

# CITY OF CALISTOGA

## STAFF REPORT

**TO: CHAIRMAN MANFREDI AND PLANNING COMMISSIONERS**

**FROM: CHARLENE GALLINA, PLANNING AND BUILDING DIRECTOR**

**DATE: APRIL 14, 2010**

**SUBJECT: CITY OF CALISTOGA REVIEW OF THE NAPA COUNTY VACATION RENTAL PROPOSAL**

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1 **ISSUE:**

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3 To discuss and provide a recommendation to the City Council on staff review and

4 assessment of the County of Napa's Vacation Rental proposal in order to submit written

5 comments during their public hearing process.

6

7 **BACKGROUND:**

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9 Public concern was expressed at the April 6, 2010 Calistoga City Council meeting (see

10 attached letter which was presented to the City Council, Attachment 1) regarding the

11 recently adopted Ordinance No. 1332 which changes regulations regarding dwelling

12 units in the unincorporated area of Napa County. It is our understanding that this new

13 ordinance will become effective in June 2010. At the same time, the Board requested

14 that the planning staff meet with stakeholders who would like to authorize pre-existing

15 and perhaps illegal vacation rentals in the unincorporated area.

16

17 Public comment received by Norma Tofanelli at the City Council meeting included a

18 request that the City of Calistoga forward a letter of support for the new ordinance by

19 stating our objection to legalizing vacation rentals and request that the County embark

20 on stringent code enforcement of illegal vacation rentals in the unincorporated areas.

21 As a result of this comment, the City Council requested the City Manager to immediately

22 forward a letter to the Napa County Board of Supervisors expressing our initial objection

23 and concerns on this issue, since this item will be before the Board of Supervisors on

24 April 27, 2010. In addition, City Manager informed the City Council that the Planning

25 Director would be presenting this issue to the Planning Commission for review and

26 recommendation to the City Council on April 14, 2010 and then return to the City

27 Council on April 20, 2010 for final direction on a comment letter to the County. On April

28 8, 2010, the City Manager's letter was forwarded to the Board of Supervisors

29 expressing the City's initial objection and concerns on the legalizing vacation rentals in

30 the County. (Attachment 2)

31

32 **DISCUSSION:**  
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34 It should be note that since the County's action in December 2009, the Planning  
35 Director has been monitoring this issue by attending one of the stakeholder meetings,  
36 as well as, has been in direct contact with the County Planning Director. As a result, the  
37 following concerns have been expressed to the County:  
38

- 39 • The cities and the County have agreed through mutually supportative General Plans  
40 that development belongs in the cities and the primary purpose of the  
41 unincorporated area is for agriculture.
- 42 • Vacation rentals of residences are in direct competition with the lodging industry  
43 critical to the economic wellbeing of the Napa Valley cities.
- 44 • Conversion of residences to lodging facilities will result in a loss of permanent  
45 housing in the County.
- 46 • Conversion of residences to lodging facilities will create service jobs and create the  
47 need for housing, particularly affordable housing.
- 48 • Conversion of residences to lodging facilities will have an overall impact on existing  
49 infrastructure systems such as streets, water, sewer and/or septic systems thereby  
50 create the need for infrastructure expansion to accommodate increased service  
51 demands.  
52

53 To assist the Planning Commission in review of this issue, staff has attached the Napa  
54 County Board of Supervisors' staff report of March 23, 2010 which provides County staff  
55 assessment and potential alternatives for legalizing vacation rentals. It should be noted  
56 that Board discussion which will include staff direction on this item was continued to  
57 their meeting of April 27<sup>th</sup>.  
58

59 At this time, staff is requesting confirmation of our initial objection to legalizing vacation  
60 rentals in the unincorporated areas based upon the above noted concerns, and further  
61 requests Commission's input on any other concerns that should be recommended to the  
62 City Council for incorporation into a letter to the County.  
63

