



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 5/20/2014
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Estimated Report Time: 1 Hour

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors

FROM: David Morrison - Director
Planning, Building and Environmental Services

REPORT BY: David Morrison, Director, Planning, Building & Environmental Servi - (707) 253-4805

SUBJECT: Joint meeting with the Planning Commission

RECOMMENDATION

Joint meeting of the Board of Supervisors and Planning Commission, with discussion and possible direction to staff regarding the following topics:

1. Noticing procedures;
2. Winery visitation, marketing and cumulative growth impact analysis;
3. Environmental Impact Report process;
4. Climate Action Plan status; and
5. Other Commissioner/Supervisor comments or concerns.

EXECUTIVE SUMMARY

The Planning Commission meets periodically with the Board of Supervisors to discuss items of a planning nature. This is the first such meeting in 2014 and is intended to provide the Commission and the Board with an update on public hearing noticing procedures, status on the Climate Action Plan, EIR processing procedures, and winery visitation / marketing trends as they relate to cumulative growth impacts. The Board and Commission may also wish to discuss other topics of interest that are within the jurisdiction of both.

PROCEDURAL REQUIREMENTS

1. Planning Commission roll call & Planning Commission Chair calls Planning Commission Special Meeting to order
2. Staff presentation
3. Public comment
4. Board & Commission discussion and direction to staff

5. Board Chair recesses Board of Supervisors Special Meeting.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: There is no proposed action and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

Typically in May and October of each year the Board of Supervisors and Planning Commission meet in joint session to discuss on-going land use policy matters. Generally the May meeting is focused on a code enforcement program update with the October meeting focusing on current topics before the Planning Commission. Since last October's meeting was cancelled due to the departure of the previous PBES Director, the focus of this joint session is proposed to address current topics before the Planning Commission. Although there are undoubtedly other policy topics worthy of discussion, given the time available (one hour), it is recommended that the Board and Commission focus most of their efforts on the topics summarized below. These topics were the ones most often mentioned by individual Board members, Commission members, and representatives of the wine industry associations.

Given the limited time available, staff is not prepared to provide an in-depth analysis of each of these topic areas, nor is specific detailed direction sought. For each issue, staff requests that the ensuing discussion focus on: (1) determining whether the issue is a priority to allocate staff resources to further address the concern; and (2) determining whether there is a consensus among the elected and appointed officials with regards to the desired outcome for each issue. Once direction has been provided, staff will work in the coming months to research the topic, develop options, and return to the Commission and Board in future hearings with the results.

Noticing on Development Proposals

The frequency of neighbor complaints notice for Planning Commission public hearing items has been increasing. Since April of 2013, 43 private development applications have been heard by the Commission, and of those 11 involved complaints from neighbors about the extent of noticing. Most complaints about noticing centered on the length of time the notice was provided prior to the hearing, and on the extent notice was provided to nearby property owners. Napa County's current noticing requirements call for: (1) publishing the hearing notice in the local newspaper; and (2) sending notices to all property owners within 300 feet of the subject project. In addition, staff follow an administrative practice of providing notice to all property owners on a shared private access road to a project site. These notices are sent 20 to 30 days in advance of the hearing.

Current County procedures meet the requirements of State law. Some jurisdictions, however, have chosen to provide additional opportunity for public participation in the land use process. Notices about pending applications are provided following the Notice of Completion, and landowners are asked to provide any comments relating to potential environmental impacts. Similarly, some jurisdictions (particularly those characterized by large parcel sizes) have increased the minimum noticing radius from 300 feet to various distances, such as 500 feet, 1,000 feet, or even a half-mile or mile.

Making this change would involve a slight increase in cost to the applicant, by requiring more than one notice be sent out, or that the number of notice recipients be increased. Involving the public earlier in the process may identify potential controversies sooner. Early participation may allow for problems to be resolved between neighbors before the Planning Commission holds its hearing, or alternatively, may allow opponents to a project additional time to prepare a legal challenge.

Visitation / Marketing / Cumulative Impact Analysis

With the increased interest in expanding public visitation, staff and the Commission are seeing more neighbor controversy regarding proposed wineries. Nearby residents are particularly concerned about traffic, water availability, and other quality of life issues that may be affected by expanding visitation rates and marketing events in the rural area.

As a result of these trends, the following concerns have been raised at recent Commission meetings:

- 1) The degree of market shift to direct-to-consumer wine marketing may not have been contemplated when the Winery Definition Ordinance (WDO) was originally adopted over 20 years ago;
- 2) The potential for cumulative environmental impacts may be increasing; and
- 3) The increased emphasis on the direct sale of wine and associated tourism activities may overshadow the County's historic focus on the agricultural production of wine, which could alter the sensitive balance between the two. This shift from quality of the product to the quantity of consumers could eventually affect both the image of Napa wine as well as the ambiance that attracts visitors from around the world.

It should be noted that the winery industry is already extensively regulated in Napa County, with strict limits on winery production, the source of fruit, number of events, ancillary retail sales, and visitation rates. It is unclear what effect additional ordinances and/or restrictions would have on the marketplace. In addition, visitation rates are difficult to enforce, with current efforts relying on the voluntary reporting of hospitality managers.

Napa County has been highly proactive regarding the cumulative impacts of new winery and vineyard approval for nearly a half-century. This concern is reflected in the creation of the Agricultural Preserve in 1968, adoption of the Winery Definition Ordinance (WDO) and Measure J in 1990 (and Measure P extending Measure J's protections), and the discussion interpreting application of the 75 percent rule in 2013. Each of these initiatives grew out of a concern that the cumulative effect of many incremental land use changes would have an impact greater than the sum total of the individual projects.

