



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 10/30/2018

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NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors

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

REPORT BY: John McDowell, Principal Planner - 299-1354

SUBJECT: Agricultural Zoning Residential Uses and Viewshed Protection Plan Workshop

RECOMMENDATION

Director of Planning, Building, and Environmental Services requests discussion and direction regarding commencing potential zoning ordinance changes to the Viewshed Protection Program and limiting total development area for residential development within agricultural zoning districts.

EXECUTIVE SUMMARY

Staff request preliminary direction regarding potential updates to the the Viewshed Protection Ordinance (hereafter "Viewshed") [Napa County Code (NCC) Section 18.106] and development standards for residential uses in the Agricultural Watershed (AW) and Agricultural Preserve (AP) zoning districts. In 2016 the Agricultural Protection Advisory Committee (APAC) and Planning Commission provided recommendations to the Board of Supervisors regarding possible changes to winery and residential land use regulations in agriculturally zoned areas. As part of the Board's final action, APAC action item #5 directed staff to: "Prepare an ordinance to limit the total development area of residential development within AP and AW zoned parcels. Take no action with regards to changing the existing development area of wineries."

In February of this year, the Board requested that staff return with a discussion item concerning the Viewshed, which applies design requirements to hillside developments visible from certain public roads. The vast majority of structures subject to the Viewshed are residences, and occur on agriculturally zoned property. Given the similar subject matter, it is recommended that these two work program items be combined, and the Board provide general direction on items to address in any ordinance updates. Following this study session staff will prepare draft ordinance updates and solicit comments from stakeholders in advance of hearing the item at Planning Commission and ultimately returning to the Board for final consideration.

PROCEDURAL REQUIREMENTS

1. Staff reports
2. Public comments
3. Board discussion and direction

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

This study session is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

History

At the conclusion of the Agricultural Protection Advisory Committee (APAC) process, the Board provided direction to staff to prepare an ordinance limiting residential land use development area on agriculturally zoned properties. This direction was an outgrowth of an initial recommendation from APAC and the Planning Commission to consider updates to development area limits for all uses on agricultural property including wineries. The Board refined this recommendation, determining that existing winery coverage requirements did not warrant revision, and instead directed that updates be considered for residential land uses.

Concern over the loss of producing agriculture land was one factor contributing to APAC's original recommendation to limit development on agriculturally zoned properties. Agricultural land uses are tracked in the County's Geographic Information System, and conversion rates are summarized in the tables provided in Attachment A. Residential development (and their access roads) have resulted in roughly 10 acres of vineyard loss annually, with the data suggesting that the rate of conversion has slowed since 2010. This conversion rate appears minimal, at least in terms of overall producing agricultural lands, because there has been an overall net increase in producing acreage every year, even with the vineyards lost to residential development.

It should also be noted that high-end rural estate development has been the dominant form of residential construction occurring within agricultural zones in recent years, and plays a large role in the economy. In 2017 (pre-fire), residential building permits accounted for approximately \$108 million in valuation, compared to approximately \$282 million in valuation for all other non-residential permits. Rural estate development and property transactions are also major contributors to increased tax assessment valuation.

Additional limits on residential development area in agriculturally zoned areas can be implemented in several ways, and the resulting land use limitations can vary greatly in their degree of restriction. This workshop evaluates existing regulations and presents several update concepts for Board consideration. Staff recommendations and other possible alternatives are included below. Alternatives are intended to aid in the discussion, and are not intended to express the full range of possibilities for achieving Board objectives.

Public Review Process

In addition to general direction on updating regulations, Staff also seeks Board direction on the process moving forward including stakeholder engagement, target dates for formal public hearings, and the priority of this item in relation to other work plan items. Staff can engage interested parties in several ways ranging from requesting comments on draft documents, to conducting informal (stakeholder) roundtable discussions, to establishing a community forum.

It is a regular practice that draft code or policy changes are distributed to a large group of 'development stakeholders.' The stakeholders list, as well as document posting to the Department's webpage, has been an effective way to get information out to interested parties and to receive their feedback and recommendations in advance of the Planning Commission hearing the item. The Board would consider the updates after the Planning Commission has concluded deliberations and forwarded their recommendation.

If the Board directs that updates be prepared as soon as possible, Staff anticipates preparing an initial draft with distribution to stakeholders prior to the end of the year. Planning Commission and Board review could occur early in 2019.

