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Agenda Date: 11/16/2011

Agenda Placement: 9A

## Napa County Planning Commission Board Agenda Letter

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**TO:** Napa County Planning Commission  
**FROM:** John McDowell for Hillary Gitelman - Director  
Conservation, Development & Planning  
**REPORT BY:** Hillary Gitelman, Director - 253-4805  
**SUBJECT:** Landmark Preservation Ordinance Update

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### **RECOMMENDATION**

#### **LANDMARK PRESERVATION ORDINANCE UPDATE, COUNTY-INITIATED ZONING TEXT AMENDMENTS P10-00377-ORD**

**CEQA Status:** In accordance with CEQA and the State CEQA Guidelines (Sections 15168), the County is proposing to use the program level Environmental Impact Report (EIR) for the General Plan Update (SCH# 2005102088, certified June 2008) as the EIR for the Landmark Preservation Ordinance Update. As discussed in a memorandum and checklist (initial study) dated August 15, 2011 and a supplemental memorandum dated November 4, 2011, this approach is consistent with CEQA and the State CEQA Guidelines because (1) the proposed update is within the scope of the General Plan approved in 2008, and (2) the program EIR prepared for the General Plan Update adequately describes the activity for purposes of CEQA. In addition, (3) the County has not identified any changes in the General Plan, changes in circumstances under which the General Plan Update was adopted, or new information of substantial importance that would necessitate subsequent environmental review pursuant to CEQA Guidelines Section 15162. A copy of the General Plan Update EIR may be reviewed during business hours at the offices of the Department of Conservation, Development and Planning, 1195 Third Street in Napa or on the County's website at <http://www.countyofnapa.org/Planning/>.

**Request:** Report to the Board of Supervisors regarding the Board's requested modifications to an ordinance recommended for their adoption on September 7, 2011, and recommend adoption of two County-sponsored ordinances. The first ordinance would designate a list of six "landmarks of special significance" which may be reused for their historic use(s) if their owner(s) obtain a use permit following site-specific environmental review. The second ordinance would allow the same listed "landmarks of special significance" to be reused for a compatible new use under the same conditions. As proposed, possible commercial uses would be limited. Historic uses could not include illegal uses such as gambling, and compatible new uses could only include uses that are permitted in the County's Commercial Limited (CL) and Commercial Neighborhood (CN) zoning districts. Both ordinances would implement an action item included in the General Plan Update of 2008.

**Titles of Ordinances:**

1. AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NAPA, STATE OF CALIFORNIA, AMENDING CHAPTER 15.52 (LANDMARK PRESERVATION) AS IT RELATES TO THE DESIGNATION AND USE OF LANDMARKS OF SPECIAL SIGNIFICANCE IN NAPA COUNTY AND ADDING NEW SECTIONS 18.104.430 (NAPA COUNTY LANDMARKS OF SPECIAL SIGNIFICANCE -- FINDINGS) AND 18.132.065 (NAPA COUNTY LANDMARKS OF SPECIAL SIGNIFICANCE -- USE AND CONTINUANCE)
2. AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NAPA, STATE OF CALIFORNIA, AMENDING SECTION 15.52.040 (DESIGNATED LANDMARKS, FARM CENTERS, AND LANDMARKS OF SPECIAL SIGNIFICANCE - USE CONDITIONS), SECTION 18.104.430 (NAPA COUNTY LANDMARKS OF SPECIAL SIGNIFICANCE - FINDINGS) AND SECTION 18.132.065 (NAPA COUNTY LANDMARKS OF SPECIAL SIGNIFICANCE – USE AND CONTINUANCE)

**Staff Recommendation:** Recommend that the Board of Supervisors find that the proposed project falls within the scope of the General Plan Program EIR and adopt both proposed ordinances.

**Staff Contacts:** Linda St. Claire, 299-1348, linda.stclaire@countyofnapa.org or Hillary Gitelman, 253-4805. hillary.gitelman@countyofnapa.org.

### **EXECUTIVE SUMMARY**

**Proposed Action:** That the Planning Commission report to the Board of Supervisors regarding the Board's requested changes to an ordinance that was recommended to the Board for adoption on September 7, 2011 and recommend that the Board of Supervisors:

1. Find the proposed project within the scope of the General Plan Update program-level EIR for the reasons stated in the accompanying memo and initial study; and
2. Adopt the two proposed ordinances.