64 **RECOMMENDATION:**  
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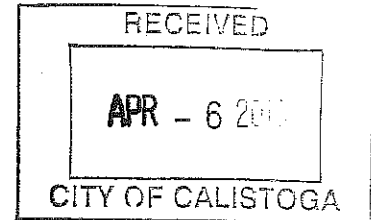
66 Staff recommends the Planning Commission discussed this item and provide any  
67 comments to staff in order to forward a recommendation to the City Council.  
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69 **ATTACHMENTS:**

- 70 1. Norma Tofanelli, letter dated April 6, 2010
- 71 a. Napa County Ordinance No. 1332 Adopted December 15, 2009
- 72 2. City Manager letter to Board of Supervisors, dated April 8, 2010
- 73 3. Napa County Board of Supervisors Staff Report of March 23, 2010 (Abbreviated)
- 74 a. Board Agenda Letter
- 75 b. County Planning Commission Staff Reports – December and November 2009
- 76 c. Measure P (2008)

6 April 2010

Mayor Gingles and Members  
Calistoga City Council



re: ILLEGAL SHORT-TERM RENTALS IN AP

On December 15, 2009 the Napa County Board of Supervisors approved Ordinance #1332 (*attached*) to clarify the longstanding prohibition on short-term vacation rentals on agricultural land, increase penalties and improve enforcement. The new ordinance was made effective June, 2010.

Short-term rentals (less than 30 days) on lands not appropriately zoned have been clearly illegal in Napa County since at least the 1980's. The county's legal counsel agrees they are a violation of the county General Plan, the Agricultural Preserve and voter-supported Measures J and P. Being illegal, they have not contributed a dime to TOT. They may not even report this illegal revenue for income tax purposes, either. Who knows?

However, owners of these approximately 300+ illegal rentals cried "foul!" at the Board's action. They don't want to lose this illegal, untaxed rental income and now refer to themselves as "stakeholders". They are not stakeholders. They have clearly broken the law. Law breakers are criminals. Therefore, they are criminals - not stakeholders.

These property owners knew when they planned their financial endeavors that such use of their property was illegal. To complain about pending financial hardship if the law is enforced is like the crack dealer complaining that he can't make his car payment if you bust him. Oh, well - it's the law.

Moreover, these illegal rentals openly advertise and have been stealing visitors and income away from LEGAL rentals located where appropriately zoned - mostly within city limits. These legal rentals have obtained necessary permits, collect and remit TOT; they probably pay Workman's Comp and other costs associated with operating a business within the law.

The overriding principle of Napa Valley's land use policy has been that commercial activity belongs in the city limits - not on county ag lands. This has served all of us well over the 40+ years of the Agricultural Preserve. Any expansion of commercial activities in the county - be it weddings, dinners and corporate events at wineries or the legalization of clearly illegal rentals - steals income away from those inns and restaurants that operate legally within the cities.

As reported in the media, illegal operators of county short-term rentals themselves estimate that if they paid TOT as they should, they would add an additional \$1.45 MILLION to hotel tax revenues. Based on that figure, they are annually siphoning over \$12 MILLION in room rents away from legal operators. This should not be allowed to continue. It is hurting your businesses and your budget.

You are now being asked to support an additional 2% TOT, via the TBID, to help your legal innkeepers fill their rooms while the county is being pressurized to legalize illegal rentals that funnel business away from them. There is a gross contradiction here. You must ask yourselves why legal operators should be forced to pay even more in these hard economic times. If the law was enforced, maybe you wouldn't need this TBID.

I have spoken with several innkeepers - many have already lowered their rates or offer specials but still cannot fill their legal rooms. They may not be able to add the 2% to the visitor's bill - they may have to lower their rates even further to cover it. This must be carefully considered within the context of the potential legalization of \$12 MILLION of illegal rentals.

In light of the proliferation of these illegal rentals and the harm they are doing to legitimate innkeepers, the Board of Supervisors was correct in acting and requiring increased penalties and strict

enforcement. They will meet again to discuss this issue on April 27, 2010.

