



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 3/1/2016
Agenda Placement: 9B
Set Time: 9:00 AM
Estimated Report Time: 1 hour

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors

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

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

SUBJECT: Recommendations on Agricultural Protection

RECOMMENDATION

Director of Planning, Building, and Environmental Services requests discussion and direction regarding the recommendations concerning agricultural protection, as forwarded by the Planning Commission from the Agricultural Protection Advisory Committee (APAC).

(CONTINUED FROM DECEMBER 8, 2015 AND JANUARY 5, 2016)

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. This was followed on March 24, with the Board of Supervisors appointing members to the serve on the Committee.

PROCEDURAL REQUIREMENTS

1. Staff reports
2. Public comments
3. Motion, second, discussion, and vote on the item

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

For a more detailed summary of the background and issues related to this item, please see prior staff reports for Agenda Item 9.D on the Board of Supervisors' meeting of December 8, 2015; and Agenda Item 9.K on the Board of Supervisors' meeting of January 5, 2016.

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. The second meeting on January 5, 2016, ran for two hours. Staff provided additional analysis as requested by the Board and received further direction on resolving the remaining four items. Staff has provided a summary of the recommendations accepted by the Board of Supervisors at the previous two hearings (see Attachment A). Note that a clarification has been made to Recommendation No. 14, indicating that the annual report to the Planning Commission would address aggregate wine production and grape sourcing data.

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 and January 5, as well as to the four recommendations that have yet to be considered.

ACTIONS ALREADY TAKEN

As the recommendations for agricultural protection nears completion of this first milestone, staff believes that it is important to recall the other efforts that have recently been made by the County to improve the planning process:

- | The County's CEQA Guidelines have been revised to require notification to nearby landowners for Erosion Control Plan applications. They were also amended to require that consultants preparing environmental documents for proposed projects contract directly to the County.
- | The Board of Supervisors joined Marin Clean Energy, allowing the unincorporated area to access a green energy portfolio.
- | The Board of Supervisors adopted new public hearing noticing requirements, expanding the radius from 300 feet to 1,000 feet.
- | Staff has been directed to update the appeals process.
- | The Affordable Housing Fee on new development has been increased.

- | The Board adopted new Water Availability Analysis standards, that replaced the standard assumption for water use in hillside areas with expanded Tier 2 analysis requirements involving more rigorous studies.
- | Staff has prepared Traffic Impact Study Guidelines to ensure consistency in project analysis.
- | Staff has been directed to complete the draft Climate Action Plan.
- | Staff has been directed to update the Circulation Element and prepare a Traffic Impact Fee for new development.
- | The Board of Supervisors and Planning Commission held a special joint hearing on the cumulative impacts of new development, attended by 450 people.
- | The Board appointed APAC, who completed their work on schedule.
- | Staff is regularly coordinating with city representatives on regional land use and water issues.
- | Staff has been directed to prepare documents that address the State's requirements for a Groundwater Management Sustainability Plan
- | The updated Housing Element has been adopted.
- | The Board of Supervisors has held two workshops on code enforcement, which resulted in two additional officers, recordation of violation notices, updated penalties, community clean-up programs, and direction to prepare a code enforcement policy and procedures manual.
- | A draft Local Area Management Program (LAMP) has been prepared to address new State requirements on wastewater treatment.

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 9.D from the December 8, 2015, public hearing; and Agenda Item 9.K on the Board of Supervisors' meeting of January 5, 2016.

Since the January 5, 2016 Board meeting, staff has been coordinating with a number of interested groups regarding the wording of the recommendations. These groups included: Coalition Napa Valley, Napa County Farm Bureau, Napa Valley Grapegrowers, Napa Valley Vintners, Napa Vision 2050, and Winegrowers of Napa Valley. While there is not unanimity among these various groups on every aspect of the recommendations presented below, staff believes that there is broad consensus on many of the concepts and approaches offered for consideration.

APAC Recommendation No. 4:

Prepare a plan to implement a phased, self-certification compliance program.

The first phase would require all wineries to report their production and grape sourcing data to the County. An ordinance to require production and grape sourcing would be considered late in 2016; would be implemented in 2017, and the first reports would be due in 2018. During this phase, staff would review the existing methodology for calculating wine production for consistency with the ATTB (Alcohol, Tobacco, Tax and Trade Bureau) definition, as well as current types of winery operations. Staff would also work with County Counsel to prepare a series of papers explaining the legal guidelines by which existing vested rights are determined.

The second phase would involve an opportunity for wineries to come in for a voluntary review of their use permit to: (1) consolidate and streamline existing use permit conditions of approval; (2) determine and specify existing vested rights; (3) clarify the scope of activities addressed; and/or (4) consider alternative effective measures of tasting and marketing visitation. The reviews would not involve any change to legally established vesting or permitted rights. Depending on the volume of such requests and the extent of the Planning Division workload, outside planning and legal consultants may be needed to implement this second phase. The current practice of the wine audit would continue through the first and second phases.

The third phase would transition to a practice of strict code enforcement whereby violators would be required to immediately comply with all applicable requirements.

Discussion: As has been evident throughout the discussion over the past year, the issue of winery permitting in Napa County is very complex. The standards and regulations placed on the winery industry far exceeds those imposed on other wine regions in California and/or the United States. This is hardly surprising, given Napa Valley's global pre-eminence, but it creates substantial challenges both in the consideration of new applications as well as the enforcement of existing operations. The issue of code compliance is further complicated by the long history of wineries in Napa, public initiatives, court decisions, State and Federal law, and the multiple layers of regulations that have accumulated at the local level over the decades.