**Discussion:** On September 7, 2011, the Planning Commission considered a project called the Landmark Preservation Ordinance Update consisting of two ordinances and one resolution. After a public hearing, the Commission recommended that the Board adopt both ordinances and the resolution. At a noticed public hearing on October 18, 2011, the Board of Supervisors adopted the first ordinance, updating the procedures and standards for the preservation and rehabilitation of historic buildings when property owners voluntarily apply for landmark designation and providing incentives for landmark designation and rehabilitation/reuse of certain types of historic buildings. The Board of Supervisors also adopted the recommended resolution establishing a Mills Act program. However the Board requested changes to the second ordinance concerning the reuse of historic commercial and resort properties as follows:

- Include a specific list of historic commercial/resort properties within the ordinance so there is no uncertainty as to which resources will qualify for reuse;
- Allow the listed resources to be reused for their historic use(s), and not for uses allowed in the CL and CN zoning districts; and
- Prepare a separate ordinance for the Board's consideration that would allow the listed resources to be reused for other commercial uses (i.e. not just their historic uses).

The Board also requested that County Counsel provide additional legal analysis and that a proposed General Plan amendment be prepared for placement on the ballot with the second ordinance if staff determines that the ordinance cannot be adopted without voter approval pursuant to Measure P (2009).

Pursuant to Napa County Code Section 18.136.070, when the Board requests changes to an ordinance that the Planning Commission has not considered, it must refer the changes back to the Planning Commission for a report and recommendation, which must be provided within 40 days. While Section 18.136.070 does not require that the Commission hold a public hearing on the requested changes, Planning Staff has noticed this item for a public hearing and recommends that the Planning Commission treat it as such. Staff will transmit the Planning Commission's report and recommendations to the Board of Supervisors in writing so as to meet the 40 day deadline (November 28). The Board of Supervisors is scheduled to hold a noticed public hearing on the proposed ordinances at 10:15 AM on December 6, 2011.

Both proposed ordinances would implement Action Item CC-28.1 included in the General Plan Update of 2008 which calls on the County to establish a discretionary process whereby owners of qualified historic buildings within agricultural areas of the County may apply for permission to reuse their building for their historic use or a compatible new use as long as the use is compatible with agriculture and the historic building is rehabilitated and maintained in conformance with the U.S. Secretary of the Interior's Standards.

### **FISCAL IMPACT**

Is there a Fiscal Impact?                      No

### **ENVIRONMENTAL IMPACT**

ENVIRONMENTAL DETERMINATION: In accordance with CEQA and the State CEQA Guidelines (Sections 15168), the County is proposing to use the program level Environmental Impact Report (EIR) for the General Plan Update (SCH# 2005102088, certified June 2008) as the EIR for the Landmark Preservation Ordinance Update. As discussed in a memorandum and checklist (initial study) dated August 15, 2011 and a supplemental memorandum dated November 4, 2011, this approach is consistent with CEQA and the State CEQA Guidelines because (1) the proposed update is within the scope of the General Plan approved in 2008, and (2) the program EIR prepared for the General Plan Update adequately describes the activity for purposes of CEQA. In addition, (3) the County has not identified any changes in the General Plan, changes in circumstances under which the General Plan Update was adopted, or new information of substantial importance that would necessitate subsequent environmental review pursuant to CEQA Guidelines Section 15162. A copy of the General Plan Update EIR may be reviewed during business hours at the offices of the Department of Conservation, Development and Planning, 1195 Third Street in Napa or on the County's website at <http://www.countyofnapa.org/Planning/>.

### **BACKGROUND AND DISCUSSION**

On October 18, 2011, the Napa County Board of Supervisors conducted a public hearing concerning two ordinances and one resolution collectively referred to as the Landmark Preservation Ordinance Update. The two ordinances and one resolution had been recommended by the Planning Commission following a public hearing on September 7, 2011 and were the result of six months of effort that began on March 2, 2011 when the Planning Commission conducted a public hearing on a proposal to update the County's Landmark Preservation Ordinance. At that time, the Planning Commission requested changes to a draft ordinance prepared by staff, indicating that the ordinance should be revised so that it would offer more preservation incentives to more qualified historic resources, rather than offering incentives to just two specific properties as a "test" of the program called for in General Plan Action Item CC-28.1.

