RECOMMENDATION

Director of Conservation, Development & Planning and County Counsel to report on their analysis of a proposal to allow vacation rentals in unincorporated Napa County as an accessory residential use and to seek direction regarding next steps.

EXECUTIVE SUMMARY

On December 15, 2009, the Board of Supervisors adopted Ordinance No. 1332 amending Section 18.08.260 of the Napa County Code defining "dwelling unit" and adding a new Section 18.104.410 clarifying the existing prohibition of transient commercial occupancies of dwelling units. The ordinance increased penalties and was intended to improve enforcement capabilities. The Board's action made the new ordinance effective 180 days following adoption (June 2010). At the same time, the Board requested that planning staff meet with those stakeholders who wanted to legalize vacation rentals and explore alternatives. The Board subsequently adopted Ordinance No. 1339 deferring the effective date of Ordinance No. 1332 to December 1, 2010.

Planning staff hosted two stakeholder meetings, one in January and one in February, and received substantial input and information from vacation rental advocates in support of their position. On March 23, 2010, staff reported on the stakeholder process, including a description of alternatives considered and issues raised, and vacation rental proponents presented a proposal to allow rentals as an "accessory use" of a dwelling unit. After public testimony, the Board directed planning staff and County Counsel to return with an analysis of the proponents' proposal.

Staff's analysis has concluded that it would be problematic to define vacation rentals as an accessory residential use and then (a) to limit the number of permits; and (b) collect transient occupancy tax (TOT). In addition, County Counsel believes that because it is possible that such an approach might be deemed inconsistent with certain
portions of the General Plan that can only be changed by a vote of the people, submitting the vacation rental proposal of the vacation rental proponents to the voters for approval would seem to be the most appropriate approach.

PROCEDURAL REQUIREMENTS

1. Staff report
2. Public comments
3. Board of Supervisors discussion and direction to staff.

FISCAL IMPACT

Is there a Fiscal Impact?  No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action 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

Napa County staff and vacation rental advocates have each tried to estimate the number of dwelling units in unincorporated Napa County that are currently being used as short-term (i.e. less than 30-day) rentals in violation of the Napa County Code. Based on a review of common websites like “Vacation Rental By Owner,” staff believes there could be about 250 such rentals, representing about 2.5% of the County’s housing stock of 10,000 dwelling units. The precise number is difficult to determine because addresses are seldom given, making it difficult to identify rentals that are within unincorporated Napa County versus those that are in one of the cities (or even an adjacent county). Also, the number of rentals fluctuate over time as owners' situations change and as owners are contacted by code enforcement staff.

The characteristics of vacation rentals also vary greatly, with some multimillion dollar houses, and some smaller dwellings. Some rentals may be owned by corporations, but many are owned by individual property owners or families. In some cases, the owners use the house regularly and/or use another house on the same property, and in other cases, the house is only used as a short term rental.

Since at least the late 1980s, the County has prohibited short term vacation rentals outside of commercial zoning districts by defining a dwelling unit as something that is for owner occupancy or rental on a monthly or longer basis (Section 18.08.26). The County has also had a strict definition of commercial use (Section 18.08.170), and has considered short term rentals (i.e. less than one month) to be a commercial, rather than a residential, use. Napa County Code provisions regarding home occupations (Section 18.08.310) and accessory uses (Section 18.08.020) have been interpreted narrowly, relying on terminology such as "[home occupations are] incidental to and subordinate to the use of the dwelling as a residence" and "[accessory uses are] subordinate to the main use and customarily a part thereof...clearly incidental, related and subordinate to the main use... cannot change the character of the main use."

Ordinance No. 1332 was adopted December 15, 2009 to perpetuate and reinforce this longstanding approach to
the issue, defining a dwelling unit as "a room or rooms constituting a separate, independent housekeeping establishment for owner occupancy or rental or lease for a period of thirty days or longer..." The Ordinance was also intended to aid enforcement efforts by substantially increasing penalties associated with illegal vacation rentals. (Ordinance 1332 is attached, along with Ordinance 1339, which establishes an effective date of December 1, 2010.)

