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Agenda Date: 7/10/2012

Agenda Placement: 10B

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors  
**FROM:** Westmeyer, Robert - County Counsel  
County Counsel  
**REPORT BY:** Robert Westmeyer, County Counsel - 259-8245  
**SUBJECT:** Angwin General Plan Amendment Initiative; Receipt of 9111 Report

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### **RECOMMENDATION**

County Counsel requests that the Board take the following actions:

1. Receive from staff the report the Board ordered prepared pursuant to Section 9111 of the Elections Code discussing Measure "U" (the "Angwin General Plan Amendment Initiative"); and
2. Take one of the following actions:
  - a. Adopt the "Angwin General Plan Amendment Initiative" without alteration at a regular or special meeting of the Board on or before July 20, 2012; or
  - b. Adopt a resolution placing the "Angwin General Plan Amendment Initiative" on the ballot of the next statewide general election which is scheduled to be held on November 6, 2012, for the purpose of enabling the people of Napa County to approve or reject the Initiative.
3. Determine whether or not the Board desires to have an argument filed for or against the Angwin General Plan Amendment Initiative by:
  - a. The Board; or
  - b. A member or members of the Board.

### **EXECUTIVE SUMMARY**

The "Angwin General Plan Amendment Initiative" petition was circulated for signatures beginning in early May 2012 and has qualified for the ballot. If adopted by the Board of Supervisors or placed on the ballot and passed by the voters, the Initiative would amend the General Plan governing land use and development decisions in unincorporated Napa County. Specifically, the Initiative would (a) amend the Land Use Map of the County (General Plan Figure AG/LU-3) on page AG/LU-67 of the General Plan, (b) amend the detailed map of Angwin on page AG/LU-31 of the General Plan, (c) amend General Plan Policy AG/LU-20 describing uses and intensities in the Agriculture, Watershed and Open Space (AWOS) land use designation, and (d) amend General Plan Policy AG/LU-

53 describing the uses and intensities in the Public-Institutional land use designation.

When an initiative is circulated for signatures, Section 9111 of the California Elections Code authorizes a County Board of Supervisors to request a report regarding the potential impacts of the initiative prior to deciding whether to adopt the initiative or to order an election. On June 5, 2012, the Napa County Board of Supervisors received correspondence from an affected property owner and the initiative proponents and requested that County staff prepare an analysis of the proposed initiative. The Board's request specified the topics that should be covered in the analysis, and indicated that the report should be prepared for presentation to the Board at its regularly scheduled meeting of August 7, 2012.

On June 19, 2012, the Registrar of Voters certified that sufficient signatures had been gathered, which was earlier than originally anticipated, and the Board accepted the certification of the Registrar of Voters at their meeting of June 26, 2012. The Registrar's certification confirmed that the Angwin General Plan Amendment Initiative petition submitted by the proponents was signed by a sufficient number of voters to qualify for the ballot and required that the Section 9111 report be presented to the Board prior to July 26, 2012 (30 days after the Board's acceptance of certification). The Section 9111 report was prepared by County staff with the assistance of outside legal counsel, and will be completed and transmitted to the Board and other interested parties prior to the meeting on July 10, 2012, which is the Board's last regular meeting before July 26, 2012.

Following presentation of the Section 9111 report to the Board, the Board is required to either (1) adopt the attached Angwin General Plan Amendment Initiative on or before July 20, 2012 or (2) adopt the attached resolution which will place the matter on the November 6, 2012 ballot and provide the voters with the opportunity to approve or reject the Angwin General Plan Amendment Initiative. If option #1 is selected the Angwin General Plan Amendment Initiative must be adopted without alteration. Adopting the attached Angwin General Plan Amendment Initiative, which has been reformatted in the form of the usual resolution the Board adopts when adopting an amendment to the General Plan, will comply with this requirement. If option #2 is selected, adopting the attached resolution would place the Initiative on the ballot. This resolution will need to be amended if the Board decides that the full text of the initiative should not be included in the sample ballot, and/or that a 500 word fiscal analysis should be included in the sample ballot. Alternative resolution language is provided in Attachment C.

