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Agenda Date: 7/11/2018

Agenda Placement: 7B

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission
FROM: Charlene Gallina for David Morrison - Director
Planning, Building and Environmental Services
REPORT BY: John McDowell, Principal Planner - 299-1354
SUBJECT: Carroll Living Trust Rezoning & Development Agreement P14-00111

RECOMMENDATION

DAVID AND ELIZABETH CARROLL / CARROLL LIVING TRUST / REZONING AND DEVELOPMENT AGREEMENT P14-00111

CEQA Status: Consideration and possible adoption of a Negative Declaration. According to the proposed Negative Declaration, the proposed project would not have any potentially significant environmental impacts. The project site is not included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.

Request: Proposal to Rezone an approximately 3.96 acre parcel from Residential Single (RS), which does not permit agriculture or agricultural land uses, to Residential Country (RC), which permits agriculture and agricultural land use to bring an existing 2.1 acre vineyard planted in 2016 into conformance with County Code. The project includes adoption of a Development Agreement (DA) establishing operating parameters for the agricultural use including: 1) Trailer hauled import of recycled water from Napa Sanitation District (NSD) for all vineyard-related water demand; 2) Limiting and monitoring groundwater use for existing non-agricultural land uses not to exceed 1.2 acre-feet annually; 3) Agricultural uses limited to vineyards or other crop raising with no visitation, tours, tastings or marketing events; 4) Vineyards farmed by professional vineyard manager; and 5) Noise and lighting limits to reduce potential for annoyance to adjoining residences. The project is located on a 3.96 acre site at 1055 Monticello Road, Napa, approximately 550 ft. east of the intersection of Monticello Road and Silverado Trail, Assessor's Parcel Number: 049-161-009.

Staff Recommendation: That the Planning Commission forward a recommendation for approval to the Board of Supervisors

Staff Contact: John McDowell, (707) 299-1354 or john.mcdowell@countyofnapa.org

Representative: Jeff Dodd, Coblentz, Patch, Duffy & Bass, LLP, 700 Main St., Suite 210, Napa, 707-603-2722 or jdodd@coblentzlaw.com

EXECUTIVE SUMMARY**Proposed Action:**

That the Planning Commission:

1. Recommends to the Board of Supervisors adoption of a Negative Declaration and adoption of an ordinance approving a Development Agreement and Zoning Map Amendment P14-00111 for the Carroll Living Trust.

Discussion:

The applicant property owner requests rezoning of their approximately 3.96 acre property from Residential Single: Building Site 2 Acre Minimum (RS:B-2) to Residential Country (RC) in order to establish agriculture as an allowed land use which will result in 2.1 acre vineyard planted in 2016 becoming an allowed use. This rezoning request was originally filed in April 2014, but application processing was not completed before the vineyard was installed. Over the last two years the applicant has worked in good faith with staff to resolve the vineyard land use with this rezoning application. At the request of the County the project includes a Development Agreement (DA) which will establish land use and operational criteria applicable to the site for a period of 15 years ensuring 'by-right' agricultural uses do not significantly impact adjacent and nearby property owners. The DA terms place a limit on groundwater use at 1.2 acre-feet per year (AF/YR) in accordance with groundwater conservation measures prescribed for the Milliken-Sarco-Tulocay (MST) groundwater deficient basin, and provides for import of recycled water from Napa Sanitation District (NSD) for all vineyard related water needs. Recycled water is hauled to the site in a 1,000 gallon vehicle-towed trailer, and stored in two 5,000 gallon above ground tanks. The irrigation system for the vineyard operates independently from the potable water system for the residences which are served by groundwater well.

The property is located on the south side of Monticello Road approximately 1/4 east of Silverado Trail in an area designated Rural Residential in the General Plan. The subject property is a remnant of a once larger farm that is surrounded by single family rural residential lots established in the 1940's and 1950's. The site contains the original farm house, a second unit and several accessory structures in addition to the recently planted 2.1 acre vineyard. No additional development is proposed with this action.

The DA and Rezoning actions are executed through the adoption of an ordinance by the Board of Supervisors. As prescribed by County Code and State law, before the Board of Supervisors can act on the request they must consider the recommendation of the Planning Commission. It is requested that the Commission conduct a public hearing and forward a recommendation for approval of the Rezoning subject to the terms of the DA.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

Consideration and possible adoption of a Negative Declaration. According to the proposed Negative Declaration, the proposed project would not have any potentially significant environmental impacts. The project site is not

included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.

