DATE:   December 13, 2011 at 2:10 p.m.

TO:   Board of Supervisors

FROM:   David Hardy, Project Planner

SUBJECT:   Proposed changes to the Uniform Rules for Agricultural Preserves and Farmland Security Zones and to the Zoning Code for agricultural land to ensure compliance with the Rules, streamline procedures, and implement the General Plan policies related to agricultural uses (ORD10-0001); Supervisorial Districts: All

Action Requested of the Board of Supervisors

The Board is requested to:

1) Adopt a Resolution approving the proposed update to the Uniform Rules for Agricultural Preserves and Farmland Security Zones ("Rules"), applicable to all new, replacement and renewing contracts, except for those that have filed a notice of non-renewal by September 1, 2012; directing staff to initiate non-renewal of parcels that do not qualify for the program; and implementing a phased monitoring program through annual surveys;

2) Provide direction to staff on remaining policy issues related to the Zoning Ordinance amendments and continue the matter for additional deliberation and action on January 31, 2012 at 2:10 pm;

3) Provide direction to staff on the Draft Resolution of Intent to consider a general plan amendment allowing vacation rentals on parcels less than 6 acres in the LIA zoning district and/or rezoning of parcels to other appropriate district and continue consideration of this resolution to January 31, 2012 for final action.

Background

On November 15, 2011, the Board of Supervisors conducted a public hearing on the recommendations of the Planning Commission. The hearing was closed for oral testimony, but the Board agreed to accept written comments until December 2, 2011, and continued the matter to December 13, 2011.

The Board indicated a desire to separate the zoning issues from the adoption of the Rules and provided direction to staff on some issues noted below, and requested additional information and/or continued discussion on a few remaining issues. This staff report therefore will address the Uniform Rules in the first section, with recommended changes in response to Board direction, and the zoning issues are discussed in the second section, with additional information and recommendations.
Staff notes the policy options for this effort were limited in scope to those that qualify for a CEQA exemption or were addressed in the General Plan EIR. Thus the policy options were either to clarify and better define the existing program or make the program more restrictive as indicated in the 2005 DOC audit of the County’s Williamson Act program.

**UNIFORM RULES**

Prior Actions on the Uniform Rules

At the hearing, the Board agreed with most of the Planning Commission and staff-recommended changes presented at the meeting and provided direction to staff on additional changes noted below:

1. Make the Rules effective on January 1, 2012, but allow those who serve a notice of non-renewal by **September 1, 2012**, to continue under the old Rules. (This change is made in the adopting Resolution on page 5).

2. Allow the Board to consider an **annual fee** at a later date. The Rules provide that the Board may establish a fee for the administration of the agricultural preserve program. The Board’s decision about whether to impose such a fee and the amount of any fee would be the subject of a separately noticed public hearing. (Rule 1.5, Page 4)

3. Revising the definition of “**contiguous**” to remove the words “touching at a point” and to state that land is contiguous “even if it is separated by roads, streets, utility fees or easements or railroad rights-of-way.” The revised language in the Rules is consistent with that of the Subdivision Ordinance. (Rule 2, Page 6)


5. Clarifying the definition of special events to say “**large gathering**” (Rule 2, Page 9)

6. Add flexibility to allow the Board of Supervisors to consider exceptions to the “**50% Rule**” for qualifying agricultural uses. (Rule 4.2, Page 15)

7. Clarifying that an approved timber **management** plan rather than a timber harvest plan, is required to qualify for the contract. (Rule 7.2.A.12, page 22)

8. Clarifying communication uses includes telecommunication facilities by inserting the word “**towers**” in the allowable communication uses (Rule 8.3.F.1, page 29)

9. Adding “**public roads**” as a compatible use (Rule 8.3.G.3, Page 31)

**Other Issues**

At the conclusion of the hearing there were a few remaining issues that the Board wanted staff to clarify as well as respond to any written comments received by the December 2nd deadlines,
which are described below. Other clarifications and non-substantive changes were made by Counsel as shown in underline and strikeout in the updated Rules.

**Issue #1:** Grandfather Provision

Under the proposed Rules, an existing contract is “grandfathered” under the old rules, so that existing uses are not subject to the new rules, if a notice of non-renewal is filed prior to September 1, 2012. A written comment suggested language for “grandfathering” existing uses on contracted land and requests that the provision be incorporated into the Uniform Rules. The proposed language would essentially allow existing land uses to continue to receive a tax break, without non-renewal, even though the land would not comply with the updated Rules or the principles of compatibility in state law. The proposed language would negate the whole purpose of updating the Rules to address incompatible uses. The audit spells out that all contracts must comply with the Rules. The audit found that under the County’s existing Rules, “The [compatible] uses are so broadly stated that they may or may not conform with the principles of compatibility…Each of the “uses” identified are vague and require more specificity. Sections 51238.1-51238.3 [of the Land Conservation Act] requires that the County review each parcel independently to determine if the use is compatible with that parcel.” The grandfather clause proposed by the commenter would not address the incompatible land uses identified in the audit and instead would allow ongoing tax breaks for incompatible uses on contracted lands. To be responsive to the issues raised in the audit, lands with incompatible uses must be non-renewed and would then continue to be restricted under the old rules until phased out. Staff is aware of only a few sites where incompatible uses exist on contracted lands, some of which are zoning code violations, and others do not qualify for contract due to parcel size or lack of a qualifying land use.