The City of Calistoga owes it to its law-abiding innkeepers to take action to support the December 15, 2009 decision of the Board of Supervisors to enforce the county's laws and clean up these illegal rentals that have been sucking income away from your businesses. Please take action to stop the legalization of these illegal rentals that are harming all of us.

Thank you,



Norma J. Tofanelli  
1001 Dunaweal Lane  
Calistoga, CA 94515

ORDINANCE NO. 1332

**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**

**WHEREAS**, under the Napa County General Plan, amended June, 2008, two overriding goals of Napa County are to preserve existing agricultural land uses and plan for agriculture and related activities as the primary land uses in Napa County, and to concentrate urban uses in the County's existing cities and town and urbanized areas (Goal AG/LU-1 and 2); and

**WHEREAS**, in support of these goals, the General Plan contains numerous policies which direct that agriculture is the primary land use in the County, minimize conflicts arising from encroachment of urban uses into agricultural areas, limiting new non-agricultural uses or developments, concentrate urban uses and residential growth in the incorporated cities and town which can provide necessary and expected public services and not conflict with the agricultural heritage of the County (Policy AG/LU-1, 3, 12, 22, 23); and

**WHEREAS**, additionally the General Plan contains policies which direct the County to promote development concepts that create flexibility, economy, and variety in housing without resulting in significant environmental impacts and without allowing residences to become commercial short-term guest accommodations (Policy AG/LU-1, 3, 12, 22, 23, 33, Action Item 33.1); and

**WHEREAS**, the commercial use of dwelling units on an overnight transient basis of less than 30 days occupancy is a commercial activity often incompatible with maintaining the agricultural nature and rural ambiance of the County, and those areas devoted to rural residential use, and may create adverse impacts on surrounding residential uses including, but not limited to, increased demand for public services because of higher densities than would otherwise likely occur, the likelihood of late night noise and glare emanating from parties, increased visitor traffic on narrow roadways exceeding

their capacity and the need to drive long distances to obtain visitor serving needs, and removes such dwellings from the potential of providing needed available housing stock for County residents; and

**WHEREAS**, the commercial use of dwelling units on an overnight transient basis of less than 30 days occupancy is currently a violation of the uses allowed in all zoning districts in Napa County, unless specifically stated otherwise in Title 18 of the Napa County Code; and

**WHEREAS**, this ordinance is declaratory of existing law with respect to commercial transient occupancies of dwelling units and will specifically enumerate and clarify in the County Code that commercial transient occupancies of dwelling units continue to be prohibited in all residential and agricultural zoning districts within the county, which is consistent with the objectives of the General Plan; and

**WHEREAS**, the Board of Supervisors determines that the enactment of this ordinance will ameliorate the above noted deleterious effects associated with transient commercial occupancies of dwelling units, and will advance and promote the health, safety, and general welfare of the County and its inhabitants.

**NOW, THEREFORE**, the Board of Supervisors of the County of Napa, State of California, ordains as follows:

**SECTION 1.** Section 18.08.260 (Dwelling unit) of Chapter 18.08 (Definitions) of the Napa County Code is amended to read in full as follows:

**18.08.260 Dwelling unit.**

A. "Dwelling unit" means a room or connected rooms constituting a separate, independent housekeeping establishment for owner occupancy or rental or lease for a period of thirty days or longer, physically separated from other rooms or dwelling units in the same structure, and containing independent cooking and sleeping facilities.

B. "Dwelling unit" does not include those commercial timeshare or vacation ownership arrangements as more specifically defined in Section 11212 of Chapter 2 of Part 2 of Division 4 of the Business and Professions Code, including a dwelling unit owned by a corporation or club, including arrangements commonly referred to as corporate club memberships, private residence clubs, vacation home partnerships, vacation clubs, destination clubs, or condohotels, and used by individual shareholders or members by advance reservation or arrangement for a period of less than thirty consecutive days, and also does not include arrangements involving a parcel of real property with more

than twelve fee owners per legal dwelling unit where any fee owner is entitled to exclusive occupancy of the dwelling unit or units for a period of less than thirty days in a given calendar year.