BACKGROUND AND DISCUSSION

Applicant / Owner: Carroll Living Trust, David C. Carroll and Elizabeth P. Carroll, Trustees

Representative: Jeff Dodd, Coblenz, Patch, Duffy & Bass, LLP, 700 Main St., Suite 210, Napa, 707-603-2722 or jdodd@coblenzlaw.com

Current Zoning: RS:B-2 (Residential Single: Building Site 2-Acre Minimum)

Proposed Zoning: RC (Residential Country)

General Plan Designation: Rural Residential

Parcel Size: Approximately 3.96 acres

Existing Land Use: Two residences (a primary residence and a secondary residence); a number of barns, sheds, and accessory structures; 2.1 acre vineyard.

Application Filed: April 9, 2014 **Determined Complete:** May 10, 2018

Adjacent General Plan Designation/ Zoning Districts/ Land Uses:

North: There are four (4) rural residential parcels abutting the site to the north ranging in size from a 0.4 acres to 0.7 acres established by the Schmutz Record of Survey in 1957, and zoned RS:B-2 with a Rural Residential General Plan designation. Further from the site across Monticello Road is a 94 acre vineyard/winery property zoned Agricultural Preserve (AP) and designated Agricultural Resource in the General Plan.

South: There are four (4) rural residential parcels abutting the site to the south ranging in size from 0.4 acres to 0.6 acres, and zoned RS:B-2 with a Rural Residential General Plan designation. These parcels are part of the Silverado Heights Subdivision established in 1941.

East: There are five (5) rural residential parcels abutting the site to the east ranging in size from 0.4 acres to 0.8 acres, and zoned RS:B-2 with a Rural Residential General Plan designation. These parcels are part of the Peterson Subdivision established in 1948.

West: There are four (4) rural residential parcels abutting the site to the south ranging in size from 0.4 acres to 0.6 acres, and zoned RS:B-2 with a Rural Residential General Plan designation. These parcels are part of the Rosemont Circle Subdivision established in 1950.

Parcel History and Evolution of this Application:

The subject parcel is an approximately 3.96 acre remnant of a once larger farm. Rural residential subdivision occurred on and around the original farm property in the 1940's and 1950's essentially setting the general land use pattern that currently exists.

Mid-1980's – The current RS:B-2 Zoning and Rural Residential General Plan Designations were applied to the site and surrounding area, although prior designations were similar.

June, 2008 - As part of the adoption of the General Plan Update, and at the request of a previous property owner, Policy AG/LU-35 included a provision allowing for the subdivision of subject property into a maximum of 4 single family residential lots.

February 21, 2014 - The applicant filed Zoning Ordinance Text Amendment P14-00040 requesting to change the RS Zoning District regulations in order to establish agriculture as an allowed use for the purpose of installing a small vineyard. Early in application processing staff identified that adding agriculture as an allowed use in the RS Zoning District would apply to all like-zoned properties throughout the County which posed potential environmental and General Plan consistency issues. As a result, the application was withdrawn.

April 9, 2014 - The applicant filed Rezone application P14-00111 requesting RC zoning. On August 7, 2014, at the request of the applicant's previous planning consultant, the item was scheduled for Planning Commission hearing on October 14, 2014, and on September 10, 2014 unresolved groundwater use and General Plan consistency findings to the item being continued off of the Planning Commission's agenda. After September 10, 2014 no further progress was made by the consultant and the rezoning application became dormant.

October 25, 2016 - A neighborhood complaint was received that a new vineyard was being watered with groundwater and that an entry gate had been installed. During a site investigation it was observed that the vineyard originally requested in 2014 had recently been installed. The applicant diligently responded to Code Enforcement's notice, and processing of the rezoning application resumed.

February, 2017 - County staff introduced the concept of employing a development agreement as a mechanism to address groundwater use, limit the scope of potential environmental impacts, and to ensure project commitments were enforceable. Work began on setting the agreement's specific terms but progress was delayed by the County due to circumstances unrelated to the project most notably caused by the 2017 Napa Fire Storm response and recovery. The applicant expressed great interest in completing processing, but was accepting of processing delays requested by the County. With County staff's acknowledgement, the applicant has maintained the vineyard while the application process has continued. Since November 2016 the Landowner has relied on recycled water to meet the irrigation and water use needs of the vineyard in a manner consistent with that being recommended for approval under the Development Agreement.

Code Compliance History:

There is no record of code violations prior to the 2016 vineyard violation. As noted in the prior section, the applicant began processing the rezoning application required to enable agricultural uses on the site but did not complete processing prior to installing the vineyard.