Recommendation: Direct Staff to solicit public comments on draft updates prior to commencing Planning Commission and Board of Supervisors hearing process.

Alternatives / Options: (1) Establish a community forum and develop draft documents through that group. (2) Conduct Staff-lead public workshops on draft documents prior to commencing formal hearings.

EXISTING CONDITIONS AND REGULATORY SETTING

General Plan

The existing General Plan devotes the majority of narrative, goals and policies toward the preservation, promotion and sustainability of agriculture (including wineries) within the two agricultural land use designations that comprise the vast majority of land area under County jurisdiction. Agriculture is highlighted as the "primary land use" with urban uses directed to non-agricultural areas. Within this context, the General Plan contains language expressly allowing residences in agricultural areas, but otherwise contains little direction on their role in fulfilling the goals and objectives of the General Plan. Notable policies include:

- Policies AG-LU 20 and 21, describe the purpose, intent and general uses within the two agricultural designations, including "one dwelling per parcel" as a general allowed use.

- Policy AG-LU 23 directs that the County will enact regulations that concentrate residential growth within urban areas, but Policy AG-LU 27 expressly exempts "...one single-family house and/or second unit on an existing legal lot..." from the definition of "urbanizing."

- Policy AG-LU 26 discourages urban developments in agricultural areas but states that "...nothing in the Agricultural Preservation and Land Use Element is intended to preclude the construction of a single-family residence, on an existing, vacant, legal parcel of land..."

- Policy AG-LU 15.5 and Action Item AG-LU 15.5.1 calls for residential uses to contain buffers from agricultural land uses.

- Policy AG-LU 33 states: "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."

- Action Item AG-LU 33.1 directs that zoning and local guidelines clarify the distinction between single-family residences and commercial short-term accommodations, and calls for the County to analyze the prevalence of extremely large residences to determine if certain size developments should require environmental review.

Both the Agricultural Preservation and Land Use Element and Housing Element emphasize that housing, at least in terms of meeting Regional Housing Needs Assessment (RHNA) mandates, generally be directed toward urban areas and away from agricultural areas (as a measure to preserve agricultural areas). Housing Element policies related to agricultural areas focus on the provision of farm worker housing. The Circulation Element encourages housing development near jobs and vice-versa as a key measure to address traffic congestion. The Economic Development (ED) Element focuses on promoting agricultural uses in agricultural areas, and is largely silent on the role of residential development. ED Policy E-12 recognizes that housing and transportation are strongly linked to the County's economic health, and directs that the County will work to implement Circulation and Housing Element policies to provide workforce housing, reduce traffic congestion, and improve the County's economic health.

Recommendation: Direct Staff to develop further definition on the role, purpose and intent of residential uses in agricultural areas within draft zoning and/or guidelines updates without the need for General Plan amendment.

Alternatives / Options: (1) Concurrently amend existing General Plan policies to further define the purpose, intent and role of residential uses in agricultural areas. (2) Limit updates to zoning and/or guidelines documents without adding to existing policy language concerning residential uses in agricultural areas.

Maximum Residential Development Area

The Winery Development Ordinance (WDO) contains coverage requirements that limit winery development area to no greater than 25% of a parcel or 15 acres, whichever is less. Application of a similar requirement for residential uses is possible, but would likely need to contain some level of graduated standard based on parcel sizes with a higher coverage allowance for smaller parcels.

Agriculturally zoned properties where residences are possible range from well below one acre to several hundred acres. Terrain and setting can vary widely. Smaller parcels, especially properties under 2 acres, tend to be set amongst other smaller properties and are consequently generally constrained under existing regulations. In these smaller lot settings, private well and septic system requirements tend to dictate the maximum developable area. Most of these smaller parcels were developed decades ago, but redevelopment or remodeling is common on these sites, although expansion over existing conditions is generally minimal due to water, sewer and other site constraints. Setting a maximum lot coverage requirements in these small lots settings would not likely result in any significant change in the amount of land area dedicated to residential uses.

Larger parcels, especially over 20 acres, tend to have ample property to meet all existing development standards, and thus the size of the residential development is more or less determined by the property owner. In these larger lot settings, total residential development typically is a very small percentage of the overall site. Therefore, setting a lot coverage maximum on larger lots likely would need to be based on a rigid acreage figure with a thoughtful definition of land improvements that count toward the acreage cap. Setting coverage requirements based off of a lot size percentage is problematic because lot sizes can be (and are) adjusted.

