions the Board is considering.
5. One quarter-time County staff person to work with and provide property value and other data to outside appraisers who would perform analyses of potential compensation claims.
6. One tenth-time GIS technician to work with and provide GIS data to outside appraisers who would perform analyses of potential compensation claims.
7. One full time equivalent Administrative Assistant, working for various departments, to prepare reports and documentation related to the Initiative.

The first year's staffing costs would be directed at evaluating potential County actions and establishing the administrative claim procedures. Thereafter, staff would be dedicated to evaluating, processing and negotiating potential claims. Should more or less staffing be required as a result of the Initiative, costs would increase or decrease accordingly.

Based on a review of current salary levels in the adopted FY 2005/06 Budget, the total annual staff cost (including overhead and benefits) is estimated at approximately $385,000 (in current FY 2005/06 dollars). This cost does not include any overhead expenses such as office supplies, equipment and office space, since these costs could not be reasonably estimated within the time constraints imposed on this study. Staffing costs are assumed to escalate over time, based on inflationary increases.

Consultant Costs

Based on consultation with County staff regarding its experience with the County Flood Control project and other condemnation cases, the County would most likely retain outside appraisers to advise on the potential decrease in value as the result of a potential restriction, as well as to serve as the County's expert during negotiations with the property owner. An appraiser is assumed to be retained to initially review the potential impacts resulting from any new land use restriction prior to any Board action. Based on discussions with County staff and local appraisers, appraisers would likely charge between $5,000 to $10,000 for an initial evaluation of the potential value decrease resulting from a new land use restriction enacted by the Board. The appraiser would analyze the "before" and "after" values of the property, requiring an analysis of two sets of comparables. This initial evaluation would be preliminary and presented to County staff in a summary memorandum form. No formal report would be prepared. Assuming 17 evaluations were to be performed in a given year (as the result of 17 new Board actions resulting in new land use regulations), the potential appraisal costs could range from $85,000 to $170,000.

If a property owner were to file a claim resulting from a new land use restriction under the initiative, an appraiser would prepare a valuation analysis on behalf of the County that would be put into a formal report. In addition, the appraiser would advise staff during the negotiation process with the property owner. The cost of these appraisal services would likely range between $7,500 to $15,000 per claim, or $150,000 to $300,000 assuming 20 claims per year. However, the appraiser's fee will be dependent on the complexity of the analysis and how much analysis and data the County can perform in-house in order to minimize the appraiser's time.

Total Administrative Costs

The total staffing and consultant costs are projected to range between $620,000 to $855,000 This represents approximately 0.8 to 1.1 percent of the total budgeted discretionary resources in FY 2005/06.

F. Litigation Costs

The potential litigation cost burden to the County resulting from the Initiative will be in addition to the administrative costs described above. The litigation costs will be a function of how many actions the Board takes that result in "*New Napa County Land Use Regulations*", how many claims are filed that can be resolved through settlement prior to trial, how many claims go to trial, as well as the time needed for review, preparation and trial for both claims and appeals of decisions related to claims.

Based on input from County Counsel, this fiscal analysis assumes that the County cannot reach agreement on 50 percent of the twenty claims potentially filed per year resulting in potential litigation costs for ten potential cases. Eight of these ten cases are assumed to proceed forward toward trial but to settle prior to trial at a settlement conference or through mediation. The remaining two cases are assumed to go to jury trial.

Based on recent experience with condemnation cases, the County Counsel's office estimates that its in-house legal costs have been $25,000 per case if agreement could be reached prior to litigation,,[7] an additional $50,000 per case if a settlement were reached at a settlement conference or through mediation prior to trial and an additional $25,000 per claim through jury trial, resulting in a total legal cost of $100,000 per case all the way through jury trial. If outside legal counsel is used, then the costs are

[7] These initial in-house legal costs of $25,000 per claim would apply to all potential compensation claims, and are reflected in staff costs (part of administrative costs described above), rather than in litigation costs.

typically two to three times higher, depending upon the amount of work that could be performed in-house versus by outside Counsel.