At the Board meeting on October 18, 2011, the Board of Supervisors adopted the resolution creating a Mills Act tax incentive program for qualified historic resources, and adopted the first proposed ordinance, which contained standards and procedures for designating Napa County Landmarks, allowed for the use of five farm centers and grange halls identified by name, and provided incentives for the designation and rehabilitation/reuse of certain types of historic buildings (e.g. residences, barns, etc.). The Board of Supervisors declined to adopt the second ordinance forwarded by the Planning Commission, and instead requested modifications that have been referred back to the Planning Commission for a report and recommendations. As originally proposed, the second ordinance would have applied to properties that contain historic buildings that were first constructed and used as commercial buildings or resorts, and allowed owners to apply for a use permit to reuse the historic buildings for their historic use or uses allowed in the Commercial Limited (CL) or Commercial Neighborhood (CN) zoning districts.

### Board of Supervisors Requested Changes

As indicated in the Executive Summary, above, the Board of Supervisors requested changes to the second ordinance concerning the reuse of historic commercial and resort properties as follows:

- Include a specific list of historic commercial/resort properties within the ordinance so there is no uncertainty as to which resources will qualify for reuse;
- Allow the listed resources to be reused for their historic use(s), and not for uses allowed in the CL and CN zoning districts; and
- Prepare a separate ordinance for the Board's consideration that would allow the listed resources to be reused for other commercial uses (i.e. not just their historic uses).

The Board also requested that County Counsel provide additional legal analysis and that a proposed General Plan amendment be prepared for placement on the ballot with the second ordinance if County Counsel determines that the ordinance cannot be adopted without voter approval pursuant to Measure P (2009). See the General Plan and Measure P discussions below for more information.

### Proposed Ordinances

As requested by the Board of Supervisors, the second ordinance considered by the Planning Commission on September 7th and the Board on October 18th has now been split into two separate ordinances. The first would allow the owners of specific historic resources identified as "landmarks of special significance" to apply for a use permit to allow the buildings to be reused for their historic use(s). There are six buildings included on the list, all of which were constructed for commercial or resort purposes, and are deemed to be "at risk" if a commercially viable reuse cannot be identified:

1. 3413 N. St. Helena Highway
2. Aetna Springs Resort
3. Napa Soda Springs Resort
4. Pope Valley Store
5. Rutherford Depot
6. Walter Springs

(A certified letter has been sent to the owners of those buildings on this list who have not already contacted the County, seeking their input on the listing. It is also possible that other property owners will present the Commission with evidence or evaluations supporting inclusion of their properties.)

To benefit from the first proposed ordinance, owners of the listed properties would have to apply for a use permit,

and satisfy the standard use permit findings plus six special use permit findings and site-specific environmental review. The intensity of proposed uses would be limited by the size of the extant historic buildings (additions could not exceed 500 square feet), the requirement that changes conform with the Secretary of the Interior's Standards for preservation projects, and any specific site constraints related to available water supplies, wastewater treatment capacity, available parking areas, and access.

Planning staff believes that this first ordinance would offer a reasonable incentive for the preservation and reuse of all of the listed buildings except for the Rutherford Depot, which was historically constructed and used as a train station. As a result, the second ordinance has been proposed such that the same list of "landmarks of special significance" could be reused for compatible new commercial uses as well as their historic use(s). In both ordinances, allowed uses would be limited in some way. In the first case, historic uses could not include illegal uses such as gambling and prostitution. In the second case, compatible new uses could only include uses that are allowed in the County's Commercial Limited (CL) and Commercial Neighborhood (CN) zoning districts. Copies of the proposed ordinances (in tracked changes) are attached for the Commission's review and reference.

### CEQA Compliance

In accordance with CEQA and the State CEQA Guidelines (Sections 15168), the County is proposing to use the program level Environmental Impact Report (EIR) for the General Plan Update (SCH# 2005102088, certified June 2008) as the EIR for the Landmark Preservation Ordinance Update. As discussed in a separate memorandum and checklist (initial study) dated August 15, 2011 and a supplemental memorandum dated November 4, 2011, this approach is consistent with CEQA and the State CEQA Guidelines because (1) the proposed update is within the scope of the General Plan approved in 2008, and (2) the program EIR prepared for the General Plan Update adequately describes the activity for purposes of CEQA. In addition, (3) the County has not identified any changes in the General Plan, changes in circumstances under which the General Plan Update was adopted, or new information of substantial importance that would necessitate subsequent environmental review pursuant to CEQA Guidelines Section 15162. A copy of the General Plan Update EIR may be reviewed during business hours at the offices of the Department of Conservation, Development and Planning, 1195 Third Street in Napa or on the County's website.

