NAPA COUNTY BOARD OF SUPERVISORS
Board Agenda Letter

TO: Board of Supervisors
FROM: Gitelman, Hillary - Director
Conservation, Development & Planning
REPORT BY: John McDowell, Deputy Director - 299-1354
SUBJECT: Ordinance - Napa Industrial LLC Development Agreement

RECOMMENDATION

First and final reading and adoption of an ordinance approving a Development Agreement between the County of Napa and Napa Industrial LLC to facilitate development of a 646,734 sq. ft. warehouse on a 38 acre portion of a 218 acre property (APN 057-080-069) commonly referred to as the "Headwaters" property, consistent with the use permit and tentative map approvals granted by the Planning Commission on January 7, 2009. The property site is located to the south of the Napa County Airport, west of the Union Pacific railroad tracks, with an Industrial Park: Airport Compatibility (IP:AC) zoning district. APN 057-090-069, American Canyon.

ENVIRONMENTAL DETERMINATION: General Rule. It can be seen with certainty that there is no possibility the proposed action may have a significant effect on the environment and therefore CEQA is not applicable. [See guidelines For the Implementation of the California Environmental Quality Act, 14 CCR 15061(b)(3)]. Approval of the Development Agreement with Napa Industrial LLC will simply contractually vest development rights already in existence resulting from the prior approval of Use Permit #P07-00412UP and Tentative Parcel Map #P08-00131-PM. Those approvals were granted by the Planning Commission on January 7, 2009 following review under the California Environmental Quality Act (CEQA) via an Addendum to the Final EIR for the Beringer Wine Estates Devlin Road Facility (State Clearinghouse No. 00034043) certified on April 9, 2002. On January 7, 2009 the Planning Commission considered the Addendum, approved a Mitigation Monitoring Program, and reaffirmed and readopted both the CEQA Findings of Fact and Rationale and Statement of Overriding Considerations contained in Board of Supervisors Resolution No. 02-72.

(STAFF REQUESTS CONTINUANCE TO JULY 13, 2010 AT 11:30 AM)

EXECUTIVE SUMMARY

In January 2009, the Planning Commission approved Use Permit #P07-00412-UP and Tentative Parcel Map #P08-00131-PM for the Napa Commerce Center (i.e. Napa Industrial LLC). The approvals were associated with a
development proposal consisting of a 646,734 sq. ft. industrial warehouse building on a 38 acre portion of a 218 acre property located immediately south of the Napa County Airport and west of the Union Pacific railroad tracks within an Industrial Park: Airport Compatibility (IP:AC) zoning district. At the time of approval, there were strong indications that construction of the project would commence in the spring of 2009. However, construction did not commence as anticipated due to the current uncertainties in the financial and real estate markets and it is presently unclear when construction will proceed. The subject property is now under consideration for annexation into the City of American Canyon. Given these circumstances, Napa Industrial LLC has requested the County enter into a Development Agreement to vest the right to construct the project as approved. In return for the vested right, the Development Agreement would require Napa Industrial LLC to pay affordable housing fees to the County and implement all requirements of the use permit and tentative map even if annexation to the City of American Canyon occurs. Requirements of the project include: improvement of Devlin Road overcrossing of the Union Pacific railroad; provision of secondary access to the Napa County Airport; payment of traffic impact fees; and preservation and enhancement of on-site wetlands.

On June 2, 2010, the Planning Commission conducted a public hearing on the proposed ordinance and Development Agreement. The Commission unanimously (5-0) recommended that the Board of Supervisors adopt the ordinance and approve the Development Agreement, except with a 10 year term instead of the 20 year term requested by the applicant. Subsequent to the Commission's action, the Planning Department received a request from the City of American Canyon (attached) for some clarifications and changes to the agreement. Staff is requesting a continuance to allow for modification to the agreement responding to the City's comments. Re-referral to the Planning Commission is not required.

PROCEDURAL REQUIREMENTS

1. Open Public Hearing.
2. Staff Report.
3. Motion, second, discussion and vote to continue the hearing to July 13, 2010.