**Resolution:** Retain the grandfather provision in the draft Resolution as drafted by County Counsel.

**Issue #2:** Agricultural processing as a “compatible use”

A request was made to allow agricultural processing, such as wineries, to be considered an “agricultural use” even if the processing was not to be considered the use that qualified the property for a contract and was subject to the same limitations as a compatible use. The rationale for this is largely a public relations issue, to reinforce the concept that the County considers wineries to be something other than industrial or commercial facilities.

Staff consulted with the Department of Conservation staff, and Assistant Director Brian Leahy responded in an email, “A winery is not considered an “agricultural use” under the California Land Conservation Act of 1965- Williamson Act. A winery can be a compatible use. If the footprint of the winery is fairly small, is less than significant, it could be a compatible use on contracted land. If the winery is a major facility or attracts substantial visits the best course is usually to cancel the Williamson Act contact on the land that the winery occupies.”

The Rules must also be consistent with the General Plan which states in Policy AR-5d “Define agricultural support services as processing services….” Policy AR-5e states that agricultural processing should be subordinate to the production activities onsite.
Resolution: Agricultural processing is listed as an “Agricultural Support Use” in Rule 8.3 B (page 28) under compatible uses to be consistent with both the Land Conservation Act and the County’s General Plan.

Issue #3: Thresholds for Compatible Uses (15% or 5 acre Rule)

A comment related to the agricultural processing issues is the limitation on the area of land that can accommodate compatible uses. In response to the DOC’s audit of 2005, your Board adopted Interim Guidelines which established a threshold for staff determinations of allowable compatible uses of 15% of the land area or 5 acres, whichever is less. This standard was approved by the DOC as responsive to some of the audit issues. The 15% or 5 acre threshold helps ensure that compatible uses are incidental and subordinate to the primary use of the land for agricultural production. This threshold can be exceeded if the Board of Supervisors makes findings of compatibility, so this standard is used primarily as a basis for administrative approvals. A comment letter noted several sites that exceed the lot coverage for compatible uses and requested that the standard be relaxed such as to allow 25% or 15 acres referring to a Napa County ballot measure. Napa County includes these lot coverage limits for wineries in their zoning code but that applies to all lands, including those not under contract, which can be less restrictive. Napa County also has other limitations on the types of uses that can occur at wineries in their zoning standards which further limits the area of coverage.

Staff reviewed the lot coverage requirements submitted in written comments and found differences in the calculation methodology used. Staff typically estimates only the building site and parking areas and does not include access roads that also serve the agricultural uses of the land. Staff agrees that the rules should be clarified to exclude the roads from the compatible use thresholds. Some of the larger wineries do exceed the administrative thresholds, but also were approved by the Board of Supervisors as compatible uses. This would continue to be allowed under the proposed Rules.

Staff notes that a more relaxed standard would be a substantial change to the existing program and require additional environmental review and consultation with the DOC. Because the threshold can be exceeded by the Board when certain findings are made, staff believes the existing program offers sufficient flexibility.

Resolution: Rule 8.2 A (page 26) “Area Limitations and Exceptions”, has been revised to clarify that public and private access roads and driveways are excluded from the calculations. In addition, staff has added a determination to the adopting Resolution, finding that existing uses on contracted land that are listed under the new rules as compatible uses are deemed compatible even if they exceed the 15% or 5 acre limitation.

Issue #4: Devoted to Agricultural or Open Space Use (50% Rule)

Under the existing program and the proposed Rules, a minimum of 50 percent of the land must be devoted to an agricultural or open space use. This standard is one of the most generous in the state. Another written comment proposed language that would create an exception to the rule that at least 50% of the land be in agricultural and/or open space use to qualify for a contract. The written comment suggested that “the planning director to exclude all portions of land which are not feasible or desirable for agricultural use by reason of soil character, slopes, water
availability or setbacks from wetlands, streams and wildlife corridors, or the presence of endangered species or their habitats or geologic constraints”.

Since the Board adopted the 50% Rule as part of the Interim Guidelines in 2007, staff has applied the 50% Rule on the whole parcel. The 50% standard provides a minimum area that must be restricted to a qualifying agricultural or open space use in exchange for a tax break on the whole parcel (except compatible use areas). Staff agrees that some exclusion is appropriate for lands that are not suitable for agricultural or open space uses due to soils, slopes or geologic constraints. However, lands occupied by wetlands, streams, wildlife corridors or endangered species should not be excluded from the calculation. Instead, these lands should be restricted under the contract as a qualifying open space use and thus count towards meeting the 50% Rule. The restrictions of the contract to maintain 50% of the land in an agricultural or open space use would run with the land until the contract is phased out. Landowners may also revise their Land Conservation Plans from time to time, to modify their qualifying land uses. The program has been expanded to allow timber and horse breeding to also qualify so that there is now a wide range of qualifying uses. In some cases, mitigation sites may also qualify as an open space use.

