



Agenda Date: 1/8/2008  
Agenda Placement: 9B

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors  
**FROM:** Robert Westmeyer - County Counsel  
County Counsel  
**REPORT BY:** Sora O'Doherty, Paralegal, 251-1090  
**SUBJECT:** Receive the certification of the Assessor-Recorder-County Clerk that the Napa County Responsible Growth Initiative has sufficient signatures and take related actions.

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### **RECOMMENDATION**

Assessor-Recorder-County Clerk and County Counsel request that the Board take the following actions:

1. Receive and order filed the Certification of the Registrar of Voters that the "Napa County Responsible Growth Initiative" petition has sufficient signatures; and
2. As required by Elections Code 9118, take one of the following actions:
  - a. Direct staff to prepare an ordinance tracking the "Napa County Responsible Growth Initiative" without alteration for adoption by the Board on January 15, 2008; or
  - b. Direct staff to prepare a resolution for January 15, 2008 placing the "Napa County Responsible Growth Initiative" on the ballot of the next statewide election occurring not less than 88 days from January 8, 2008 for the purpose of enabling the voters of Napa County to approve or reject the "Napa County Responsible Growth Initiative"; or
  - c. Adopt a resolution directing staff to prepare and present to the Board a report pursuant to Section 9111 of the Elections Code and identify what information should be included in the report.

### **EXECUTIVE SUMMARY**

The Registrar of Voters (hereafter the "ROV") has examined that initiative petition that has been identified by the proponents as the "Napa County Responsible Growth Initiative" (hereafter "Initiative"). The ROV has determined that the Initiative signatures were sufficient in that the submitted initiative petition contained the signatures of registered voters representing at least 10 percent of the entire vote cast in Napa County for all candidates for Governor at the last gubernatorial election. A certificate documenting that determination has been submitted to the Clerk of the Board of Supervisors.

This certification of sufficiency must be accepted and ordered filed by the Board. Additionally, immediately following acceptance, the Board is required to take one of the following actions: (1) adopt the initiative as an

ordinance without alteration within 10 calendar days, (2) place the question of approving or rejecting the Initiative before the voters on the June 2008 ballot, or (3) order a report addressing the various impacts the passage of the initiative might have. See the Background portion of this agenda item for a listing of the matters that may be addressed in the report should one be ordered.

If a report is ordered, the report must be returned to the Board within 30 calendar days. Following its return the Board is then required to take one of the following actions: (1) adopt the initiative as an ordinance without alteration within 10 calendar days, or (2) place the question of approving or rejecting the Initiative before the voters on the June 2008 ballot.

Required Actions:

1. Motion to Accept the Certification of the ROV and order it filed by the Clerk of the Board.
2. Discussion re whether to a) adopt the Initiative on January 15th, b) call an Election on January 15<sup>th</sup>; or c) order a 9111 Report.
3. Motion implementing one of the three alternatives.
4. Discussion re whether a Auditor's Fiscal Analysis (500 words) should be ordered
5. Motion requiring or not requiring an Auditor's Fiscal Analysis.

**FISCAL IMPACT**

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
What is the revenue source?	The General Fund will cover the cost of sending ballot materials to all voters as well as the minimal cost of adding one measure to the official ballot itself.
Is it Mandatory or Discretionary?	Mandatory
Is the general fund affected?	Yes
Future fiscal impact:	No foreseeable future impact as this process is initiative specific. It is possible that this initiative, if successful, might result in additional initiatives being filed in the future to amend the provisions of this initiative or add additional land use requirements to the requirements set forth in this initiative. However, the number of such initiatives are not foreseeable and therefore any estimation would be speculative.
Consequences if not approved:	The county will be exposed to costly litigation due to its failure to follow Elections Code section 9118 if appropriate action is not taken on the "Napa County Responsible Growth Initiative" in a timely manner.
Additional Information:	None.

**ENVIRONMENTAL IMPACT**

ENVIRONMENTAL DETERMINATION: None Required regardless of the Board's decision [calling an election required to be held as a result of the gathering of sufficient signatures pursuant to Elections Code section 9118 is

ministerial and therefore not subject to CEQA [*Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 189]; adopting an ordinance in lieu of calling an election is ministerial and therefore not subject to CEQA [*Native American Sacred Site and Environmental Protection Association et al. v. City of San Juan Capistrano* (2004) 120 Cal.App.4th 961, 969]].

