



AGRICULTURAL COMMISSION

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Greg Boeger, Chair – Agricultural Processing Industry
Lloyd Walker, Vice-chair – Other Agricultural Interests
Chuck Bacchi – Livestock Industry
Bill Draper – Forestry/Related Industries
Dave Pratt – Fruit and Nut Farming Industry
Tom Heflin – Fruit and Nut Farming Industry
Gary Ward – Livestock Industry

MINUTES*

April 9, 2008
6:30 P.M.

Board of Supervisors Meeting Room
330 Fair Lane – Building A, Placerville

Members Present: Bacchi, Boeger, Draper, Heflin, Pratt, Walker, Ward

Members Absent: None

Ex-Officio Members Present: William J. Stephans, Ag Commissioner/Sealer

Staff Members Present: Nancy Applegarth, Clerk to the Ag Commission
Chris Flores, Ag Biologist/Standards Inspector
Pierre Rivas, Development Services/Planning

Others Present: Art Marinaccio, Judith Mathat, Ray Nutting, Demetri Romas, Kathye Russell, John Smith

I. CALL TO ORDER

The meeting was called to order at 6:33 p.m. by Greg Boeger, Chair.

II. APPROVAL OF AGENDA

It was moved by Mr. Heflin and seconded by Mr. Walker to APPROVE the Agenda as submitted. Motion passed.

AYES: Bacchi, Draper, Pratt, Heflin, Walker, Ward, Boeger

NOES: None

ABSENT: None

III. APPROVAL OF MINUTES

Minutes of March 12, 2008

Mr. Draper requested that a modification be made to the March 12, 2008 Minutes, Item XIII., Janine D'Agostini, or Virginia L. Murphy, agents for Ronald Smith, request for administrative relief from agricultural setbacks - where Timberland "Preserve" Zone land is stated, it should be changed to Timber "Production" Zone (TPZ) land. It was then moved by Mr. Walker and seconded by Mr. Draper to APPROVE the Minutes of March 12, 2008 with the change to Item XIII. Motion passed.

AYES: Bacchi, Draper, Pratt, Heflin, Walker, Boeger

NOES: None

ABSTAIN: Ward

***NOTE:** This meeting was not recorded due to technical problems.

IV. PUBLIC FORUM

- *No comments were received*

V. Ranch Marketing/Winery Ordinance Update

John Smith, Oakstone Winery, gave a brief update of the El Dorado Winery Association meeting regarding the Low Impact Winery Ordinance. The Fair Play Winery Association was not able to discuss the draft ordinance.

VI. Discussion of General Plan Policy 8.1.3.1

“Agriculturally zoned lands including Williamson Act Contract properties shall be buffered from increases in density on adjacent lands by requiring a minimum of 10 acres for any parcel created adjacent to such lands. Those parcels used to buffer agriculturally zoned lands shall have the same width to length ratio of other parcels.”

Ag staff presented a Draft Relief Findings Criteria for General Plan Policy 8.1.3.1 with two options and questions for the Agricultural Commission’s consideration:

Proposed Draft Option A – Findings contained in a Resolution adopted by the Board of Supervisors by adding an authorizing statement within the General Plan policy

Proposed Draft Option B – Findings would be contained in the General Plan Policy itself.

See Attachment A

Questions to be considered during the May 14, 2008 Ag Commission meeting:

1. Should the required findings be placed in the General Plan or in a “Criteria and Guidelines” document adopted by the Board through a resolution similar to the “*Administrative Relief for Agricultural Setbacks*” criteria and guidelines?
2. Are the draft findings appropriate? Are other findings needed?
3. Should there be different findings criteria for Community Regions and Rural Centers?
4. What other General Plan policies may be affected or may require further consideration due to the draft findings?

Mr. Bacchi questioned the unintended consequences of finding **C) *The agriculturally zoned parcel is zoned Exclusive Agriculture (AE) or Agricultural Preserve (AP) and is no longer under contract and used agriculturally.*** He voiced his concerns that this finding would limit the use of available grazing lands that are still zoned AE but that are not under contract. Staff was directed to review this draft finding for possible clarification.

The Commission members commended staff for the work on the proposed draft. It was

recommended that staff meet with Peter Mauer and other Planning staff to finalize a draft of the criteria which will then be discussed, with possible action, at the May 14, 2008 Ag Commission meeting.

Staff will also review the General Plan policies for any conflicts with the draft findings. A list of potentially impacted policies will be completed for the May 14th meeting.

