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**TO:** Public Protection Committee  
Supervisor Federal Glover  
Supervisor John Gioia

**FROM:** John Kopchik, Interim Director  
By: Bob Calkins, CDBG Program Manager

**DATE:** October 27, 2014

**SUBJECT:      Proposed Findings and Recommendations – Alcoholic Beverage  
Sales Commercial Activities (Deemed Approved Ordinance)**

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**RECOMMENDATION**

**APPROVE** the proposed Findings and Tentative Recommendations as proposed by staff and/or amended by the Public Protection Committee (PPC), and forward to the Board of Supervisors for consideration.

**BACKGROUND**

Through the efforts of District 5 Supervisor Federal Glover, it has come to the attention of the Board of Supervisors that a type of alcoholic beverage product known as "alcopops" has been identified as a contributor to under-age drinking in the County. On June 3, 2014, the Board of Supervisors referred to the PPC the task of reviewing Chapter 82-38 of the ordinance code, known as the "Deemed Approved" ordinance (Attachment #1), to determine if relevant changes can or need to be made to the ordinance in order to better regulate the sale of alcopops by liquor stores, as well as reviewing the entire ordinance to make any needed changes that would improve its overall effectiveness relating the sale of alcohol in the unincorporated areas. A 4-phase work plan was approved by the PPC on June 23, 2014 (Attachment #2).

**FINDINGS**

**Research**

1. There is a perception held by the public that AlcoPop products are marketed to youth, and are more accessible to minors than other alcoholic beverages.

2. The Performance Standards notice and Deemed Approved pamphlet were out-of-date (old phone numbers, etc.).
3. Health Services Department currently conducts inspections of businesses selling alcohol including Deemed Approved establishments.

#### Mapping

1. Many of the Deemed Approved establishments are within crime reporting districts with 20% higher than average crime rates (Attachment #3)
2. DCD has not received any complaints about a Deemed Approved establishment from the public, sheriff, or any other interested party.
3. DCD and the Sheriff's office have not coordinated sharing of crime data from Deemed Approved establishments.
4. Over the last four years, crimes have been reported taking place at most Deemed Approved establishments including crimes related to alcohol (sales to minors, intoxicated in public, etc.)

#### Site Inspections

1. Some Deemed Approved establishments are closed, no longer in business, or no longer sold alcohol.
2. Most Deemed Approved establishments do not have the Performance Standards notice posted in the store as required.
3. Most Deemed Approved establishments with AlcoPop products have them placed in the back of the store, in the refrigerator section next to other alcoholic beverages (beer, mostly).
4. A few Deemed Approved establishments in Bay Point and Rodeo have placed AlcoPop products near the front of the store, or near the cash register.
5. Most of the Deemed Approved establishments were found, at the time of the site inspections, to be free of nuisance activities (loitering, public drunkenness, excessive litter, or excessive loud noise).

### **TENTATIVE RECOMMENDATIONS**

1. Update the Performance Standards (PS) notice with correct contact information.
2. Have the PS notice contain a "Quick Response Code" (QR Code) containing how and where a person can submit a complaint about the operation of the Deemed Approved establishment.
3. Establish protocols with the Office of the Sheriff to share with DCD crime data for all Deemed Approved establishments on a yearly basis.
4. Establish a protocol for performing consistent site inspections of the Deemed Approved establishments including developing protocols with Health Services Department to share with DCD the results of their inspections of businesses selling alcohol including the Deemed Approved establishments.
5. Establish a protocol with the Tax Collectors Office to ensure Deemed Approved establishments are paying the required fee pursuant to Section 82-38-1006.

6. Conduct periodic trainings on the Ordinance to owners and employees of Deemed Approved establishments.
7. Advocate for State legislation prohibiting the sale of AlcoPop products by businesses that sale alcohol beverages.
8. Changes to Ordinance:
  - a) Require the PS notice to be a certain size (including font size, etc.) and posted in a specific location(s).
  - b) Add language to Section 82-38.814(9) of the Deemed Approved ordinance specifically allowing the County to prohibit the sale of AlcoPop products if an establishment is found to be in violation of the Ordinance.

## Attachments

## ATTACHMENT #1

Contra Costa County, California, Ordinance Code >> Title 8 - ZONING >> Division 82 - GENERAL REGULATIONS >> Chapter 82-38 ALCOHOLIC BEVERAGE SALES COMMERCIAL ACTIVITIES >>

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Chapter 82-38 ALCOHOLIC BEVERAGE SALES COMMERCIAL ACTIVITIES

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**Sections:**

**Article 82-38.2. General**

82-38.202 Purpose and administration.

82-38.204 Definitions.

82-38.206 Inspection and right of entry.

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82-38.808 Deemed approved performance standards.

82-38.810 Posting.

82-38.812 Notification to owners of deemed approved activities.

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82-38.816 Procedure for consideration of violations to conditions of approval.

82-38.1002 Appeal to board of supervisors.

82-38.1004 Notification of public hearing.

82-38.1006 Fee schedule.

82-38.1008 Violations and penalties.

**82-38.202 Purpose and administration.**

This chapter requires and provides criteria for the consideration and approval of land use permits before a new alcoholic beverage sales commercial activity will be permitted in any land use zoning district of this county. This chapter further confers deemed approved status upon existing alcoholic beverage sales commercial activities. The county finds it necessary to establish land use permit requirements and criteria in the interest of the public health, safety and welfare to regulate alcoholic beverage sales commercial activities in the unincorporated area. This chapter alone does not allow or permit alcoholic beverage sales commercial activities, but only applies to these activities where otherwise allowed or permitted within an involved applicable land use zoning district. This chapter does not authorize alcoholic beverage sales commercial activities in any land

use district where they are not otherwise allowed or permitted by the applicable involved zoning district's regulations.

(Ord. 2002-33 § 2).