### General Plan and Zoning Consistency

The County's General Plan includes a number of policies encouraging the preservation of historic resources. These policies support the identification and preservation of resources from Napa County's historic and prehistoric periods (Policy CC-19), and encourage the County to offer incentives for the appropriate rehabilitation and reuse of historic buildings. The proposed ordinances and resolution advance the following goals and policies of the Napa County General Plan:

- Goal CC-4: Identify and preserve Napa County's irreplaceable cultural and historic resources for present and future generations to appreciate and enjoy.
- Policy CC-18: Significant historical resources are buildings, structures, districts, and cultural landscapes that are designated Napa County Landmarks or listed in or eligible for listing in either the National Register of Historic Places or the California Register of Historic Resources. Owner consent is a prerequisite for designation as a County Landmark.
- Policy CC-19: The County supports the identification and preservation of resources from the County's historic and prehistoric periods.
- Action Item CC-19.2: Consider amendments to the County zoning and building codes to improve the procedures and standards for property owner-initiated designation of County Landmarks, to provide for the preservation and appropriate rehabilitation of significant resources, and to incorporate incentives for historic preservation.
- Policy CC-24: Promote the County's historic and cultural resources as a means to enhance the County's

identity as the nation's premier wine country and a top tourist destination, recognizing that "heritage tourism" allows tourists to have an authentic experience and makes good business sense.

- Goal CC-5: Encourage the reuse of historic buildings by providing incentives for their rehabilitation and reuse.
- Policy CC-26: Projects which follow the Secretary of the Interior's Standards for Preservation Projects shall be considered to have mitigated their impact on the historic resource.
- Policy CC-28: As an additional incentive for historic preservation, owners of existing buildings within agricultural areas of the County that are either designated as Napa County Landmarks or listed in the California Register of Historic Resources or the National Register of Historic Places may apply for permission to reuse these buildings for their historic use or a compatible new use regardless of the land uses that would otherwise be permitted in the area so long as the use is compatible agriculture, provided that the historic building is rehabilitated and maintained in conformance with the U.S. Secretary of the Interior's Standards for Preservation Projects. This policy recognizes that, due to the small number of existing historic building in the County and the requirement that their historic reuse be compatible with agriculture, such limited development will not be detrimental to the Agriculture, Watershed or Open Space policies of the General Plan. Therefore, such development is consistent with all of the goals and policies of the General Plan.

An expanded evaluation of General Plan consistency is provided in an attached memorandum dated October 11, 2011 and further discussed in the memorandum dated November 4, 2011 responding to Farm Bureau comments.

Since the Board of Supervisors hearing on October 18, 2011 and in making requested revisions to the proposed ordinance, Planning staff has again assessed the issue of General Plan conformity, and believes that the proposed ordinances can be adopted without a General Plan amendment. Specifically, while the ordinances would allow uses that are not expressly permitted by Policies AG/LU-20 and 21, there are other uses allowed by the General Plan that these policies do not mention, and thus the proposed ordinances would not constitute a fatal contradiction of a "mandatory" policy. Also, while the ordinances may not be consistent with Policy AG/LU-12, they would expressly implement Policy CC-28 and can be found to be "on balance" consistent with the General Plan as a whole. Ultimately it is up to the Board of Supervisors to determine whether they agree.

#### Measure P

County staff has evaluated the proposed ordinances for conformance with Measure P, which was adopted by county voters in 2009 as an extension of Measure J (1990). Measure P requires voter approval if the Board of Supervisors wishes to redesignate land that is currently designated for agriculture on the General Plan Land Use Map or if the Board wishes to amend the policies in the General Plan which establish the uses and intensity of uses allowed in agricultural areas. (See the text of Measure P attached.) The proposed ordinances would not require redesignation of land or amendment of the General Plan, and thus voter approval is not required. Please also refer to staff's memorandum dated November 4, 2011 responding to the letter submitted on behalf of the Farm Bureau by Professor Daniel Selmi on October 17, 2011, which is also attached.

#### **SUPPORTING DOCUMENTS**

- A . Ordinance (List of Landmarks)
- B . Ordinance (Commerical Use)
- C . General Plan Consistency Memo October 11, 2011
- D . Selmi-Farm Bureau Letter - October 17, 2011

E . Response to Selmi-Farm Bureau Letter - November 4, 2011

F . CEQA Memo & Checklist, August 15, 2011

G . Text of Measure P (2009)

H . Comment Letter

Napa County Planning Commission: Approve

Reviewed By: John McDowell