

AGRICULTURE ADVISORY COMMITTEE (AAC)

The Indian River County (IRC) Agriculture Advisory Committee (AAC) met at **2:00 p.m. on Wednesday, October 30, 2019**, in the County Administration Building, Building B, Room B1-501, 1801 27th Street, Vero Beach, Florida. You may hear an audio of the meeting; review the agenda and the Minutes on the IRC website – <http://www.ircgov.com/Boards/AAC/2019.htm>.

Present were: Chairperson Robert Adair, Jr., Associated Industry, Sean E. Sexton, Cattle, Anna Kirkland, Associated Industry, Ruben Koch, Irrigation, David Howard, Horticulture, Susan Adams, Commissioner Liaison.

Others Present were: Jason Brown, County Administrator; William DeBaal, Deputy County Attorney, Susan Prado, Assistant County Attorney, Roland DeBlois, County Community Development Director, John McCoy, County Chief of Current Development, Scott McAdam, County Building Official, Commissioner Peter D. O'Bryan; and Kimberly Moirano, Recording Secretary.

Call to Order and Welcome

Chairperson Adair called the meeting to order at 2:00 p.m. He introduced the members of the Advisory Committee. He introduced himself as Robert Adair. He has been on the Committee he thinks since 2007 and the Committee has been inactive for the last five years. He then introduced the members as they went around the table starting with Mr. Sexton. Mr. Sean Sexton introduced himself. He lives in Indian River County and manages Treasure Hammock Ranch. He does not remember how long he has been on the Committee but it has been for quite a while. David Howard introduced himself. He is from Graves Brothers Company in Wabasso and he represents horticulture. He has been on the Committee for six to seven years. Ruben Koch introduced himself. He is the irrigation appointee and he own Irrigation Consultants. He has been on the Committee for six to seven years. Anna Kirkland introduced herself. She is new and she is an Associated Industry appointee. She is the President of the Indian River County Cattle Women for one year and her family has been in the County since '75 with citrus and cattle. Robert Adair welcomed her to the Committee. Susan Adams introduced herself as Commissioner Liaison. She is County Commissioner for District 1. Chairperson Adair introduced himself as an Associated Industry appointee. He is doing research specifically citrus research. He has been in the County for 32 years and his passion is agriculture.

Election of Officers

The first item before the Board today is the election of officers. Mr. Adair was serving as Vice Chairman. He would open the floor for nominations for Chairman.

Mr. William DeBaal introduced himself. He is the Deputy County Attorney and as Mr. Adair has already said, we'll open the floor for nominations of Chairman for the AG Advisory Committee. Mr. DeBaal asked if there were any nominations for Chairman.

Chairperson Adams asked if she was able to request the nomination of Robert Adair. There was a Motion made by Ms. Kirkland and seconded by Mr. Sexton for the nomination.

Consideration of Off-Site Accessory Landscaping Services Uses in Agricultural Zoning Districts

Roland DeBlois proceeded with a PowerPoint presentation on the consideration of off-site accessory landscaping services uses in the Agricultural Zoning Districts. Back in April of 2018 the owners of the Caribbean Lawn & Landscaping submitted an Affidavit to construct a non-residential AG building on 37th Street. It's a ten-acre property that's zoned agriculture. The structure is about 8,000 square feet and on the Affidavit it was identified for agriculture equipment storage and agricultural office space. Also in the statement it was described that the overall property use was intended for nursery operation, containing nursery and pesticide storage, pole barn, camp shop, shake house, production bed and recycling pond and office space. At that time, based on the overall property description and the current allowance that landscaping can be accessory to an on-site nursery, the County accepted the Affidavit. The owners proceeded to build the building under the AG exemption. Mr. DeBlois presented an aerial that shows the building on the overall roughly ten acre property. In December of 2018, the County received a complaint that the building was finished and the owner started operating the Caribbean Lawn & Landscaping business out of the building without the onsite nursery having been established. Consequently, county staff cited Caribbean for operating the accessory landscape business prior to establishing the onsite agricultural use. The Code Enforcement Board ordered Caribbean to follow through on establishing the principal onsite tree farm nursery as it's been interpreted and applied. The area of the nursery the tree farm nursery has to be greater than the area of the site devoted to the offsite landscaping business. After being cited, Caribbean plant basically the back portion of the property and they met the requirement of having the aerial extent of the nursery larger than the area of the accessory landscape business. Based on that, the Code Enforcement Board closed the case. In the meantime, Mr. Simmons and Mr. Campbell, who live on 37th who were aware of the Code case, brought it before the County Commission and expressed their concerns about the business on the property. This was during the midst of the Code case when the nursery hadn't been established at that time in March. They expressed concerns of the traffic, the effects on the neighborhood, the precedent for similar businesses and agricultural areas and they talked about the Code case. Based on that discussion at the March meeting, the BCC members expressed concerns that the landscaping business was more of a commercial operation gaming the system to use the property in an AG. The potential AG use is out of scale with the wholesale nurseries in agriculture. As a result of that meeting, the Board directed staff to do research, come back to the County Commission with proposed changes to the land development regulations to try to address this potential out-of-scale issue.