Enforcement of a maximum residential envelope may be challenging, as some site improvements do not require building permits (e.g., lawns, sports areas, walkways, formal gardens). Consideration should also be given to whether a variance or exception process would be allowed, as well as addressing legal nonconformities created by the new regulation.

An alternative approach to placing a spatial or area limit on residential development, would be to limit structure

size. Since virtually all residential structures trigger building permits, this form of regulation would have a higher degree of enforceability. One approach to limit total residential development area is to simply place an overall size limit on 'by-right' single family residences, and require some form of discretionary review on projects exceeding the thresholds, perhaps similar to the Viewshed Ordinance's design guidelines, public noticing, and hearings processes (see Viewshed Ordinance discussion below). Similar size limits can be placed on accessory buildings, or accessory buildings can be addressed as a percentage of the size of the primary residence. This approach is supported by General Plan Action Item AG-LU 33.1 which suggests residences over a certain size be evaluated for potential environmental impacts.

Recommendation: Prepare an ordinance that allows a certain amount of residential development by-right, and requires a discretionary review process for developments exceeding the ministerial threshold.

Alternatives / Options: (1) Prepare ordinance that sets maximum coverage of residential development including range of requirements based on lot size and other site constraints; (2) Determine that setting a maximum coverage requirement is not necessary, and provide direction on updating other aspects of residential regulations.

Residential Use

The base AP and AW district regulations [Napa County Code (NCC) Chapters 18.16 and 18.20] and the associated general development standards (NCC Chapter 18.104) prescribe residential development allowances in agriculturally zoned areas. These regulations follow traditional zoning convention with residences (one primary residence per legal lot) and residential accessory uses (second units, guest cottages, out buildings, etc.) designated as by-right development. Development standards consist primarily of height and building setback requirements. Projects that meet standards or otherwise are not in conflict with code must be approved, and conversely must be denied or modified if in conflict with any standard. These standards provide a great deal of consistency to all like-zoned properties and result, generally, in a straight forward review process for proposed projects.

However, on occasions these regulations can produce seemingly arbitrary and/or irrational land use actions on specific parcels and/or development proposals due to their rigid, non-discretionary nature. The regulations can cause compulsory denial of what would otherwise appear to merit "common sense" approval. They can also result in compulsory approval of projects that seemingly go beyond the intent of zoning, generally as a result of the regulations predating and not addressing current land use concepts. As an example: Permit denial of a barbeque/pool building must occur if the structure contains all the features meeting the definition of a secondary dwelling unit and the property already contains a secondary dwelling unit, but permit approval is required if instead the barbeque kitchen is not enclosed within habitable space and three free-standing detached master bedrooms are proposed as part of a "pod" house. Custom residential accessory structures occur on a somewhat regular basis on high-end rural estates. Examples of such structures include barns housing large private car collections, entertainment pavilions, private art collection buildings, recreation rooms including bowling alleys or movie theaters, private music studios, etc. Residential use caves also occur, and are generally used as entertainment spaces and to house private wine collections. Staff works with applicants to conform these structures to zoning requirements, often times utilizing recorded deed restrictions memorializing an applicant's commitment to use the structure in a residential manner.

In recent years, it has also become more common to see house plan submittals containing multiple matching or similarly-sized master bedrooms with separate exterior entrances, independent climate controls, and other features like mini-bars akin to what would be seen in a hotel room. Many of these types of structures are owned by corporations or in fractionalized ownership arrangements. Staff is required to approve plans when the applicant indicates an intent to utilize the improvements in a manner consistent with zoning. In some cases, homes are being used as illegal short-term vacation rentals and are dealt with through code compliance. In other cases, the

home is used in a manner that complies with regulations, like a long-term vacation rental or as a non-commercial vacation residence for the owner and/or their invited guests.

Case law, as well as State and Federal statute, highly restrict local agencies land use rules concerning residential occupancy. Regulations pertaining to ownership arrangements, such as joint-tenancy agreements, fractional occupancy, time-shares, stock cooperatives, are by and large dictated at the State and Federal level. The courts have also held that local agencies cannot define the living arrangements of the occupants of a single family residence. Local control of residential occupancy is generally limited to setting occupancy duration, where occupancy of less than 30 days can be defined locally as a commercial or transient use and thus not considered a residential land use, which is presently contained in Napa County Code.

Recommendation: Prepare an ordinance that allows a certain amount of residential development by-right, and requires a discretionary review process for developments exceeding ministerial threshold.