This same concern has also led to the current transportation study being conducted by the Napa County Planning and Transportation Agency (NCPTA), as well as the recommendations being considered from the Groundwater Resources Advisory Committee (GRAC).

Information about cumulative impacts is important for three reasons: (1) it allows staff to ensure that CEQA documents can be tiered off of the General Plan EIR, which can streamline the environmental review process; and (2) it can identify trends to assist the County in developing solutions to problems before they occur, to avoid the need for future moratoriums and/or burdening individual applicants with mitigation for impacts created by the industry; and (3) if the EIR assumptions significantly overestimate future trends, or if environmental circumstances change within the plan timeframe, mitigation based on these assumptions may exceed the incremental impact of the project.

A great deal of work has been done on this issue in recent years, and still more work is currently underway. While valuable, cumulative trend analysis can be time-consuming. The number of current planning projects has been

increasing over the past several months, in response to the improving economy, and there are a number of General Plan actions and planning assignments that need to be completed. A number of vacancies in the Planning Division have been filled in recent months, which is helping to reduce the project backlog and create some capacity for advance planning projects that are determined to be priorities.

EIR Processing

For the past decade, Napa County has allowed applicants to directly contract with environmental consultants regarding the preparation of Environmental Impact Reports (EIRs). Pursuant to the "Local Procedures for Implementing the California Environmental Quality Act (CEQA)," revised in 2010, the County maintains a list of qualified consultants. (The list of consultants has not been updated in the past ten years.)

The preparation of EIRs by consultants under contract to the applicant is allowed under California law, as decided in *Cantwell-Anderson, Inc. v. County of Los Angeles* (1991). There the Court of Appeal, Second District, ruled that (1) an agency may comply with CEQA by adopting EIR materials drafted by the applicant's consultant, so long as the agency independently reviews, evaluates, and exercises judgment over that documentation and issues it raises and addresses, and (2) there is no rule against contractor drafting of responses to comments of draft EIRs under CEQA.

Recently, applicants have expressed frustration over the time and expense involved in the preparation of Environmental Impact Reports for their projects. Likewise staff has concern with the ability of consultants to remain impartial when trying to please both the applicant (who is paying the contract) and the County (who has to accept the work product). This in turn has raised questions regarding both the cost-effectiveness and adequacy of the analysis.

The main advantage of allowing applicants to contract directly with consultants with the current approach is that it can expedite the preparation of the EIR since the applicant controls the hiring and managing of the consultant, including revisions to the contract. The drawback is that although since the applicant has control over the studies that go into the environmental analysis, there may be a perception that the consultant is working too closely with the project applicant, which could influence the EIR's conclusions in favor of the applicant at the expense of environmental and public interests. In addition, staff may be held accountable for both a product and schedule over which they have little direct influence.

Alternatively, on most projects, the County could contract with the consultant and be reimbursed for the costs by the applicant. The main advantage with this approach is it eliminates perceived conflicts of interest between the consultant and applicant. The drawback is that the process to hire the consultant will take longer, due to the Request for Proposal (RFP) process. If there are revisions to the contract which require additional funds, amendments will need to be approved by the Board, which could cause further delays.

In either case, staff will continue to work with future applicants on the selection of appropriate consultants, and coordinated review of draft EIRs.

It should be noted that the Department is scheduling an in-house workshop in the next two months to supplement staff's knowledge and skills with regards to CEQA. In addition, the County list of recommended consultants will be updated through a new RFP.

Climate Action Plan

As a part of the comprehensive General Plan update in 2008, Napa County committed to developing a plan that would reduce greenhouse gas (GHG) emissions to 1990 levels by 2020, consistent with the goals of Assembly Bill 32. A proposed Climate Action Plan (CAP) was recommended by the Planning Commission and considered by the

Board of Supervisors in 2012. The Board remanded the CAP back to staff to better address transportation emissions, and to “credit” past accomplishments and voluntary efforts. At that time, the Board also requested that the Planning Commission consider voluntary “best practices” when reviewing projects until a revised CAP is adopted.

The Commission’s current list of best practices was developed with stakeholder input during the spring of 2013. Project applicants are requested to consider these best practices and submit this checklist along with applications for discretionary approvals (e.g. use permits and use permit modifications). However, since there is no minimum GHG reduction threshold required or other criteria to be met, the Planning Commission is obliged to accept the applicant’s proposal even when it is considered to be less than robust. Similarly, by relying on incremental and voluntary efforts, the County has limited ability to ensure the successful achievement of its 2020 GHG reduction goal.

Although preparation of the Climate Action Plan is mandated by the General Plan, both as policy and as mitigation measure, it should be noted that State approved methodologies for calculating greenhouse gas emission reduction are largely urban-based and are not directly applicable to rural jurisdictions. While the preservation of oak woodlands may be counted towards carbon sequestration, the promotion of vineyards is not allowed to be included in the calculations. Similarly, it is challenging for agricultural areas to reduce back down to levels in 1990, without either reducing cropland and/or imposing significant costs on new construction. Resumption of the Climate Action Plan will require creative new approaches and coordination with the Air Resources Board to ensure compliance with State legislation.

SUPPORTING DOCUMENTS

None

CEO Recommendation: Approve

Reviewed By: Pamela Kindig