Staff acknowledges that some landowners may not want their lands restricted to open space uses and believe that doing so in a contract may be a constraint that persists beyond the contract term. However, staff notes that biotic habitat for protected species would be a constraint for discretionary permits regardless of the whether the land is subject to a Land Conservation Act contract or whether it is designated as such in the General Plan and zoning.

Staff agrees that an exception to the 50% rule is reasonable, and has proposed alternative language and objective standards to guide when the Board allows land to qualify for a contract even if less than 50% of the land is in agricultural and/or open space use. Staff has developed language to create an exception to the 50% rule when all of the following standards are met: (1) more than 50% of the land is not suitable for agricultural or open space uses due to soils, slope, or geologic constraints, (2) the remainder of the land is continuously used or maintained for agricultural and/or open space uses, (3) placing the land under contract is consistent with the purposes of the Land Conservation Act, and (4) where the land is prime land continuously used for agriculture, a minimum of 6 acres must be planted in a permanent crop, and (5) where the land is prime land utilized for both agricultural and open space use, a minimum of 10 acres must be planted in a permanent crop.

This exception recognizes that there are circumstances that may justify accepting land into the program even if it doesn’t meet the 50% threshold. The exception’s criteria ensure that each parcel of land under contract is individually devoted to agricultural and/or open space use and qualifies for a contract.

Resolution: Section 4.2 B (1) “Eligibility Requirements” (page 15) has been revised to exclude land not suitable for agricultural or open space uses due to soils, slopes or geologic constraints. Wetlands, streams and wildlife habitat areas may be counted as a qualifying open space use to meet the 50% Rule.

Issue #5: Multi-parcel Contracts Under Same Ownership
Another written comment advocated for an option where agricultural use on other parcels could count towards the required 50% for a single parcel that cannot independently meet the 50% rule as long as all of the parcels are operated as a single agricultural operation, owned by the same owner, and each parcel meets the minimum parcel sizes. However, the comment does not advocate for treating such parcels as a unit for all purposes under the contract, including compatible use determinations.

Staff does not support this suggested change because allowing use of land on one parcel to count towards agricultural or open space use on another parcel would result in parcels with little to no agriculture or open space being accepted into the program. This is contrary to the purposes of the Land Conservation Act. Parcels with insufficient agriculture or open space use to independently qualify for a contract may qualify for a contract following a lot line adjustment, or following the planting or grazing of additional acreage or as an open space use.

Staff proposed alternative language for an exception to the 50% Rule in Section 4.2 B 1 (see Issue #4, above, and page 15 of the draft Rules). This exception applies to all contracted parcels individually. Agricultural use on one parcel may not be counted towards agricultural use on another parcel for the latter to qualify for a contract, even when the parcels are jointly managed and under the same ownership.

Resolution: Section 4.2.B on page 15 is revised to allow an exception to the 50% rule where specific findings are made by the Board of Supervisors to ensure that the land is still devoted to agricultural or open space use even though less than 50% of the land is used for agricultural and/or open space.

Issue #6: Ag Employee Dwellings

Another written comment notes that the Rules allow only one agricultural employee dwelling, but under the zoning an agricultural employee dwelling is allowed for each of the qualifying agricultural uses based on a certain number of animals or acres of planted crops. Staff agrees that agricultural employee dwellings allowed under zoning are supportive of agriculture and are compatible uses on contracted lands and should be permitted under the Rules in compliance with zoning standards.

Resolution: Section 8.3 (A) (3) on page 28 of the Rules is revised to allow agricultural employee dwellings in compliance with applicable zoning standards.

Issue #7: Recreational Uses

Another written comment objects to the allowance for recreational uses not being subject to the limitations on acreage for other compatible uses. The reason that “recreational uses” are allowed without limitations is because they are defined under the Uniform Rules and the Land Conservation Act as “the use of land in its agricultural or natural state by the public”. Recreational uses are defined very narrowly as listed in Section 8.3 C (page 28) and an exception to the area limitations (15% or 5 acre rule) is provided in Section 8.2 B 1 (page 26) because the area for
hiking, walking, or hunting is the same area as the qualifying agricultural or open space use. Staff agrees that any accessory structures should be subject to the area limitations and/or required findings for an exception and that the language is somewhat ambiguous.

Resolution: Section 8.2 B 1 on page 26 has been deleted to clarify that recreational uses of land are subject to the compatibility findings.

Issue #8: Status of Existing Type I and Type II Contracts

One speaker suggested that some old non-prime contracts were erroneously categorized as prime (Type 1) contracts which could create a breach of contract due to minimum parcel size or type of use. Staff has researched this issue and found that there are several contracts that are in the wrong “type” of contract either because they were originally drafted incorrectly or because the parcel has been subdivided or the use of the land has changed.

Resolution: The proposed Rules eliminate the distinction between the two forms of contracts for ALL existing contracts as well as new contract. (Section 5.2 of the Rules, Page 18). The effect of this wording is to clarify that regardless of the original contract type, the property will be in compliance as long as the operation meets the requirements under the Rules for the type of land and commodity actually being produced.