### **Procedural Requirements:**

#### **PART I (Accept 9111 Report and Call Election or Adopt Initiative)**

1. The Chair announces the agenda item.
2. The staff reports on the item.
3. The Chair invites public comments.
4. Discussion by the Board.
5. A member of the Board of Supervisors makes a motion to accept the 9111 Report and implement one of the two alternative actions.
6. A different member of the Board of Supervisors seconds the motion.
7. Board discussion and debate on the motion.
8. The Chair call for the vote. If roll call vote is requested by any member of the Board of Supervisors, the Clerk calls the roll.
9. The Chair announces the result of the vote.

#### **PART II (Prepare Argument For or Against Initiative)**

1. The Chair announces the second part of the agenda item.
2. The staff reports on the item.

3. The Chair invites public comments.
4. Discussion by the Board.
5. A member of the Board of Supervisors makes a motion regarding preparation of an argument for/against or authorizing a member or members of the Board to file an argument for/against.
6. A different member of the Board of Supervisors seconds the motion.
7. Board discussion and debate on the motion.
8. The Chair call for a vote.
9. The Chair announces the result of the vote.

### **FISCAL IMPACT**

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
What is the revenue source?	<p>General Fund - adding this measure to the November 6, 2012 ballot will result in the Elections Division of the County Clerk's Office incurring approximately \$2,500 in costs due to including Measure "U" on the ballot along with related official election materials [i.e. the General Plan Amendment, the Impartial Analysis, and any arguments for/against that might be filed (and rebuttals if permitted)]. There will also be a cost of less than \$1,000 to prepare the required Impartial Analysis.</p> <p>Additional minimal costs will be incurred by the County Executive Office and Conservation Development and Planning Departments preparing an argument for or against (and rebuttal if permitted) for the Board's review should the Board decide to file an argument for or against (and a rebuttal if permitted).</p>
Is it Mandatory or Discretionary?	Mandatory
Is the general fund affected?	Yes
Future fiscal impact:	It is possible certain aspects of the Angwin General Plan Amendment Initiative might be litigated if the Measure passes and the County defends the Initiative. Additionally if the voters approve these changes, additional elections might be held to overcome the restrictions imposed by the Angwin General Plan Amendment Initiative which will impact the county from a fiscal standpoint. Both of these possibilities are too speculative to be discussed further at the present time. In any event, as described elsewhere in the agenda item, the Board does not have the discretion to refuse to act. The Board is required to adopt the Angwin General Plan Amendment Initiative or order an election.
Consequences if not approved:	The Board of Supervisors will be in violation of its mandatory duty to either adopt the Angwin General Plan Amendment Initiative on July 10, 2012 (or within 10 days of July 10, 2012) or immediately order that an election be held on the Angwin General Plan Amendment Initiative. There are no other options since this is a citizen signature driven initiative.
Additional Information:	None

**ENVIRONMENTAL IMPACT**

**ENVIRONMENTAL DETERMINATION:** Exempt from environmental review regardless regardless of the Board's decision. Calling an election required to be held as a result of the gathering of sufficient signatures pursuant to Elections Code section 9118 is a ministerial act and therefore not subject to CEQA [*Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 189]. Alternatively, adopting an initiative ordinance in lieu of calling an election is also deemed a ministerial act and not subject to CEQA [*Native American Sacred Site and Environmental Protection Association et al. v. City of San Juan Capistrano* (2004) 120 Cal.App.4th 961, 969].

**BACKGROUND AND DISCUSSION**

An initiative has been filed with the Registrar of Voters (hereafter the "ROV") commonly referred to as the "Angwin General Plan Amendment Initiative" (hereafter the "Angwin GPA"). The Angwin GPA would do all of the following:

1. Change the General Plan land use designation for one area in Angwin from Urban Residential to Public-Institutional;
2. Change the General Plan land use designation for two additional areas in Angwin from Urban Residential to Agricultural, Watershed and Open Space;
3. Permit modernization and expansion of the existing sewage treatment facility located on one of the subject parcels on the west side of Howell Mountain Road despite the Agriculture, Watershed and Open Space designation; and
4. Prohibit further subdivision of parcels designated Public-Institutional.

