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Agenda Date: 6/2/2010
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: John McDowell, Deputy Director - 299-1354
SUBJECT: Napa Industrial LLC Development Agreement - P09-00546-DA

RECOMMENDATION

NAPA INDUSTRIAL LLC / NAPA COMMERCE CENTER - DEVELOPMENT AGREEMENT P09-00546-DA

CEQA Status: The entitlements were analyzed for purposes of the California Environmental Quality Act under an Addendum to a Final EIR for the Beringer Wine Estates Devlin Road Facility (State Clearinghouse No. 00034043) certified on January 7, 2009. The original Final EIR was certified on April 9, 2002. In approving the Use Permit and Tentative Parcel Map on January 7, 2009, the Planning Commission readopted the CEQA Findings of Fact and Rationale and Statement of Overriding Considerations contained in Board of Supervisors Resolution No. 02-72, and further adopted a Mitigation Monitoring and Reporting Program.

Request: Approval of a Development Agreement to grant a vested right for 20 years to construct a 646,734 sq. ft. industrial warehouse building previously entitled for development under Use Permit P08-00131-UP and Tentative Parcel Map P07-00412-UP approved by the Planning Commission on January 7, 2009. The project is located on a 218 acre property immediately south of the Napa County Airport and approximately 1,000 ft. southwest of the current southerly terminus of Devlin Road and South Kelly Road within the IP:AC - Industrial Park: Airport Compatibility Zoning District (Assessor's Parcel Number 057-090-069), American Canyon.

Ordinance Title: *An Ordinance of the Board of Supervisors of the County of Napa, State of California, approving the Development Agreement between the County of Napa and Napa Industrial LLC.*

Recommendation: That the Commission forward a recommendation for approval of the Development Agreement and adoption of the Ordinance to the Board of Supervisors.

Staff Contact: John McDowell, 299-1354 or john.mcdowell@countyofnapa.org

EXECUTIVE SUMMARY

Proposed Action:

That the Planning Commission:

1. Recommends the Board of Supervisors find the previously adopted Addendum to a Final EIR for the Beringer Wine Estates Devlin Road Facility, CEQA Findings of Fact and Rationale and Statement of Overriding Considerations Resolution No. 02-72, and Mitigation Monitoring and Reporting Program certified on January 7, 2009, adequately addressed all project-related potential 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.

Discussion:

In January 2009, the Planning Commission approved the Napa Commerce Center use permit and tentative map consisting of a 646,734 sq. ft. industrial warehouse building on a 38 acre portion of 218 acre property located immediately south of the Napa County Airport. At the time of approval, there were strong indications that construction would commence in spring of 2009. Given the uncertainty in the financial and real estate markets, it is unclear when construction of the project will proceed. Also, the subject property is being considered for annexation to the City of American Canyon. Given these changes, the property owner has requested a Development Agreement to vest the right to construct the project for 20 years. This Development Agreement is a contract between the County (or City upon annexation) and property owner that guarantees certain rights and entitlements to both parties. In this case, the developer would secure a vested right to build the project in turn for the County being assured that all use permit conditions are fully implemented including payment of housing trust fund fees and construction of certain off-site industrial park roadway improvements. Staff supports adoption of the development agreement, but recommends that the term of the agreement be 10 years instead of the 20 years requested by the applicant.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

The proposed development agreement will grant a vested right to develop a previously approved use permit and parcel map approved on January 7, 2009. The scope of development activities addressed within this development agreement were previously considered within the Beringer Wine Estates Devlin Road Final Environmental Impact Report (State Clearinghouse No. 00034043) certified on April 9, 2002, and Addendum to the Beringer Wine Estates Devlin Road Final Environmental Impact Report certified on January 7, 2009.

BACKGROUND AND DISCUSSION

Owner: Napa Industrial, LLC c/o RREEF America

Applicant: Douglas Pope, Headwaters Development Company, LLC

Zoning: IP:AC (Industrial Park: Airport Compatibility)

General Plan Designation: Industrial

Parcel Size: 218 acres

Existing Land Use: Vacant

Initially Submitted: December 29, 2009

Adjacent Zoning / Land Use:

North - I:AC and AV:AC (Industrial and Airport: Airport Compatibility) - Napa County Airport

South - City of American Canyon IP (Industrial Park) - Vacant

East - IP:AC (Industrial Park: Airport Compatibility) - Vacant lands beyond adjoining railroad tracks

West - IP:AC (Industrial Park: Airport Compatibility) - Vacant

History and Evolution of this Application:

December 2001 - Use Permit 98597-UP and associated land use entitlements were approved for the former property owner, Beringer Wine Estates. County approvals authorized the construction of a 36,000,000 gallon per year winery within a 1,424,400 square foot multi-building/ facility on the eastern portion of the 218-acre site, generally parallel to the existing railroad tracks. The western portion of the site would have been used for vineyards, wastewater treatment ponds to accommodate effluent generated by on-site wine production operations, and wetland preservation areas.