The additional in-house legal costs for the two compensation cases that proceeded on to jury trial would likely be $75,000 per case. Assuming that the legal work was done entirely in-house, the County Counsel litigation costs would likely be $550,000, calculated as follows:

8 cases settled at settlement conference or mediation (at $50,000 each)	$400,000
2 cases jury trial (at $75,000 each)	$150,000
Total	**$550,000**

This in-house litigation cost is equivalent to 3.58 full-time equivalent (FTE) Deputy County Counsel positions. If outside legal counsel were retained to litigate all of the claims, litigation costs would likely range between $1,100,000 and $1,650,000.[8] Under this scenario, there would still be in-house legal costs associated with tracking the claims and coordinating with outside legal council, estimated between $100,000 and $200,000.

Assuming that the same appraiser could be used from the beginning of the claim process through the litigation and trial process, the additional appraiser costs through settlement are projected to range from $15,000 to $22,500 per claim. In addition, should the case go to trial, an additional allowance of $10,000 in appraiser costs would be needed. Thus, the total estimated appraiser cost related to litigation would range from $170,000 to $245,000. However, these costs do not include costs for other consultants who might be needed for specific cases, such as a hydrologist, engineer or any other consultants with special expertise, which might be needed to analyze the loss of value to the property.

Annual litigation costs (including in-house staff and outside consultants) are thus estimated to range from $720,000 to $2.1 million, based on the assumptions outlined above. This represents 0.9 to 2.7 percent of the County's discretionary resources, which is the primary source available to fund these annual litigation costs resulting from claims filed under the Initiative.

G. Conclusion

As shown in Table III-3, the potential compensation claims resulting from the hypothetical scenarios analyzed in this report range from a low of $14 million to a high of over $50 million, representing 18 percent to 65 percent of the County's FY 2005/06 discretionary resources.

Annual administrative and legal costs to implement the Initiative are estimated to range from $1.34 million to $2.95 million, or 1.7 to 3.8 percent of the County's FY 2005/06 discretionary resources.

Based on this analysis, we conclude that adoption of the proposed Initiative would result in a significant fiscal impact to the County's General Fund.

[8] In addition, there would likely be additional paralegal and administrative staff time required for appeals, as well as potential staff time from the staff appraiser and/or planner. For purposes of this analysis, it is assumed that this additional staff time has been accounted for in the staffing assumptions outlined in the Administrative Cost section above.

Table III-3
Potential Range of Fiscal Impacts on Napa County General Fund
The Fair Payment of Public Benefit Act

	Potential Fiscal Impact		As Percent of FY 2005/06 County Discretionary Resources *	
Cost Category	**Low**	**High**	**Low**	**High**
Compensation Claims				
Scenario A-New Environmental Mitigation	$ 26,000,000	$ 52,000,000	33.8%	67.6%
Scenario D-New Land Use Regulation	$ 37,500,000	$ 50,000,000	48.8%	65.0%
Scenario E-New Regulation Per Mandate	$ 14,000,000	$ 14,000,000	18.2%	18.2%
Administrative				
County Staff	$ 385,000	$ 385,000	0.5%	0.5%
Consultant	$ 235,000	$ 470,000	0.3%	0.6%
Subtotal	$ 620,000	$ 855,000	0.8%	1.1%
Litigation				
County Staff	$ 550,000	$ 200,000	0.7%	0.3%
Consultant [1]	$ 170,000	$ 1,895,000	0.2%	2.5%
Subtotal	$ 720,000	$ 2,095,000	0.9%	2.7%
Administrative and Litigation Costs	**$ 1,340,000**	**$ 2,950,000**	**1.7%**	**3.8%**

Notes:
* Discretionary resources for FY 2005/06 are about $76.9 million, of which $72.1 million is allocated to functional area budgets.
1.The high end of the range includes cost of outside legal counsel.
Under this scenario, there would still be in-house County legal staff costs as reflected above.
Source: Seifel Consulting and Stahr & Associates based on data provided by Napa County.

H. Limitations of the Analysis

If the Initiative were passed, potential claims would likely be subject to legal interpretation, the outcome of which cannot be anticipated at this time. Given the universe of potential types of compensation claims that could be filed, this report cannot attempt to project the comprehensive fiscal impacts to the County. Furthermore, time and data constraints permitted analysis of only a sampling of the most likely case studies that would trigger compensation under the proposed Initiative. Therefore, this fiscal analysis evaluates three hypothetical scenarios quantitatively and describes other potential scenarios qualitatively.