## 82-38.204 Definitions.

For purposes of this chapter, the following words and phrases have the following meanings:

- (a) "Administrative Hearing Officer." The zoning administrator or his or her designee is the alcoholic beverage sales administrative hearing officer.
- (b) "Alcoholic Beverage." Alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, that meets the following criteria: (1) contains one-half of one percent or more of alcohol by volume; (2) is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances; and (3) sales of which require a state of California Department of Alcoholic Beverage Control license.
- (c) "Alcoholic Beverage Sales Commercial Activity." The retail sale, for on-premises or off-premises consumption, of alcoholic beverages. A full-service restaurant is not an alcoholic beverage sales commercial activity.
- (d) "Condition of Approval." A requirement that must be carried out by: (1) a new alcoholic beverage sales commercial activity to exercise a land use permit; or (2) an existing alcoholic beverage sales commercial activity to comply with deemed approved performance standards and to retain its deemed approved status.
- (e) "Crime Reporting Districts." Geographical areas within the boundaries of the unincorporated area of the county that are identified by the Contra Costa County sheriff's department in the compilation and maintenance of statistical information on reported crimes and arrests.
- (f) "Deemed Approved Activity." Any alcoholic beverage sales commercial activity existing immediately before the effective date of this chapter is a deemed approved activity if it complies with the deemed approved performance standards in Section 82-38.808.
- (g) "Deemed Approved Performance Standards." The standards set forth in Section 82-38.808.
- (h) "Deemed Approved Status." The status conferred by this ordinance upon a deemed approved activity in accordance with Section 82-38.806.
- (i) "Full-Service Restaurant." A place that: (1) is primarily, regularly and in a bona fide manner used and kept open for the serving of at least dinner to guests for compensation; and (2) has kitchen facilities containing conveniences for cooking an assortment of foods that may be required for those meals; and (3) obtains a minimum of sixty-seven percent of its gross receipts from the sale of meals and other food and drink non-alcoholic products; and (4) submits evidence of total meal and other non-alcoholic product sales to county officials upon request for purposes of determining its status under this ordinance. A place that sells or serves only sandwiches (whether prepared in a kitchen or made elsewhere and heated up on the premises) or only snack foods, or both, is not a full-service restaurant.
- (j) "License." A valid state of California Department of Alcoholic Beverage Control license.
- (k)

"Off-Sale Alcohol Outlet." An establishment that conducts retail sales of alcoholic beverages for consumption off the premises where sold.

- (l) "On-Sale Alcohol Outlet." An establishment that conducts retail sales of alcoholic beverages for consumption on the premises where sold, excluding full-service restaurants.

(Ord. 2002-33 § 2).

#### **82-38.206 Inspection and right of entry.**

- (a) County staff designated by the county administrator to enforce this ordinance may enter an alcoholic beverage sales commercial activity during normal business hours whenever they have cause to suspect a violation of any provision of this chapter or to investigate alleged violations of the deemed approved performance standards or conditions of approval prescribed in this chapter.
- (b) An owner or occupant, or agent of an owner or occupant, who refuses to permit entry and investigation into premises open to the public is subject to civil or criminal prosecution.

(Ord. 2002-33 § 2).

#### **82-38.208 Administrative hearing officer.**

The administrative hearing officer will conduct public hearings and make determinations in accordance with Section 82-38.406, Section 82-38.814, and Section 82-38.816 to obtain compliance with this chapter. This section is not intended to restrict the powers and duties of other county officers or bodies that monitor alcoholic beverage sales commercial activities in the unincorporated area of the county to ensure compliance with applicable laws, statutes, and regulations.

(Ord. 2002-33 § 2).

#### **Article 82-38.4. Nonconforming Use Provisions for Existing Alcoholic Beverage Sales Commercial Activities**

#### **82-38.402 Existing alcoholic beverage sales commercial activities.**

On premises for which a license has been issued and where these premises are being used to exercise the rights and privileges conferred by the license at a time immediately before the effective date of this chapter, the premises may continue to be used to exercise the same rights and privileges without requiring a land use permit. This use is a nonconforming use, subject to the nonconforming use provisions of Chapter 82-8 of the county ordinance code (except as otherwise provided in this chapter or in the

Alcoholic Beverage Control Act, Division 9 of the Business and Professions Code), and is entitled to deemed approved status, subject to Article 82-38.8.

(Ord. 2002-33 § 2).

#### **82-38.404 Transfer or revocation of alcoholic beverages control licenses.**

- (a) If a license is to be transferred to a new owner, the community development director is authorized under Business and Professions Code Section 23800(e), on behalf of the county, to request that the state of California Department of Alcoholic Beverage Control within thirty days after the filing of a transfer application (or a longer period if allowed by law) impose

conditions to mitigate problems at or in the immediate vicinity of the premises on any licenses being transferred to new owners.

- (b) If a license is to be transferred to a new premises, the alcoholic beverage sales commercial activity must apply for a land use permit in accordance with the requirements of Chapter 26-2, Chapter 82-6, and this chapter.
- (c) If a license is revoked by the state of California Department of Alcoholic Beverage Control, after the revocation becomes a final order the alcoholic beverage sales commercial activity must cease operation and may not resume unless it applies for and obtains a land use permit in accordance with this chapter.

(Ord. 2002-33 § 2).