January 11, 2005 - The Conservation, Development and Planning Department Zoning Administrator approved a Use Permit Modification (#03344-MOD) clarifying several conditions of approval and revising timing mechanisms for their completion. Biagi/Beringer Wine Estates sold the property at some point after this action.

June 2008 - The Board of Supervisors adopted the Napa County General Plan Update which included Figure AG/LU-5 depicting a growth boundary for the City of American Canyon which includes the subject property within that boundary. This growth boundary was agreed upon by the City and County in a Memorandum of Understanding (MOU) executed in July 2008. The MOU and General Plans for the City and County designate the property for future annexation to the City.

January 7, 2009 - The Planning Commission approved the current entitlement on the property consisting of Use Permit P08-00131-UP and Tentative Parcel Map P07-00412-UP. The City of American Canyon is the sewer and water provider for the project and they issued 'will serve' letters upon completing their review of the proposal. City Staff provided substantial input and support to the County during review of the project.

December 29, 2009 - The subject Development Agreement application was filed with the County.

March 5, 2010 - The City of American filed an annexation application with the Local Agency Formation Commission (LAFCO) which includes the subject property in addition to several other nearby vacant industrial properties. Subsequent to the annexation filing, City and County staff met with the applicant to discuss continued processing of this application and a master development application filed with the County in March 3, 2010 for the

remainder property. At the conclusion of the meeting it was determined that the County would finish processing of this Development Agreement application, but the City would assume the lead agency role processing the master plan on the remainder of the site.

Code Compliance History:

There is no history of code violations on this property.

Discussion Point(s):

Development Agreement Process and Requirements

In 1979, the State enacted Government Code Section 65864 which provides for local governments to enter into development agreements with property owners as a vehicle to add certainty to development entitlement for complex projects. In practice, they are generally only used on 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 binding between the parties involved. These contracts lock in applicable local rules and regulations at the time the agreement is executed (unless otherwise specified). In turn for vested development rights and other local agencies commitments, local agencies can request that such entitled projects include elements that exceed what is required of other projects not subject to a development agreement. Development agreements are adopted by ordinance, and must be consistent with the general plan and zoning.

Development Agreement Commitments

The scope of commitments within this development agreement are relative 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 construct the project at any point within the term of the agreement, in turn for guaranteeing that the project is constructed in accordance with all the adopted conditions of approval including payment of the County Affordable Housing Impact fee. The housing impact fee is the critical component of this contract. The City of American Canyon does not charge an affordable housing impact fee on industrial development. Without this agreement, should building permits not be issued until after annexation to the City, no housing fees would be collected. The developer obtains substantial benefit from having a vested right to build. As such, they have agreed to pay into the County's Affordable Housing Trust Fund even after annexation occurs. Other commitments benefitting the County and City included in the original approval and this 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 mitigation monitoring plan that includes the preservation and enhancement of wetlands and sensitive habitat on the property.

Term of the Agreement

The applicant is requesting that the term of the agreement be 20 years, which is the maximum period stipulated in State law. County Staff recommend a 10 year term. A longer term is typically applied only to projects that are expected to take decades to proceed from initial construction to completion. The project is a single warehouse building that will be constructed in a single phase. Consequently, Staff is not seeing the necessity to grant vested rights for the next 20 years.

To some degree this unresolved point is moot because upon annexation of the property, the development agreement term would automatically expire 8 years from the date the annexation is completed as set forth in State law (unless term extension is executed with the City). Also, the City is processing the master plan for the remainder of the property which includes a development agreement. There is some likelihood that this current development agreement will be superseded upon the City and developer entering into the new development

agreement for the master plan. Staff requests that the Commission determine an appropriate term for the agreement in the recommendation forwarded to the Board of Supervisors.

Annexation to City of American Canyon

As noted above, 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 interest to the County. Government Code Section 65865.3 outlines the rights and responsibilities of the City as the successor interest, 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 a condition injurious to the City's welfare.

The agreement has been referred to the City for comment. However, the final draft was not completed until May 24th, and although the City's Planning Director is diligently evaluating the proposal, he indicated he may not been able to complete the review before the Commission meeting. County Staff are appreciative of the City Planning Director working with the County to accomodate the processing schedule. In the event that the City review is not complete prior to the Commission hearing, it is anticipated that Commission hearing can still proceed, because there will be sufficient time before the Board of Supervisors hears the matter to address any City comments or concerns. In event that City comments result in a substantive change to the proposal subsequent to the Commission's hearing, the project would return to the Commission for review prior to being heard by the Board of Supervisors.

Technically, there is no legal obligation for the City to consent to the terms of the development agreement. However, given the mutually agreed upon City/County growth boundary MOU, and the fact that this development agreement will be assumed by the City upon annexation, County Staff feel it is important for the City to be supportive of this agreement before final action is taken by the Board of Supervisors.

SUPPORTING DOCUMENTS

- A . Ordinance Approving Development Agreement
- B . Development Agreement

Napa County Planning Commission: Approve

Reviewed By: John McDowell