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NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Hillary Gitelman - Director
Conservation, Development & Planning
REPORT BY: Hillary Gitelman, Director, 253-4805
SUBJECT: Discussion and Possible Action Regarding Extending the Agricultural Lands Preservation Initiative (Measure J)

RECOMMENDATION

Discussion and possible adoption of a resolution initiating the process of extending the Agricultural Lands Preservation Initiative (more commonly known as Measure J).

EXECUTIVE SUMMARY

On November 15th, the Board of Supervisors requested that County staff prepare an analysis of options for extending the Agricultural Preservation Initiative (more commonly known as Measure J). Measure J is scheduled to expire on December 31, 2020. Therefore, without an extension, commencing January 1, 2021, the entire General Plan will be subject to modification by a majority vote of the Board of Supervisors. Currently, certain General Plan provisions that are identified in Measure J may not be changed without first securing an affirmative vote of the majority of the voters in Napa County.

On November 15th, the Board of Supervisors also indicated its desire to schedule a "general assembly" of representatives from the County and all of the incorporated cities within the county to discuss Measure J and Rural-Urban Limit (RUL) lines.

Four options for the extension of Measure J are discussed in the Background section below, along with a staff recommendation related to Measure J and suggestions related to conduct of a "general assembly." The four options discussed are (1) extension of Measure J by action of the Board of Supervisors; (2) placement of a Measure J extension on the ballot by the Board of Supervisors; (3) adoption of a Measure J extension by the Board of Supervisors following the submittal of a citizen initiative petition with sufficient signatures, or (4) placement of a Measure J extension on the ballot by a citizen petition.

County staff recommends the Board of Supervisors adopt the attached Resolution which sets forth the Board's intent to place a Measure J extension on the ballot in June 2008 unless a Notice of Intent to circulate an initiative petition extending Measure J has been filed with the Elections Division of the County Clerk's Office by early August

of 2007.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Exempt from the California Environmental Quality Act (CEQA) per State CEQA Guidelines Section 15061(b)(3)) (CEQA does not apply where it can be seen with certainty that there is no possibility the proposed action of adopting the proposed resolution may have a significant effect on the environment).

BACKGROUND AND DISCUSSION

On November 15, 2005 the Napa County Board of Supervisors expressed its desire to consider the extension of Measure J beyond its current sunset date of December 31, 2020. Measure J is Napa County's voter-initiated agricultural preservation initiative, and requires land that is currently designated as open space (AWOS or AR) on the General Plan Land Use Map to remain so designated until December 31, 2020, unless the land is redesignated to another general plan land use category by a vote of the people. Measure J also prohibits changes to certain text provisions in the general plan without voter approval until December 31, 2020. Certain limited exceptions to these requirements exist. A copy of Measure J is attached, together with a list of land use changes that have been considered by the voters pursuant to Measure J since its adoption in 1990 and the results of those votes.

County staff has assessed four options that might result in the extension of Measure J below. These are followed by a staff recommendation and discussion related to planning a "general assembly" of the County and all incorporated cities.

Options for Extension of Measure J

(1) Under Option 1, the Board of Supervisors would consider and adopt an ordinance eliminating the sunset provision of Measure J or extending the sunset from 2020 to 2050. This has two principal disadvantages. First, since environmental review would be required, the environmental determination would be subject to legal challenge. Second, the extension would be subject to change by a future Board of Supervisors and therefore would not accomplish the principal aim of Measure J, which is to ensure stability by requiring a vote of the people for certain amendments to the General Plan.

(2) Under Option 2, the Board of Supervisors would place an ordinance eliminating the sunset provision of Measure J or extending the sunset from 2020 to 2050 on the ballot for consideration by the voters. While this action by the Board of Supervisors would require environmental review and thus could be subject to legal challenge, consideration and adoption of a Measure J extension by the voters would avoid the principal disadvantage associated with Option 1. However, this approach would have another potential disadvantage in that it might be perceived as a "top down" approach without the buy-in of community advocates associated with any ballot measures that is placed on the ballot via initiative petition.