#### **82-38.406 Change in mode or character of operation.**

- (a) The administrative hearing officer may hold a public hearing to determine whether a land use permit is required for an existing alcoholic beverages sales commercial activity if any of the following occur:
  - (1) An alcoholic beverage sales commercial activity discontinues operation for more than one hundred twenty days;
  - (2) An alcoholic beverage sales commercial activity surrenders, abandons, closes, or quits its licensed premises;
  - (3) An alcoholic beverage sales commercial activity's license is surrendered or suspended;
  - (4) An existing alcoholic beverage sales commercial activity changes its activity so that the state of California Department of Alcoholic Beverage Control requires a different type of license;
  - (5) An existing alcoholic beverage sales commercial activity expands the floor area devoted to the display or sales of alcoholic beverages, or both, by more than twenty percent;
  - (6) Any other circumstances that results in a substantial change in the mode or character of operation of the alcoholic beverage sales commercial activity, except for those circumstances listed in subdivision (b) of Section 23790 of the California Business and Professions Code.
- (b) The purpose of a public hearing under this article is to receive testimony and determine whether the premises have operated continuously without substantial change in the mode or character of operation. Notice of the public hearing will be in accordance with Section 82-38.1004.
- (c) At the conclusion of a public hearing under this article, the administrative hearing officer may determine that a substantial change in the mode or character of operation of the premises either has occurred or has not occurred.
- (d) If the administrative hearing officer determines that a substantial change in the mode or character of operation of the premises has occurred, the alcoholic beverage sales commercial activity must cease operation and may not resume unless it applies for and obtains a land use permit in accordance with this chapter.
- (e) The determination of the administrative hearing officer becomes final thirty calendar days after the date of decision unless appealed to the board of supervisors in accordance with Section 82-38.1002.

(Ord. 2002-33 § 2).

#### **Article 82-38.6. Land Use Permits for New Alcoholic Beverage Sales Commercial Activities**



**82-38.602 Requirement.**

Notwithstanding any other provisions of this code, no new alcoholic beverage sales commercial activity may be established unless a land use permit is first obtained in accordance with the requirements of Chapter 26-2, Chapter 82-6, and this chapter.

(Ord. 2002-33 § 2).

**82-38.604 Restrictions.**

- (a) A new alcoholic beverage sales commercial activity is not permitted in any of the following locations:
  - (1) Within seven hundred feet of an existing alcoholic beverage sales commercial activity;
  - (2) Within four hundred feet of any of the following: a public or private accredited school; a public park, playground or recreational area; a place of worship; a hospital; an alcohol or other drug abuse recovery to treatment facility; or a county social service office;
  - (3) Within a crime reporting district, or within six hundred feet of a crime reporting district, where the general crime rate exceeds the countywide general crime rate by more than twenty percent.
- (b) The distance restrictions of subsection (a) do not apply to any new alcoholic beverage sales commercial activity that has twenty-five or more full time equivalent (FTE) employees and a total floor area of twenty thousand square feet or more, and sells from the premises food and other groceries for home consumption.
- (c) The distances specified in subsection (a) will not be measured from any establishment that is not generally open to the public, including private clubs and lodges.

(Ord. 2002-33 § 2).

**82-38.606 Findings.**

No land use permit to allow a new alcoholic beverage sales commercial activity will be issued unless all of the following findings are made in addition to the findings required by Section 26-2.2008 and Section 82-6.002:

- (a) A finding of "public convenience and necessity" (Business and Professions Code Section 23958.4(b)(2)), if the activity will be located in an area that has been determined by the state of California Department of Alcoholic Beverage Control to have an undue concentration of licenses as defined in Business and Professions Code Section 23958.4(a).
- (b) A finding that the alcoholic beverage sales commercial activity will not aggravate existing problems in the neighborhood created by the sale of alcohol such as loitering, public drunkenness, alcoholic beverage sales to minors, noise and littering.

(Ord. 2002-33 § 2).

**82-38.608 Granting.**

Land use permits to modify the location provisions contained in this article may be granted under this chapter and in accordance with Chapters 26-2 and 82-6.

(Ord. 2002-33 § 2).

#### **82-38.610 Conditions of approval.**

Reasonable conditions of approval may be imposed, including but not limited to those listed in Section 82-38.614, as part of approval of any land use permit issued under this article.

(Ord. 2002-33 § 2).

### **Article 82-38.8. Standards and Procedures for Existing Alcoholic Beverage Sales Commercial Activities**

#### **82-38.802 Purpose.**

The general purposes of this article are:

- (a) to protect and promote the public health, safety, comfort, convenience, prosperity, and general welfare by requiring that alcoholic beverage sales commercial activities that are legal nonconforming activities under this chapter and considered to be deemed approved activities comply with the deemed approved performance standards at Section 82-38.808; and,
- (b) to achieve the following objectives:
  - (1) protect residential, commercial, industrial, and civic areas and minimize the adverse impacts of nonconforming and incompatible uses;
  - (2) provide opportunities for alcoholic beverage sale commercial activities to operate in a mutually beneficial relationship to each other and to other commercial and civic services;
  - (3) provide mechanisms to address problems often associated with the public consumption of alcoholic beverages, such as litter, loitering, graffiti, unruly behavior and escalated noise levels;
  - (4) prevent alcoholic beverage sales commercial activities from becoming a source of public nuisances in the community; and
  - (5) provide for properly maintained alcoholic beverage sale establishments to minimize impacts to the surrounding environment.

(Ord. 2002-33 § 2).

#### **82-38.804 Applicability.**

This article applies, to the extent permissible under other laws, to alcoholic beverage sales commercial activities existing and operating on the effective date of this chapter within the unincorporated area of the county. The nonconforming use provisions of the county's zoning regulations, including but not limited to Chapter 82-8, apply to this article, except as otherwise provided in this chapter.

(Ord. 2002-33 § 2).

#### **82-38.806 Deemed approved activity.**

All alcoholic beverage sales commercial activities existing and operating with all required licenses on the effective date of this chapter will automatically become deemed approved activities as of the effective date of this chapter. Each deemed approved activity retains its deemed approved

status if it complies with the deemed approved performance standards set forth in Section 82-38.808 and if the licensed premises are in continuous operation without any substantial change in the mode or character of operation of the premises.

(Ord. 2002-33 § 2).

#### **82-38.808 Deemed approved performance standards.**

An existing alcoholic beverage sale commercial activity retains its deemed approved status only if it conforms with all of the following standards:

- (a) its operation does not result in adverse effects to the health, peace or safety of persons residing or working in the surrounding area;
- (b) its operation does not result in repeated nuisance activities on or near the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests;
- (c) its operation does not result in violations of other county, state, or federal regulations, ordinances, or statutes;
- (d) its operation does not result in the transfer, expiration or revocation of a state of California Department of Alcoholic Beverage Control license;
- (e) its upkeep and operating characteristics are compatible with and will not adversely affect the liveability or orderly development nor encourage the marginal development of abutting properties and the surrounding neighborhood; and
- (f) its operation does not result in jeopardizing or endangering the public health or safety of persons residing or working in the surrounding area.