**SECTION 2.**

A new Section 18.104.410 (Transient commercial occupancies of dwelling units prohibited) is added to Chapter 18.104 (Additional Zoning District Regulations) of the Napa County Code to read in full as follows:

**18.104.410 Transient commercial occupancies of dwelling units prohibited.**

A. Transient commercial occupancies of dwelling units are prohibited in all residential and agricultural zoning districts within the county.

B. Definitions. Unless otherwise defined in Chapter 18.08, the following definitions shall apply to this section:

1. "Commercial use" shall have the same meaning as commercial use in Section 18.08.170, except it shall not include house exchanges, where owners or occupants swap homes for vacation purposes.

2. "Occupancies" means the use or possession or the right to the use or possession of real property or a portion thereof, including any dwelling unit, single family dwelling unit, guest cottage, or second unit, for dwelling, lodging or sleeping purposes. The right to use or possession includes any nonrefundable deposit or guaranteed no-show fee paid by a person, whether or not the person making the deposit actually exercises the right to occupancy by using or possessing any property or portion thereof.

3. "Transient commercial occupancies of dwelling units" means any commercial use of a dwelling unit for a period of time less than thirty consecutive days. It does not include occupancies associated with farm labor camps, residential care facilities, family day care homes, or legally permitted bed and breakfast establishments, hotels or motels.

C. Liability and Enforcement.

1. Any property owner, or authorized agent thereof, who uses or allows, or who knowingly arranges or negotiates for the use of, transient commercial occupancies of dwelling units in violation of this section shall be guilty of either an infraction or a misdemeanor.

2. Any property owner, or authorized agent thereof, who prints, publishes, advertises or disseminates in any way, or causes to be printed, published, advertised or disseminated in any way, any notice or advertisement of the availability of transient commercial occupancies of dwelling units as prohibited by this section, shall be guilty of either an infraction or a misdemeanor.

3. In addition to the penalties set forth in subsections (C)(1) and (2) above, violators of this section may be subject to a public nuisance abatement action brought under the provisions of Chapter 1.20 and the civil penalty provisions of up to one thousand dollars per violation per day as provided in subsection (B) of Section 1.20.155 and subject to an unfair competition action brought pursuant to Business and Professions Code Section 17200 et. seq and up to two thousand five hundred dollars per violation civil penalty allowed thereunder.

4. Any person who uses, or allows the use of transient commercial occupancies of dwelling units prohibited by this section shall also be liable for the transient occupancy tax that would have been owed under Chapter 3.32 had the occupancy use been legal, including the penalty and interest provisions of Section 3.32.080.

5. The civil remedies and penalties provided by this subsection are cumulative to each other.

**SECTION 3.** The Director of Conservation, Development and Planning has determined that this ordinance would not have a significant effect on the environment and is exempt from the California Environmental Quality Act [See guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15061(b)(3)]. The project also 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, will not 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.]

**SECTION 4.** Pursuant Chapter 4, Title 7, commencing with Section 65800, of the California Government Code, this ordinance is consistent with the following goals and polices of the 2008 General Plan: Agricultural Preservation and Land Use Goals AG/LU-1, 2, 5 and Policies AG/LU- 1, 3, 12, 20, 21, 22, 26, 32, 33, 34, and 35; Circulation Policy CIR-1; Community Character Goal CC-6 and 8 and Policies CC-31 and 36.

**SECTION 5.** If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors of the County of Napa hereby declares it would have passed and adopted this ordinance and each and all provisions hereof irrespective of the fact that any one or more of said provisions be declared invalid.




**SECTION 6.** This ordinance shall be effective one hundred eighty (180) days from and after the date of its passage.

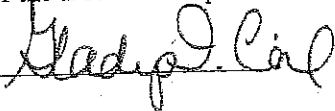
**SECTION 7.** A summary of this ordinance shall be published at least once 5 days before adoption and at least once before the expiration of 15 days after its passage in the Napa Valley Register, a newspaper of general circulation published in the County of Napa, together with the names of members voting for and against the same.