Given the broad range of potential interpretations, the proposed Initiative would increase the cost of implementing and enforcing land use regulations In response to those increased costs, the County could choose to enforce fewer regulations or change the method currently used to implement and enforce land use regulations. While such a response by the Board of Supervisors is possible, Seifel Consulting has no way of predicting how the Board would change its policies. Therefore, this fiscal analysis assumes that the regulatory behavior of the Board would be similar to the actions the Board took during 2004.

The assumptions utilized in this analysis are based on the best information made available by County staff during August 2005. In order to prepare this analysis, Seifel Consulting has reviewed, but not prepared, audited, authenticated or verified data provided by County staff including maps and databases of existing land use and permits, County budget memorandum and data on administrative and legal costs related to the Flood Control project. Seifel Consulting cannot and does not warrant the accuracy of any data utilized to prepare the fiscal impact estimates in this report. Seifel Consulting has not been retained nor asked to investigate or verify the reliability or accuracy of the County's data or projections.

The projected impacts to the County are intended only as estimates of the potential range of likely impacts, based on the underlying assumptions, as further described in this report. The actual cost of implementing the Initiative may be higher or lower than the range of potential fiscal impacts estimated in this report due to the reasons cited above. Actual compensation paid to claimants may be higher or lower than the estimates presented in this report. This analysis considers only the fiscal impacts to the Napa County General Fund and does not address the broader costs or benefits to society from the Initiative.

IV. Other Potential Impacts

This section of the report considers potential impacts of the proposed Initiative on County land use, infrastructure, and businesses consistent with items two through seven of Elections Code Section 9111, subdivision (a). This analysis assumes that if the Initiative passes, the Napa County Board of Supervisors will attempt to avoid adopting any new resolution or ordinance that could be defined as a "New Napa County Land Use Restriction" under the Initiative. This assumption is based on the assumption that the Board would seek to avoid the potential fiscal impacts discussed in the preceding section.

1. Potential Effects on the General Plan Update & Zoning Consistency

Pursuant to California Elections Code Section 9111(a)(2), the Napa County Board of Supervisors has requested a report on the proposed Initiative's potential to effect 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.[1]

a. General Plan Update

In 2004, the Napa County Board of Supervisors decided to undertake a comprehensive update of the Napa County General Plan, and in early 2005, the planning process was initiated by a series of seven community meetings. Many views were expressed at these meetings regarding potential issues and topics to be addressed in the updated plan, however the substantial majority of participants also expressed their reluctance to pursue major changes that would alter the County's commitment to agricultural preservation and urban centered growth.

Following the early 2005 community meetings, the Board established a Citizen Steering Committee and approved a contract with consultants who will take the lead on preparation of an associated Environmental Impact Report (EIR). The EIR will assess a number of possible alternatives, including an "Existing Plan" alternative that would simply update and extend the existing Plan without any substantive policy changes.

The preliminary project schedule anticipates that the Citizen Steering Committee, consultants, and County staff will present an updated plan to the County Planning Commission and the Board of Supervisors for adoption in late 2007 or early 2008, following certification of a Final EIR.

Voter approval of the Initiative would minimize the policy changes likely to be considered as part of the General Plan update and thus increase the risk of internal inconsistencies within the Plan. This is because policy changes could themselves be considered "New Napa County Land Use Restrictions" under the Initiative, potentially requiring compensation of affected property owners. In addition, even if policy changes themselves did not require compensation, State law requires that zoning be consistent with the General Plan, and policy changes could lead to conforming amendments to the zoning ordinance or other implementation measures that could require compensation of affected property owners.

While minimizing policy changes considered as part of the General Plan update would appear consistent with community input gathered in early 2005 and is clearly one possible outcome of the planning process

[1] The Government Code sections cited prohibit discrimination, address housing development approvals, and provide for housing incentives.

even if the Initiative were not approved by voters, there are a number of potential issues associated with this approach. First, if the Initiative is approved, any increases in development potential created by General Plan or zoning changes (to stimulate affordable housing development, for example) could not be offset by reduced development potential elsewhere, even if this were desired (that is, without triggering the compensation requirement in the Initiative). Second, the updated General Plan could not be "self mitigating" and some mitigation measures identified in the associated EIR could also not be implemented. And finally, it might not be feasible to address new State requirements enacted within the timeframe of the General Plan update or subsequent to the update. These issues are explained further below.