Staff did go back to the County Commission in June with findings and a draft LDR Amendment, which was in the backup for today's meeting. The approach was to more specifically define what constitutes an allowable landscape services business, accessory to a wholesale nursery of a reasonable scale. When Mr. DeBlois went to the Board to see if they would consider the draft ordinance amendment, the Board, after discussion and input, decided that it would be appropriate to bring it through this committee for consideration and recommendations and potentially it would go back through a hearing process, through not only this committee but the Planning & Zoning Commission, to come up with an approach to address the issues and the land use conflicts. Since the June meeting, staff has received two LDR Amendment Proposal Applications. The two proposals are for the Committee to consider along with staff's recommendation. For purposes of reference, we're calling one the Hendrix LDR amendment by Mr. Ken Hendrix. He had a recommendation on what would be appropriate for a regulation amendment. The second proposal is referred to as the Simmons/Campbell Amendment, based on the applicants Mr. Simmons and Mr. Campbell. As such, there are three different regulation

amendment proposals which Mr. DeBlois is going to briefly go over, as described in the backup documents.

As Mr. Adair had referenced, there are three areas of the County where it tends to be more of an issue where we're starting to have the conflicts, in particular, are the agricultural areas, one unit to five acres. Essentially it's more particularly a concern at the rural fringe areas next to where we have most of the residential development also an issue out in the larger acre AG area. When you look at the use conflicts again Mr. Adair kind of touched upon. You run into a mix of uses. You have the agricultural uses. The bona fide agricultural uses you have residential uses. Essentially the estate residences, business uses and those areas all tend to particularly come together in those areas that were circled on the map. You need to factor in the estate preemptions, the Agritourism, the non-residential farm building. It really just adds all to the mix in trying to address this issue. There is a reference to the voluntary use of the Affidavit, which we have talked about. Essentially right now what the County Code says is if you're in the agricultural zoning district, any one of the three zoning districts, it allows commercial nurseries its permitted use stating that wholesale and off site landscaping services are allowed. No retail sales allowed on site. Staff has always interpreted the current Code such that any offsite landscaping has to be accessory to the principal use of the wholesale nursery use and that led particularly the example case we've been talking about as far as the landscaping use established without the nursery.

If you have a nursery or a tree farm, if it's customarily associated with it that you're going to have some landscaping service to take that product and use it off site to plant trees, etc. There's a question that's been raised saying if its lawn care, what's lawn mowing got to do with principal AG use and that's one of the things that we're all talking about. It also has to be subordinate in an area extent and this is where the interpretation is if its accessory use among other things it can't be occupying an area bigger than the principal use and it has to be located on the same site as the principal use. This is staff's interpretation under the current Code and essentially was applied through the code case we referenced. The nursery has to be established before you can have an accessory use to that main use. The scale has to be such that it's less from the main use. Other than that though currently and this is one of the things that staff is recommending in its draft revision is there is no quantitative standard right now in the Code other than what Mr. DeBlois just mentioned on it as far as aerial extent. So, under the staff proposal it's just to tighten that out and come up with more quantitative standards.

The staff has researched existing nurseries in the County, site size, access building and other parking areas not just the one that's been the main point of discussion, but overall. There are actually quite a few of these in the County not just the one or two and looked at the various aspects of accessory and nature of the landscaping.

Mr. DeBlois showed 17 examples of tree farms/nursery type businesses in AG where they have some component of offsite landscaping. Mr. DeBlois went briefly through the slides to give the audience a visual spatial aerial shot of these types of businesses.