At the Board of Supervisors' direction, Planning staff hosted vacation rental stakeholder meetings in early 2010, inviting interested members of the public to share ideas and to explore alternatives to Ordinance No. 1332. A summary of these meetings was provided to the Board on March 23, 2010, at which time the vacation rental proponents submitted a proposal to legalize vacation rentals as an "accessory residential use" subject to a number of conditions. At the stakeholder meetings and the March 23rd Board meeting, there were also discussions of potential impacts and benefits of vacation rentals, as well as the planning and legal issues associated with them.

This staff report does not repeat the previous material, but instead summarizes the principal issues associated with the proponents' proposal described below.

**Vacation Rental Proponents' Proposal**

The vacation rental proponents' proposal would amend the zoning ordinance to allow up to 300 short-term vacation rentals (i.e. rental of a dwelling unit for less than 30 days) as an accessory residential use provided that certain conditions are met as follows:

1. The residence involved must be a legal (permitted) dwelling unit of greater than 1,200 square feet, and must be located on a parcel greater than 1 acre in size. (Exempting units less than 1,200 square feet is suggested as a way to minimize conflicts with affordable housing goals; exempting parcels less than one acre is suggested as a way to minimize neighbor conflicts.)
2. The residence must be used for short term rentals no more than 20 weeks per year.
3. The property owner must obtain a permit from the County and must pay transient occupancy tax (TOT) on a quarterly basis. Permits would automatically expire in the event that rentals are unused (owners do not pay TOT) for four sequential quarters.
4. To receive a permit, owners would have to agree to limit occupancy of the residences to two persons per bedroom plus four additional people, with no large parties or weddings. The number of automobiles on site must be limited to the number accommodated by on site parking spaces, and a "code of conduct" must be posted on site, with a clear explanation of noise limits contained in the County’s noise ordinance. (Limiting the occupancy of the unit is suggested to minimize neighbor conflicts and preclude large events.)
5. Owners and guests must acknowledge the "right to farm" in each signed contract.
6. Owners must provide the County and nearby neighbors with a contact number where the owner or his/her representative can be reached at any time of the day/night.

Planning staff assumes that to administer the program, the County would accept applications at the same time each year (e.g. during the month of January), provide written notice to neighbors in the vicinity of each property included in the applications, and hold a public hearing to determine which permits would be granted so as not to exceed the 300 rental limit. The applications would be discretionary and environmental review pursuant to the California Environmental Quality Act (CEQA) would be required (although all annual applications could be evaluated as one “project” under CEQA). The decision to approve or reject applications would be appealable to the Board of Supervisors. Implementation of this proposal would require adoption of an ordinance amending numerous sections of the Napa County Code as follows:
Zoning Code Chapter 18.08, Definitions, would need to be amended to include a definition of vacation rentals (new Section number 18.08.X).
Zoning Code Section 18.08.260, Dwelling Unit, would need to be amended to clarify that dwelling units are for occupancy or rental on a monthly or longer basis “except as provided in Section 18.08.X.”
Zoning Code Section 18.08.170, Commercial Use, would need to be amended to include an additional sentence: “Commercial use also does not include short term vacation rentals permitted pursuant to Section 18.08.X.”
Zoning Code Section 18.08.080, Bed and Breakfast Establishments, would need to be amended to indicate that vacation rentals would not be defined as Bed and Breakfasts: “…For purposes of this section, “bed and breakfast establishments” shall not include vacation rentals permitted pursuant to Section 18.08.X, and refers to other establishments where the primary relationship between the occupants thereof and the owner or operator of the establishment is that of an innkeeper and guest…”
Zoning Code Section 18.120.010, Exceptions to Use Limitations, would need to be amended to allow vacation rentals upon issuance of an administrative permit in accordance with Chapter 18.126.