(3) Under Option 3, an ordinance eliminating the sunset provision of Measure J or extending the sunset from 2020 to 2050 would be adopted by the Board of Supervisors after receipt of a certification by the Elections Division of the County Clerk's office that sufficient signatures had been secured to require an initiative election all pursuant to subsection (a) of Elections Code section 9118. This approach would eliminate the disadvantages discussed in Options 1 and 2 above. First, there is no environmental review required prior to the Board adopting a proposed initiative ordinance in lieu of placing it on the ballot. The court's have concluded that this is a ministerial action thus not subject to the CEQA (Native American Sacred Site and Environmental Protection Association et al v City of San Juan Capistrano (2004) 120 C.A.4th 961). Second, the initiative ordinance could not be changed without a vote of the people. See Elections Code section 9125 ("No ordinance proposed by initiative petition and adopted either by the board of supervisors without submission to the voters or adopted by the voters shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance. In all other respects, an ordinance proposed by initiative petition and adopted shall have the same force and effect as any ordinance adopted by the board of supervisors"). Third, such an approach could not be perceived as a "top down" approach. This approach would also avoid the costs of an election.

(4) Under Option 4, an ordinance eliminating the sunset provision of Measure J or extending the sunset from 2020 to 2050 would be placed on the ballot for consideration by the voters through a citizen-initiated petition. This approach does not require environmental review (14 CCR 15268; Friends of Sierra Madre v. City of Sierra Madre (2001) 25 Cal.4th 165) and would eliminate all of the disadvantages of Options 1 and 2 for the reasons discussed in option 3 above but would require the cost, expense, and uncertain result involved in an election.

For the reasons discussed above, the third option would be most desirable in terms of its cost, effectiveness and its community support, provided that the authors of the measure carefully avoided adding new restrictions or exemptions that could be perceived as undesirable by the voters.

When Would the Board Know Whether an Initiative Petition might be circulated in time for the June 2008 Election?

The Elections Code provides that initiative proponents must gather the required number of signatures within 180 days following the receipt of the "Title and Summary" from the County Counsel's Office (Section 9110). The County Counsel is required to prepare and file with the Elections Department the Title and Summary within 15 days after an Notice of Intent to Circulate an Initiative Petition is filed with the County Clerk's office (Sections 9103 and 9105). The Registrar of Voters is entitled to take 30 working days to validate the signatures appearing on each section of the submitted initiative petition (Section 9114/9115).

A June 2008 election involving a local initiative measure must be called by the Board of Supervisors by early March of 2008. This being the case, and taking into account all of the timeframes described in the previous paragraph, if a notice of intention to circulate an initiative petition has not been filed by early August of 2007, it is unlikely a citizen initiated initiative petition could be circulated and the signatures validated prior to the March 2008 deadline to order that a local initiative election be held in conjunction with the June 2008 statewide election.

Staff Recommendation

In light of the advantages and disadvantages associated with each option described above, County staff recommends that the Board of Supervisors express its intent to place a Measure J extension on the ballot (Option 2) in June 2008 unless a citizen-initiated petition drive (Option 3 or 4) has been initiated by August of 2007. June 2008 is recommended as the date to hold such an election since this is the earliest regular election following scheduled completion of the ongoing General Plan update.

A resolution is attached for the Board's consideration.

Planning for a "General Assembly"

On November 15, The Board of Supervisors expressed its desire to convene a "general assembly" of County representatives (elected and non-elected) and representatives from each of the five cities to discuss extension of Measure J and the status of each city's Rural-Urban Limit (RUL) line. The Board's intent was to convene the assembly prior to June 2006, when the transportation sales tax measure is planned for the ballot, and use it as a forum to express each jurisdiction's commitment to the agricultural preservation and growth control objectives inherent in Measure J and the RULs.

Provided this accurately reflects the Board's intent and direction, County staff will work with the Napa County League of Governments (NCLOG) to convene and agendize the "general assembly" for sometime in February 2006. At the assembly, County staff will be prepared to summarize the material presented here, as well as any action taken by the Board. City staffs will be requested to present information regarding their RULs or similar controls.

SUPPORTING DOCUMENTS

- A . Text of Measure J, November 1990
- B . County Initiatives Related to Measure J, November 1990 to the Present
- C . Resolution

CEO Recommendation: Approve

Reviewed By: Andrew Carey