- VII. William & Amelia Dolan** – A request for administrative relief from agricultural setbacks for the proposed single-family residence to be located 187 feet from the southeast property line. The subject parcel is adjacent to Residential Agricultural (RA-20) zoned land and therefore subject to special agricultural setbacks in accordance with the Interim Interpretive Guidelines adopted June 22, 2006. The proposed single-family residence does not meet the requirements for the Development Services Director to allow up to a 50 and/or a 75 percent setback reduction and therefore requires the Agricultural Commission review for administrative relief. (District 2)

Staff reported on the site visit to the property. The subject parcel is zoned RA-20, is not in an Agricultural District, has non-choice soils, it is wooded and has limited building sites due to its steep topography. To the west, north, and east of the proposed building site, the land drops off steeply. The Consumnes River is to the north, in the canyon below. The applicants have proposed to place a detached garage between the single-family residence and the RA-20 parcel to the east, which would act as a man-made barrier. The RA-20 parcel to the east is also very steep, rugged and wooded, does not have an agricultural operation on it at this time, nor is one likely to take place, has non-choice soils, and is not located in an Agricultural District.

Amelia Dolan was present for questions and review of the application.

It was moved by Mr. Pratt and seconded by Mr. Heflin to recommend APPROVAL of William and Amelia Dolan's request for administrative relief from a 200 foot agricultural setback, allowing a setback of 187 feet from the RA-20 zoned parcel to the east, as it can be demonstrated that the topography of the site acts as a natural barrier and the proposed detached garage will act as a man-made barrier, which will reasonably minimize any negative impacts on agricultural use. Staff also recommends that the applicant comply with Resolution No. 079-2007 Exhibit A of the Board of Supervisors pertaining to the adoption of the Criteria and Procedures for Administrative Relief from Agricultural Setbacks. Section B.5 requires the following action by the applicant: In all cases, if a reduction in the agricultural setback is granted for a non-compatible use/structure, prior to the issuance of a building permit, a Notice of Restriction must be recorded identifying that the non-compatible use/structure is constructed within an agricultural setback and that the owner of the parcel granted the reduction in the agricultural setback acknowledges and accepts responsibility for the risks associated with building a non-compatible use/structure within the setback. The Commission notes that the project has already been started within the agricultural setback and that a building permit has been issued.

AYES: Bacchi, Draper, Pratt, Heflin, Walker, Ward, Boeger

NOES: None

ABSENT: None

- VIII. Z 07-0057 & P 07-0052 – LIVING CARE REZONE & PARCEL MAP (Living Care 1, LLC, Demetre Haralambakis/Gene E. Thorne & Associates, Inc.):** A request to rezone a property from RE-5 (Estate Residential – 5 Acre) to R1A (One-Acre Residential) and a tentative parcel map creating four (4) lots ranging in size from 1.01 acres to 1.71 acres with the following design waivers: 1) To not require the application of general plan transportation and circulation element policy TC-41 which seeks the inclusion of pedestrian/bike paths, where feasible; 2) To not require inclusion of a 10-foot roadway shoulder along the project frontage on Cold Springs Road; 3) To allow greater than 3:1 lot depth to width ratio; 4) To allow a 50-foot road right-of-way for Boulder Lane; 5) To allow the centerline of boulder Lane to not follow the centerline of the proposed right-of-way. The property, identified by Assessor’s Parcel Number 323-250-42, consists of 5.08 acres, and is located on the south side of Cold Springs Road southwest of the intersection with Boulder Lane, in the Placerville area. (District 3)

Staff gave a report on the site visit. Although there is a small .24 acre parcel north of and adjacent to the subject parcel, it is not considered a parcel that can be used as a buffer between the project parcel and the agricultural parcel since it is owned in fee title by the County for a roadway easement along Cold Springs Road. Therefore, the project is required to be considered by the Agricultural Commission, as the project parcel is south of two RA-20 zoned parcels. One consists of 20 acres and the other is approximately 61 acres. Both are in the Gold Hill Agricultural District and have choice soils. In the past, these parcels were very production pear orchards. Currently neither appears to being used for agricultural operations.