(Ord. 2002-33 § 2).

#### **82-38.810 Posting.**

The owner of each deemed approved activity must post the performance standards in a conspicuous and unobstructed place visible from the entrance of the establishment for public review.

(Ord. 2002-33 § 2).

#### **82-38.812 Notification to owners of deemed approved activities.**

The community development department must notify the owner of each deemed approved activity, and also the property owner if not the same, of the activity's deemed approved status. This notice must:

- (a) be sent via first class return receipt mail;
- (b) include a copy of the performance standards;
- (c) state that the performance standards must be posted in a conspicuous and unobstructed place visible from the entrance of the establishment for public review;
- (d) state that the activity must comply with all performance standards;

- (e) state that a review fee is required in accordance with Section 82-38.1006 and must state the amount of the fee; and
- (f) state that the activity must comply with this ordinance.

(Ord. 2002-33 § 2).

**82-38.814 Violations of performance standards, conditions of approval for continued deemed approved status following violation.**

- (a) If the county receives a complaint from the public, sheriff, or any other interested party that a deemed approved activity is not complying with the performance standards set forth in Section 82-38.808, the administrative hearing officer may review the deemed approved status of the deemed approved activity in question at a public hearing. Notification of the public hearing will be made in accordance with Section 82-38.1004 and must include notification that the officer will consider the deemed approved status of the deemed approved activity.
- (b) The purpose of the public hearing is to receive testimony on whether the operating methods of the deemed approved activity are causing negative impacts in the surrounding area. At the public hearing, the administrative hearing officer will determine whether the deemed approved activity conforms to the deemed approved performance standards set forth in Section 82-38.808. At the conclusion of the hearing, the administrative hearing officer may continue the deemed approved status for the activity in question or may require changes or impose reasonable conditions of approval to retain deemed approved status. The officer's decision will be based on information in staff documents and testimony from the business owner and all other interested parties. The deemed approved activity must comply with these conditions. The determination of the administrative hearing officer becomes final thirty calendar days after the date of decision unless appealed to the board of supervisors under Section 82-38.1002.
- (c) The administrative hearing officer may impose conditions of approval relating to one or more of the following:
  - (1) entertainment uses, activities, or amusement devices on the premises;
  - (2) separation, monitoring, or design of area devoted to alcohol sales;
  - (3) security measures;
  - (4) lighting, litter, trash receptacles, graffiti or nuisance abatement, or other similar requirements; or
  - (5) maintenance.
- (d) Specific conditions of approval that may be imposed include but are not limited to the following:
  - (1) Soundwalls. If the alcoholic beverage sales commercial activity abuts residential uses and is allowed in the involved zoning district, a soundwall may be required between the activity and the abutting residential uses. The soundwall must be no higher than six feet and must not obstruct the view of the building and parking areas from the street. Vegetation may be required to be planted along the soundwall and be of a type that will cover the soundwall surface within two years.
  - (2) Graffiti Removal. The removal of all graffiti from the walls, fences, pavement or buildings within seventy-two hours of its appearance on the property may be required.
  - (3) Exterior Lighting. Exterior lighting containing high pressure sodium or equivalent type, with an illumination intensity of between one and four foot-candles, may be required. The lighting may be required to be lit during all hours of darkness. Any required

lighting must be directed and shielded so as not to glare onto adjoining residential properties and must have a housing to protect against breakage. Any required lighting must illuminate the adjacent public sidewalks and all parking lots under the business establishment's control in a manner that allows law enforcement personnel to identify persons standing in those areas. Any broken or burned out lights may be required to be replaced within seventy-two hours.

- (4) **Trash Receptacles.** Permanent, non-flammable trash receptacles, sixty gallons or less in size, may be required to be located at convenient locations, appropriately screened from view, outside the establishment and in the establishment's parking area (if any). The operators of the business may be required to remove on a daily basis, or more frequently if needed to maintain a litter-free environment, all trash from these receptacles and from the sidewalk adjacent to the establishment. The operators of the business also may be required to remove, at least three times per week, all trash originating from its establishment deposited on public property within four hundred feet of any boundary of its premises. Security may also be required in a manner similar to that required under Section 88-16.010 (take-out food establishment). All trash receptacles of any size may be required to be appropriately screened from view.
- (5) **Pay Telephones.** Pay telephones on the site of the establishment may either be: (a) prohibited; or (b) required to be of the type that only allow outgoing calls and be located in a visible and well-lighted location.
- (6) **Interior View.** In establishments with glass storefronts, an unobstructed interior view from the street of the cash register area may be required and no more than thirty-three percent of the square footage of the windows and transparent doors of the premises may be allowed to bear advertising or signs of any sort. All advertising, signage and products may be required to be placed and maintained to ensure that law enforcement personnel have a clear and unobstructed view of the establishment's interior.
- (7) **Program.** A "complaint response-community relations" program established and maintained by the deemed approved activity may be required. The program may include the following:
  - (a) Posting at the entry of the establishment and providing to any requesting individual the telephone number for the area commander of the local law enforcement substation;
  - (b) Coordinating with the local law enforcement agency to monitor community complaints about the establishment's activities;
  - (c) Having a representative of the establishment meet with neighbors or neighborhood association on a regular basis and at their request, attempt to resolve any neighborhood complaints regarding the establishment.
- (8) **Activities.** If appropriate, the following activities may be prohibited on the premises: pool or billiard tables, football or pinball games, arcade style video or electronic games, or coin operated amusements devices.
- (9) **Prohibited Products.** To discourage nuisance activities, an off-sale alcohol outlet may be prohibited from selling one or more of the following products:
  - (a) Wine or distilled spirits in containers of less than seven hundred fifty milliliters;
  - (b) Malt beverage products with alcohol content greater than five and one-half percent by volume;
  - (c) Wine with an alcoholic content greater than fourteen percent by volume unless in corked bottles and aged at least two years;

