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Agenda Date: 3/17/2015  
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Set Time: 9:00 AM  
Estimated Report Time: 10 Minutes

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors

**FROM:** Jeffrey Richard for Minh Tran - County Counsel  
County Counsel

**REPORT BY:** Jeffrey Richard, CHIEF DEPUTY COUNTY COUNSEL -

**SUBJECT:** Findings of Fact and Decision on Appeal - Napa Sea Ranch Rezoning Appeal Hearing - File No. P14-00019-RZG

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### **RECOMMENDATION**

County Counsel requests consideration and adoption of a Resolution of Findings of Fact and Decision on Appeal regarding the appeal filed by Thomas Carey, on behalf of Albert Giovannoni, Trustee of the Albert D. Giovannoni Trust, to a letter issued by the Napa County Planning, Building and Environmental Services on August 22, 2014, which provided staff's interim analysis and description of probable recommendations on a pending application filed by the appellant to rezone portions of the Napa Sea Ranch property from AW - Agricultural Watershed and RS - Residential Single to MC - Marine Commercial, located at 333 Cuttings Wharf Road, (P14-00019-RG) (Assessor's Parcel Nos. 047-261-007 & 047-261-009).

**ENVIRONMENTAL DETERMINATION:** The proposed action, adoption of a Resolution of Findings of Fact and Decision denying the appeal of staff's August 22, 2014 letter regarding a pending rezoning application, is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

**(CONTINUED FROM DECEMBER 9 AND DECEMBER 16, 2014)**

### **EXECUTIVE SUMMARY**

The project involves an applicant appeal of a letter sent by the Deputy Planning Director to the applicant concerning a request to rezone an approximately 57-acre split-zoned site to commercial use. The subject property, known as the Napa Sea Ranch, is located at the southern terminus of Cuttings Wharf Road at the Napa River. The site contains the Napa Sea Ranch boat storage business on a 10-acre portion of the site currently zoned Marine Commercial. The site also contains a 12-acre residentially zoned area, which includes a boat launch and day use/fishing area along its Napa River frontage. The remainder of the site, approximately 35 acres, is zoned Agricultural Watershed and contains a treatment pond for the neighboring Napa Valley Marina plus two storage buildings. (Prior to the Board hearing of the appeal on December 9, 2014, staff did not determine the precise

calculation of the amount of acreage that would be rezoned and this information was not included in the applicant's submittal materials.) The proposed rezoning would change the RS:AC (Residential Single:Airport Compatibility), and AW:AC (Agricultural Watershed:Airport Compatibility) to MC:AC (Marine Commercial:Airport Compatibility). The proposal also included a request to amend the text of the Marine Commercial Zoning Chapter (Title 18.34) to allow overnight camping upon issuance of a Use Permit.

On August 22, 2014, the Deputy Planning Director issued a letter summarizing staff's viewpoint that the proposal was in conflict with the General Plan and informing the applicant that staff would be taking the position as the application proceeded to decision makers that an Environmental Impact Report (EIR) would be the appropriate CEQA document for analysis of the proposed project. The applicant filed an appeal stating that staff's conclusions in the letter were unsupported by fact, thereby constituting a prejudicial abuse of discretion. Although it was questionable whether staff's letter was ripe for appeal, County Counsel determined that the matter should go before the Board of Supervisors given the claim of prejudicial abuse of discretion.

After having been continued from the December 9, 2014 meeting, the matter was heard by the Board of Supervisors on December 16, 2014. Because the appeal pertained to a matter that was not the subject of an administrative record or related to any decision based on a recorded public hearing, the appeal was heard by the Board on December 16, 2014 using its independent judgment on a "de novo" basis. At the continued appeal hearing, the Board heard and considered all evidence presented relating to the appeal, including all written materials developed by County staff and testimony and documentation submitted on behalf of appellant and the public. The Board closed the public hearing and adopted a motion of intent to deny the appeal in its entirety. The Board referred the matter to County Counsel for preparation of proposed findings of fact. County Counsel has prepared the proposed Resolution of Findings of Fact and Decision on Appeal, which is attached. As is customary, staff provided the proposed resolution to appellant's counsel for review and comment. Appellant's counsel indicated that he had no comments on the proposed resolution.