## **BACKGROUND AND DISCUSSION**

An initiative has been filed with the Registrar of Voters (hereafter the "ROV") that the proponents have identified as the "Napa County Responsible Growth Initiative" (hereafter the "Initiative"). The purpose of the Initiative is to do all of the following:

1. The annual number of new housing units permitted in the unincorporated portion of Napa County shall be limited to accommodate an annual population growth rate that exceeds neither that of the nine San Francisco Bay Area counties nor 1%. Initially the Initiative would limit the annual issuance of building permits authorizing new residential construction to a number equal to 1% times the number of housing units in the unincorporated area (currently approximately 114 building permits per year not counting rollover, exempted or grandfathered units).
2. Prohibit single family residences from exceeding 3 stories or 35 feet in height, whichever is less.
3. With limited exceptions prohibit structures from exceeding 35 feet in height.
4. Require that 15% of new residential developments are sold or rented at a price level that persons with moderate or below moderate income can afford.

Various changes to the General Plan and Zoning Code are proposed by the Initiative to accomplish these purposes.

The proponents of the Initiative filed their notice of intention to circulate an initiative petition with the ROV on October 4, 2007. The required ballot title and summary was prepared and provided to the ROV on October 19, 2007 and the ballot title and summary was provided to the proponents of the Initiative on that same day. The proponents of the Initiative published their notice of intention to circulate an initiative petition and the ballot title and summary, as required by subparagraph (b) of Elections Code section 9105, on October 21, 2007, and proof of publication was filed with the ROV on October 26, 2007.

The 180 days within which the proponents were required to submit the necessary signatures to the Registrar of Voters commenced on October 20, 2007. The signed sections of the Initiative were filed with the ROV on December 10, 2007 which was well within the 180 day timeframe.

The ROV was required to examine the Initiative and certify it as sufficient or insufficient within 30 days of December 10, 2007 excluding Saturdays, Sundays and holidays. After completing his examination of the signatures the ROV concluded that the Initiative signatures were sufficient in that there were signatures of registered voters representing at least 10 percent of the entire vote cast in Napa County for all candidates for Governor at the last gubernatorial election. The ROV also concluded that the signatures did not represent more than 20 percent of the entire vote cast in Napa County for all candidates for Governor at the last gubernatorial election; therefore the governing law is Elections Code Section 9118.

The ROV's certificate showing the sufficiency of the petition was prepared and submitted to the Clerk of the Board of Supervisors on December 26, 2007. The Elections Code requires the Clerk of the Board, upon receipt of an

initiative certification by the ROV, to place the certification on the agenda of the next regular meeting of the Board of Supervisors. The next regular meeting of the Board of Supervisors following December 26, 2007 is January 8, 2008.

### Elections Code Section 9118

Elections Code Section 9118 outlines the steps the Board is required to take if an initiative petition is signed by at least 10 percent but not more than 20 percent of the entire vote cast in Napa County for all candidates for Governor at the last gubernatorial election preceding the publication of the notice of intent to circulate an initiative. In such a case the Board is required to take one of the following actions:

- (1) adopt the initiative as an ordinance without alteration within 10 calendar days of the date of the meeting at which the certificate of sufficiency is presented, or
- (2) submit the ordinance to the voters without alteration at an election occurring not less than 88 days after the date of the order of the election, or
- (3) order a report discussing various impacts the passage of the initiative might have.

If option #1 is selected the ordinance will be prepared and submitted to the Board for adoption at its January 15, 2008 meeting.

If option #2 is selected the election would be scheduled for, and consolidated with, the June 3, 2008 direct primary election. The resolution ordering such an election would be prepared and submitted to the Board for adoption at its January 15, 2008 meeting.

If option #3 is selected the attached resolution should be adopted as is more fully discussed immediately below.

### The 9111 Report

The statute that controls the content of any report the Board may order is found in Elections Code section 9111 and therefore the report is commonly referred to as a 9111 Report.