- (d) Single containers of beer or malt liquor;
  - (e) Containers of beer or malt liquor not in their original factory packages of six-packs or greater;
  - (f) Containers of beer or malt liquor larger than thirty-nine ounces;
  - (g) Distilled spirits in bottles or containers smaller than three hundred seventy-five milliliters;
  - (h) Cooler products, either wine- or malt-beverage-based, in less than four-pack quantities.
- (10) Chilled Alcoholic Beverages. An off-sale alcohol outlet may be prohibited from maintaining refrigerated or otherwise chilled alcoholic beverages on the premises.
- (11) Hours of Operation. In an off-sale alcohol outlet, the sale of alcoholic beverages may be restricted to certain hours of each day of the week unless limited further by the state of California Department of Alcoholic Beverage Control.
- (12) Cups. In off-sale alcohol outlets, the sale or distribution to the customer of paper or plastic cups in quantities less than their usual and customary packaging may be prohibited.
- (13) Signs. The following signs may be required to be prominently posted in a readily visible manner in English, Spanish, and the predominant language of the patrons:
- (a) "California State Law prohibits the sale of alcoholic beverages to persons under twenty-one years of age";
  - (b) "No Loitering or Public Drinking"; and
  - (c) "It is illegal to possess an open container of alcohol in the vicinity of this establishment".
- (14) Presentation of Documents. A copy of the conditions of approval and the California Department of Alcoholic Beverage Control license may be required to be kept on the premises and presented to any law enforcement officer or authorized county official upon request.
- (15) Mitigating Alcohol-Related Problems. The establishment may be required to operate in a manner appropriate with mitigating alcohol-related problems that negatively impact those individuals living or working in the neighborhood, including but not limited to: sales to minors, the congregation of individuals, violence on or near the premises, drunkenness, public urination, solicitation, drug-dealing, loud noise, and litter.
- (16) Signage. The total surface of signage pertaining to or referencing alcoholic sales or beverages that is visible from the public right-of-way may be required to not exceed six hundred thirty square inches.
- (17) Employee Training. All sales clerks in on-sale alcohol outlets and off-sale alcohol outlets may be required, within ninety days of the beginning of employment, to complete an approved course in "responsible beverage service training". The establishment may be required to provide evidence of the employee's completion of this training to county authorities within ten days following completion of training.
- (18) Drug Paraphernalia. An off-sale alcohol outlet may be prohibited from selling drug paraphernalia products as defined in Health and Safety Code Sections 11014.5 and 11364.5. "Drug paraphernalia" means all equipment, products and materials of any kind that are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing,

concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the California Uniform Controlled Substances Act (commencing with California Health and Safety Code Section 11000).

- (19) Loitering. The establishment's operators or employees may be required to discourage loiterers and to ask persons loitering longer than fifteen minutes to leave the area and contact local law enforcement officials for enforcement of applicable trespassing and loitering laws if persons requested to leave fail to do so.
- (20) Security Cameras. At least two twenty-four hour time-lapse security cameras may be required to be installed and properly maintained on the exterior of the building at locations recommended by the sheriff's department. All criminal and suspicious activities recorded on this surveillance equipment must be reported to local law enforcement. To the extent allowed by law, the establishment's operators may be required to provide any tapes or other recording media from the security cameras to the sheriff.
- (21) Prohibited Vegetation. No exterior vegetation may be planted or maintained that could be used as a hiding place for persons on the premises. Exterior vegetation may be planted and maintained in a manner that minimizes its use as a hiding place.

(Ord. 2002-33 § 2).

#### **82-38.816 Procedure for consideration of violations to conditions of approval.**

If the county receives a complaint from the public, sheriff, or any other interested party that a condition of approval is being violated, the administrative hearing officer may hold a public hearing to receive testimony and determine whether violations of any conditions of approval have occurred. Notification of the public hearing will be in accordance with Section 82-38.1004. The administrative hearing officer may amend the existing conditions of approval based upon the evidence presented or revoke the deemed approved activity's deemed approved status. The determination of the administrative hearing officer becomes final thirty calendar days after the date of decision unless appealed to the board of supervisors in accordance with Section 82-38.1002.

(Ord. 2002-33 § 2).

#### **Article 82-38.10. Appeals, Notice, Fees, and Penalties**

##### **82-38.1002 Appeal to board of supervisors.**

- (a) Within thirty calendar days after a decision by the administrative hearing officer, the business owner or property owner if not the same, the sheriff, community members, or any other interested party may appeal to the board of supervisors as set forth in Chapter 14-4. Upon receipt of the appeal and the required appeal fee, the clerk of the board will set the date for consideration of the appeal as set forth in Section 14-4.006.
- (b) In considering an appeal of a determination that a substantial change in the mode or character of operation of the premises has occurred, the board of supervisors may uphold or reverse the determination of the administrative hearing officer.
- (c) In considering an appeal after conditions of approval on a deemed approved activity are imposed or modified or after deemed approved status is revoked, the board of supervisors must determine whether the established use conforms to the applicable deemed approved performance standards or conditions of approval. The board of supervisors may continue or revoke a deemed approved status, or the board of supervisors may modify the conditions of

approval or impose additional reasonable conditions of approval as the board judges are necessary to ensure conformity with deemed approved performance standards.

- (d) A decision of the board of supervisors is final as set forth in Section 14-4.008  
(Ord. 2002-33 § 2).

#### **82-38.1004 Notification of public hearing.**

The administrative hearing officer or his or her designee must notify the owner of the alcoholic beverage sales commercial activity, and the property owner if not the same, of the date, time and place of the public hearing. Notice must be sent via certified return receipt mail. The public hearing must be noticed by mail or delivery to all persons shown on the last available equalized assessment roll as owning real property in the unincorporated area of the county within three hundred feet of the subject property in accordance with Section 26-2.2004. All notices must be given not less than ten days before the hearing date. Notification fees will be in accordance with Section 82-38.1006 and paid for by the owner of the deemed approved activity.