Staff recommends an approach that acknowledges these constraints and also provides a path towards greater consistency and integration in how code compliance is managed. It is a phased approach, that will be implemented over time to allow for both the private sector and County staff to develop the institutional practices needed to achieve greater compliance. This approach would work to align County definitions to more closely align with State and Federal practices, and would establish County guidelines and procedures to make the permitting process clearer and more predictable for all parties involved. The recommendation would also provide a period of time during which the winery owners can work voluntarily with the County to consolidate and clarify existing permit requirements, and/or determine the extent of existing vested rights. All of these actions would be taken with the intent of creating a well-defined regulatory environment, that is equally transparent to owners, the public, staff, and decision makers. Once that goal has been achieved, winery owners would be better prepared to internally monitor their permit conditions, code compliance staff would be in a better position to strictly enforce County standards, and the public would be better served in the more efficient resolution of complaints.

APAC Recommendation No. 5:

Prepare an ordinance to limit the total development area of residential development within AP and AW zoned parcels. Take no action with regards to changing the existing development area of wineries.

Discussion: Current County Code already restricts winery development area (defined as aggregate paved or semi-permeable improvements) to no more than 25 percent of the parcel on which the winery is located, or 15 acres, whichever is less. As such, there are already strong limits on the extent to which wineries are allowed to develop on agriculturally zoned properties. But as highlighted by the APAC, there is no similar limit on housing within the agricultural zones. Every year, Napa builds more new homes than new wineries, and the total number of rural homes far exceeds the number of wineries. Increasingly, homes in the agricultural zones are getting larger, with a correspondingly increasing footprint once associated improvements are included, such as driveways, septic systems, wells, pools, tennis courts, bocce ball courts, cabanas, second units, and guest homes. For smaller parcels, the majority of the value of the property is in its value as a rural residential estate. This increases land prices such that growers and vineyard developers are not able to economically compete to acquire property, reducing the inventory of land available for agricultural expansion. Consequently, staff is recommending that the County Code be amended to place an area limit on the footprint of new homes and additions to existing homes. The ordinance would not specify a percentage of the total parcel size, as that would make development of vacant one-acre lots impossible and would allow for far too large of a footprint on expansive parcels.

APAC Recommendation No. 6:

As a part of the guidelines referenced in Planning Commission No. 13, staff reports shall include a calculation of the impermeable outdoor areas (not located within an enclosed structure) proposed for hospitality, and express that calculation as a percentage of the production facility for each Use Permit or Major Modification winery application. In addition, a site plan showing permeable areas designated for hospitality (i.e., lawns, gardens, etc.) shall be included as a part of the winery application, for the purpose of CEQA review.

Discussion: Impermeable surfaces such as porches, verandas, patios, and plazas can be used for outdoor seating at many wineries during pleasant weather. As such, they represent potential hospitality capacity for tasting and marketing visitors, on a seasonal basis. Because these areas are typically paved, they represent a conversion of farmland and raise the question as to whether the total hospitality area (compared to the total production facility) remains incidental and subordinate to the agricultural use. However, wineries have been relying on these areas for many years. Adopting this into an ordinance would create a large and complex determination of existing vested rights, which would require significant staffing resources to address. Instead, staff believes that this issue should be addressed through guidelines, which provide the Planning Commission with the discretion and flexibility needed to consider the unique circumstances of individual applications, on a case-by-case basis. It will also provide the opportunity to gather information that can be used to better guide land use decision-making and policy in the future.

Caves are not included in this recommendation, as they do not affect agricultural land. Similarly, permeable landscaped areas would not be included in the calculation, as they can be ripped and planted, and do not represent a permanent conversion of farmland. However, to the extent that such areas are used for outdoor entertainment, they need to be evaluated under CEQA for issues such as noise, light and glare, parking, etc. Consequently, those areas should be described on a site plan, but not included in the calculation of hospitality area.

APAC Recommendation No. 9:

As a part of any ordinance that implements one or more APAC recommendations, include a statement of policy in the Findings which states that wineries that were legally established prior to adoption of the Winery Definition Ordinance (WDO) are an integral part of the Napa Valley economy. The Board of Supervisors recognizes the legal existence of such wineries and permits their continued right to operate within the conditions of their approved use permits; provided, however that expansion above and beyond that allowed by the approved use permit would only be permitted upon securing a modification to the use permit in accordance with the zoning ordinance. The Board further declares that the conforming structures and uses of legally established wineries are rights that cannot be rescinded, revoked, or traded away without due process.

Discussion: As previously stated by staff in the January 5, 2016, report, it remains staff's position that all property owners are subject to any change in land use 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. Where these circumstances occur, the property owner's rights prevail over the new regulations. Staff believes that the revised recommendation articulates this balance of public and private interests, and provides a clear framework for evaluating future winery applications with regards to new regulations.

NEXT STEPS

Once the Board of Supervisors has completed providing direction regarding the recommendations on agricultural protection, 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 Supervisors' 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 the recommendation in question. 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 considered by the Planning Commission, before their recommendations are forwarded to the Board of Supervisors for additional public hearings and final action.

SUPPORTING DOCUMENTS

A . Attachment A - Prior Board Actions

CEO Recommendation: Approve

Reviewed By: Helene Franchi