The proponents of the Angwin GPA filed their notice of intention to circulate an initiative petition with the Registrar of Voters on April 26, 2012. The required ballot title and summary was prepared and provided to the Registrar on May 3, 2012. The ballot title and summary were provided to the proponents of the Angwin GPA on May 3, 2012. The proponents of the Angwin GPA published their notice of intention to circulate an initiative petition and the ballot title and summary, as required by subparagraph (b) of Elections Code section 9105, on May 4th, 5th and 6th 2012, and proof of publication was filed with the Registrar of Voters on May 7, 2012.

The 180 day period within which the proponents were required to submit the necessary signatures to the Registrar of Voters commenced on May 4, 2012. The signed sections of the Angwin GPA initiative petition were filed with the Registrar on May 23, 2012, which was well within the 180 day timeframe.

The Registrar of Voters was required to examine the Angwin GPA signatures and certify them as sufficient or insufficient within 60 days of May 23, 2012, excluding Saturdays, Sundays and holidays due to the failure of the initiative to qualify based on a random sampling of signatures (Elections Code section 9115). After completing his examination of the signatures without using the random sampling method (Elections Code section 9114) the Registrar concluded that the Angwin GPA signatures were sufficient in that there were signatures of registered voters representing at least 10 percent of the entire vote cast in Napa County for all candidates for Governor at the last gubernatorial election. The Registrar also concluded that the gross number of signatures submitted did not equal more than 20 percent of the entire vote cast in Napa County for all candidates for Governor at the last gubernatorial election. Therefore the next steps in the initiative process are found in Elections Code Section 9118.

The Registrar of Voters' certificate showing the sufficiency of the Angwin GPA was prepared and submitted to the

Clerk of the Board of Supervisors on June 19, 2012. The Elections Code requires the Clerk of the Board, upon receipt of an initiative certification by the Registrar, to place the certification on the agenda of the next regular meeting of the Board of Supervisors which was June 26, 2012. On June 26, 2012 the Board received and ordered its clerk to file the Registrar of Voters' certificate.

As noted elsewhere in this agenda item, Elections Code Section 9118 outlines the steps the Board is required to take if an initiative petition is signed by at least 10 percent but not more than 20 percent of the entire vote cast in Napa County for all candidates for Governor at the last gubernatorial election preceding the publication of the notice of intent to circulate an initiative. In such a case the Board is required to take one of the following actions:

1. Adopt the initiative without alteration within 10 calendar days of the date of the meeting at which the certificate of sufficiency is presented, or
2. Submit the initiative to the voters without alteration at the next statewide election occurring not less than 88 days after the date of the order of the election, or
3. Order a report discussing various impacts the passage of the initiative might have.

In this case, the Board ordered the preparation of a 9111 Report prior to the certification of signatures by the Registrar of Voters and identified what issues it wished discussed in the report at the meeting of June 5, 2012. Each of the issues the Board wished to be discussed in the 9111 Report are included in a 9111 Report that has been prepared by County staff and outside legal counsel. (The Report will be transmitted to the Board and interested parties in advance of the Board's July 10, 2012 hearing but could not be attached to this agenda item due to time constraints.)

At the meeting at which the 9111 report is presented to the Board, the Board is required by Elections Code section 9118 to take one of the following actions:

1. Adopt the Angwin General Plan Amendment Initiative without alteration on July 10, 2012 or within 10 calendar days of July 10, 2012, or
2. Submit the Angwin General Plan Amendment Initiative to the voters without alteration at the next statewide election occurring not less than 88 days after the date of the order of the election.

#### Ballot Question.

If an election is called the question to be placed on the ballot will read as follows:

"Shall the Angwin General Plan Amendment Initiative be adopted? (The Initiative, if approved by the voters, would redesignate certain lands in Angwin from Urban Residential to Agricultural, Watershed and Open Space (AWOS) or Public Institutional, permit modernization and expansion of an existing sewage treatment facility west of Howell Mountain Road despite its AWOS designation, and prohibit further subdivision of Public Institutional Lands countywide)"

#### Fiscal Analysis To Be Included In the Official Ballot Materials

In addition to the "9111 report" described above, subparagraph (c) of Elections Code section 9160 authorizes the Board, but does not require the Board, to order the County Auditor to prepare a fiscal analysis. That fiscal analysis is limited in content and length because is it part of the official ballot materials that will be sent to each voter.