(Ord. 2002-33 § 2).

#### **82-38.1006 Fee schedule.**

Fees and fee regulations, including fees for the review, notification, appeal, and reinspection of deemed approved activities, will be in accordance with a fee schedule established by the board of supervisors.

(Ord. 2002-33 § 2).

#### **82-38.1008 Violations and penalties.**

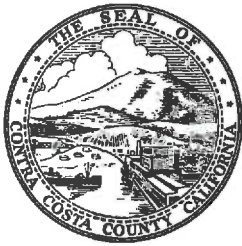
- (a) Violations of the terms or any of the conditions of approval of a land use permit issued under this article may result in revocation of the permit in accordance with Article 26-2.20, as well as any other enforcement remedy allowed by law.
- (b) If the deemed approved status of a deemed approved activity is revoked, the property owner or business owner is subject to:
- (1) criminal enforcement action in accordance with Chapter 14-8, including arrest by citation;
  - (2) Civil enforcement in accordance with Chapter 14-6; and
  - (3) In the case of a property owner, nuisance abatement in accordance with Chapter 14-6
- (c) Liability for Expenses. In addition to the punishment provided by law, a violator is liable for costs, expenses, and disbursements paid or incurred by the county or any of its contractors in the correction and abatement of the violation. Re-inspection fees to ascertain compliance with previously noticed or cited violations may be charged against the owner of the deemed approved activity in an amount set by the board of supervisors. The county administrator or his or her designee must mail the property owner or business owner of the affected premises a written notice setting forth the itemized cost of chargeable services and requesting payment of those costs. If the bill is not paid in the time stated in the notice, the charges will be referred to the county office of revenue collection, or if the charges are against the property owner, the charges will be placed as a lien against the property in accordance with Chapter 14-6

(Ord. 2002-33 § 2).





## ATTACHMENT #2



**CONTRA COSTA COUNTY**  
**Department of Conservation and Development**  
**Community Development Division**  
**30 Muir Road**  
**Martinez, CA 94553-4601**  
**Telephone: 674-7877      Fax: 674-7250**

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**TO:** Public Protection Committee  
Supervisor Federal Glover  
Supervisor John Gioia

**FROM:** Catherine Kutsuris, Director  
By: Bob Calkins, CDBG Program Manager

**DATE:** June 23, 2014

**SUBJECT:** **Proposed Work Plan to Review Ordinance 82-38 – Alcoholic Beverage Sales Commercial Activities (Deemed Approved Ordinance)**

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**RECOMMENDATION**

**APPROVE** the proposed work plan for reviewing the "Deemed Approved" ordinance.

**BACKGROUND**

Through the efforts of District 5 Supervisor Federal Glover, it has come to the attention of the Board of Supervisors that a type of alcoholic beverage product known as "alcopops" has been identified as a contributor to under-age drinking in the County. On June 3, 2014, the Board of Supervisors referred to this Committee (Attachment #1) the task of reviewing Chapter 82-38 of the ordinance code, known as the "Deemed Approved" ordinance (Attachment #2) to determine if relevant changes can, or need to be made to the ordinance in order to better regulate the sale of alcopops by liquor stores, as well as reviewing the entire ordinance to make any needed changes that would improve its overall effectiveness relating the sale of alcohol in the unincorporated areas.

A 4-phase work plan has been developed by the Department Conservation and Development (DCD) to examine the overall adequacy of the Deemed Approved ordinance and to explore possible amendments that could be made to specifically address the sale of alcopops.

### **Phase I: Data Gathering (June/July 2014)**

In this phase of the process, data will be collected from various sources including the Health Services Department and the state Alcoholic Beverage Control, related to:

- Determining how alcohol consumption/sales impact communities especially its youth.
- Identifying viable resources for quantitative data collection and analysis regarding community impact aspects of alcohol sales on the community and general compliance with Deemed Approved Ordinance.
- Mapping of existing alcohol-sales outlets in relation to schools, public parks, playgrounds, recreational areas, churches, etc.
- Researching existing literature on alcopops.
- Reviewing and updating the list of Deemed Approved alcohol-sales outlets and establish protocols/methods of verifying "exempt status" of alcohol-selling establishments.
- Updating all Deemed Approved contact information, brochure, literature and electronic information.
- Cross referencing State ABC list of active liquor licenses in the unincorporated County against the current Deemed Approved list and Tax Collector's list of Deemed Approved fees collected.

### **Phase II: Site Inspections (July/August 2014)**

Site visits will be conducted by DCD's Code Enforcement Division to all of the deemed approved locations in the unincorporated areas. The task list will include:

- Conduct site inspections of all Deemed Approved alcohol selling establishments to verify compliance with current Ordinance (Sec. 82-38.808).
- Review complaint data and/or law enforcement actions, if any, for each establishment.
- Compile/analyze results of site visits and complaint/law enforcement action data.

### **Phase III: Analyze Data (July/August 2014)**

This phase will consist of analyzing the data collected in Phase I, and analyzing the field information gathered from the site inspections conducted by Code Enforcement. This information will aid in developing a strategy for making policy recommendations, updates, or changes to the Deemed Approved ordinance and enforcement procedures that will allow the County to better regulate the sale of alcohol in the unincorporated areas.