Issue #9: Minor Non-Substantive Revisions

Other issues raised at the hearing and in written comments refer to clarifications of the definitions for special events and contiguous lots, as well as clarifying language related to certificates of compliance, agricultural support uses, and required findings.

REQUESTED ACTION ON THE UNIFORM RULES

Adopt the Resolution approving the Uniform Rules with the changes listed above applicable to all new, replacement and renewing contracts, except for those that have served a notice of non-renewal by September 1, 2012; directing staff to initiate non-renewal of parcels that do not qualify for the program; and to implement a phased monitoring program through annual surveys.
ZONING ORDINANCES

Prior Actions on the Zoning Ordinances

At the November 15th hearing, the Board indicated concurrence with most of the Planning Commission and staff recommended changes presented at the meeting, but wanted further information and discussion on several issues discussed below.

1. Importation for agricultural processing in the AR zone
2. Proposed size limits on processing buildings in the AR zone
3. Use of private roads or easements for farmworker housing
4. Mushroom farming as a permitted use in agricultural zones
5. Mixing of uses to qualify for an agricultural employee housing unit
6. Part-time agricultural employee housing
7. Agricultural farmstays in the AR and RRD zones
8. Vacation Rentals in the LIA zone
9. Incorporating Restricted Uses in the Zoning Code

The main focus of the zoning code changes has been on conforming the zoning to the updated Uniform Rules and the limited policy changes from the General Plan update. It is important to note that the scope of the policy options were limited to changes that were evaluated in the General Plan EIR or that qualify for a CEQA exemption. Additional changes in policy that are outside the scope of this effort would require further analysis, environmental review, and subsequent hearings and notice. In addition, any changes in policies that were not previously considered by the Planning Commission are required to be referred back to the Planning Commission for a report and recommendation, pursuant to Government Code Section 65857.

Remaining Issues

**Issue #1:** Importation for Agricultural Processing in the AR zone

At the hearings before both the Planning Commission and the Board of Supervisors, testimony was received requesting that some importation of grapes be allowed for small wineries in the AR zone. The Planning Commission considered allowing importation up to 30 percent, but recommended allowing only limited processing of on-site agricultural products because the AR zoning district is primarily a Rural Residential zone. A majority of the Board indicated that up to 30 percent importation should be allowed to provide winemakers with flexibility to blend certain grapes. While some also expressed concerns about bad weather years, staff clarified that we would not issue zoning violations based on catastrophic events or bad weather years but rather only for ongoing use violations where complaints are received.

**Recommendation:** The AR zoning district has been revised to allow up to 30 percent of the total on-site production may be imported agricultural products from the local area.

**Issue #2:** Proposed Size Limits on Processing Buildings in the AR zone
The Board also raised questions as to whether the proposed size limits for agricultural processing in the AR zone are adequate to allow for storage. The Planning Commission recommendation was to allow up to 2,500 sq. ft. of agricultural processing on parcels less than 5 acres; and, up to 5,000 sq. ft. of processing on parcels greater than 5 acres. Staff analyzed the square footage (SF) requirements for small to medium sized wineries (See Table 1) and found that there is a range of 0.21 SF to 1.1 SF of building per case of production, depending on the type of wine and preferences of the winemaker. These figures include storage areas as well as incidental offices and labs. Using the maximum floor area ratio of 1.1 sf/case indicates that 2,200 cases of wine could be produced in a 2,500 sq. ft. building; and 4,500 cases could be produced in a 5,000 sq. ft. building.

A high yielding vineyard can produce up to five tons of fruit per acre, resulting in 300 cases of wine per acre. Allowing for an additional 30 percent for importation would increase the production to 390 cases. Five acres of vineyard plus 30 percent importation could therefore produce approximately 2,000 cases of wine. Based upon the floor area ratios noted above, production of 2,000 cases of wine could be accommodated in buildings less than 2,500 SF in size.

There are over 10,000 parcels in the AR zone and 81% are less than five acres in size, reflecting the rural residential character of this zoning district. The average home size in Sonoma County is approximately 2,500 SF. Accessory buildings by definition are to be “subordinate” in size and scale to the primary residential use. This scale of building and level of activity was considered by the Planning Commission to be incidental and subordinate to primary rural residential use of AR zoned properties. Consequently, the Planning Commission recommended the proposed size limitations as reasonable to allow adequate processing activity for on-site production in a residential neighborhood setting, but not of a commercial scale that might involve greater impacts or compatibility issues.

Policy options for different size thresholds could be considered by the Board to include using different minimum acreage thresholds or different size thresholds. However, policy options for different size thresholds were not considered by the Planning Commission and would need to be referred back to the Commission for a report and recommendation.

**Recommendation:** No changes are recommended to the proposed size or acreage thresholds. However, this issue could be revisited in phase two of the Development Code update.