From the standpoint of existing and potential regulations, one of the things staff looked at was how our other counties are addressing this issue. They looked at Brevard, Martin, Osceola, St. Lucie as well as Indian River and we found out they all allow wholesale landscaping services in agriculture districts as a permitted use with no specific criteria. Indian River County has an accessory use versus a principal use. Staff also looked at Palm Beach County, which is currently dealing with this issue, and they've established specific criteria that gets them to the requiring that it be accessory to nursery, have certain minimum acreage and landscape buffering. The staff report that was included in the Committer packet included information presented to the BCC back

in June. Staff will be looking at revising the definition of offsite accessory landscaping to provide essentially more conditions or requirements within the definition that would have to be met. Under this approach, in order for the use to be allowed, you wouldn't necessarily need a permit but you would have to meet these various requirements and provide certain things and setbacks and buffers beyond what is already in the Code. Regarding the staff proposed ordinance that was presented back in June to the Commission, again we're just making it clear that any allowable landscape services would have to be clearly accessory to a principal bona fide agricultural use. It would define landscaping services as installation, mowing and trimming and maintenance services for a broad range of landscape materials. It would preclude pest control services. The draft would include further regulations to small-scale businesses. There are a lot of small-scaled one or two person landscape service businesses that operate out of a home and this whole section would not get into that. It would still be potentially allowed as a home occupation permit provided it was an appropriate scale and met certain requirements that we have under a separate section of the Code. The proposed ordinance specifies that the nursery must be established before you have the offsite accessory use which was one of the main issues we dealt with on the Caribbean. For it to be allowed you would have to have 400,000 square feet (just over 9 acres) of land or larger for any new operation to be established. Once you get below roughly 10 acres, it's more of an issue when you get into the 5 acre tracts. It is more of an issue and the County would not allow that going forward.

The other thing in staff's proposed ordinance, not currently required, is that there would be more specificity as to certain requirements such as 50 foot setback of all improvements, parking as well as buildings. Limits to the landscaping services would be specified as to ratio of aerial coverage; you have to have a greater area of onsite nursery than the area devoted to the landscaping services. You would have to provide visual screening and buffer from adjacent properties and streets. Also, which is currently staff's interpretation, accessory landscaping operations cannot have onsite burning, mulching or dumping coming from offsite onto the property. That's essentially the summary of what was presented to the Commission under the staff's ordinance.

Mr. DeBlois touched upon the two other proposals that the County has received since then. He presented Mr. Hendrix's LDR Amendment proposal. Mr. Hendrix's proposal is to make off-site landscaping services and agricultural what is called a "special exception" use. What that means is that a special exception use is a type of use is you would have to go through a public hearing process to get approval, from the Planning & Zoning Commission and the Board of County Commissioners, with notice to the surrounding property owners when these hearings would be coming up. It makes it a lot more of a public input process for review of compatibility. Under a special exception law, the use allowance is not necessarily a given. The BCC would make the ultimate decision. Under this proposal, not only would you have to go through the public hearing process, but you would have to meet certain criteria Mr. Hendrix is proposing: that facilities be 50 feet from property lines and 500 feet from the nearest residence on adjacent property; that outdoor improvements, parking and driveways be at least 50 feet from property lines; and that conditions might be imposed for noise impact mitigation. Some of these criteria overlap what staff has been recommending. No landscaping services on properties less than 400,000 square feet. He is also proposing that there be supervision of landscaping personnel when they're on site coming and going from the property.

The third amendment that the staff is looking at that was submitted by Mr. Simmons and Mr. Campbell is they take a more direct approach and they're essentially proposing to eliminate the allowance of offsite accessory landscaping services in agricultural zoning districts. The basic premise is that the landscaping services use is essentially a commercial business, not an

agricultural business, and they expressed that they're concerned that it's essentially gaming the system or exploiting agricultural exemption, avoiding commercial property taxes, building codes, fees, concurrency and other requirements and laws that applies to other commercial businesses. Essentially, they see the landscaping service as a non-AG commercial business. They're recommending moving forward by just eliminating the possibility of accessory landscaping services in AG.