Subparagraph (c) of Elections Code section 9160 provides that not later than 88 days prior to an election that includes a county ballot measure, the board of supervisors may direct the county auditor to review the measure

and determine whether the substance thereof, if adopted, would affect the revenues or expenditures of the county. The fiscal impact statement shall estimate the amount of any increase or decrease in revenues or costs to the county if the proposed measure is adopted. The fiscal impact statement is "official matter" within the meaning of Section 13303, and shall be printed preceding the arguments for and against the measure. The fiscal impact statement may not exceed 500 words in length.

Historically, the Board has not required the preparation of a fiscal analysis and therefore county resolutions calling these types of elections expressly provide that such an analysis is not required. If the Board after review of the 9111 Report determines to order an election, and wishes a fiscal analysis included in the Official Ballot materials each voter will receive, the Board should so indicate and the resolution calling the election will need to include such a requirement. That change can easily be made at the hearing on this matter before a motion to adopt the resolution is considered by replacing the language currently in the resolution calling the election with the language contained in Exhibit "C". See 4th full paragraph on page 4 of the attached proposed Resolution calling the election.

The Board has ordered a fiscal analysis as part of the Section 9111 report. However neither that fiscal analysis nor the other materials contained in the 9111 Report are official ballot materials and therefore cannot be included in the voter information packet that each voter receives prior to an election. That fact should be taken into consideration in determining whether or not to require the Auditor to provide a fiscal analysis pursuant to subparagraph (c) of Elections Code section 9160

#### Printing the Entire Text of Measure "U" in the Sample Ballot.

The Board some years ago decided to routinely print the entire text of initiatives in the official ballot materials. As a result of that decision every resolution that is prepared calling an local county election provides that the entire text of the initiative will be printed in the official ballot materials. Printing the entire text of initiatives in the official ballot materials is not required, however, and thus the Board has the option of not doing so in the case of the Angwin GPA if it wishes. If the Board decides that the entire text of the Angwin GPA should not be printed in the official ballot materials, it should amend the attached resolution calling the election. That change can easily be made at the hearing on this matter before a motion to adopt the resolution is considered by replacing the language currently in the resolution requiring the full text of the Angwin GPA to be included in the official ballot materials with the language contained in Exhibit "C". See 5th full paragraph on page 4 of the attached proposed Resolution calling the election.

#### Filing Arguments For/Against Measure "U"

Elections Code section 9162 provides that any of the following persons or groups may file a written argument for or against any county measure:

1. Board of Supervisors; or
2. Any member or members of the Board authorized by the Board; or
3. Any individual voter who is eligible to vote on the measure; or
4. Any bona fide association of citizens, or any combination of these voters and associations.

However, only one Argument in Favor and one Argument Against may be included in the official ballot materials. Section 9166 provides that the Board's argument, or an argument filed by a member or members of the Board authorized by the Board, have priority should the Board wish to file an argument by one of these two methods. Similarly, the Board (or the Board members authorized by the Board to file an argument) would be able to file a rebuttal if a rebuttal is permitted since only those persons or entities who filed the argument in favor or against are permitted to file (or authorize someone else to file) a rebuttal.

Therefore, if the Board wishes to develop an argument for or against Measure "U" that will have priority insofar as inclusion in the Official Ballot Materials is concerned, it has two choices:

(1) The Board may direct staff to prepare an argument for or against Measure "U" to be presented to and adopted by the Board at its August 7, 2012 meeting; or

(2) The Board may authorize any member or members of the Board to prepare and file an argument for or against Measure "U" on or before 4:30 p.m. on August 17, 2012.

The deadline for submitting arguments for or against Measure "U", which is 4:30 p.m. on August 17, 2012, is driven by the printing schedule of the official ballot materials for the statewide presidential general election. For this reason, the deadline is absolute and cannot be extended.

### **SUPPORTING DOCUMENTS**

- A . Resolution Calling Election (Angwin GPA)
- B . Adoption of Angwin GPA in Lieu of Conducting an Election
- C . Revisions to Resolution Calling Election (Angwin GPA)
- D . Angwin General Plan Initiative To Be Included in Official Ballot Materials

CEO Recommendation: Approve

Reviewed By: Helene Franchi