The foregoing ordinance was introduced and public hearing held thereon before the Napa County Conservation, Development and Planning Commission at a regular meeting of the Commission on November 18 and December 2, 2009, and was passed at a regular meeting of the Board of Supervisors of the County of Napa, State of California, held on the 15th day of December, 2009, by the following vote:

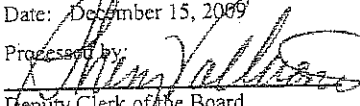
AYES:	SUPERVISORS	CALDWELL, WAGENKNECHT, DODD and LUCE
NOES:	SUPERVISORS	NONE
ABSTAIN:	SUPERVISORS	NONE
ABSENT:	SUPERVISORS	DILLON

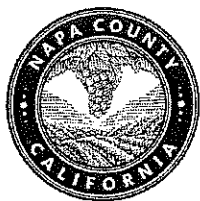
  
\_\_\_\_\_  
**MARK LUCE, CHAIR**  
Napa County Board of Supervisors

ATTEST: GLADYS I. COIL  
Clerk of the Board of Supervisors

By: 

APPROVED AS TO FORM  
Office of County Counsel  
By: Rob Paul (by e-signature)  
Deputy County Counsel  
By: Sue Ingalls (by e-signature)  
County Code Services  
Date: December 15, 2009

APPROVED BY THE NAPA  
COUNTY  
BOARD OF SUPERVISORS  
Date: December 15, 2009  
Processed by:   
Deputy Clerk of the Board



A Tradition of Stewardship  
A Commitment to Service

Agenda Date: 3/23/2010  
Agenda Placement: 9C  
Set Time: 10:00 AM  
Estimated Report Time: 2 Hours

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors  
**FROM:** Gitelman, Hillary - Director  
Conservation, Development & Planning  
**REPORT BY:** Hillary Gitelman, Director - 253-4805  
**SUBJECT:** Vacation Rental Ordinance Policy Discussion

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### **RECOMMENDATION**

Director of Conservation, Development and Planning to summarize stakeholder meetings related to vacation rentals in unincorporated Napa County, including the exploration and analysis of alternatives to the existing prohibition, and to seek direction regarding next steps.

### **EXECUTIVE SUMMARY**

On December 15, 2009, the Board of Supervisors adopted an ordinance amending Section 18.08.260 of Napa County Code defining "dwelling unit" and adding a new Section 18.104.410 prohibiting transient commercial occupancies of dwelling units. The ordinance was intended to clarify a longstanding prohibition on short term vacation rentals, increase penalties and improve enforcement. The Board's action made the new ordinance effective in 180 days (June 2010) and at the same time, the Board requested that planning staff meet with stakeholders who wanted to legalize vacation rentals and explore alternatives.

Planning staff hosted two stakeholder meetings, one in January and one in February, and has received substantial input and information from vacation rental advocates in support of their position. This agenda item is intended to provide a summary of the stakeholder process, including alternatives considered and issues raised, and to provide members of the public with an opportunity to address the Board on this subject matter. After public testimony, planning staff would like further direction on next steps.

### **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**

At the Board of Supervisors' direction, planning staff hosted vacation rental stakeholder meetings on January 27 and February 24, 2010, inviting interested members of the public to share ideas and to explore alternatives to the ordinance adopted on December 15, 2009 (attached). A summary of these meetings is provided below, along with a summary of relevant policies and regulations, and possible next steps. Meeting handouts, public comments, and other relevant information received by staff during the stakeholder process have been organized in a binder of reference material and provided to the Clerk and members of the Board separately. (A copy is available for public review at the Clerk's office, 1195 Third Street, Suite 310, and at the Planning Department, 1195 Third Street, Suite 210.)