Mr. DeBlois advised that, when looking at these alternative amendments, it's important to note that existing landscaping services that were legally established at the time they were established are considered grandfathered, so any amendment that this Committee supports or that the County Commission ultimately adopts is going to apply to new businesses only. Pre-existing legally established uses are called "non-conformities" or "legal non-conformities." The County Code has regulations that pertain to grandfathered uses, with certain restrictions. Such uses cannot not be increased or expanded under the non-conformities requirements. The other provision in our Code is if a non-conforming business discontinues for more than a year, it would be a premise for discontinuing or eliminating the non-conformity. Another thing to consider that's important is if the County takes the path of essentially eliminating a use that was once allowed, or changing the use classifications such that it's a special exception, the County could run into issues of private property rights protection under state law. The Burt Harris Act provides that if a land use regulation change adversely affects real property value without compensation to a landowner, the landowner may having standing to take legal action against the County. That's the summary, and staff is recommending that the Committee consider the presented alternatives and have a discussion on it.

An extensive question and answer discussion ensued with Members of the ACC and the audience.

Mr. Adair voiced that when we look at what's before us, we talked about gaming the system, that we need to be fair to the taxpayers, and we need to be fair to existing commercial landscaping businesses that are inside the urban service area that complied with building codes, paid their taxes, paid for water retention, paid for impact fees, paid for all the costs that any other commercial development pays. Then all of a sudden we're outside the urban service area and guess what, we don't have a building code. Sheds and other structures not subject to the building code were mostly blown down during hurricanes in his AG neighborhood, and he had pieces of sheet metal on his property flying around at 100 mph. At some point we all have to build strong enough so that we don't have structures falling apart at 90 mph blowing into another building that's built to Code. These are concerns. Fairness to the taxpayer, fairness to the other businesses that are in place and gaming the system. He feels we need an LDR and he feels that it needs to be finally crafted in tune and done so in that it doesn't interfere with agriculture as we know it.

Mr. Sexton indicated that he doesn't want anyone to feel that he gives the impression that he has no regard for landscape nurseries because he considers that agriculture in every sense of the word. When the Committee was reviewing issues when hurricanes Frances and Jean came through, there was a FEMA meeting at the college down in Ft. Pierce that Ken Pruitt moderated, and there was a showing of hands and it surprised him that 80 percent of the people in that room were nursery and landscape and nursery people.

Commissioner Adams indicated that it was best if we had some type of motion for staff even if it's just to direct them to bring back more information. Mr. Adair asked for a motion to approve those recommendations to the Planning Department via Mr. DeBlois.

Mr. DeBlois summarized what he understands the direction to be: for staff to do some more research and revise its draft ordinance in consideration of the particular issues brought up. Specifically, the 50 foot setback or the driveway issue, the pesticide use issue and the distinction between what would be incidental to a bona fide nursery versus more of a pesticide business. Also to look at the 50 percent threshold ratio on the scale and the concerns of that as not being appropriate, and to look at the potential or opportunity for administrative approval versus just the permitted use subject to criteria under the definition. So to bring that back for this Committee to review at a future meeting.

ON MOTION BY Mr. Howard, seconded by Mr. Sexton, the Council unanimously (4-0) approved the direction of staff.

Mr. DeBlois reminded the Committee that, procedurally, Mr. Simmons, Mr. Campbell and Mr. Hendrix submitted formal applications for LDR amendments, so as we move forward, those alternatives are all going to be on the table the whole way through to the County Commission. All that's being referred to here is revising staff's version of the LDR amendment recommendation.

Next Meeting Date

The next Agricultural Advisory Committee Council meeting will be held on **Wednesday, December 11, 2019 at 2:00 p.m.**

Adjournment

There being no further business, the meeting adjourned at approximately 4:35 p.m.

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Present were: Chairperson Robert Adair, Jr., Associated Industry, Sean E. Sexton, Cattle, Anna Kirkland, Associated Industry, Ruben Koch, Irrigation, David Howard, Horticulture, Susan Adams, Commissioner Liaison.

Others Present were: Jason Brown, County Administrator; William DeBaal, Deputy County Attorney, Susan Prado, Assistant County Attorney, Roland DeBlois, County Community Development Director, John McCoy, County Chief of Current Development, Scott McAdam, County Building Official and Kimberly Moirano, Recording Secretary.

Call to Order

Chairperson Adair called the meeting to order at 2:00 p.m. He indicated that all of the members were present except for Ruben Koch.

Approval of the Minutes of October 30, 2019

ON MOTION BY Mr. Sexton, seconded by Ms. Kirkland, the Council unanimously (6-0) approved the October 30, 2019 Minutes.