**Issue #3:** Use of Private Roads for Farmworker Housing

For a number of years the zoning code has allowed approval of farmworker housing accessed by a private road, without necessarily having agreement from all owners of the road, as long as a use permit is obtained. The owners of a private road expressed concern that this existing code language interfered with their rights as road owners. These owners have suggested a substantial revision to the current code to require permission of landowners for use of private roads for all farmworker housing including that allowed with a use permit. This request appears to conflict with
Housing Element policies intended to facilitate construction of farmworker housing and may also conflict with the federal Fair Housing Act by discriminating against farmworkers by establishing requirements that no other type of housing has to meet.

**Recommendation:** Staff does not recommend any changes to the recommendation of the Planning Commission.

**Issue #4:** Mushroom Farming as a Permitted Use

One speaker suggested that mushroom farming should be allowed without a use permit in the agricultural zones. Mushroom farming currently requires a use permit in agricultural zones in order to ensure compatibility with adjacent land uses due to concerns of odors related to composting materials. While some types of growing media avoid the odor problems, operational standards for this type of use should be developed to ensure compatibility. This is one of those matters that is beyond the scope of this work effort and would require further analysis, environmental review and referral back to the Planning Commission for hearing. Staff considers this an appropriate topic for the second phase of the forthcoming update to the Development Code, at which time a number of standards will be developed for specific uses in order to allow a more expedited process as a permitted use. Staff intends to conduct a workshop with the Board to determine the priority for uses that should be streamlined in the second phase of the Development Code update.

**Recommendation:** Develop standards to allow mushroom farms without a use permit as part of phase two of the Development Code.

**Issue #5:** Mixing of Uses to Qualify for an Agricultural Employee Housing Unit

A comment at the Board hearing requested that farmers be allowed to qualify for an agricultural employee unit based on a mix of agricultural uses (specifically, different kinds of livestock). The standards for agricultural employee units are defined by a threshold number of animals or acres of crops that would support the need for a full-time agricultural employee. Similar to farm family or farmworker housing units, an agricultural employee unit does not count toward the allowable density on agricultural lands.

**Resolution:** The flexibility to "mix and match" agricultural uses to support a farm employee housing unit already exists in the code. In addition to the number of animals or acres of crops required to qualify for a farm employee unit, the code allows the following: "Any other agricultural use which the Planning Director determines to be of the same approximate agricultural value and intensity as Subsections..." listed. No other changes are recommended.

**Issue #6:** Part-Time Agricultural Employee Housing

A request was made at the Board hearing to allow part-time agricultural employee housing on agricultural lands. Part-time agricultural employees are currently allowed to occupy any dwellings on farmlands, but part-time employees are not used to justify additional housing units that exceed the General Plan density. Agricultural properties are already permitted a primary...
unit[s] as allowed by the General Plan density and additional units for farm family members, full-time agricultural employees, seasonal and year-round farmworkers that do not count toward the General Plan density. Allowing additional units for part-time employees is outside the scope and direction of General Plan EIR and would entail additional analysis and environmental review to consider expanded density on agricultural lands. Additional notice, hearings and review by the Planning Commission is also required. Staff has concerns that this would be a loophole for increasing residential uses on agricultural lands and does not recommend consideration of part-time employees as the basis for allowing additional housing units.

Resolution: No changes to the code are recommended.

Issue #7: Agricultural Farmstays in the AR and RRD Zone

One speaker suggested that accessory buildings such as second units be allowed to be used for farm stays, and that farmstays be allowed in the RRD zoning district. The definition of farmstays currently allows use of a guest house, but prohibits use of second dwelling units, agricultural employee units, and other farmworker housing that is counted as part of the County’s affordable housing inventory for certification of the Housing Element of the General Plan. The current definition of farm family dwellings prohibits their leasing or subleasing, as would be the case with a lodging tenant. Additionally, when second units, agricultural employee units or farmworker units are approved, a covenant is required to be recorded that limits the use of these units. So, these units cannot be available for farmstays.

Another speaker expressed concern that food facility permits are required by the proposed farmstay standards. The actual language says that a farmstay shall maintain a food facility permit “as required by the Health and Safety Code.” The County is not in a position to waive state law requirements.

Some comments at the Board hearing suggested that farmstays be allowed in the AR and RRD zoning districts, and as indicated previously, staff has no objections to allowing this as a farmstay is similar to a bed and breakfast inn, which is permitted in those zones. However, these issues were not part of the policy directive in the General Plan, nor were they considered by the Planning Commission and this item would need to be referred back for a report and recommendation and duly noticed hearings.

Recommendation: Due to staff workloads, rather than delay further action on the AR or RRD zoning districts, staff recommends deferring any further changes to the allowable uses in these districts to the Development Code. This change may be considered part of phase one as the standards would already be developed and adopted into the code.

Issue #8: Vacation Rentals in the LIA Zoning District

Ordinance: As noted above, the Board agreed with the Planning Commission’s recommendation to allow existing vacation rentals in the LIA zoning district to be grandfathered with a zoning permit or use permit, provided that they meet the vacation rental and septic standards and events are prohibited. These requirements are included in the grandfather provision provided in Section VIII of the inland adopting ordinance. There are 27 existing vacation rentals in the LIA zone of
record to date. The ordinance provision would allow additional vacation rentals that register by the end of the year and pay 4th quarter transient occupancy taxes to also apply for the zoning or use permit by March 1, 2012.