b. General Plan Update Could Yield Identical or More Permissive Policies

Based on a legal analysis by Kronick, Moskovitz, Tiedemann & Girard, it appears that policy or code changes that reduce development potential would constitute "New Napa County Land Use Restrictions" under the proposed Initiative, while changes that increase development potential would not. For example, as part of the General Plan update, the General Plan could be amended to increase residential densities, allow a wider range of commercial uses (outside the agricultural areas), or re-designate land from industrial to residential use, because all of these would not "further limit or restrict the use" of property. On the other hand, the Plan could not be amended to lower residential densities, further restrict commercial uses, or re-designate land from industrial to agricultural use without potentially triggering the compensation provision of the Initiative. The net effect of the inability to off-set increases in development, is that the General Plan update process will result in policies and implementing regulations that are identical to or more permissive than the current General Plan.

c. Required Environmental Mitigation Could be Infeasible

An EIR prepared in association with an updated General Plan that is either identical to or more permissive than the current General Plan will necessarily identify significant environmental impacts requiring mitigation. This is due to the nature of analyses required under the California Environmental Quality Act (CEQA), and the fact that even without substantive policy changes, Napa County will continue to grow, adding population, employment, vineyards, wineries, schools, etc.

The sum total of this growth means that the EIR being prepared for the County's General Plan Update will likely identify potentially significant traffic and other impacts requiring mitigation, even if no substantive policy changes are proposed.

Typically, jurisdictions preparing general plans, plan amendments, and updates look for ways to make their plans "self mitigating" by adding policies, objectives, or implementation measures that will address potential impacts identified through the planning or environmental review process. For example, if the analysis identifies potentially significant traffic impacts, the General Plan can call for establishment of a transportation impact fee requiring developers to contribute towards the cost of transportation improvements. Similarly, if the analysis identifies potentially significant impacts on a rare or endangered species, the general plan can call for preparation of a habitat conservation plan and/or land use restrictions to avoid loss of critical habitat. Even if such measures are not included in the plan itself, jurisdictions can adopt them as mitigation measures and thereby reduce or eliminate potentially significant environmental impacts associated with plan adoption.

If the Initiative is approved by the voters, Napa County would find it difficult to make its updated General Plan "self-mitigating" or to adopt mitigation measures recommended in the EIR. This is because any developer impact fees, procedural hurdles, or restrictions on land use would meet the definition of a "New Napa County Land Use Restriction" under the Initiative, potentially requiring the County to compensate affected property owners. (Also see the discussion of Hypothetical Scenario B in the fiscal analysis, and the discussion of infrastructure, below.)

d. Future Changes to State Requirements could not be Addressed

State law requires general plans to contain specific elements, and from time to time these requirements are changed by the legislature and the Governor. For example, in the 2005 legislative session, a bill was introduced that would require all cities and counties "to include data and analysis, comprehensive goals, policies, and feasible implementation strategies to improve air quality" within a specified time period.[2]

If the voters approve the Initiative, Napa County would find it difficult to revise its General Plan to include any implementation strategies affecting the use of real property, and thus would have difficulty meeting the proposed requirement. While it appears that Exception Four of the Initiative was intended to address this issue, it fails to do so. Local agencies are almost always given discretion as to how to implement State mandated programs, and thus the proposed "exemption" will not be usable in almost all cases. Napa County would face similar difficulties responding to other changes in State law and could ultimately end up with a General Plan that would not pass legal muster if challenged. While unlikely for many years, the "worst case" outcome would be for a court to find the General Plan inadequate. If this occurred, the court could suspend the County's authority to issue building permits, zoning changes, variances and subdivision approvals (CGC Section 65755).

e. General Plan & Zoning Consistency

Because approval of the Initiative would discourage the Board of Supervisors from considering and adopting changes in zoning or policy that could result in requests for compensation, the Initiative would also tend to minimize the potential for inconsistencies to develop. In the several instances where development standards currently differ between the General Plan and zoning, the General Plan would continue to be the guiding document, unless amended.[3]

f. Preventing Discrimination & Housing Development Approvals/Incentives

No potential impacts related to discrimination or housing development approval/incentives have been specifically identified. Please refer to next session on effects on housing policy, which could indirectly affect housing development/incentives.

