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Agenda Date: 1/5/2016
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NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors

FROM: David Morrison - Director
Planning, Building and Environmental Services

REPORT BY: David Morrison, Director, Planning, Building & Environmental Servi - (707) 253-4805

SUBJECT: Planning Commission Recommendations Regarding Agricultural Protection

RECOMMENDATION

Director of Planning, Building, and Environmental Services requests discussion and direction regarding the recommendations being forwarded by the Planning Commission from the Agricultural Protection Advisory Committee (APAC) to improve existing land use policies, codes, and practices.

(CONTINUED FROM DECEMBER 8, 2015)

EXECUTIVE SUMMARY

This meeting is intended to provide the Board with an opportunity to hear and consider recommendations made by the Planning Commission to improve agricultural protection, based on guidance provided by the APAC. These recommendations are the result of nine months of work by the two groups, and are the direct outcome of direction provided by the Board of Supervisors at their March 10, 2015, Special Meeting on the cumulative impacts of development on the Napa Valley.

PROCEDURAL REQUIREMENTS

1. Staff presentation
2. Board questions of staff
3. Board discussion and direction to staff

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Planning, Building and Environmental Services - General Plan (1000-17000-1700004)
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	The Board may choose to implement some or all of the recommendations resulting in General Plan amendments, new ordinances or policies to improve land use planning within the County.
Is the general fund affected?	Yes
Future fiscal impact:	Depending on the extent of recommended changes, some work could extend into future fiscal years. Funding would be budgeted appropriately.
Consequences if not approved:	The Board may choose not to implement the recommendations by the Planning Commission.
Additional Information:	The development of ordinances, General Plan policies, staff coordination, and California Environmental Quality Act (CEQA) review to implement the proposed recommendations would result in staff costs. These efforts may require a reprioritization of other staff tasks, but would require limited costs other than staff time. Contracts to provide supplemental consultant services for revising the Circulation Element and preparing the Climate Action Plan have been accommodated through the existing budget process. These actions would be paid for by the General Plan fee.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and CEQA is not applicable. Also, it can be seen with certainty that there is no possibility the proposed action may have a significant effect on the environment and therefore CEQA is not applicable pursuant to the General Rule contained in the Guidelines For the Implementation of the California Environmental Quality Act, 14 CCR 15061(b)(3).

BACKGROUND AND DISCUSSION

For a more detailed summary of the background and issues related to this item, please see the staff report for Agenda Item 9.D for the Board of Supervisors' meeting of December 8, 2015.

On March 24, 2015, the Board of Supervisors appointed an Agricultural Protection Advisory Committee (APAC), to address public concerns about the rate, intensity, and location of development within the unincorporated area. The APAC was made up of a broad cross-section of interests, including the wine industry, agriculture, businesses, cities, environmental organizations, neighborhood groups, and at-large members. In order to be forwarded, recommendations were required to receive at least two-thirds support of the committee. The APAC presented their final recommendations to the Planning Commission on September 10, 2015. The Planning Commission

completed its review of APAC's work and made their final recommendations to the Board of Supervisors on November 4, 2015.

The Board of Supervisors held its first public hearing regarding the APAC recommendations on December 8, 2015. The hearing ran five hours and testimony was received from 73 different speakers. At the end of the hearing, the Board provided direction to staff regarding 10 of the 14 pending recommendations. Staff has provided a summary of the direction provided at the December 8 hearing in Attachment A.

Additional analysis has been requested that compares existing policies and ordinances to both the APAC and the Planning Commission recommendation. That analysis will be detailed in a supplemental memo, separate from this report, which will be provided to the Board of Supervisors and made available to the public prior to the January 5, 2016 meeting.

The Board of Supervisors may add, delete, substitute, or modify the recommendations forwarded to them by the Planning Commission. This applies to clarification of the direction provided by the Board of Supervisors on December 8, as well as to the four recommendations that have yet to be considered.

At the December 8 hearing, the Board of Supervisors requested additional background from County Counsel regarding two issues: (1) Applicability of new regulations and vested rights; and (2) Equal protection. These issues were requested in relation to APAC Recommendation No. 9, concerning the manner in which the APAC recommendations may be applied to both new and existing wineries in the future. County Counsel's analysis is provided as follows:

Applicability of New Regulations and Vested Rights

The rule in California is that if a city or county changes its land use regulations, a property owner will be subject to those new regulations unless the property owner: (1) has obtained statutory vested rights under a development agreement; (2) has a vesting tentative map; or (3) can demonstrate that sufficient development activities have been undertaken to establish common law vested rights. The common law vested rights rule was affirmed in 1976 when the California Supreme Court held that "if a property owner has performed substantial work and incurred substantial liabilities in good faith reliance on a permit issued by the government, he acquires a vested right to complete construction in accordance with the terms of the permit. Once a landowner has secured a vested right the government may not, by virtue of a change in the zoning laws, prohibit construction authorized by the permit upon which he relied." (*Avco Community Developers, Inc. v. South Coast Regional Comm.* (1976) 17 Cal.3d 785, 791.)