Resolution of Intent: The Board also began deliberations on whether to consider an amendment to the General Plan Land Use policies for the LIA zone to allow additional vacation rentals as a use that could be permitted. One Board member supported allowing new vacation rentals on parcels less than 6 acres based on the fact that these parcels are too small for a viable commercial agricultural operation, but there was no consensus on this issue. The Board requested additional information and continued deliberations on the policy options.

Board members expressed concern about the large number of parcels in the LIA zoning district that did not comply with the current 20 acre minimum parcel size. This situation exists not only in the LIA district but throughout the County because of the deliberate approach taken by the Board of Supervisors in adopting the 1989 General Plan to reduce development potential in agricultural and resource areas. The Board reduced subdivision potential and allowable densities by establishing minimum parcel sizes that are generally greater than the existing lot patterns. The 1989 General Plan specifically called for maintaining at least a 10-acre density in areas outside urban service boundaries and to avoid further density increases in such areas. At the outset of the GP2020 process, the Board determined there would be no significant changes to residential density in any zoning district, other than individual requests to conform existing land uses. However, the County’s general plan policies and zoning regulations affect more than just residential density, as we are now seeing with this vacation rental issue in LIA areas. While the low-density zoning in LIA areas reflects the Board’s adopted policies regarding density and protection of agricultural land, it may be appropriate to evaluate some increased land use flexibility in the future on parcels that are too small for commercial farming.

An amendment to the General Plan for vacation rentals was outside the scope of this current effort to bring the zoning into conformance with the General Plan, so the Resolution of Intent would merely provide direction to staff to consider an amendment and that would involve evaluation of a range of policy options. Standards may be needed to address compatibility and potential impacts on adjacent agricultural operations. A General Plan amendment would also be needed to allow the additional visitor service uses in LIA areas. This would require noticed public hearings and further environmental review which could be quite involved if all parcels in the LIA zoning district were included (except on contracted lands where vacation rentals are prohibited). The Board could reduce the scope of the effort in the Resolution of Intent by limiting the amendment that would be considered to smaller LIA parcels only. The scope of the effort will drive the amount of staff time involved and may require additional budget to evaluate impacts. Given the department’s current comprehensive planning work program, staff time would not be available for this effort until at least 2013 unless other work is delayed or additional funding is provided to augment staffing. Options for the Resolution of Intent include:

**Allowing vacation rentals on all parcels in the LIA.** There are 2,149 parcels in the LIA that are not under a Land Conservation Act contract that could potentially be affected by this option as shown in the table in Table 2. The Board could also select any other parcel size threshold deemed appropriate.

**Allowing vacation rentals on parcels less than 10 acres in size.** Parcels less than 10 acres in size would include some that are commercially viable agricultural parcels, but these parcels would
not qualify for a Land Conservation Act contract. There are 1,410 parcels in the LIA that could potentially be affected by this option.

**Allowing vacation rentals on parcels less than 6 acres in size.** Parcels less than 6 acres in size are generally considered too small to be commercially viable agricultural operations, though your Board also heard testimony that high-value specialty crops could be viable on small parcels. There are 1,153 parcels in the LIA that could potentially be affected by this option.

**Allowing vacation rentals on all parcels in the LIA, but establishing a cap on the total number permitted.** The idea of allowing new vacation rentals in the LIA, but establishing a cap on the total number was suggested in written comments received after the Board hearing. A similar approach was used by the City of Napa when they discovered a number of vacation rentals were operating but were not allowed in their zoning code. This option may be done without a General Plan amendment by simply extending the time period for the “grandfather” clause to a future date or until the cap is reached, whichever occurs first. A cap of 50 was suggested by the commenter. There are 27 existing registered vacation rentals and a cap of 50 would allow 23 new vacation rentals to be established. Without a General Plan Amendment, staff would suggest no more than a 2-year period for this type of prospective grandfather clause.

**Other options:** The Board could also establish a different parcel size threshold or a combination of a parcel threshold and cap.

**Recommendation:** Staff recommends extending the grandfather provision and establishing a cap on the total number of vacation rentals allowed in the LIA as the most efficient and equitable option. This option could be in the adopting ordinance as an extended “grandfather” provision, without an amendment to the General Plan. A Resolution of Intent would not be needed.

**Issue #9: Incorporation of Restricted Uses in the Zoning Ordinances**

Another issue raised at the Board hearing related to the Uniform Rules being “incorporated into the zoning code”. The proposed Zoning Code changes do not incorporate the Uniform Rules, per se, but they do identify uses that are restricted on contracted lands, as has been done in the current code. The current code identifies uses which are prohibited or restricted on contracted lands, such as bed and breakfast inns and golf courses as well as, by requiring rezoning to the RRDWA district where prohibited uses are not allowed. Staff recommends that the restricted uses be identified in zoning to ensure consistent practice in administration of the code and so that staff, property owners, and the general public can easily determine the allowable uses of land. This practice also enables the County to enforce contract breaches through the zoning enforcement process. Because the restrictions in the Uniform Rules are very similar to our General Plan and zoning regulations, there are only a few uses that are allowed under zoning but prohibited on contracted lands and those restrictions vary by district. This makes the administration of the program somewhat confusing for staff and the public if the prohibited uses are listed as allowable land uses. Prohibited uses on contracted lands include:

- churches and schools (currently prohibited in LIA)
- large private or public cemeteries (currently prohibited in LIA)
- vacation rentals (currently prohibited in LIA)
• bed and breakfast inns (currently prohibited in LIA and on contracted lands)
• second units (currently prohibited on contracted lands in the RRDWA),
• golf courses (currently prohibited on contracted lands)
• private landing strips not associated with agriculture (currently prohibited in LIA)
• residential care facilities
• large family day care and day care centers
• retail nurseries relying on imported plant stock

A concern was also expressed that existing uses of land under contract would become a zoning violation. However, as with all new zoning regulations, legally established uses existing prior to adoption of changes in zoning would be considered legal non-conforming, even if they breach the contract. Enforcement provisions of the zoning code would only be available for new prohibited uses established after adoption of the zoning changes.

**Recommendation:** Staff recommends that the Board adopt the ordinances as drafted identifying the prohibited uses on contracted land for clarity and to be consistent with past practice.

**SUMMARY OF REQUESTED BOARD ACTIONS**

1. Approve the Resolution adopting the updated Uniform Rules effective January 1, 2012 and applying to all new, replacement and renewing contracts, except for those that have filed a notice of non-renewal by September 1, 2012, and including direction to staff to 1) initiate non-renewal of parcels that do not qualify for the program and 2) implement a phased monitoring program.

2. Provide direction to staff on the remaining zoning issues and continue the zoning ordinances to January 31st, 2012 for final action. Remaining issues and staff recommendations include:

   a) **Importation of agricultural products for processing in the AR zone.** Revise AR to allow up to 30 percent importation.

   b) **Proposed size restrictions on storage and processing buildings in the AR zone.** Retain the 2,500/<5 ac and 5,000 SF/>5 ac and re-evaluate with the code update.

   c) **Use of private roads or easements for farmworker housing.** Retain current code language and update terms only.

   d) **Mushroom farming as a permitted use in agricultural zones.** Requires environmental review, notice hearing and PC recommendation. Consider with code update.

   e) **Mix of uses to qualify for an agricultural employee housing unit.** Existing code includes provisions for allowing a mix of ag uses. No changes are needed.

   f) **Part-time agricultural employee housing.** No changes are recommended. Part-time employees can occupy existing units on farmland.
g) Agricultural farmstays in AR and RRD zone. Requires environmental review, notice hearing and PC recommendation. Consider with code update.

h) Vacation Rentals in the LIA zone. Extend grandfather provision and establish a cap of 50 without a General Plan amendment.

i) Incorporating Restricted Uses under WA in the Zoning Code. Include restricted uses in zoning for ease of administration and public information.

3. Provide direction to staff on whether to adopt the Resolution of Intent to consider an amendment to the General Plan to address new vacation rentals within the LIA. The Resolution of Intent will not be needed if the Board agrees with the staff recommendation to extend the grandfather provision for 2-years and establish a cap on the number of vacation rentals allowed in the LIA.

List of Attachments:

Table 1: Ratio of Winery Size to Production
Table 2: LIA Parcel Sizes on Non-contracted Lands

Draft Board of Supervisors Resolution Approving the Uniform Rules
EXHIBIT A: Draft Uniform Rules
# TABLE 1
## RATIO OF PRODUCTION TO WINERY SIZE

