



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 12/2/2009

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: Hillary Gitelman, Director - 253-4805
SUBJECT: Vacation Rentals Ordinance - P09-00485-ORD

RECOMMENDATION

VACATION RENTAL ORDINANCE - ZONING ORDINANCE TEXT AMENDMENT P09-00485-ORD

CEQA Status: It has been determined that this type of project does not have a significant effect on the environment and is exempt from the California Environmental Quality Act. The project will not impact an environmental resource of hazardous or critical concern, has no cumulative impact, there is no reasonable possibility that the activity may have a significant effect on the environment due to unusual circumstances, will not result in damage to scenic resources, is not located on a list of hazardous waste sites, cause substantial adverse change in the significance of a historical resource or extract groundwater in excess of the Phase 1 groundwater extraction standards as set by the Department of Public Works. [See Class 5 ("Minor Alterations in Land Use Limitations") which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15305; see also Napa County's Local Procedures for Implementing the California Environmental Quality Act, Appendix B.] The project is also covered by the General Rule. It can be seen with certainty that there is no possibility the proposed action may have a significant effect on the environment and therefore CEQA is not applicable. [See Guidelines For the Implementation of the California Environmental Quality Act, 14 CCR 15061(b)(3)].

Request: County-sponsored ordinance to clarify the County's prohibition on short term vacation rentals except in commercial zoning districts by clarifying the definition of a "dwelling unit" and adding a new section 18.104.410 explicitly prohibiting transient commercial occupancies of dwelling units.

Ordinance Title: AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NAPA, STATE OF CALIFORNIA, AMENDING SECTION 18.08.260 DEFINING DWELLING UNIT AND ADDING A NEW SECTION 18.104.410 PROHIBITING TRANSIENT COMMERCIAL OCCUPANCIES OF DWELLING UNITS TO THE NAPA COUNTY CODE

Staff Recommendation: That the Planning Commission conduct a public hearing and forward a recommendation of approval to the Board of Supervisors

Staff Contact: Hillary Gitelman, 253-4805, hgitelman@co.napa.ca.us

EXECUTIVE SUMMARY**Proposed Action:**

1. That the Planning Commission recommend to the Board of Supervisors that they find the proposed ordinance exempt from review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15305 (Class 5 Categorical Exemption) as provided by Napa County's Local Guidelines for Implementing CEQA, and pursuant to the General Rule (CEQA Guidelines Section 15061(b)(3)) that CEQA does not apply where it can be seen with certainty that there is no possibility of a significant impact.
2. That the Planning Commission recommend to the Board of Supervisors that they find the proposed ordinance consistent with the Napa County General Plan for the reasons articulated in this staff report and adopt the proposed ordinance.

Discussion:

Unincorporated Napa County has a limited number of legally permitted hotels, B&Bs, and other guest accommodations. A quick web search will reveal that the County also has quite a few informal vacation rentals, where property owners are renting their homes, second units, and guest houses as tourist or guest accommodations in violation of the County's zoning regulations. The Napa County Board of Supervisors has expressed an interest in improving the effectiveness of code enforcement efforts aimed at eliminating illegal vacation rentals. The proposed ordinance would clarify and update the existing prohibition on vacation rentals (except in Commercial zoning districts) by clarifying that creative ownership strategies (e.g. timeshares, vacation "clubs," etc.) are not "dwelling units" and by explicitly prohibiting transient commercial occupancy of dwelling units. At the Commission's request, the proposed ordinance has been adjusted to exempt "house swaps" from the definition of transient commercial occupancies.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: It has been determined that this type of project does not have a significant effect on the environment and is exempt from the California Environmental Quality Act. The project will not impact an environmental resource of hazardous or critical concern, has no cumulative impact, there is no reasonable possibility that the activity may have a significant effect on the environment due to unusual circumstances, will not result in damage to scenic resources, is not located on a list of hazardous waste sites, cause substantial adverse change in the significance of a historical resource or extract groundwater in excess of the Phase 1 groundwater extraction standards as set by the Department of Public Works. [See Class 5 ("Minor Alterations in Land Use Limitations") which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15305; see also Napa County's Local Procedures for Implementing the California Environmental Quality Act, Appendix B.] The project is also covered by the General Rule. It can be seen with certainty that there is no possibility the proposed action may have a significant effect on the environment and therefore CEQA is not applicable. [See Guidelines For the Implementation of the California Environmental Quality Act, 14 CCR 15061(b)(3)].

BACKGROUND AND DISCUSSION

The Napa County General Plan and zoning ordinance permit at least one dwelling unit on every legal parcel that is zoned for agriculture or residential use. In these zoning districts, commercial uses are **generally prohibited**, and property owners who rent their dwelling units as short term vacation rentals (a commercial use) do so in violation of Napa County Code. The County has consistently prohibited short term vacation rentals because **such** commercial activities can conflict with legally permitted uses (e.g. agriculture), can create a nuisance for residential neighbors, and removes housing stock from residential use at a time when Napa County has unmet housing needs.