## **PROCEDURAL REQUIREMENTS**

1. Staff reports.
2. Chair invites interested parties to comment on the proposed findings.
3. Motion, second, discussion and vote on findings.

## **FISCAL IMPACT**

Is there a Fiscal Impact?                      No

## **ENVIRONMENTAL IMPACT**

**ENVIRONMENTAL DETERMINATION:** The proposed action, adoption of a Resolution of Findings of Fact and Decision denying the appeal of staff's August 22, 2014, letter regarding a pending rezoning application, 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**

The matter before the Board is an applicant appeal of staff positions taken in an August 22, 2014 letter issued by

the Deputy Planning Director concerning the processing status of a pending application to rezone approximately 57 acres located on the west side of Cuttings Wharf Road abutting the northwest bank of the Napa River. The proposed rezoning is described above in the Executive Summary and was described in detail in the agenda letter for the hearing on the appeal. The August 22, 2014 letter that is being appeal notified the applicant of the positions that staff would likely be taking on the application as it proceeded to the Planning Commission or Board of Supervisors: (1) that the proposed project would be inconsistent with the General Plan, (2) that in particular the proposed zoning change would be inconsistent with the portions of the General Plan that were added as a result of the passage by County voters of Measures J and P that require voter approval of any change in land use of property designated in the General Plan for agriculture use, and (3) that staff's preliminary view was that an Environmental Impact Report (EIR) would be the most appropriate environmental document for the project.

Appellant's Appeal Packet stated the reasons for his appeal as follows: "Prejudicial abuse of discretion; lack of fair and impartial hearing; no facts presented that support decision (see attached statement of appeal)," and appellant also provided detailed explanation and analysis, both in writing and at the Board hearing, of appellant's basis for disagreeing with staff's positions stated in the August 22, 2014 letter.

A substantial question exists as to whether the August 22, 2014 staff letter constituted a "decision" that may be appealed to the Board of Supervisors. However, to provide the applicant/appellant with an opportunity to have a hearing on his contention that the Letter resulted in prejudice to him and constituted an abuse of discretion, County Counsel accepted the appeal as complete for processing on September 19, 2014. In accordance with County Code Chapter 2.88, Appeals, the matter was set for hearing before the Board within 90 days of submittal of the completed appeal application. Because the appeal involved a matter that was not related to any decision based on an administrative record or any recorded public hearing, based on County Code Section 2.88.090.A, the appeal was heard by the Board of Supervisors on a 'de novo' basis using its independent judgment.

At appellant's request, the appeal hearing was continued from the December 9, 2014 Board meeting to December 16, 2014. At that time, the Board heard and considered all oral and documentary evidence presented relating to the appeal, including written analysis and an oral presentation by County staff, and testimony and documentation submitted on behalf of appellant and the public. After considering all such evidence and information, and exercising its independent judgment, the Board closed the public hearing and adopted a motion of intent to deny the appeal in its entirety. The Board referred the matter to County Counsel for preparation of proposed findings of fact. County Counsel has the proposed Resolution of Findings of Fact and Decision on Appeal, which is attached to this Agenda Letter.

As is customary, staff provided the proposed resolution to appellant's counsel for review and comment. Appellant's counsel indicated that he had no comments on the proposed resolution. Thus, staff recommends that the Board confirm its tentative decision to deny the appeal in its entirety and that the Board adopt the proposed Resolution of Findings of Fact and Decision on Appeal, which is based on the following facts:

As shown by the record on this Appeal, the challenged staff letter of August 22, 2014, did not and does not constitute a decision of any Napa County decision maker that is binding on appellant or that affects appellant's rights or interests. Staff's August 22, 2014 does not make any final determination or decision on the project's consistency or inconsistency with the General Plan. Nor does the letter make any final determination or decision as to the extent of CEQA review and documentation that will be required for the proposed project. The letter was a statement of staff's opinion only, based on the evidence presented to staff as of that time. Therefore, the letter does not constitute an abuse of discretion, as it was within staff's prerogative to advise appellant of staff's analysis and the probable positions and recommendations staff would be making at such time as the application were to come before decision makers. Thus, no basis exists for the Board to overrule or disapprove of staff's letter.

**SUPPORTING DOCUMENTS**

A . Resolution of Findings of Fact, Decision on Appeal, 3-17-15

CEO Recommendation: Approve

Reviewed By: Helene Franchi