### **Phase IV: Develop Policy Recommendations (August/September 2014)**

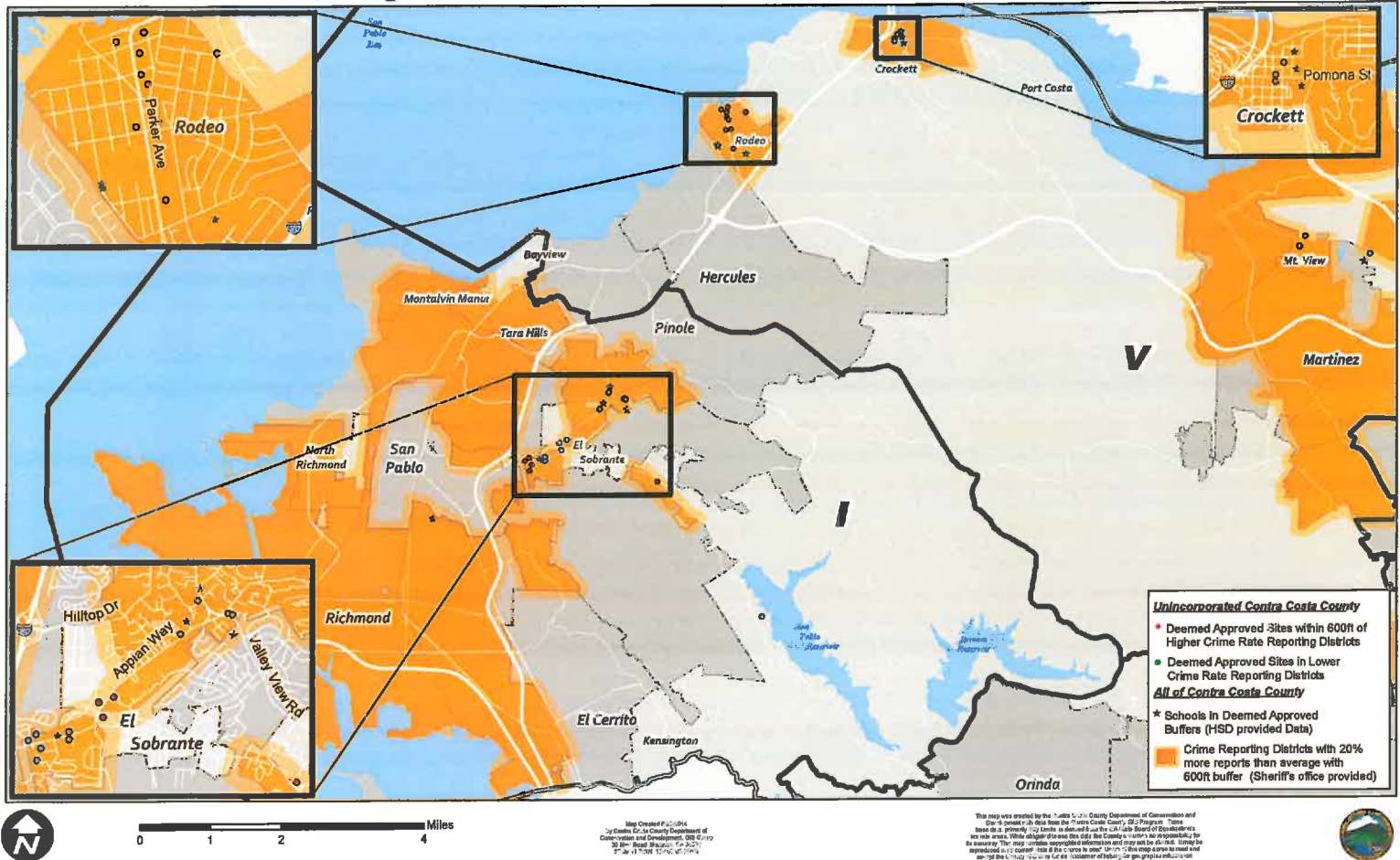
Working with the Public Protection Committee, determine what kinds of policies along with possible revisions to the Deemed Approved ordinance should be recommended to the Board of Supervisors that will help the affected communities in a real and meaningful way. Any policy revisions and ordinance changes will then be presented to

the Planning Commission for review and approval, and ultimately considered by the Board of Supervisors.