While the project parcel is in a Community Region, has a Land Use Designation of MDR (Medium-Density Residential, which is consistent with the proposed 1-plus acre parcels) and the General Plan states that growth will be directed and facilitated in Community Regions, the Agricultural zoning of the parcels to the north, requires a minimum parcel size created adjacent to such parcels to be a minimum of 10 acres. Specifically, General Plan Policy 8.1.3.1 states that “Agriculturally zoned lands...shall be buffered from increases in density on adjacent lands by requiring a minimum of 10 acres for any parcel created adjacent to such lands.” The present size of the project parcel (5.08 acres) is also consistent with the MDR Land Use Designation of 1.00 to 5.00 acres parcels. Since this is the case, the creation of smaller parcels will increase the density adjacent to ag lands which is inconsistent with the General Plan.

Kathye Russell, Gene Thorne & Associates, distributed a hand-out with information on the proposed project (*See Attachment B*). Ms. Russell stated that a finding of consistency can be made even when a project may be in conflict with some of the General Plan policies. The General Plan states that “In using the General Plan, it must be applied comprehensively. No single component (map, goal, objective, policy, or map) can stand alone in the review and evaluation of a development project.” Staff understood Ms. Russell’s point however; an

appellant district case regarding the Cinnabar project (*The Future, City of Plymouth et al v. El Dorado County Board of Supervisors et al* 1998) found that a project is inconsistent with the General Plan when the land use policy at issue is fundamental, mandatory and specific. Staff believes that Policy 8.1.3.1 is a fundamental, mandatory and specific policy that protects agricultural lands from increases in density and as such any project adjacent to agricultural lands must comply with this policy. Additionally, the Cinnabar case included the same language for using the General Plan. Furthermore, the current acreage is consistent with the MDR Land Use Designation so the creation of smaller parcels is not necessary to be consistent with the General Plan. It is staff's contention that the proposed project is not necessary to attain the goals of the General Plan land use policies since the current parcel acreage is consistent with the General Plan.

It was moved by Mr. Draper and seconded by Mr. Walker to recommend DENIAL of the Living Care Rezone and Parcel Map request to rezone APN 323-250-42 from RE-5 to R1-A and a tentative parcel map creating four lots ranging in size from 1.01 acres to 1.71 acres as the fundamental, mandatory, and specific General Plan Policy 8.1.3.1, requires a 10 acre minimum parcel size adjacent to Agriculturally zoned lands.

AYES: Walker, Ward, Bacchi, Draper, Pratt, Heflin, Boeger

NOES: None

ABSENT: None

IX. LEGISLATIVE ISSUES

- Staff is tracking approximately 47 bills that may have an impact to agriculture and will give specific update as the legislative session progresses.

X. CORRESPONDENCE

- No report

XI. OTHER BUSINESS

- 08-0010 Boundary Line Adjustment application – C.J. Smith III
- 08-0011 Boundary Line Adjustment application – Wayne Swart
- 08-0016 Boundary Line Adjustment application – Robert Bell

XII. ADJOURNMENT

There being no further business, Chair Boeger adjourned the meeting at 8:20 p.m.

APPROVED: Greg Boeger, Chair

Date: May 14, 2008

ATTACHMENT A

TO: Agricultural Commission Members

FROM: Agricultural Department Staff

SUBJECT: GENERAL PLAN POLICY 8.1.3.1 – DRAFT RELIEF FINDINGS CRITERIA

Proposed Draft Option A: (Findings criteria contained in a Resolution by adding authority statement within the General Plan policy).

General Plan Policy 8.1.3.1: “Agriculturally zoned lands including Williamson Act Contract properties shall be buffered from increases in density on adjacent lands by requiring a minimum of 10 acres for any parcel created adjacent to such lands. **A parcel size of less than 10 acres may be considered, if the parcel meets certain criteria and/or findings that are recommended by the County Agricultural Commission and adopted by the Board of Supervisors.** Those parcels used to buffer agriculturally zoned lands shall have the same width to length ratio of other parcels.”

The finding listed below will be adopted by the Board through a Resolution:

The County Agricultural Commission may consider recommending the creation of a parcel(s) less than 10 acres adjacent to agriculturally zoned lands when the Commission finds that the following exists:

- A) *The parcel adjacent to the agriculturally zoned land is within an existing General Plan Community Region or Rural Center and will not intensify conflict with an adjacent agricultural operation; or*
- B) *The agriculturally zoned parcel is zoned Exclusive Agriculture (AE) or Agricultural Preserve (AP) and is no longer under contract and used agriculturally; or*
- C) *The agriculturally zoned parcel is less than 10 acres in size and is not being used for agricultural operations; or*
- D) *The Agricultural Commission determines that the surrounding parcels are residential in nature and are not suitable for an agricultural operation; or*
- E) *The parcel was assigned an urban or other nonagricultural use in the Land Use Map for the 1996 General Plan; and*
- F) *The proposed parcel size is consistent with the General Plan Land Use designation; and*
- G) *The proposed parcel will not intensify conflict with an adjacent agricultural operation; and*
- H) *The agriculturally zoned land area contains less than 20% choice soils; or*
- I) *The Agricultural Commission determines that there is currently no agricultural activity on the agriculturally zoned parcel(s) adjacent to the subject parcel and that the conversion to a low or high intensive farming operation is not likely to take place due to soil and/or topographic characteristics of the adjacent agriculturally zoned parcel(s)*

ATTACHMENT A continued:

Proposed Draft Option B: (Findings criteria contained in the General Plan policy)

General Plan Policy 8.1.3.1: “Agriculturally zoned lands including Williamson Act Contract properties shall be buffered from increases in density on adjacent lands by requiring a minimum of 10 acres for any parcel created adjacent to such lands. Those parcels used to buffer agriculturally zoned lands shall have the same width to length ratio of other parcels.”

The County Agricultural Commission may consider recommending the creation of a parcel(s) less than 10 acres adjacent to agriculturally zoned lands when the Commission finds that the following exists:

- A) The parcel adjacent to the agriculturally zoned land is within an existing General Plan Community Region or Rural Center and will not intensify conflict with an adjacent agricultural operation; or*
- B) The agriculturally zoned parcel is zoned Exclusive Agriculture (AE) or Agricultural Preserve (AP) and is no longer under contract and used agriculturally; or*
- C) The agriculturally zoned parcel is less than 10 acres in size and is not being used for agricultural operations; or*
- D) The Agricultural Commission determines that the surrounding parcels are residential in nature and are not suitable for an agricultural operation; or*
- E) The parcel was assigned an urban or other nonagricultural use in the Land Use Map for the 1996 General Plan; and*
- F) The proposed parcel size is consistent with the General Plan Land Use designation; and*
- G) The proposed parcel will not intensify conflict with an adjacent agricultural operation; and*
- H) The agriculturally zoned land area contains less than 20% choice soils; or*
- I) The Agricultural Commission determines that there is currently no agricultural activity on the agriculturally zoned parcel(s) adjacent to the subject parcel and that the conversion to a low or high intensive farming operation is not likely to take place due to soil and/or topographic characteristics of the adjacent agriculturally zoned parcel(s)*

QUESTIONS FOR AGRICULTURAL COMMISSION CONSIDERATION:

1. Should the required findings be placed in the General Plan or in a “Criteria and Guidelines” document adopted by the Board through a resolution similar to the “Administrative Relief for Agricultural Setbacks” criteria and guidelines?
2. Are the draft findings appropriate? Are other findings needed?
3. Should there be different findings criteria for Community Regions and Rural Centers?
4. What other GP policies may be affected or may require further consideration due to the draft findings?

ATTACHMENT A continued:

EXAMPLES: (September 2007 to Present)

1. **McCann Ranch (next to Union Mine HS) – application to rezone and create parcel map** (Denied due to 8.1.3.1; was in a Community Region and had an HDR Land Use Designation, was not in an Agricultural District, and would probably not intensify conflict with an adjacent agricultural parcel as one parcel was a school site and the other parcels were in the Community Region with LUD's of HDR). **Meets criteria A) above.**

2. **Mica St. (off Crystal Blvd) – application for a General Plan Amendment to change the Land Use Designation from RR to LDR** (Denied due to 8.1.3.1; was zoned RE-5, was in a residential area, had adjacent properties (10 acres, 5 acres, and 4 acres) with RA-20 zoning and RR LUD's). Adjacent parcels had inconsistent zoning and LUD's with their parcel sizes.) **Meets criterion C) above.**

3. **South Shingle Rd./Conforti – pre-application for a General Plan Amendment, rezone (I/I to RE-5/LDR) and creation of parcel map**(Unable to consider due to 8.1.3.1; has Industrial zoning and Industrial LUD, is in a rural residential area, has an adjacent parcel with AE zoning and an RR LUD (no ag, non-choice soils, not in an Ag District), and two other adjacent parcels of RE-5/LDR and RE-10/LDR). **Meets criterion B) above.**

4. **Sawmill Creek (Shingle Springs) – application to rezone and create parcel map** (Conditional approval with conditions based on 8.1.3.1. Parcel is in the Shingle Springs Community Region but adjacent to an AE zoned parcel that is no longer in a WAC). **Meets criteria A) and B) above.**