The right to develop does not vest until all final discretionary approvals have been authorized and significant "hard costs" have been expended in reliance on those permits, i.e., until substantial construction has occurred in reliance on a building permit. (*Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal. App.4th 534, 552.) Pre-construction costs such as the purchase price of the land, design, architectural or engineering fees, and site preparation work are not considered "hard costs" and will not count towards establishment of a vested right.

The new regulations could be applied, at the Board's discretion, to:

1. Applications that are on-file but not yet complete;
2. Applications that are complete but not yet approved; or
3. Applications that have been approved but have not yet vested.

Equal Protection

A local government regulation may not deprive a person of equal protection of the laws. (US Const. 14th Amend. and Cal. Const., Art. 1, 7.) Denial of constitutional equal protection is usually claimed where a land use regulation makes an alleged arbitrary and discriminatory classification. In most cases involving property regulations, the regulation is reviewed by the courts under what is known as the “rational relationship” test; that is, if the regulation is reasonably related to the accomplishment of a legitimate governmental purpose, it will be upheld. However, where the regulation infringes upon a constitutionally protected personal liberty (such as freedom of expression or privacy) or infringes upon a fundamental right (such as the right to vote), the standard of judicial review is elevated from the traditional “rational basis” test to the more restrictive “strict scrutiny” test is applied. Under the “strict scrutiny” standard, the government bears the burden of establishing a compelling governmental interest and that the distinctions (discrimination) are necessary to further its purpose. The courts employ an intermediate level of scrutiny when the regulation impinges on their types of personal rights protected by the constitution such as gender. In those cases, the legislation must be substantially related to a legitimate governmental interest.

The new APAC regulations under consideration are intended to minimize impacts to agricultural lands and protect visual resources which are legitimate governmental purposes and would pass muster under the first prong of the “rational basis” test. However, the second prong requires the regulation to be reasonably related to accomplishing that legitimate governmental purpose. New wineries and the expansion of existing wineries would, in most cases, have similar types of impacts on agricultural lands and visual resources. In both cases, agricultural lands would be converted from farmland to either a new winery facility or expansion of an existing winery facility and new structures would be constructed and added to the visual landscape. To avoid successful equal protection claims, Staff recommends that the new regulations be imposed on all wineries including new applications and modifications to existing wineries but in a manner that would not interfere with existing wineries’ vested rights. By way of example, if an existing winery already exceeds the 20% development cap, that winery could not expand beyond its existing development area however the winery would not have to remove structures to come into compliance with the 20% cap. There would be no “clawing back” of existing legally developed uses and rights.

STATUS OF MARCH 2015 ACTION ITEMS

Formation of the APAC was only one of the actions taken by the Board of Supervisors in March. As part of the December 8, 2015 hearing, the Board of Supervisors requested staff to provide a status update of the other major County initiatives currently underway to address concerns regarding development in the unincorporated area.

Climate Action Plan (CAP)

On July 14, 2015, the Board of Supervisors approved Agreement No. 8385 with Ascent Environmental, Inc. to prepare the CAP, in the amount of \$99,890. The agreement is set to expire on June 30, 2016, but may be extended. The current schedule anticipates the draft CAP being presented to the Board of Supervisors for adoption in the Fall of 2016. The contract includes seven primary tasks: (1) Initiate work; (2) Update the green house gas emissions (GHG) inventory and forecasts; (3) Establish GHG reduction targets and analyze any gaps needed to comply with those targets; (4) Prepare the CAP; (5) Conduct public outreach; (6) Hold public hearings; and (7) Prepare a consistency checklist for applications. To date, all work remains on schedule and within budget. Task 1 has been completed. The consultant is working on the draft GHG inventory and forecasts (Task 2), which are expected to be submitted to staff in January, 2016. The first of four public outreach meetings (Task 5) was held on November 9, 2015, and was attended by 20 to 30 people.

Circulation Element

On August 11, 2015, the Board of Supervisors approved Agreement No. 9397 with Fehr and Peers to prepare an update to the Circulation Element of the Napa County General Plan, in the amount of \$155,510. The agreement is set to expire on June 30, 2016, but may be extended for up to two additional years. The current schedule anticipates that the draft Circulation Element will be presented to the Board of Supervisors for adoption in the

Summer of 2016. The contract includes 10 primary tasks: (1) Develop thresholds of significance for use in CEQA analysis; (2) Review the existing Circulation Element; (3) Review the Napa-Solano Travel Demand Model; (4) Generate updated traffic forecasts; (5) Update impacts and mitigation measures; (6) Recommend policy changes; (7) Develop Traffic Impact Study (TIS) guidelines; (8) Prepare the updated Circulation Element; (9) Support CEQA review of the updated Circulation Element; and (10) Prepare a Transportation Impact Fee Study. To date, all work remains within budget, but is about 1-2 months behind. Tasks 1-3 have already been completed. Work is underway on the updated draft traffic forecasts (Task 4), which should be completed in January, 2016. Work has begun on an interim version of the TIS guidelines (Task 7). The consultant has also provided in-house training of staff regarding traffic study review.