**Vacation Rentals: Prevalence, Impacts and Benefits**

Many other jurisdictions allow short term vacation rentals and regulate them, both in order to avoid impacts, and to assess a transient occupancy tax (TOT). Some sample ordinances were collected during the stakeholder process, including those from Mendocino County, El Dorado County, Maui, and the City of Napa. Sonoma County is currently going through a stakeholder process to establish regulations for vacation rentals with the intention of limiting their intensity of use to that of a traditionally occupied single family home, and collects an estimated \$2 Million in TOT from vacation rentals annually.

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 rentals (i.e. for less than 30 days) in violation of County Code. Based on a review of common websites like Vacation Rental By Owner, staff believes there could be about 250 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.

There are three main downsides or impacts that are often ascribed to vacation rentals, including the following:

1. Vacation rentals can cause nuisance impacts related to noise, traffic, etc., that are incompatible with surrounding residential properties;
2. Vacation rentals can be considered commercial uses that are incompatible with agricultural zoning and land use designations; and
3. Vacation rentals can remove housing from the housing stock at a time when Napa County has unmet housing needs.

There are also upsides or benefits that are often ascribed to vacation rentals, including the following:

1. Vacation rentals are part of Napa County's economy, providing accommodations for patrons who support local restaurants, wineries, etc.
2. Vacation rentals provide a way for property owners to generate income so they can afford to live in Napa County;
3. Vacation rentals could generate substantial transient occupancy taxes (TOT) if they were legalized; and
4. Vacation rentals can sometimes have fewer impacts than full time residences if they are used less intensively.

A longer list of potential impacts and benefits associated with vacation rentals was developed for one of the stakeholder meetings. (See reference materials.) Another list captured stakeholder ideas about permit conditions that could be applied to vacation rentals in order to address the downsides or impacts identified. These include possible limitations on the size of the parcel and the size of the house, with the thought that short term rental of large houses on large parcels would not impact neighbors or take affordable housing out of the housing stock. Other possible limitations on the list include a requirement for owner occupancy a certain percentage of the time.

Vacation rental advocates have suggested that there would be substantial economic impacts to the County if existing, illegal vacation rentals are forced to cease operation. Planning staff has neither confirmed nor disputed this suggestion, since to do so would require speculation about the alternative accommodations that guests of the existing rentals would use if the current rentals cease to exist.

#### Relevant Sections of Napa County Code

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." The full text of these and other relevant sections of County Code was included in a hand out distributed at the February 24th stakeholder meeting. (See reference materials.)

#### Relevant General Plan Policies

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." (See reference materials.)

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."

Other relevant sections of the General Plan include 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 a 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. The text of these and other relevant General Plan policies was included in a hand out distributed at the February 24th stakeholder meeting. (See reference materials.)

#### January 27, 2010 Stakeholder Meeting: Alternatives Exploration

The first stakeholder meeting provided an opportunity to brainstorm about possible alternatives to the "do nothing alternative" in which the County's prohibition on short term vacation rentals would stay in place, and the increased penalties adopted with the December 15, 2009 ordinance would take effect in June 2010. Stakeholders helped to identify a spectrum of possible alternatives in increasing intensity from "do nothing" to "anything goes."

Some of the interesting ideas that surfaced included the "Non-Ag Alternative," which would permit vacation rentals outside of areas designated for agriculture on the County's official land use map (General Plan Figure AG/LU-3), the "WDO Alternative," which would permit vacation rentals that are associated with a winery (on the same parcel or a different parcel), and the "Guest House Alternative," which would allow owners to rent guest houses, not dwellings. A full list of alternatives identified in the stakeholder brainstorming session was included in a hand out distributed at a small group meeting on February 17th, and at the February 24th stakeholder meeting. (See reference materials.)

The January 27th stakeholder meeting also included a discussion about concerns that have been expressed about vacation rentals and potential benefits of legalizing them, and possible permit conditions that could be put in place to ensure vacation rentals are compatible with agricultural and residential uses in the vicinity. The group overwhelmingly agreed that if vacation rentals are legalized, they should be required to pay TOT, and many suggested that private homeowners should be allowed to rent their homes part of the time, while corporations or "resorts" should be precluded from purchasing dwelling units and using them as short term rentals if feasible.