#### Attachments

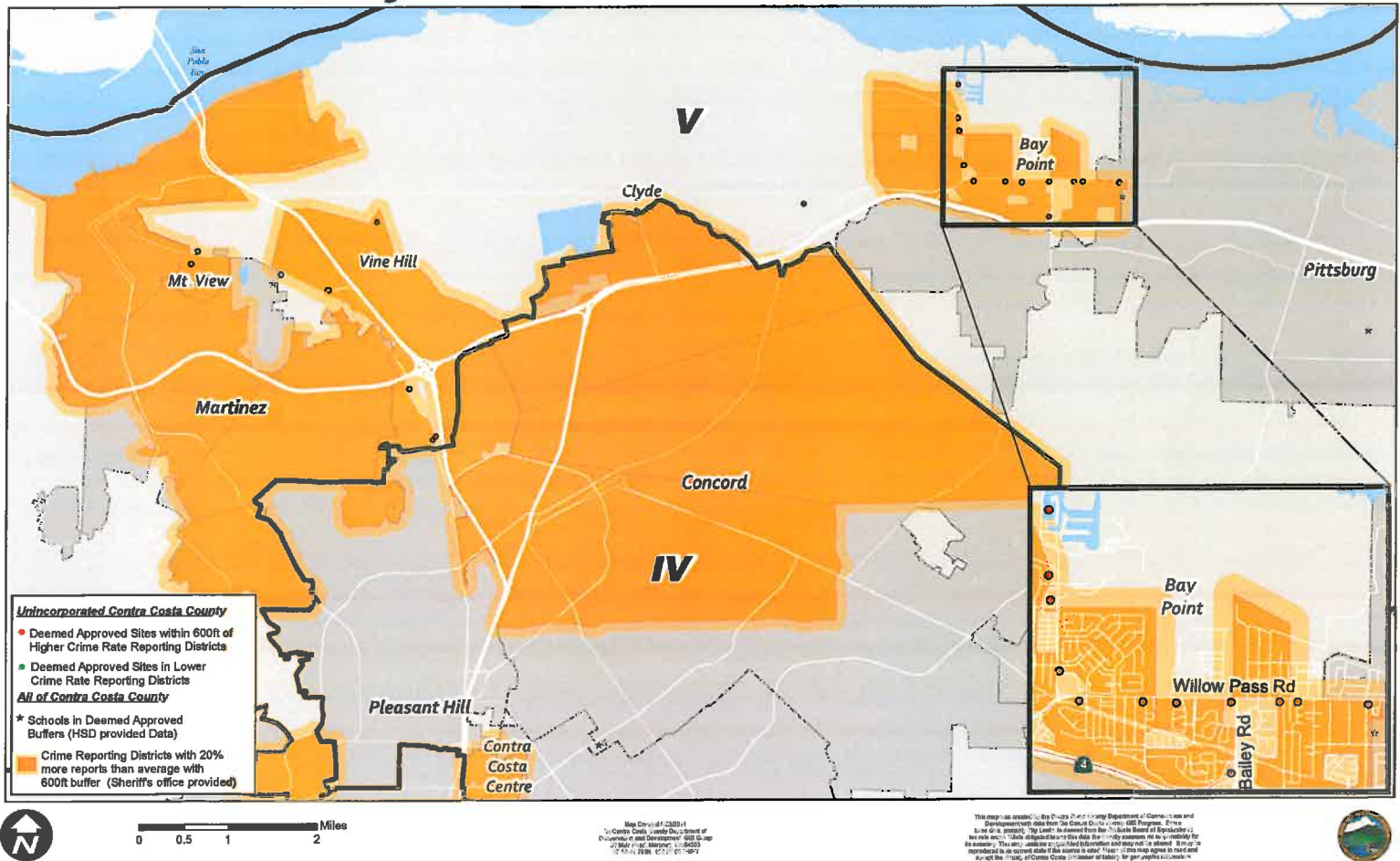
## ATTACHMENT #3

## ***West County Deemed Approved Ordinance Map***



## North Central County Deemed Approved Ordinance Map

## ***North Central County Deemed Approved Ordinance Map***



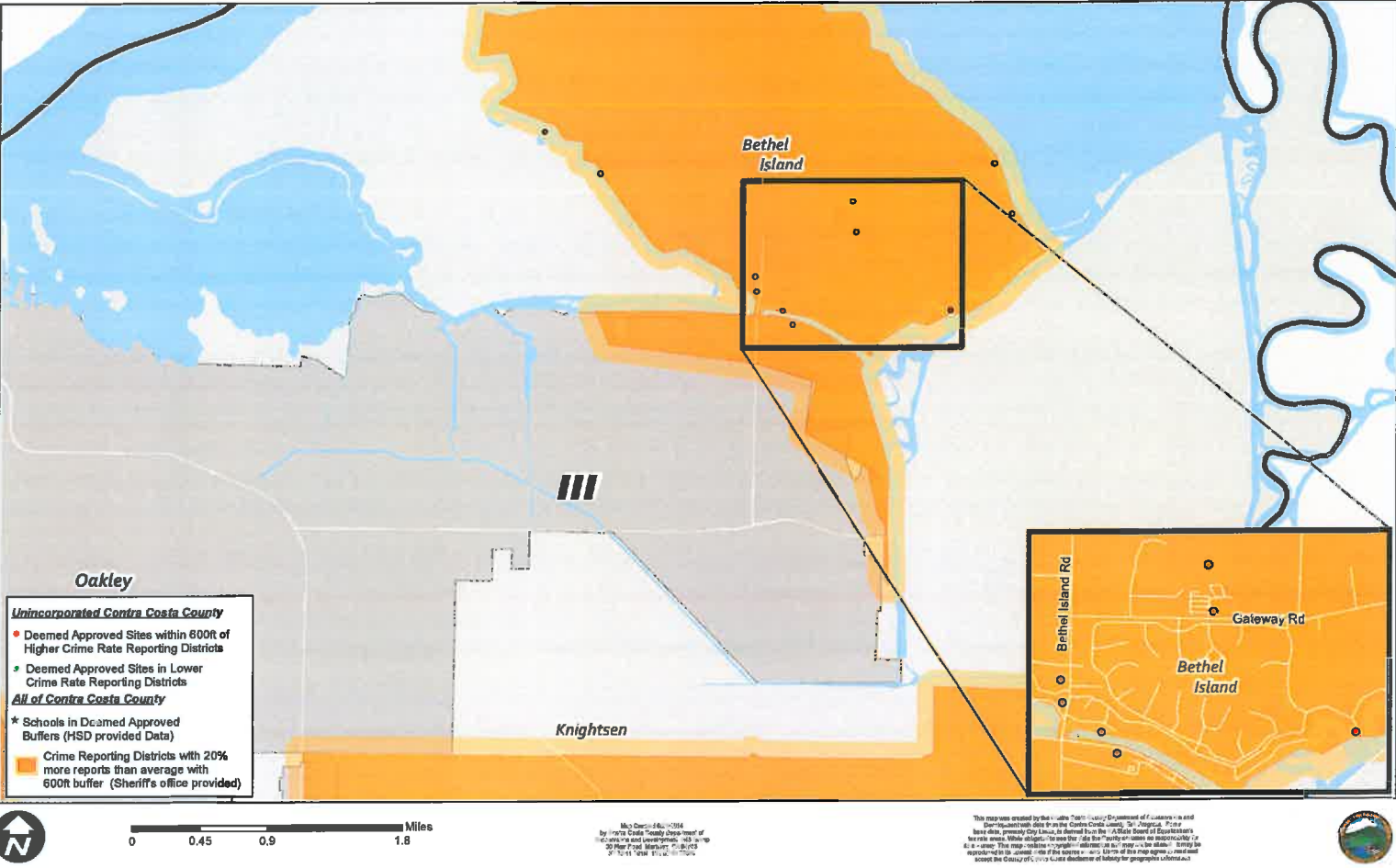


## **Central South County Deemed Approved Ordinance Map**



Contra Costa County

North East County Deemed Approved Ordinance Map



## **South East County Deemed Approved Ordinance Map**

