



Agenda Date: 5/24/2005  
Agenda Placement: 8B  
Set Time: 9:15 AM PUBLIC HEARING  
Estimated Report Time: 90 Minutes

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors  
**FROM:** Cathy Gruenhagen for Hillary Gitelman - Director  
Conservation, Development & Planning  
**REPORT BY:** Heather Bennett McCollister, Principal Planner , 299-1348  
**SUBJECT:** Barthelemy Appeal Public Hearing

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### **RECOMMENDATION**

Consideration and possible action regarding an appeal filed by Richard Barthelemy, Trustee and Cynthia Barthelemy, Trustee to a decision by the Conservation, Development and Planning Commission on March 2, 2005. The Commission's decision denied the applicants' Parcel Map request No. 02630-PM, which would subdivide a parcel of approximately 40.0 acres into three smaller parcels at the terminus of Steele Canyon Road approximately 1100 feet north of its intersection with Headlands Drive. The site lies entirely within an RC (Residential Country) zoning district and within an area designated Agriculture, Watershed & Open Space (AWOS) by the Napa County General Plan (Assessor's Parcel No. 019-180-015).

**ENVIRONMENTAL DETERMINATION:** State CEQA Guidelines Section 15270 provides: (a) CEQA does not apply to projects which a public agency rejects or disapproves; and (b) This section is intended to allow an initial screening of projects on the merits for quick disapprovals prior to the initialization of the CEQA process where the agency can determine that the project cannot be approved. A recommendation of denial is not subject to CEQA review.

### **EXECUTIVE SUMMARY**

This hearing before the Board is to consider an appeal of the Planning Commission's March 2, 2005 decision to deny the applicants' request for a subdivision (Parcel Map). In making their decision, the Commission indicated that the proposed subdivision would not be consistent with the Napa County General Plan, since the Plan's Land Use Map designates the project site as AWOS, and Land Use Element Standard F(7)(c) establishes a minimum parcel size of 160 acres in this land use classification.

The Commission specifically indicated that it could not make the findings required for (1) County Code 17.14.060 that the proposed map is not consistent with the applicable general plan and (2) County Code 17.08.030 for lack of information submitted. (More specific details are provided in the attached staff report).

The appellant has argued that the Commission's decision was inappropriate and argues that the project as proposed is consistent with the AWOS land use designation.

**FISCAL IMPACT**

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Conservation, Development & Planning, Clerk of the Board and County Counsel
Is it Mandatory or Discretionary?	Mandatory
Is the general fund affected?	Yes
Future fiscal impact:	None
Consequences if not approved:	The County is required by State Law to respond to appeals.
Additional Information:	None

**ENVIRONMENTAL IMPACT**

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**BACKGROUND AND DISCUSSION**

**PROCEDURAL BACKGROUND:** On March 2, 2005 the Planning Commission denied this item based on inconsistencies with the General Plan, and also noted that insufficient information was provided to allow the Commission's consideration of other required findings. On March 15, 2005, subsequent to the Planning Commission's final decisions, and within the prescribed 10-working day period for appeal, an appeal was filed by Richard Barthelemy, Trustee and Cynthia Barthelemy, Trustee.

**CURRENT STATUS AND ACTIONS REQUESTED BY THE BOARD OF SUPERVISORS:** The Department of Conservation, Development, and Planning recommends that the Board of Supervisors deny the appeal and uphold the Planning Commission's decisions to deny the project for the reasons contained in this staff report and based upon the evidence contained in the record.

**STATED BASIS FOR THE APPEAL AND STAFF RESPONSE:** The following outlines the Basis of the Appeal as contained in the appellant's submittal. For convenience, staff has numbered each issue and provided a summary, but recommends the Board review the appeal for additional details.

**Appeal Ground 1:** The parcel map is consistent with the General Plan. The appellant has referenced prior actions by the Board of Supervisors and argues that the RC zoning with the 10-acre parcel size is consistent with the Agricultural Watershed & Open Space (AWOS) land use designation.

**Staff response:**

(1) Documents submitted by the appellant show that County actions prior to 1991 found the underlying RC zoning consistent with the AWOS land use designation. Consistency was found in that both the zoning and the general

plan land use designation permitted or support residential uses. However, nothing in this consistency determination should be construed to permit action(s), as a subdivision of a 40 acre parcel, which conflict with the General Plan in force and effect at the time. Most importantly, to subdivide a 40-acre parcel would be inconsistent with the Napa County General Plan as it currently exists, regardless of the underlying RC zoning.

(2) Additionally, case Law has established that the General Plan is the guiding document when policies conflict [Leshner Communication vs. City of Walnut Creek; 52Cal.3D531 (1990)]

**Appeal Ground 2:** The General Plan Land Use map does not reflect the designation adopted by the County. The appellant has argued that the prior rezoning consistency hearings are not updated or indicated by this decision on the land use maps.

Staff response: The General Plan Land Use map shows the land use as AWOS, just as it did when the rezoning to RC was enacted in 1985. All subsequent amendments are shown on the land use map in a text box on the bottom right hand corner, clearly specifying the action date. The consistency determination referenced by the appellant was simply that, a consistency determination and did not affect a change to the General Plan or Land Use map.

**Appeal Ground 3:** A General Plan amendment and Measure J vote are not required. The appellant has argued that the current General Plan designation and the record for the Barthelemy property allow the RC zoned property to be subdivided. Measure J, did not affect or alter the previous determinations made by the County on the General Plan designation and consistency for the property.

Staff response: Based on staff's recommendation and the Planning Commission findings that the project is not consistent with the AWOS land use designation, the proposed project would require an amendment of the General Plan. This amendment would in turn require a Measure J vote of the electorate. Numerous General plan policies are referenced in the attached staff report that clearly specifies the minimum parcel size for the land use designation of AWOS is 160 acres. Since the proposed parcel size of the three parcels is less than the 160 acres as required in the General Plan land use designation of 160 acres, a General Plan amendment with a amendment Measure J vote is required.

## **RECOMMENDATIONS:**

- | DENIAL of the appeal, uphold the Planning Commission's decision based that the proposed subdivision is inconsistent with the General Plan, and noting that insufficient information has been received to make the other findings, under County Code Section 17.14.060.
- | The proposal is inconsistent with the General Plan and thus can not be approved despite the underlying RC zoning, unless the General Plan is amended. Yes, the Board found the RC zoning consistent with the AWOS land use designation in the General Plan , when it was rezoned, but this does not alter the General Plan land use destination which now requires 160 acre minimum parcel size. The more restrictive provision between the General Plan and zoning prevails.

## **SUPPORTING DOCUMENTS**

- A . Staff report
- B . Appeal
- C . Graphics

CEO Recommendation: Approve

Reviewed By: Andrew Carey