<table>
<thead>
<tr>
<th>FILE</th>
<th>CASES</th>
<th>BLDG SF</th>
<th>SF/CASE</th>
<th>CASE/SF</th>
</tr>
</thead>
<tbody>
<tr>
<td>PLP07-0042</td>
<td>2,000</td>
<td>2,200</td>
<td>1.10</td>
<td>0.9</td>
</tr>
<tr>
<td>UPE06-0039</td>
<td>5,000</td>
<td>3,800</td>
<td>0.76</td>
<td>1.3</td>
</tr>
<tr>
<td>UPE06-0116</td>
<td>5,000</td>
<td>3,625</td>
<td>0.73</td>
<td>1.4</td>
</tr>
<tr>
<td>PLP08-0075</td>
<td>5,000</td>
<td>3,000</td>
<td>0.60</td>
<td>1.7</td>
</tr>
<tr>
<td>UPE92-0156</td>
<td>5,000</td>
<td>2,500</td>
<td>0.50</td>
<td>2.0</td>
</tr>
<tr>
<td>UPE06-0055</td>
<td>8,000</td>
<td>4,100</td>
<td>0.51</td>
<td>2.0</td>
</tr>
<tr>
<td>PLP06-0044</td>
<td>10,000</td>
<td>10,170</td>
<td>1.02</td>
<td>1.0</td>
</tr>
<tr>
<td>UPE07-0039</td>
<td>10,000</td>
<td>9,600</td>
<td>0.96</td>
<td>1.0</td>
</tr>
<tr>
<td>PLP06-0098</td>
<td>10,000</td>
<td>8,600</td>
<td>0.86</td>
<td>1.2</td>
</tr>
<tr>
<td>PLP07-0024</td>
<td>15,000</td>
<td>10,000</td>
<td>0.67</td>
<td>1.5</td>
</tr>
<tr>
<td>UPE07-0012</td>
<td>15,000</td>
<td>4,950</td>
<td>0.33</td>
<td>3.0</td>
</tr>
<tr>
<td>PLP07-0012</td>
<td>20,000</td>
<td>6,820</td>
<td>0.34</td>
<td>2.9</td>
</tr>
<tr>
<td>UPE07-0044</td>
<td>20,000</td>
<td>17,912</td>
<td>0.90</td>
<td>1.1</td>
</tr>
<tr>
<td>UPE99-0105</td>
<td>20,000</td>
<td>12,000</td>
<td>0.60</td>
<td>1.7</td>
</tr>
<tr>
<td>UPE06-0085</td>
<td>25,000</td>
<td>13,570</td>
<td>0.54</td>
<td>1.8</td>
</tr>
<tr>
<td>PLP05-0062</td>
<td>25,000</td>
<td>17,000</td>
<td>0.68</td>
<td>1.5</td>
</tr>
<tr>
<td>UPE07-0019</td>
<td>31,000</td>
<td>12,000</td>
<td>0.39</td>
<td>2.6</td>
</tr>
<tr>
<td>UPE01-0048</td>
<td>35,000</td>
<td>18,000</td>
<td>0.51</td>
<td>1.9</td>
</tr>
<tr>
<td>UPE00-0171</td>
<td>35,000</td>
<td>10,000</td>
<td>0.28</td>
<td>3.5</td>
</tr>
<tr>
<td>PLP02-0044</td>
<td>45,000</td>
<td>34,124</td>
<td>0.75</td>
<td>1.3</td>
</tr>
<tr>
<td>PLP06-0081</td>
<td>60,000</td>
<td>36,500</td>
<td>0.61</td>
<td>1.6</td>
</tr>
<tr>
<td>UPE05-0053</td>
<td>60,000</td>
<td>40,000</td>
<td>0.66</td>
<td>1.5</td>
</tr>
<tr>
<td>PLP99-0028</td>
<td>150,000</td>
<td>46,000</td>
<td>0.33</td>
<td>3.3</td>
</tr>
<tr>
<td>PLP99-0042</td>
<td>180,000</td>
<td>38,000</td>
<td>0.21</td>
<td>4.7</td>
</tr>
</tbody>
</table>

**TOTAL** | **796,000** | **364,471** | **0.46** | **2.2**

**NOTES:**
1. Building SF includes storage, processing, warehouse, offices, labs and tasting rooms.
2. Data obtained from review of approved projects.
### TABLE 2
LIA PARCEL SIZES
ON NON-CONTRACTED LANDS

<table>
<thead>
<tr>
<th>Supervisor District</th>
<th>Total No. of Parcels</th>
<th>No. of Parcels over 20 acres</th>
<th>% of Total</th>
<th>Parcels 10 acres up to 20 acres</th>
<th>% of Total</th>
<th>Parcels Less than 10 acres</th>
<th>% of Total</th>
<th>Parcels Less than 6 acres</th>
<th>% of Total</th>
<th>Parcels Less than 2 acres</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>383</td>
<td>109</td>
<td>28%</td>
<td>57</td>
<td>15%</td>
<td>217</td>
<td>57%</td>
<td>187</td>
<td>49%</td>
<td>90</td>
<td>23%</td>
</tr>
<tr>
<td>2</td>
<td>4</td>
<td>4</td>
<td>100%</td>
<td>0</td>
<td>0%</td>
<td>0</td>
<td>0%</td>
<td>0</td>
<td>0%</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>3</td>
<td>0</td>
<td>0</td>
<td>0%</td>
<td>0</td>
<td>0%</td>
<td>0</td>
<td>0%</td>
<td>0</td>
<td>0%</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>4</td>
<td>1,700</td>
<td>295</td>
<td>17%</td>
<td>254</td>
<td>15%</td>
<td>1,151</td>
<td>68%</td>
<td>934</td>
<td>55%</td>
<td>517</td>
<td>30%</td>
</tr>
<tr>
<td>5</td>
<td>62</td>
<td>14</td>
<td>23%</td>
<td>6</td>
<td>10%</td>
<td>42</td>
<td>68%</td>
<td>32</td>
<td>52%</td>
<td>21</td>
<td>34%</td>
</tr>
<tr>
<td><strong>ALL</strong></td>
<td><strong>2,153</strong></td>
<td><strong>422</strong></td>
<td><strong>20%</strong></td>
<td><strong>318</strong></td>
<td><strong>15%</strong></td>
<td><strong>1,413</strong></td>
<td><strong>66%</strong></td>
<td><strong>1,153</strong></td>
<td><strong>54%</strong></td>
<td><strong>628</strong></td>
<td><strong>29%</strong></td>
</tr>
</tbody>
</table>

Note: Many substandard parcels are part of a larger multi-parcel farming operation