Alternatives / Options: (1) To the extent permitted by law, further define full extent of allowable residential uses and designs permissible in local regulations; (2) Establish a total maximum development area per parcel and reduce degree of regulation for uses that occur within the development area. (3) Continue current administrative practices utilizing deed restrictions and other notices of allowed use to address out of the ordinary designs. (4) Investigate possibility of establishing agricultural land conversion fee and/or requirement for conservation easement when land is taken out of agriculture.

Outdoor Living Areas

One area where regulations have not kept up with changes in market demand is outdoor living areas, which have become common on most rural estates. These spaces can be unenclosed, partially enclosed or seasonally convertible between enclosed and unenclosed space. Most above-ground structural improvements, like a patio cover or swimming pool, are subject to setback requirements but are otherwise not limited in size. Secondary living units and guest cottages have size limitations, but those limitations are based on interior habitable space. It has become very common for second units and guest cottages to contain large unenclosed or non-conditioned spaces resulting in overall structure size that is far beyond the interior-only size limits. These non-conditioned spaces are both a desirable design element and not subject to current zoning size limitations or residential use housing impact fees based on enclosed area.

Recommendation: Update zoning regulations to address outdoor living areas that are part of guest cottages, secondary dwelling units, and other habitable residential accessory structures.

Alternatives / Options: (1) Establish a total maximum development area per parcel and reduce degree of regulation for uses that occur within the development area.

Existing Viewshed Ordinance

The Viewshed Ordinance is designed to increase discretion and public process commensurate with the degree of visibility a project has from certain public roadways, or what are commonly referred to as Viewshed roads. The ordinance relies on design guidelines more than rigid zoning standards. Ordinance goals seek to protect views from scenic roads in balance with maintaining property rights and providing for public input in the decision making process. The design manual suggests measures that can be employed to reduce the visibility of structures and associated improvements (like access roads) and blend them into surrounding land features. The amount of public process and discretion expands commensurately with the degree of project visibility from designated roads. Projects that cannot be viewed from a designated roadway qualify for streamlined review and do not trigger public notification. Projects that are visible from designated roads but fully comply with design requirements require public notice and hearing before the Zoning Administrator. Projects requesting an exception or exceptions to

design requirements are subject to Use Permit consideration before the Planning Commission.

The Viewshed Ordinance can result in uses that are otherwise allowed by-right to become discretionary uses. A parcel's applicable zoning may allow one residence per legal lot, but if that residence will be sited in a manner where it is subject to the Viewshed Ordinance, then approval of the residence becomes fully discretionary. This presents somewhat of a dilemma in terms of consistently treating similar projects in similar ways. A hillside residence that is not visible from a designated road is not subject to Viewshed design guidelines and simply needs to meet basic zoning setback and height limits. A project that is visible from a scenic roadway is subject to design guidelines or must seek an exception from the Planning Commission, including preparation of supporting environmental analysis. Environmental analysis is not required for projects that are exempt from the Viewshed ordinance.

The situation can be compounded when a project that otherwise qualifies as a non-discretionary building permit becomes discretionary as a result of requirements imposed by other reviewing departments, divisions or agencies. For example, the widening of the existing access driveway is often required to comply with the County Road and Street Standards. If the required widening is in a hillside setting visible from a Viewshed road, then a discretionary approval is required even if the residence itself is not visible. In these circumstances the environmental review considers the entire proposal, but the Viewshed requirements are only applied to those elements of the project that are visible or potentially visible from the Viewshed road.

The visual impact of residential development in agricultural areas can be further compounded by the number of intrusions into a neighborhood's landscape. Areas that were once large tracks of uninterrupted vineyard land now contain several residences and/or other structures. Although the number of new structures and total land area committed to those structures is relatively small, the visual change in the setting can be quite dramatic.

Overall, staff believes the Viewshed Ordinance achieves a reasonable balance of protecting scenic quality while allowing property owners to develop projects that meet their needs. From staff's view, the process is not overly burdensome to applicants, and neighbors and the general public are provided sufficient notice and opportunity to comment. Public outreach includes a 1,000-foot minimum mailing radius and posting of pending projects to the County's webpage. Most Zoning Administrator hearings are lightly attended. When neighbors do attend, applicants more often than not are able to satisfactorily address their concerns. The most common concern raised is that the new development may impact the views from the neighbor's property, but the ordinance does not protect views from nearby residences. Often times applicants will make minor adjustments to their project in response to neighbor comments even though the ordinance does not require the change, like adding landscaping to soften the view from a neighbor's property.