Discussion Point(s):

Rezoning

Attachment A depicts the rezoning action, which consists solely of changing zoning of the subject property from RS:B-2 to RC. Existing RS zoning is a single family residential district with a minimum lot size as small as 6,000 sq. ft., but many RS districts contain Building Site Combination Zoning mandating larger minimum lot sizes as is the case with this district and its 2 acre minimum. The RC district is a transitional district allowing both residential and agricultural uses. These two residential districts share a number of common development standards as well as allowable and conditionally allowable land uses. However, there are several notable differences that should be considered before granting this request. Most notable, and inherent to the requested action, is that RC zoning allows agriculture by right whereas RS zoning does not allow agriculture. For the 2.1 acre vineyard to be permissible on the subject property, the zoning must be changed to RC or to another zoning district that allows agriculture.

Staff supports rezoning the site to RC. Alternately, General Plan Table AG/LU-B also allows Agricultural Watershed (AW) zoning, but given the relatively small size of the parcel and the fact it is surrounded by properties zoned RS:B-2, the site is more suited to the transitional RC designation than AW. RC zoning has been applied to other similarly sized and nearby properties on the south side of Monticello Road that contain agricultural uses. The existence of other similar RC properties in the vicinity assures this rezoning does not result in impermissible 'spot' zoning (wherein land use requirements benefit a single parcel different from the surrounding properties in the area).

The minimum parcel size for RC zoning is 10 acres. In general practice properties being rezoned would comply with the minimum lot size of the proposed zoning district. However, in Napa County minimum lot size requirements have typically been utilized as a measure to regulate further parcelization more so than establish the minimum developable lot size. As a result of Napa County's relative large minimum lots size (up to 160 acres in the AW), thousands of properties within the unincorporated area are technically below zoning district minimum lot size. This includes virtually all of the RS:B-2 properties surrounding this site. Rezoning this property to RC will not result in an inconsistency with zoning. The property will continue to be a legal lot of record, and will simply not be divisible under the new zoning designation. All existing structures and residential land uses will also continue to conform to zoning development standards.

General Plan Consistency

General Plan Table AG/LU-B sets forth allowable zoning designations within each General Plan land use category for use when considering changes to zoning. It is important to note that the table is used solely when considering zone changes. The subject property has a Rural Residential General Plan Designation, and in accordance with the table only RC and AW zoning may be permitted as part of a rezoning action. RC zoning is called out in the table as the appropriate zoning designations, but the footnotes state that AW zoning is permitted in any district.

General Plan Policy AG/LU-114, which immediately precedes and references Table AG/LU-B, states that rezoning in accordance with the table is "desirable but not mandated, since consistency is achieved by reviewing the stated policies of the General Plan in addition to the Land Use Map." This is a very important point when considering the rezoning request. Rezoning to RC is not mandated by the General Plan, and the table simply establishes that only RC and AW are possible if rezoning is to occur.

The focus on determining General Plan consistency of the rezoning action lies in evaluating all of the relevant General Plan policies throughout the document. The most important policy is Policy AG/LU-35 which sets forth the overall intent and general uses permissible within the Rural Residential Designation that applies to this site and the surrounding area. This area is characterized as a transitional area exhibiting rural, agricultural and urban land use patterns. Policy AG/LU-35 states that the intent of the Rural Residential category is to: "Provide for low density residential use in neighborhoods that are in proximity to existing urbanized areas but that are currently in agriculture or where further parcelization will be discouraged..." Single family dwellings as well as agriculture are listed as permissible general uses. Therefore, the proposed RC zoning, which allows both agriculture and single family dwellings is suitable.

However, existing RS zoning remains suitable as well. In fact, Policy AG/LU-35 goes on to state that subdivision of this specific property into four new parcels is permissible, which was added to the policy at the request of the prior property owner. At the time, decision makers were supportive of this request to augment the policy because the property was surrounded by existing single family residential development and determined that allowing further parcelization on this site would be consistent with the surrounding land use pattern. Rezoning the property now to RC would conflict with that policy to some degree given that RS zoning is necessary to subdivide below the 10 acre minimum lot size of the RC district, and Table AG/LU-B does not enable rezoning of the site back to RS once it is changed.

The fact that rezoning the property to RC now may prevent future parcelization allowed by this one clause within Policy AG/LU-35 does not in itself render the request inconsistent with the General Plan. There are many other

applicable policies that support the change, including all of the other language within Policy AG/LU-35. A General Plan consistency analysis containing all applicable policies is attached. To address the minor conflict within Policy AG/LU-35, the DA contains a provision where the property owner acknowledges that the clause allowing subdivision of the property may be amended by the County in the future.