2. Potential Effects on Land Use, Housing & Meeting Housing Needs

Pursuant to California Elections Code Section 9111(a)(3), the Napa County Board of Supervisors has requested a report on the proposed Initiative's potential to effect 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.

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[2] SB 44, introduced by Senator Kehoe. The bill passed out of Assembly committee on August 16, 2005 and appears headed for approval.

[3] In a recent case before t he Board of Supervisors involving a property zoned for 10-acre parcels, but in a General Plan designation with 160-acre minimum parcel size, the County found the zoning (RC) to be generally consistent with the General Plan designation (AWOS) despite the different minimum parcel size controls, and determined that the more stringent General Plan standards apply

As stated earlier, approval of the Initiative would discourage the Board of Supervisors from considering and adopting changes in zoning or policy that could result in requests for compensation. Thus, the Board would feel constrained from making any policy or zoning changes that were more restrictive than current policies/zoning. The Board could consider policies that were more permissive (i.e. that increase development potential) and thus stimulate changes in land use. However, there are factors, such as Measure J, which make any immediate or dramatic land use changes as a result of the Initiative unlikely.

a. Effects on Housing Policy

Changes in zoning and policy necessary to periodically update the Housing Element as required by State law would tend to increase development potential, rather than restrict it, and thus would be unaffected by the Initiative. For example, if the Board of Supervisors were to relax existing restrictions affecting one parcel or a group of parcels or pass an ordinance increasing the development potential on a group of parcels to stimulate development of affordable housing, these actions would not constitute "New Napa County Land Use Restrictions."[4]

One possible exception would involve new "inclusionary zoning" requirements or increases to the current housing impact fee. If future updates to the Housing Element contained policies that could best be implemented by requiring property owners or developers proposing new housing construction to either provide and/or pay for additional affordable units, this requirement would constitute a "New Napa County Land Use Restriction" (i.e. if the cost/fees exceed the scope or cost of the County's current housing impact fee). The County could find it even more difficult to meet State housing requirements over time if the Initiative prevented the County from taking these actions, which are typically considered by local jurisdictions as part of a comprehensive housing policy.

3. Potential Effects on Funding for Infrastructure

Pursuant to California Elections Code Section 9111(a)(4), the Napa County Board of Supervisors has requested a report on the proposed Initiative's potential impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space.

Napa County typically funds infrastructure improvements through a variety of mechanisms. In recent times, big-ticket flood control and transportation improvements have been funded through a combination of sales taxes, and State and federal grants or loans. School improvements are tax or bond funded, and parks/open space improvements are funded through State bond monies or the County General Fund. None of these funding sources, with the exception of the County's General Fund, would be at all affected by the Initiative. The General Fund would be affected only to the extent that the Board of Supervisors took actions resulting in requests for compensation under the Initiative (actions that could result in administrative costs, legal costs, and/or monetary compensation). Some increased general fund spending on Planning and County Counsel resources is likely to occur simply due to the need to analyze each and every action to ensure that such actions do not fall under the proposed Initiative.

Impact fees are the one potential source of infrastructure funding that would be affected by the Initiative. As described in the earlier discussion of impacts related to the General Plan update, the Initiative would preclude the County from increasing or expanding existing impact fees without potentially being liable for compensation equivalent to the increase or expansion.

[4] Of course, the owners of adjacent parcels could argue that the value of their property was affected, and that they are entitled to compensation. The legal analysis by Kronick, Moskovitz, Tiedemann & Girard takes the position that the Board's action would not "further limit or restrict the use" of property, and that requests for compensation would not be upheld.

Currently, the County has a transportation impact fee that applies to new development in the Airport Industrial Area. Cities in the County also have impact fees that apply within their jurisdictions, as this is a common way to ensure that developers pay their "fair share" for impacts to existing residents. Typically, impact fees are calculated based on the cost of specific improvements the community deems necessary to accommodate potential development.

Hypothetical Scenario B presented earlier suggests that the County may someday want to expand the current impact fee such that all new development pays its "fair share" of specified infrastructure improvements, not just development in the Airport area. If the County Board of Supervisors enacted such a fee, the County could be required to compensate affected property owners, negotiate compromise solutions, or rescind/waive the fee. This would effectively negate the Board's action, rendering impact fees ineffectual as a source of infrastructure funding.