General Plan Changes Required

Vacation rental advocates have identified numerous policies in the Napa County General Plan in support of their proposal to legalize the use. These include policies in the Agricultural Preservation and Land Use Element and the Economic Development Element such as Policy E-2: “The County recognizes that tourism contributes to the economic viability of agriculture in Napa County and is an important part of the County’s economy, generating jobs, local spending, and tax revenues.” Nonetheless, 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.” There is also a program in the Housing Element (Program H-1c) that commits the County to “assign high priority to abatement of illegal vacation rentals, ensuring that existing dwelling units are used as residences, rather than tourist accommodations.”

Policy AG/LU-33, Action Item AG/LU-33.1, and Housing Element Program H-1c would need to be amended to legalize vacation rentals as an accessory residential use as proposed. Specific changes are listed below:

1. General Plan Policy AG/LU-33 would need to be amended as follows: “The County will promote development concepts that create flexibility, economy, and variety in housing without resulting in significant environmental impacts and without allowing residences affordable housing to become timeshares, resorts, hotels, or similar tourist-type accommodations.”
2. General Plan Action Item AG/LU-33.1 about clarifying the distinction between single-family residences and commercial short term guest accommodations would need to be eliminated.
3. Housing Element Program H-1c would need to be amended as follows: “In addition to the priorities identified in Policy AG/LU-118, the County’s code enforcement program will assign high priority to abatement of illegal vacation rentals, ensuring that affordable housing and second existing dwelling units are used as residences, rather than tourist accommodations.”

General Plan Policies AG/LU-20 and -21 regarding uses and intensities allowed in agricultural areas were enacted by the voters as Measure J (1990) and Measure P (2008), and would not require amendment, however to maintain the Plan’s internal consistency, staff would recommend amending Policy AG/LU-26 as follows:

1. General Plan Policy AG/LU-26 would be amended to reference vacation rentals: “The County will discourage proposed urban developments which require urban services outside of existing urbanized
areas. However, nothing in this 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 in compliance with adopted County ordinances and other applicable regulations, except on designated park land, or to preclude legal accessory uses of single family residences such as home occupations and vacation rentals. Pursuant to State law, small child care centers are considered residential uses....”

Amendments to the General Plan can be initiated by the Board of Supervisors (with adoption of a resolution) at any time, and up to four amendments can be adopted in any given year. Due to notification and hearing requirements, an amendment to the Agricultural Preservation & Land Use Element would take approximately four months to complete not including the time required for environmental review pursuant to CEQA. Due to the requirement for consultation with the State's Department of Housing and Community Development (HCD), amendments to the Housing Element take longer. The proposed change to the Housing Element would also have to be considered in the context of the County's ongoing litigation regarding the sufficiency of the Housing Element adopted in June 2009.

**Issues Associated with Defining Vacation Rentals as "Accessory" Uses**

Local agencies have clear authority to define accessory as well as principally permitted uses, and there is no statutory impediment to defining short term vacation rentals as accessory uses associated with dwelling units of greater than 1,200 square feet, provided that the vacation rental use (for 20 weeks per year or for some other duration or frequency) can legitimately be considered to be "clearly incidental, related and subordinate to" the use of the dwelling unit as a residence. (Cited text is from Napa County Code Section 18.08.020).

There are two potential issues associated with the definition of vacation rentals as accessory uses however. These involve the proponents' proposal to (1) limit the number of vacation rentals; and (2) require payment of TOT. County Counsel has pointed out that if the vacation rental use can legitimately be defined as accessory to a dwelling unit, then the County cannot limit the number of such accessory uses without leaving itself vulnerable to legal challenge based on the concept of "equal protection." Similarly, if the use is part of and accessory to a residential use, the County could be vulnerable to challenge if it collected TOT, since that tax is applicable to transient occupancies, and these are commonly viewed as commercial uses.

These issues could, of course, be resolved by allowing an unlimited number of vacation rentals (while possibly limiting the amount of time they can be rented each year), and by not collecting TOT. However, this approach would provide vacation rentals with a competitive advantage when compared to other tourist accommodations, since these other accommodations must pay TOT. In addition, policy makers would have to agree that the proposed use (20 weeks per year) did in fact qualify as "incidental" in light of other uses of this term in the County Code, or they would have to agree to some other intensity of use.