Coordination with Cities to address regional land use and transportation issues

Over the past ten months, there have been a number of efforts to improve inter-jurisdictional coordination. A brief summary is provided as follows;

- | The Chair of the Board of Supervisors met with the five Mayors in April, 2015, to discuss countywide land use concerns;
- | The County and City Planning Directors met in August and in December to establish contact and review issues of mutual interest - a third meeting is tentatively set for January;
- | Staff from the City of Napa and the City of St. Helena have expressed potential interest in working on a joint Climate Action Plan;
- | County staff is working with staff from the City of Napa to provide background information for the development of policy on the use of trucked water;
- | County staff is also working with staff from the City of Napa to address concerns regarding the impact of vineyards on municipal water supplies;
- | Staff from the County, City of American Canyon, and Napa Sanitation met to ensure continued water delivery for new projects within the Airport Industrial Area Specific Plan; and
- | County staff have been working with staff from the City of St. Helena to review potential traffic impacts associated with pending projects.

NEXT STEPS

Once the Board of Supervisors has completed providing direction regarding the APAC recommendations, staff will begin the process of drafting the necessary ordinances, guidelines, and any General Plan policies (if required). Staff will work with County Counsel and interested parties in developing the more detailed implementation needed to carry out the Board of Supervisor's direction. If significant legal, procedural, or staffing resource issues arise as a result of this process that would substantially affect implementation, staff will return to the Board of Supervisors for additional discussion and direction before any further work is done on that recommendation. Public workshops will be held to review draft ordinances and policies, and staff will prepare the appropriate documents pursuant to the California Environmental Quality Act (CEQA). Hearings on any draft ordinances and policies will be held before the Planning Commission, before the recommendations are forwarded to the Board of Supervisors for additional public hearings and final action.

A draft general timeline for implementation of the APAC recommendations is provided in Attachment B. A summary of what is needed to implement the APAC recommendations is provided in Attachment C.

RECOMMENDATIONS

There are four recommendations remaining for the Board of Supervisors to discuss and provide direction to staff, as provided below. Additional analysis of these items may be found in the staff report for Agenda Item 9D from the December 8, 2015, public hearing.

APAC Recommendation No. 6:

Modify the County Code to include outdoor hospitality areas and Type 3 caves in the total area used to determine the maximum square footage for accessory uses for new wineries in the AP and AW zones.

APAC Recommendation No. 10:

Strongly encourage elected and appointed officials of the County, and their staffs, to take the following actions:

- a. Implement the land use policies identified in the Napa County General Plan Update;
- b. Enforce all current regulations fairly and consistently.
- c. Deny any unrealistic use permit applications and modifications that are depending on the excessive use of variances.
- d. Consistently follow existing procedures.
- e. Discontinue creative efforts to justify projects on non-conforming parcels.
- f. Be consistent in the interpretation, application and enforcement of all use permits.
- g. Complete items the County Board of Supervisors and Planning Commission identified at the joint special hearing on March 10, including:
 - i. County Climate Action Plan;
 - i. Circulation Element of the General Plan; and
 - i. Summit of County, City, and Town officials to discuss joint effort to address regional land use and transportation issues.

APAC Recommendation No. 11:

Share the County's production reporting methodology with the five other Napa County jurisdictions and encourage annual winery data collection from wineries located in the unincorporated area for the purposes of capturing more complete data.

Planning Commission Recommendation No. 14:

Provide an annual report to the Planning Commission on prior calendar year winery activity that includes the following information:

- a. Total permitted and actual wine production;
- b. Total wine grape acreage and production;
- c. Total amount of wine crushed within Napa County, amount of grapes imported into Napa, and amount of grapes exported out of the County;
- d. Total production, tasting room visitation, marketing visitation, and variances approved by the County;
- e. Gross and net loss of vineyards and farmland;
- f. Average and median visitation numbers for groups of wineries based on production levels; and
- g. Number of temporary event permits issued, and number of visitors allowed.

SUPPORTING DOCUMENTS

- A . Attachment A - Draft Board of Supervisors Direction from December 8, 2015
- B . Attachment B - General APAC Implementation Timeline
- C . Attachment C - APAC Implementation Table

CEO Recommendation: Approve

Reviewed By: Helene Franchi