#### February 24, 2010 Stakeholder Meeting: Alternatives Evaluation

The second stakeholder meeting provided an opportunity to discuss potential regulatory and policy changes that would be needed to implement the alternatives identified in January. The group spent considerable time focusing on relevant General Plan policies, and staff presented an analysis of four alternatives, including sections of Napa County Code that would have to be revised to implement each alternative, the scope of required General Plan amendments, and the likelihood that approval from the voters would be required under Measure P (2008). Conclusions can be summarized as follows:

- All alternatives analyzed -- except for the "do nothing" alternative and the "guest house" alternative -- would raise concerns for affordable housing advocates and would require an amendment to the Housing Element to eliminate Program H-1c, in addition to changes to General Plan Policy AG/LU-33 and Action Item AG/LU-33.1.
- The "guest house" alternative would require changes to Napa County Code Sections 18.08.300 and 18.104.080 about guest cottages, and all other alternatives analyzed -- except the "do nothing" alternative -- would require changes to sections of Napa County Code about dwelling units (Section 18.08.260), accessory uses (18.08.020), and/or home occupations (Sections 18.08.310 and 18.104.090).
- All alternatives analyzed -- except for the "do nothing" alternative and the "non-ag" alternative -- could require approval from the voters under Measure P (2008), since the zoning and General Plan changes might result in inconsistencies with the "intent" of the Agricultural Resource and Agriculture, Watershed and Open Space designations as defined in General Plan Policy AG/LU-20 and 21.

The group spent some time discussing how an ordinance could be crafted to address concerns about affordable housing by (a) prohibiting short term vacation rentals of smaller homes and (b) requiring the owner to live on the property for a percentage of the time, and whether there was a limited rental program that could qualify as a legal, accessory use of a single family home. Staff described the low threshold that the County has historically maintained for requiring a Measure P vote (e.g. selling sandwiches at the Pumpkin Patch produce stand), and indicated that only the "Non-Ag" alternative would avoid the question entirely.

### Possible Next Steps

At the close of the February 24, 2010 stakeholder meeting, staff invited attendees to participate in the presentation to the Board scheduled for March 23, 2010, and indicated that there were probably two courses of action for vacation rental advocates: (1) develop an ordinance allowing short term vacation rentals with reasonable restrictions county-wide and put that ordinance before the voters; and (2) develop an ordinance with a very restrictive program and make the legal and political argument that voter approval would not be required for an accessory use that is "incidental and subordinate" to a single family home. As a hybrid, someone also suggested (3) adoption of an ordinance allowing short term vacation rentals with reasonable restrictions in Non-Ag areas for a "test" period, before proceeding with option (1) or (2).

Planning staff is seeking Board of Supervisors direction on next steps, and would particularly like Board of Supervisors input on whether they would be willing to entertain a limited program like the one suggested in item (2), above. Specifically, would the Board like to consider amendments to the General Plan and zoning regulations to allow vacation rentals as an accessory use within single family homes above a certain size when that home is occupied by the owner for a certain percentage of the year? And if the Board of Supervisors is interested in considering such an ordinance, would they be willing to do so without putting the question before the voters pursuant to Measure P based on an argument that the proposed General Plan changes (see the first bullet above) do not result in the various policies of the General Plan being internally inconsistent? A copy of Measure P is attached for reference.

### SUPPORTING DOCUMENTS

- A . Ordinance Adopted December 15, 2009
- B . List of Meeting Handouts & Stakeholder Input
- C . Measure P (2008)

CEO Recommendation: Approve

Reviewed By: Helene Franchi



A Tradition of Stewardship  
A Commitment to Service

Agenda Date: 12/2/2009

Agenda Placement: 9A

## Napa County Planning Commission Board Agenda Letter

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**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

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### **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



A Tradition of Stewardship  
A Commitment to Service

Agenda Date: 11/18/2009

Agenda Placement: 9B

## Napa County Planning Commission Board Agenda Letter

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**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

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### RECOMMENDATION

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