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Agenda Date: 4/21/2010

Agenda Placement: 9A

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission

FROM: John McDowell for Hillary Gitelman - Director
Conservation, Development & Planning

REPORT BY: Chris Cahill, Planner - 707.253.4847

SUBJECT: 2009-2010 Winery-related Zoning Ordinance Amendments and Associated Interpretive Guidance, County-initiated Zoning Code Text Amendment No. P10-00098-ORD

RECOMMENDATION

2009-2010 WINERY-RELATED ZONING ORDINANCE AMENDMENTS and ASSOCIATED INTERPRETIVE GUIDANCE RESOLUTION, COUNTY-INITIATED ZONING CODE TEXT AMENDMENT No. P10-00098-ORD

CEQA Status: Negative Declaration Prepared. According to the proposed negative declaration, the project would not have any potentially significant environmental impacts. This project is applicable to all parcels zoned and sized to allow wine production, a number of which are included on the lists of hazardous waste sites enumerated under Government Code §65962.5.

Request: County-sponsored ordinance to: 1.) amend Napa County Code §18.08.370 "Marketing of wine," to clarify existing limitations on where, when, how, and for whom allowed winery marketing may occur; 2.) amend Napa County Code §18.08.620 "Tours and tastings," to clarify existing limitations on food and wine pairings at wineries; and 3.) amend §18.16.030 (H) and §18.20.030 (J) to allow the sale of wine related products as a winery-accessory use within the AP (Agricultural Preserve) and AW (Agricultural Watershed) zoning districts. The project also includes adoption of a resolution establishing interpretive guidance related to winery activities within the AP and AW zoning districts.

Proposed Zoning Ordinance text amendments and associated policy interpretations would apply to unincorporated areas countywide, and in particular to those parcels zoned and sized to allow wine production. In staff's view, the proposal would update but not substantively change provisions of the Winery Definition Ordinance (WDO) adopted in 1990.

Ordinance Title: *AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NAPA, STATE OF CALIFORNIA, AMENDING SECTIONS 18.08.370, 18.08.620, 18.16.030, AND 18.20.030 OF THE COUNTY CODE AS THEY RELATE TO THE MARKETING OF WINE, FOOD AND WINE PAIRINGS CONDUCTED AS PART OF TOURS AND TASTINGS AND THE MARKETING OF WINE RELATED PRODUCTS PERMITTED AT WINERIES IN THE AGRICULTURAL PRESERVE (AP) AND AGRICULTURAL WATERSHED (AW) ZONING DISTRICTS.*

Resolution Title: *A RESOLUTION OF THE NAPA COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF NAPA, STATE OF CALIFORNIA, ESTABLISHING INTERPRETIVE GUIDANCE ON MARKETING ACTIVITIES FOR WINERIES.*

Staff Recommendation: That the Planning Commission conduct a public hearing and recommend that the Board of Supervisors adopt the proposed negative declaration, adopt the proposed ordinance, and adopt the proposed resolution.

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EXECUTIVE SUMMARY

Proposed Action:

That the Planning Commission:

1. Recommends Board of Supervisors adoption of the proposed negative declaration, finding that the proposed ordinance and resolution would have no potentially significant environmental impacts.
2. Recommends Board of Supervisors adoption of the proposed ordinance, finding that the proposed ordinance is consistent with the Napa County General Plan, and does not result in internal inconsistencies within Napa County zoning regulations.
3. Recommends Board of Supervisors adoption of the proposed resolution, finding that it would interpret and not conflict with provisions of the ordinance.

Discussion:

On March 2, 2010, the Napa County Board of Supervisors considered four separate proposals addressing winery-related sections of the County Code and those activities allowed at wineries under the definition of "marketing of wine" first adopted in 1990. Similar proposals were considered by the Planning Commission at their hearing on February 17, 2010.

At the close of their March meeting, the Board directed staff to prepare an ordinance for consideration by the Planning Commission and the Board that would adopt certain limited wording changes agreed upon by wine industry interest groups (called "Proposal 1"). The Board also directed staff to prepare a draft resolution that would provide interpretive guidance regarding the definition of "marketing of wine" similar in some ways to the official "design manual," which provides interpretive guidance for the County's N.C.C. Chapter 18.106 Viewshed Protection Program (called "Proposal 2"). The Board elected not to proceed with a separate special event permit process (called "Proposal 3"), and asked staff to work with industry groups to pursue funding for implementation of more complex code changes related to winery tours and tastings (called "Proposal 4").

Since March 2, 2010, planning staff has worked with County Counsel to prepare the proposed ordinance and resolution that are before the Planning Commission today. Staff has also prepared and circulated a proposed negative declaration pursuant to the California Environmental Quality Act (CEQA). At today's public hearing, the Planning Commission will consider these materials along with public testimony, and will decide whether to recommend that the Board of Supervisors adopt the negative declaration, ordinance, and resolution.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

Negative Declaration Prepared. According to the proposed Negative Declaration, the project would have no potentially significant environmental impacts. This project is applicable to all parcels zoned and sized to allow wine production, a number of which are included on the lists of hazardous waste sites enumerated under Government Code §65962.5.

BACKGROUND AND DISCUSSION**Winery-Related Zoning Ordinance Amendments & Associated Resolution**

Property Affected: Unincorporated areas countywide, in particular those parcels zoned and sized to allow wine production.