Development Agreement & Project Benefits

Winery use permits are the most common type of project reviewed by the Planning Commission where conditions of approval are applied in order to define the scope of the entitlement as well as set design and operational limits. This request has no use permit associated with it and will simply change the land use regulations applicable to the site. Unlike a use permit, conditions of approval cannot be applied to a rezoning action. The new zoning district results in new allowed by-right land uses that would otherwise not be subject to any project specific discretionary entitlement to ensure significant environmental or neighborhood impacts are avoided. Therefore, a DA is recommended as a companion action to the rezoning in order to provide a mechanism for defining the scope of entitlement and setting design and operational limits.

A DA differs from use permits in that it is a contract between the local agency and party seeking to develop property within the agency's jurisdiction. Through the agreement the local agency can request community benefits that go beyond general zoning and development requirements, and in turn applicants can receive benefits from the local agency that otherwise could not be applied under general zoning requirements. Requirements the County intends to impose through the DA must be agreed to by the applicant. In turn, the County is under no obligation to enter into the contract (unlike a use permit where certain mandatory findings must be addressed for either approval or denial).

In this case, both parties receive benefits warranting the adoption of the DA. County benefits include setting operational limits on farming, water use and land use activities ensuring neighborhood compatibility and protecting the environment. In addition, the applicant has agreed to contribute \$5,000 toward County groundwater monitoring activities occurring in the vicinity of the project. This contribution was requested as a measure to address the 2.1 acre vineyard planted in advance of completing the rezoning action. The applicant will benefit by receiving a vested right to retain the vineyard, and development regulations on the property cannot be changed by the County for the 15 year term of the agreement.

Groundwater Use and Recycled Water Import

This property is located within the MST water deficient groundwater basin. Existing land uses within the basin consist of a variety of residential, agriculture, resort and recreational developments which, over the course of decades, resulted in overtaxing of groundwater resources. In 1999, the County adopted the Groundwater Conservation Ordinance (NCC Chapter 13.15) in order to arrest the decline in water table levels and move toward a sustainable level of groundwater use within the basin. This ordinance establishes 'fair share' groundwater use rates for properties within the MST basin as well as other basins throughout the County, with the MST basin assigned the lowest, most conservative fair share rate of 0.3 acre/feet of water per acre of land.

Land uses established before the ordinance are encouraged to voluntarily comply with this fair share allotment, and most new developments (which rely on groundwater) are required to comply with the standard through the issuance of a groundwater permit or use permit depending on the type of use proposed. New discretionary uses within the basin need to demonstrate that the project does not increase groundwater use beyond the existing conditions in order to avoid contributing to a known significant cumulative environmental impact.

The Rezoning action is not subject to a discretionary groundwater permit. Therefore, through the DA, the requirements of the Groundwater Conservation Ordinance will be applied and thus ensure that the rezoning does not contribute to groundwater related environmental impacts. The DA requires the issuance of a groundwater permit and limits groundwater use to 1.2 acre/feet per year pursuant to the fair share standard. To assure groundwater use does not exceed the standard, a monitor will be placed on the groundwater well. All water

required to service the vineyard is provided via trailer hauled recycled water supplied from NSD. Trailer hauled water is necessary because the NSD recycled water pipeline servicing the MST basin has not been extended in the general vicinity of the site. NSD has provided a letter (attached) stating their ability to serve the project.

A detailed water use analysis was prepared for the project by CMP Engineering, a qualified civil engineering firm, that indicates that all vineyard water demand can be met with the proposed haul, store and disperse program. Plans submitted with the CMP Engineering report demonstrate that the vineyard irrigation systems operates independently from the potable water system for the residences served by the onsite well. The DA provides certainty that the new vineyard enabled by the rezoning action will comply with County groundwater conservation mandates. The applicant intends to dry farm the vineyard which would translate to reduction in trailer hauling trips once vines reach maturity. Even still, trailer hauling trips are relatively infrequent and do not result in a significant change in the traffic generation rates for the project (see traffic section of attached Initial Study/Negative Declaration).