5. **Shinn Ranch – parcel split request next to an active WAC and AE zoned land** (Request was denied due to 8.1.3.1. Parcel had an HDR Land Use Designation). **Meets criteria E), F), G), and H) above.**

ATTACHMENT B

April 9, 2008 ~Agricultural Commission Meeting Cold Springs Parcel Map Comments by Kathye Russell

VIII. Z 07-0057 & P 07-0052 – LIVING CARE REZONE & PARCEL MAP (Living Care 1, LLC, Demetre Haralambakis/Gene E. Thorne & Associates, Inc.): A request to rezone a property from RE-5 (Estate Residential – 5 Acre) to R1A (One-Acre Residential) and a tentative parcel map creating four (4) lots ranging in size from 1.01 acres to 1.71 acres with the following design waivers: 1) To not require the application of general plan transportation and circulation element policy TC-41 which seeks the inclusion of pedestrian/bike paths, where feasible; 2) To not require inclusion of a 10-foot roadway shoulder along the project frontage on Cold Springs Road; 3) To allow greater than 3:1 lot depth to width ratio; 4) To allow a 50-foot road right-of-way for Boulder Lane; 5) To allow the centerline of boulder Lane to not follow the centerline of the proposed right-of-way. The property, identified by Assessor's Parcel Number 323-250-42, consists of 5.08 acres, and is located on the south side of Cold Springs Road southwest of the intersection with Boulder Lane, in the Placerville area. (District 3)

Staff Recommendation: *recommends DENIAL of the Living Care Rezone and Parcel Map request to rezone APN 323-250-42 from RE-5 to R1-A and a tentative parcel map creating four lots ranging in size from 1.01 acres to 1.71 acres as the fundamental, mandatory, and specific, General Plan Policy 8.1.3.1, requires a 10 acre minimum parcel size adjacent to ag*

FACT 1: *Project site is NOT adjacent to ag land: It is buffered by APN #323-250-41-now under county ownership*

FACT 2: *The Ag site is buffered by Cold Springs Road—in that it is the Lori Veerkamp Trust – across the road!*

FACT 3: *Conflict in zoning and GP designations. When that occurs - zoning ordinances are subordinate to, and must be consistent with, the General Plan land use designation. This was established in Leshar Communications, Inc vs City of Walnut Creek, and I quote:*

The Planning and Zoning Law itself precludes consideration of a zoning ordinance which conflicts with a general plan....the general plan stands. A zoning ordinance that is inconsistent with the general plan is invalid when passed and one that was originally consistent but has become inconsistent must be brought into conformity with the general plan. Planning and zoning law does not contemplate that general plans will be amended to conform to zoning ordinances. The tail does not wag the dog. The general plan is the charter to which the ordinance must conform."

FACT 4: *The 2004 GP is internally inconsistent as evidenced by this very project which shows one policy requiring 10-acre buffers and numerous policies that override that*

buffer as shown by the Comm Region designation.

ATTACHMENT B continued

- General Plan STRATEGIES....GP page 5: *"Recognize urban growth in Community Regions...."*
- General Plan CONCEPTS..... PG page 6: *"Community Regions where growth will be directed and facilitated"*
- "Using The Plan" ...GP page 7: *"...it must be applied comprehensively...NO single component (policy, etc) can stand alone in the review and evaluation of a development project...merits should be based on consistency with goals, objectives and policies of all elements and land use map..."*

GP Community Region goals (which are on our project site AND the Veerkamp site) are:

- "Community regions are intended as 'urban limit lines' showing where the urban and suburban land uses will develop.
- They are set to allow for continued population growth and economic expansion....
- They are established to define those areas which are appropriate for the highest intensity of self-sustaining compact urban-type development or suburban type development with the county based, in part, on 'major transportation corridors and travel patterns'

MDR = "...establishes areas suitable for detached single-family residences with larger lot sizes ...enable limited agricultural land management activities...applied where the character of the area is single family residences...Parcel size maximum allowed is 1 unit per 1 acre..."

Policy 8.1.1.1 defines AL-designated lands and concludes these lands must meet one of the following:

Are located in a Rural Region –

OR

The County Dept of Agriculture has determined that the land is "well suited" for ag production.

Since our project is NOT in a Rural Region - we would like to see the documentation and criteria used by the Ag Dept to make the latter determination.

Thank you.