**Measure P**

As noted above, implementation of the proponents' proposal would not require amendment of those sections of the General Plan adopted by the voters as Measure J (1990) and then Measure P (2008). Thus, an argument can be made that voter approval is not required.

However, County Counsel has pointed out that General Plan policies adopted by the voters describe the "intent" of the County's agricultural land use designations, and the ordinance and General Plan amendment needed to implement the proponents' proposal could be interpreted as modifying, and therefore being inconsistent with, this intent. Therefore the legally prudent course of action would be to put the policy question before the voters including an adjustment to the intent language that has been previously adopted by the voters.

If the Board of Supervisors decides to place an item on the ballot for voter approval, that decision is subject to
CEQA. If voters develop an initiative and gather sufficient signatures, the Board is required to either place the initiative on the ballot or alternatively adopt the initiative without alteration either at the regular meeting at which the certification of the initiative petition is presented or within 10 days after it is presented. If either of these last two scenarios occur, no CEQA review is required. *Native American Sacred Site and Environmental Protection Ass’n v City of San Juan Capistrano* (2004) 120 Cal.App.4th 961; *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165).

**Net Fiscal Benefit**

Many other jurisdictions allow short term vacation rentals and regulate them, both in order to avoid impacts, and to generate revenues by collecting TOT. (Sonoma County collects an estimated $2 Million in TOT from vacation rentals annually.) Proponents have suggested that their proposed program for Napa County would provide substantial tax revenues and have economic benefits (employment, commercial activity) for the community at large. Their economic analysis assumes 300 vacation rentals, rented for an average of 90 days per year, at an average of $450 per night. With these assumptions, the proposal would generate about $1.5 Million in tax revenue annually.

Administrative costs of the proposal would include the costs of collecting and auditing TOT, code enforcement, and application processing. The Auditor has estimated that there would be $180,000 to $350,000 in additional costs (due to staff increases and associated office space, ITS charges, etc.) if the Board would like to audit 50-100 additional TOT-generating rentals each year. The Treasurer would also have some additional collection costs. Annual application review/analysis, noticing, and permitting could be conducted on a cost-recovery basis, with the applicant paying fees sufficient to cover staff time and materials. However staff time and materials spent on appeal hearings & code enforcement activities are not generally recovered through department fees. With a robust program to identify and abate unpermitted vacation rentals or vacation rentals operating in violation of their permit, these costs could equal $150,000 to $200,000 annually.

Based on these assumptions and estimates, the net fiscal benefit to the County would be around $1 Million per year if TOT can be collected, and if there are not unanticipated costs associated with litigation.

**Other Input & Alternatives**

Since the March 23, 2010 meeting, the County has received additional public input on the vacation rental issue, including arguments opposing the legalization of vacation rentals, and suggestions that the County adopt alternatives somewhat different than the proponents' proposal (and more like the City of Napa's ordinance). County staff has also gathered data from each of the cities/town in Napa County regarding the number of guest accommodations available in their jurisdiction. (See data attached.)

Additional input received from March 24 through June 16 has been attached for the Board's information. Input received subsequent to June 16 will be provided to the Board separately, and copies will be made available to the public by the Clerk of the Board.

**Staff Recommendation & Possible Next Steps**

Staff is seeking Board of Supervisors direction on next steps. In light of the analysis presented here, staff recommends that the Board either take no further action and allow Ordinance 1332 to take effect in December 2010, or consider putting the issue before the voters if proponents develop an initiative and gather sufficient signatures. In doing so, the Board could request that proponents use an approach that will allow for either a limited number of vacation rentals and/or a limited number of rentals per year, and also allow for collection of TOT.
SUPPORTING DOCUMENTS
A. Ordinance 1332
B. Ordinance 1339
C. Summary of Legal Guest Accommodations (County as a Whole)
D. Public Input March 23-June16, 2010

CEO Recommendation: Approve
Reviewed By: Helene Franchi