Development Agreement Use and Operational Commitments

The terms of the DA establish a set of neighborhood appropriate farming commitments that will ensure agricultural land uses do not significantly impact neighbors. While recognizing the County's longstanding 'right to farm' policy (an agricultural operations protection measure), the DA places mutually agreeable limits on this 'infill' site where agriculture is being reestablished within a predominantly rural residential setting, and where neighbors would now experience some of the annoyances that come with living next to farming activities. These commitments have been worked into the DA. The applicant has expressed an intent to simply continue conducting the vineyard operation as opposed to pursuing other allowed more intensive agricultural operations. Vineyards tend to result in minimal annoyance to adjoining residences. The DA contains the following operational requirements:

- Animal husbandry limited to small scale residential appropriate level (i.e. two horse and 10 chickens)
- No grape processing (i.e. winery related operations) on site
- No visitation, tours, tastings or marketing events
- Vineyard frost and heat protection limits on night time noise production
- Vineyard professionally managed
- Neighbors provided with vineyard manager and/or property owner contact information
- Farm management businesses serving other properties not permitted

Neighborhood Setting

The property is surrounded by single family residential lots ranging in size from 0.4 to 0.8 acres in size. All of these residential lots have rear yards facing the subject property with primary residences located greater than 50 ft. from the shared rear property line. Of the 18 parcels adjoining the applicant's property, 13 are located in proximity to the vineyard. The other 5 parcels are in proximity to the residential uses.

Over the course of application process the property owner has reached out to all adjoining property owners on multiple occasions, and has received written support from at least 32 residents (see application submittal attachment for complete listing). As of the release date of this staff report, no comments in opposition of the project have been received. Neighbors supporting the project generally expressed a preference for the vineyard over the possibility of subdividing the property into 4 lots as enabled by the General Plan. Neighbors appear supportive of the applicant's operational commitments on farming activities set forth in the DA.

Development Agreement and Rezoning Process

Chapter 18.136 of the Zoning Code outlines the process by which a parcel's zoning designation can be changed from one zone to another. In short, upon receipt of an applicant-initiated rezoning request, the Planning Commission is required to hold a noticed public hearing. At the close of the hearing, the Commission votes to recommend either approval of, denial of, or modifications to the rezoning request. If the Commission votes to recommend modification or approval, Planning staff submits a written report on behalf of the Planning

Commission to the Board of Supervisors and the rezoning ordinance is agendized for a final hearing before the Board and possible adoption. If the Commission votes to deny the requested rezoning, that denial is final unless, "an interested party requests a hearing by filing a written request with the Clerk of the Board within five days after the Commission files its recommendation with the Board." (NCC §18.136.060{C})

Decision-Making Options:

As noted in the Executive Summary Section above, staff is recommending approval of the Rezoning subject to the terms of the DA as described in Option 1 below.

Option 1: Recommend Project Approval to Board of Supervisors (Staff Recommendation)

Discussion - The recommended project consists of adopting one ordinance that will rezone the property concurrent with adoption of a DA setting the terms of use permitted under the new zoning designation. Term of the agreement is 15 years, and will result in the existing 2.1 acre vineyard becoming an allowed use.

Action Required - Commission motion, second and vote recommending Board of Supervisors adoption of the negative declaration and approval of the ordinance.

Option 2: Revised Project Alternative

Discussion - In the event the Commission wish to revise the terms of the DA, either to reduce or augment them, then the item should be remanded back to staff with direction to work with the applicant on revising the DA. The DA is a binding contract between the County and applicant requiring consent on the terms of the contract between the parties. Unlike a use permit, the Commission cannot apply 'conditions of approval' without the consent of the applicant.

Action Required – Commission motion, second and vote to continue the item to either a date certain or uncertain, with direction to staff to work with the applicant on revised DA terms to be added, eliminated or/and amended.

Option 3: Project Denial

Discussion - In the event the Commission does not support rezoning as proposed, the Commission would vote to deny the project. Denial of the project would result in the vineyard code violation remaining outstanding and remanded back to the Code Enforcement Division to pursue abatement. Any interested party would however be able to request Board consideration of the proposal upon filing of a timely written request with the Clerk of the Board pursuant to NCC §18.136.060{C}.

Action Required – Commission motion, second and vote to deny the proposed project.

Option 4: Continuance Option

The Commission may continue an item to a future hearing date, at its discretion.

SUPPORTING DOCUMENTS

- A . Draft Rezoning and Development Agreement Ordinance
- B . Draft Development Agreement

- C . Zoning District Comparison Chart
- D . General Plan Consistency Analysis
- E . Agency Comments
- F . Initial Study Draft Negative Declaration
- G . CMP Engineering Water Availability Study
- H . Application Submittal Materials
- I . Neighbor Support Comments
- J . Graphics

Napa County Planning Commission: Approve

Reviewed By: Charlene Gallina