Over the years, several larger projects have generated complaints from both neighbors and the general public after project completion (and well after any public hearing approval). The ordinance requires that *"the existing vegetation, proposed landscaping, topographical siting, architectural design, and color tone screen the predominant portion of the proposed structure,"* but does not set a limit on the total amount of structure that is visible. In other words, at least 50% of a building must be screened, but there is no size limit on the amount of the structure that is visible. As a result, the larger the structure is, the greater amount of the structure that can be visible and still meet the requirement. Within this context, view angles play into the review. A structure may be fully screened from a public road, but may not be screened from other surrounding properties. A notable example of this circumstance is a large residence located on the hill 1.25 miles east of the Town of Yountville and immediately south of Yountville Cross Road. The vast majority of this house is fully screened by existing vegetation, and the project complies with the ordinance, but after it was constructed several complaints regarding its visibility were received from homeowners within the Town of Yountville who have backyard views facing the hill. Similar complaints were also received about large homes built in the vineyards immediately east of the Town of Yountville, but those homes were not subject to the Viewshed Ordinance and required only building permit approval.

Recommendation: Minor technical updates are needed to clarify several areas of confusing language and to consistently list all of the qualifying Viewshed roads.

Alternatives / Options: (1) Expand notice and/or process for projects that are determined to be exempt from review. (2) If Board directs that all residential development over a certain size is subject to discretionary review, combine Viewshed requirements and the new discretionary process. (3) Update design requirements to allow less visibility of hillside structures and improvements, or in turn, allow more visibility of hillside structures and improvements.

Earth Tone Colors

Several recent new projects have utilized brighter white exterior finish colors that have resulted in public/neighbor concerns about their appearance. General zoning standards do not address exterior color(s), meaning that by right land uses can be painted any color. However, structures that are subject to the Viewshed Ordinance are required to have colors that 'blend' with the surrounding vegetation and land forms, and projects that require discretionary approvals are subject to Standard Conditions of Approval that require 'earth tone' finishes. The Standard Conditions of Approval state: "The colors used for the roof, exterior walls and built landscaping features of the winery shall be limited to earth tones that will blend the facility into the colors of the surrounding site specific vegetation." The term 'earth tone' is not defined in County Code. Merriam-Webster defines earth tone as "any of various rich colors containing some brown." In practice, the County has a long history of authorizing finish colors that do not necessarily contain 'some brown.' Whites and beiges are commonly authorized, along with greys, greens and reds. In recent years with building construction trends shifting toward increased energy efficiency, use of brighter shades of white have become increasingly common due to their ability to reflect solar radiation and resulting in increased energy efficiency. There are, however, many examples of white or beige wineries dating back to the 1980s and 1990s.

Recent controversies over building color appear to have been the result of conflicting expectations between Staff, applicants and project neighbors. Often during the public hearing process building designs are represented as having muted or darker color shades, but those colors are not expressly conditioned as the final building colors. In some cases, the final building design (including colors) changes after the Planning Commission hearing. It is somewhat common for projects to go through some level of administrative use permit modification during building permit plan check review in order to address post Planning Commission changes to a project. Notice occurs for most administrative modifications and in recent cases where neighbors expressed concern over final building colors, the notice contained mention of final building colors (but did not include a rendering of the revised design and/or color scheme).

These difference of opinion may have been avoided had there been more certainty of the final project colors at the time the entitlement was granted. If the term earth tone is retained in the County's regulatory framework, then the code could be updated to define the full extent of acceptable colors, or the Board could simply direct that exterior colors must include 'some brown'. Alternatively, earth tone could be removed and replaced with language that clarifies the full range of acceptable colors, such as a defined color palette.

Recommendation: Update zoning regulations to subject all new development to the same set of building color requirements.

Alternatives / Options: (1) Set final building colors at time of discretionary approval, and require public notice and discretionary decision if color changes are proposed afterward; (2) Establish a comprehensive range of acceptable colors (i.e. - County-approved color pallet) as guidelines and allow projects to be painted any color within the approved range; (3) Eliminate building color requirements and allow buildings to be painted any color.

SUPPORTING DOCUMENTS

- A . Agricultural Land Conversion Summary
- B . Viewshed Protection Ordinance and Design Manuel

CEO Recommendation: Approve

Reviewed By: Helene Franchi