Any report that is ordered, in lieu of immediately calling an election or adopting the Initiative without alteration, may address the effect of the Initiative on any or all of the following matters:

- (1) Its fiscal impact;
- (2) Its effect on 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 [NOTE: the limitations referenced relate to Affordable Housing and discrimination in housing issues];
- (3) Its effect on 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;
- (4) Its impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space. The report may also discuss whether the measure would be likely to result in increased infrastructure costs or savings, including the costs of infrastructure maintenance, to current residents and

businesses;

(5) Its impact on the community's ability to attract and retain business and employment;

(6) Its impact on the uses of vacant parcels of land;

(7) Its impact on agricultural lands, open space, traffic congestion, existing business districts, and developed areas designated for revitalization; or

(8) Any other matters the board of supervisors request to be in the report.

When a land use initiative has been drafted by members of the public the Board has not historically ordered the preparation of a 9111 report. The Board has, however, ordered such a report in the case of most recent initiatives.

If the Board orders a 9111 report, the report must be completed and presented to the Board no later than 30 calendar days after it is ordered. That means the deadline for preparing a 9111 report on this Initiative is February 7, 2008. Since there is no Board meeting on February 7th the actual deadline, absent the calling of a special meeting of the Board of Supervisors for February 6th or 7th, is the Board's regular meeting of February 5, 2008. The Conservation, Development and Planning Department, which usually prepares such reports in consultation with other County departments, would therefore have a period of 28 calendar days to prepare a report on the Initiative.

At the meeting at which the 9111 report is presented to the Board, the Board must take one of the following actions:

(1) adopt the initiative as an ordinance without alteration within 10 calendar days of the date of the meeting at which the 9111 report was presented, or

(2) submit the ordinance to the voters without alteration at an election occurring not less than 88 days after the date of the order of the election.

If the Board wishes to require a 9111 report it should adopt the attached resolution after indicating what information it wishes included in the report. Please refer to page 3 of the attached resolution to review the various types of information that can be included in a 9111 report.

#### Fiscal Analysis To Be Included In the Official Ballot Materials

In addition to the "9111 report" described above, subparagraph (c) of Elections Code section 9160 authorizes the Board, but does not require the Board, to order the County Auditor to prepare a fiscal analysis. That fiscal analysis is limited in content and length because is it part of the official ballot materials that will be sent to each voter.

Subparagraph (c) of Elections Code section 9160 provides as follows:

“(c) Not later than 88 days prior to an election that includes a county ballot measure, the board of supervisors may direct the county auditor to review the measure and determine whether the substance thereof, if adopted, would affect the revenues or expenditures of the county. He or she shall prepare a fiscal impact statement which estimates the amount of any increase or decrease in revenues or costs to the county if the proposed measure is adopted. The fiscal impact statement is “official matter” within the meaning of Section 13303, and shall be printed preceding the arguments for and against the measure. The fiscal impact statement may not exceed 500 words in length.”

Historically, the Board has not required the preparation of a fiscal analysis and therefore a requirement to prepare

such an analysis is never included in resolutions calling initiative elections. If the Board ultimately determines to order an election, and wishes a fiscal analysis included in the Official Ballot materials each voter will receive, the Board should so indicate and the resolution calling the election will include such a requirement.

If the Board wishes a more extensive fiscal analysis than can be accomplished in 500 words it should order same as a part of the Section 9111 report. However neither that fiscal analysis nor the other materials contained in a 9111 report are official ballot materials and therefore cannot be included in the voter information packet that each voter receives prior to an election.

Finally, during the last election cycle the Board concluded to routinely print the entire text of initiatives in the official ballot materials. As a result of that decision any resolution that is prepared ordering an election will provide that the entire text of the Initiative will be printed in the official ballot materials. Printing the entire text of initiatives in the official ballot materials is not required, however, and so the Board still has the option to not doing so if it wishes.

### **SUPPORTING DOCUMENTS**

- A . Text of Napa County Responsible Growth Initiative
- B . Resolution 9111 Report

CEO Recommendation: Approve

Reviewed By: Helene Franchi