FISCAL IMPACT

Is there a Fiscal Impact?      No

ENVIRONMENTAL IMPACT

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BACKGROUND AND DISCUSSION

Under the provisions of Government Code Section 65864 et seq., local governments are authorized to enter into development agreements with any person having a legal or equitable interest in real property in order to add certainty to a development entitlement. In practice, development agreements are generally only used for larger projects that are anticipated to take multiple years to build out, such as for a master planned community. Development agreements are entered into voluntarily, but once executed the terms are a binding contract between the parties. The contract locks in applicable local rules and regulations at the time the agreement is executed unless otherwise specified in the agreement. In return for granting vested development rights, local agencies can request that such entitled projects include elements that exceed what could otherwise be required. Development agreements are adopted by ordinance, and must be consistent with the General Plan.

Development Agreement Commitments

The scope of commitments within this proposed development agreement are relatively small when compared to what would typically be contained within an agreement for a larger-scale, multi-phase project. Here, the developer is essentially asking for a guarantee to allow construction of a previously approved project at any point within the term of the agreement even if the site annexes to the City of American Canyon. In return, the developer would agree to construct the project in accordance with all the adopted conditions of approval including payment of the County’s Affordable Housing Fee. Other commitments benefitting the County and City included in the conditions of approval and the Development Agreement are: 1) construction of the Devlin Road bridge over the railroad tracks; 2) provision of a secondary access point to the Napa County Airport; 3) payment of traffic impact fees (either to the County or the City); and 4) implementation of the mitigation monitoring plan that includes the preservation and enhancement of wetlands and sensitive habitat on the property. The disposition and expenditure of the traffic impact fees (whether collected by the City or the County) would be governed by provisions of a 2008 agreement between the City and the County.

Annexation to City of American Canyon

The City of American Canyon is actively processing an application to annex the subject property and several surrounding properties into the City. The completion date for this annexation is not known, but given that it is actively being pursued, it is anticipated that it will be completed within the next year. Upon annexation, the Development Agreement would remain valid with the City being the successor entity to the County. Government Code Section 65865.3 outlines the rights and responsibilities of the City as the successor entity, but in short, the City must honor the agreement. The City has some limited ability to suspend or nullify the agreement if it is demonstrated that the agreement has adverse impacts on public health or safety, or creates conditions injurious to the City’s welfare.

County Staff, the applicant and the City’s Planning Director have been working together for the past several months on processing this application and an unrelated application to master plan the remainder of the 218 acre parcel. In March of this year, and prior to the City’s filing for annexation, the County accepted an application for the master plan on the remainder of the site. In April, a meeting occurred with City Staff, County Staff and the applicant in which it was agreed upon that the County would finish processing of the Development Agreement that is currently before the Board, but that the City would assume the lead agency role in processing the master plan for the remainder of the site. In May, the final draft of the Development Agreement was completed and referred to the City for comment. Comments were received on June 15, 2010 (attached), and are still being addressed in modifications to the agreement.

Public Comment
On June 2, 2010, the Planning Commission conducted a public hearing on the proposed ordinance and development agreement. No members of the public spoke during the Commission's public hearing other than applicant's representatives. The discussion centered over the term of the agreement. At the conclusion of the public hearing, the Commission unanimously (5-0) voted to recommend adoption of the ordinance by the Board of the Supervisors but amended the agreement to a 10-year term. That term amendment is reflected in the Development Agreement attached hereto, which does not yet include changes needed in response to the City of American Canyon's comments. Although no re-referral to the Planning Commission is required, staff is requesting that the Board open the noticed public hearing and then continue the hearing to July 13, 2010 at 11:30 AM so that additional, minor changes to the agreement can be incorporated.

SUPPORTING DOCUMENTS
A. Ordinance
B. Development Agreement
C. American Canyon Comments, June 10, 2010

CEO Recommendation: Approve
Reviewed By: Helene Franchi