Current Zoning: AP (Agricultural Preserve) and AW (Agricultural Watershed)

General Plan Designation: AR (Agricultural Resource) and AWOS (Agriculture, Watershed, and Open Space)

Discussion:

The Winery Definition Ordinance (WDO) was adopted in 1990 and codified in various sections of the County's zoning code. The ordinance has been successful at limiting commercial uses in agricultural areas by ensuring that wineries remain focused on the business of producing wine, and by ensuring that tours and tastings and the marketing of wine plays a subordinate role.

Discussions about changes to the WDO have always engendered passionate testimony, and the current ongoing discussions are no exception. As a result, the discussions that began in late 2009, have evolved to the point where clarifying -- rather than substantive -- changes to winery-related sections of the zoning code are now proposed.

Proposed Ordinance

The proposed ordinance would amend four sections of the zoning ordinance pertaining to wineries approved after the effective date of the WDO in 1990 in a manner agreed upon by the four principal wine industry groups. The amendments would clarify the definition of "marketing of wine," would amend the definition of "tours and tastings" to explicitly permit food-wine pairing, and would amend two other sections to permit retail sale of "wine related items." In staff's view, none of the proposed changes would alter the fundamentals of the original WDO which provided for a 75% grape source rule, tours and tastings by appointment only, and required marketing activities to be incidental and subordinate to wine production.

Chapter 18.136 of the Zoning Code outlines the procedure by which the Zoning Code is to be amended, requiring the Planning Commission to hold a noticed public hearing on the proposed amendments, and to recommend either approval of, denial of, or modifications to the draft ordinance. Planning staff is then required to report the Planning Commission's recommendation up to the Clerk of the Board and the ordinance is noticed and agendized

for a public hearing before the Board of Supervisors. If adopted by the Board of Supervisors, the proposed ordinance would become effective in 30 days.

Proposed Resolution

The proposed resolution would enact statements of policy that are intended as interpretive guidance for applicants, members of staff, and owners and operators of wineries approved since adoption of the WDO in 1990. The resolution articulates a number of examples and statements intended to foster a common understanding of (a) the types of events that are permitted and not permitted under the definition of "marketing of wine" (b) concerns about converting existing structures into wineries if those structures are brand new; (c) the relationship between marketing and location, and marketing and production volumes; (d) annual "spot" audits; and (e) temporary certificates of occupancy.

Once the resolution is recommended for approval or disapproval by the Planning Commission, it would be scheduled for a public hearing by the Board of Supervisors. If adopted by the Board, the proposed resolution would provide interpretive guidance and would not change the substance of the existing zoning ordinance or the proposed ordinance (if adopted). The resolution would remain effective until repealed or modified by a subsequent resolution.

CEQA Compliance

An initial study has been prepared and a negative declaration is proposed for adoption in accordance with the California Environmental Quality Act (CEQA). Because the proposed ordinance and resolution would not substantively modify fundamental principles of the original WDO, and would neither encourage nor discourage additional wineries or additional activities at wineries, they would not have a significant effect on the environment.

General Plan and Zoning Consistency

California law requires local jurisdictions to maintain consistency between their general plan and zoning. In this case, the zoning text changes anticipated would not change fundamental precepts of existing zoning provisions dating back to 1990, and are fully consistent with relevant general plan policies, including **Policy AG/LU-3** which states (in relevant part);

"The County's planning concepts and zoning standards shall be designed to minimize conflicts arising from encroachment of urban uses into agricultural areas..."

and **Policy AG/LU-13**, which states;

"The 1990 Winery Definition Ordinance recognized certain pre-existing wineries and winery uses as well as new wineries. For wineries approved after the effective date of that ordinance, agricultural processing includes tours and tastings by appointment only, retail sales of wine produced by or for the winery partially or totally from Napa County grapes, retail sale of wine-related items, activities for the education and development of consumers and members of the wine trade with respect to wine produced by or at the winery, and limited non-commercial food service. The later activity may include wine-food pairings. All tours and tastings, retail sales, marketing activities, and non-commercial food service must be accessory to the principal use of the facility as an agricultural processing facility. Nothing in this policy shall alter the definition of 'agriculture' set forth in Policy AG/LU-2."

The Winery Definition Ordinance has been successful at limiting commercial uses in agricultural areas by ensuring that wineries remain focused on the business of producing wines, and by ensuring that tours and tastings and marketing of wine play an accessory role. The proposed ordinance would continue and reinforce the key wine production/ accessory use distinction while at the same time recognizing that the preservation of

agricultural land requires a reliable market to justify the investment required to acquire, develop and maintain vineyards capable of producing high quality fruit.

The proposed resolution would also be consistent with the General Plan, and is intended to further **Policy AG/LU-107**, which states in part that the County *"shall provide a clear, consistent, timely, and predictable review process for all proposed projects, ensuring that all applicants are treated fairly, that staff's analysis is objective, and that decision-makers and interested members of the public receive information and notice as required by law."*

Attachments

The CEQA document, proposed ordinance, and proposed resolution are attached along with public comments received since the last public hearing on this matter. Redline changes in the resolution reflect edits and corrections based on input received since the original version was distributed to stakeholders on March 23, 2010; they reflect staff's desire to bring the resolution to the Board of Supervisors for consideration concurrent with the proposed negative declaration and ordinance. The "whereas" clauses of the ordinance have also been adjusted slightly based on public input.

SUPPORTING DOCUMENTS

- A . Proposed Ordinance
- B . Proposed Resolution
- C . Negative Declaration and Initial Study
- D . Comments (through 4.13.10) Not Otherwise In Record
- E . Noticing

Napa County Planning Commission: Approve

Reviewed By: John McDowell