The Napa County Board of Supervisors has long expressed an interest in improving the effectiveness of code enforcement efforts aimed at eliminating illegal short term vacation rentals, and in June 2009 adopted a Housing Element Update which included Program H-1c: "...the County's code enforcement program will assign high priority to abatement of illegal vacation rentals, ensuring that existing dwelling units are used as residences, rather than tourist accommodations."

In the past year, the Conservation, Development & Planning Department has used a three-prong approach to this issue, including (1) outreach to property owners; (2) stepped-up enforcement efforts; and (3) development of code changes clarifying the County's longstanding prohibition on short term vacation rentals. Items (2) and (3) have been undertaken in collaboration with staff in the District Attorney's office and County Counsel's office, and item (3) has resulted in the current draft ordinance (attached).

Development of the proposed ordinance has taken many months, and involved meetings with key stakeholders, including realtors and land use attorneys working in unincorporated Napa County. Input received on earlier versions of the ordinance was helpful in focusing on the most important clarifications, ensuring that the proposed changes are direct and to the point, and will provide for easier enforcement and additional penalties.

The proposed changes to County Code would clarify existing provisions of the Code, since dwelling units that are leased for less than one month have long been considered illegal vacation rentals, subject to code enforcement actions, violation abatement, and civil penalties. Because the proposed changes would clarify, rather than change, the County Code, they would have no physical environmental impacts, and are considered exempt from CEQA. They are also consistent with and implement the Napa County General Plan. (See memo attached.)

The Planning Commission opened their public hearing on this draft ordinance on November 18, 2009 and heard testimony both for and against the proposal, as well as a request for clarification/amendment to ensure that existing legal fee ownership arrangements are respected, and that "house swaps" can be exempted from the new code section about transient commercial occupancies. As a result, several wording changes have been incorporated into the attached, draft ordinance.

The Commission also requested some analysis about what other counties are doing, and a vacation rental ordinance from El Dorado County is attached. In El Dorado County, using dwelling units as vacation rentals is permitted as long as a permit is obtained and ordinance requirements are met (including payment of transient occupancy tax). Sonoma County has historically allowed vacation rentals, collecting about \$2 Million in transient occupancy tax annually, and is currently crafting an ordinance similar to El Dorado County's.

George Bachich has argued (in his letter of November 12, 2009) that interpreting or amending the County's existing ordinance to allow vacation rentals similar to Sonoma or El Dorado Counties would be consistent with the Napa County General Plan because the plan talks about "concentrating" rather than "exclusively locating" commercial uses in urbanized areas, because General Plan Goal AG/LU-5 encourages commercial uses compatible with adjacent uses and agriculture, and because vacation rentals do not hinder agricultural operations or threaten the

economic viability of agriculture. (See Mr. Bachich's letter for the full text and list of his arguments.)

Planning staff disagrees with Mr. Bachich's interpretations, and believes that both the current zoning ordinance and the Napa County General Plan support the County's existing prohibition on the use of dwelling units as vacation rentals, and both would have to be amended to eliminate this prohibition. **The Napa County Code is structured so that those uses which are not enumerated as allowed are prohibited [see Section 18.12.080 which provides all uses must be in conformity with all regulations of the zoning district, and no commercial uses are permitted other than is specifically authorized under the Zoning Code].** In the zoning ordinance, the existing prohibition is expressed within the definition of a dwelling unit as something that is for owner occupancy *or rental on a monthly or longer basis* (Section 18.08.26). The existing prohibition also derives from the definition of commercial use (18.08.170) and the exclusion of **all but a few discrete** commercial uses from agricultural and residential zoning districts (see the Agricultural Preserve zoning district for example -- Sections 18.16.010 et seq.).

In the General Plan, Policy AG/LU-33 clearly expresses the County's policy that short term tourist use of existing dwelling units is prohibited: "The County will promote development concepts that create flexibility, economy, and variety in housing without resulting in significant environmental impacts *and without allowing residences to become timeshares, resorts, hotels, or similar tourist-type accommodations*" [emphasis added]. In addition, tourist accommodations are commercial uses, and conflict with General Plan Policies AG/LU-20 and -21, regarding uses and intensities allowed in agricultural areas. These policies were enacted by the voters as Measure J (1990) and Measure P (2008) and generally limit uses to (a) agriculture and (b) one single family dwelling per parcel (except as specified in the Housing Element). There are limited number of circumstances in which other uses are permitted in agricultural areas (e.g. legal non-conforming commercial uses), but unlike vacation rentals, these are generally articulated in other General Plan policies (e.g. Policy AG/LU-45 about legal non-conforming uses), allowing the plan to be interpreted as a whole to allow those other uses.

This is an important point: general plans are by definition, general, and decision makers rely on the plan as a whole, balancing potentially competing policies and priorities. In the current instance, planning staff believes that the County's longstanding commitment to directing commercial uses into urbanized areas, expressed in various ways throughout the General Plan, would preclude legalization of vacation rentals in agricultural areas (i.e. outside of an existing urbanized area as defined on General Plan p. SV-3) without a General Plan amendment.

SUPPORTING DOCUMENTS

- A . Revised Draft Ordinance
- B . CEQA & GP Memo
- C . Input Received for November 18 Hearing
- D . El Dorado County Example
- E . Additional Correspondence

Napa County Planning Commission: Approve

Reviewed By: John McDowell