4. Other Potential Effects on Land Use & the Economy

Pursuant to California Elections Code Section 9111(a)(5) through 9111(a)(7), the Napa County Board of Supervisors has requested a report on the proposed Initiative's potential to impact the community's ability to attract and retain business and employment, its potential impact on the uses of vacant parcels of land, and its potential impact on agricultural lands, open space, traffic congestion, existing business districts, and developed areas designated for revitalization.

Because the Initiative would have no impacts until the Napa County Board of Supervisors took an action meeting the definition of a "New Napa County Land Use Restriction," the Initiative would have no immediate effect on agriculture, open space, or existing businesses. In fact—as proponents of the Initiative point out —many would view the resulting constraint on new regulation as a benefit, since property owners would be confident of a static regulatory environment. However, this static regulatory environment would inevitably result in impacts over time, because the County's environment and the larger State and federal regulatory context would continue to evolve. This is probably the single greatest issue associated with the Initiative – that it constrains the Napa County Board of Supervisors and the County from responding to changing environmental circumstances or to new State or Federal requirements.

Many such changes and requirements are hypothetical at best (see Hypothetical Scenario E presented earlier), but at least one new State requirement is already known. Amendments made to the Clean Water Act in 1987 prohibit the discharge of pollutants from municipalities that are not authorized by a National Pollutant Discharge Elimination System (NPDES) permit. On March 10, 2003, Napa County was required to apply for coverage under the State Water Resources Control Board's (SWRCB's) Phase II municipal storm water NPDES "General Permit." The County applied for this coverage, which was approved in May 2004. The "General Permit" now allows the County to develop and implement storm water pollution prevention programs that are tailored to the community as long as they address six program areas including: Public Education and Outreach, Public Involvement and Participation, Illicit Discharge Detection and Elimination, Construction Site Runoff Control, Post-Construction Runoff Management, and Municipal Operations.

To date, the County has adopted an ordinance that prohibits illicit discharges and grants authority to the Director of Public Works to establish Best Management Practices (BMP) requirements for development projects and businesses. Although the Director has the authority to adopt BMP requirements for development projects, County staff anticipates bringing the proposed requirements to the Board of Supervisors for adoption. Construction Site Runoff Control requirements are scheduled for consideration by the Board in September or October, and Post-Construction Runoff Management requirements are scheduled for consideration sometime in the winter/spring of 2006.

If the Initiative is approved by the voters, there is the potential for property owners to challenge the County's Construction Site and Post-Construction requirements when they are applied to individual properties. This is because the requirements will be proposed for adoption after "the date the notice of intention was filed by the proponents" of the Initiative, as stated in Exemption 1 of the Initiative, and there is no clear minimum standard mandated by the State, as stated in Exemption 5.

One potential remedy for this situation would be for the County to ask the State to set minimum standards or specific requirements for land development. If this were accomplished, and the County did not have to take action of any kind, property owners would have to comply with the State-imposed measures which would likely be more stringent and expensive than the measures likely to be adopted under the current, more flexible system. For example, in some jurisdictions – like the City of Napa -- the State has required specific standards for hillside residences on slopes greater than 25%. Currently, the County has the flexibility to use a 30% threshold for consistency with the existing use permit criteria for residential homes. If the State were to impose minimum standards, they would likely impose the 25% threshold in use elsewhere.

If the State does not set minimum standards or specific requirements that provide the County no discretion, the Board of Supervisors would be forced to place proposed requirements on the ballot in conformance with Exception 5 of the proposed Initiative. Voter approval would result in compliance with the law. Voter rejection of the requirements would expose the County to substantial risk of litigation for non-compliance with the Clean Water Act. Costs of the additional (or shared) elections may also be substantial.

This scenario would potentially play out each time the State or Federal government imposed a new requirement on Napa County, since both the State and Federal government typically provide some local discretion. With no sunset provision, the Initiative would remain in effect forever, compromising the County's ability to respond to inevitable changes in circumstances. While only somewhat problematic in the short term, the long-term effects could be debilitating for the County's governance, potentially affecting government services, the overall "image" of the County, and the business climate.