Additions and Deletions to the Agenda

Chairperson Adair called for agenda item additions or deletions. Chairperson Adair indicated he had an addition under Other Business that he would like to have another meeting scheduled.

Mr. Ruben Koch appeared at 2:05 p.m.

Consideration of Alternative Ordinance Amendment – Off-Site Accessory Landscaping Services Uses in Agricultural Zoning Districts

Roland DeBlois, County Community Development Director, presented an overview of requirements on off-site agricultural accessory landscaping services and agriculture. As a refresher, at the last meeting three distinct alternatives were discussed to address the issue of landscaping services in agriculture districts. There was the proposed amendment that staff had drafted and presented to the County Commission back on June 18, 2019, which essentially clarified and defined off-site accessory landscaping services. The definition proposed under that draft amendment included criteria with requirements and limitations on landscaping services in

agriculture districts. In addition to staff's proposal, two alternative proposals were independently submitted by citizens. One of those was the Hendricks LDR Amendment, which proposes to make off-site accessory landscaping services a "special exception" use in agricultural zoning districts. Under the County Code, "special exception" land use approvals are subject to public hearings. Such a land use proposal would have to go to both the Planning & Zoning Commission and County Commission for approval. There would be notice to surrounding property owners if such a proposal came in and it would be subject to specific criteria that Mr. Hendricks proposed. The third alternative under consideration, as discussed at the last meeting, was the Simmons/Campbell Amendment, which would prohibit off-site accessory landscaping services in agriculture zoning districts, under the premise that such uses are commercial and not appropriate in agriculture districts.

As a result of that discussion and at the end of that meeting, the Committee's Motion and direction to Staff was to look at revising the staff proposed amendment to address certain issues that were raised at the last meeting. In summary, there were four particular issues for staff to look into. One was whether or not a 50 foot setback for driveways was appropriate given that there were flag-lot configurations in agriculture, which would make it difficult to meet the 50 foot setback for a driveway under such lot configurations. The other direction was to look at distinguishing between pesticide applications that would be clearly incidental to a bona fide nursery use versus more of a standalone pesticide business. The third point was to look at the ratio of aerial coverage when comparing an accessory use to the principal use and come up with a better ratio.

Finally, the Committee directed staff to review whether or not an off-site accessory landscape services should be a "permitted" use, not subject to site plan approval, or another classification, which would require site plan approval. Based on direction from the Committee to review those four issues, staff has drafted a revised alternate draft amendment. From Staff's perspective, staff's revised alternative amendment represents a fourth alternative to the previous three alternatives discussed at the last meeting. Staff's alternative proposed amendment would make off-site accessory landscaping services an "administrative permit" use, which would make it subject to the site plan review process. It also would include specific criteria that would have to be met. Under the alternative draft, the parking area, driveway, and building area associated with the landscaping services portion would have to be at least 50 feet from all property lines. The other change would be to limit the area devoted to the accessory landscaping services to 50 percent of the cultivated area of the nursery, which is a change from what it is under the current ordinance. Right now, the area of planted nursery has to be bigger than the area devoted to the off-site landscape portion. Under this proposal, the landscaping services area could not exceed 50 percent of the planted area.

Another proposed requirement is screening of outdoor parking areas from all adjacent property lines with a six-foot opaque feature, which could be a fence, planted vegetation or combination. A fourth criteria would be a prohibition on burning, mulching or dumping of off-site material brought onto the site. Such material stockpiling would not be allowed other than debris generated from the site itself. The alternative amendment is currently structured to be a staff-approved site plan review (not subject to Planning and Zoning Commission approval).

Under administrative permits, there are two options regarding site plan approvals. One option is for the site plan approval to be subject to staff review only; the other option is for site plan proposals to be subject to Planning and Zoning Commission approval. Under this draft, it would be a staff approval (only) as currently written.

Regarding a 50-foot setback of driveways from property lines, staff's position is that such a setback should be required. That is because of the potential nuisance to adjacent property owners of off-site landscaping business vehicles coming and going from the property on a daily basis, which the setback would help mitigate.

Staff has included language in the proposed definition of off-site accessory landscaping where it references that such a use would not include standalone pesticide control services. This would also specify that off-site accessory landscaping services would not include standalone lawn mowing services. The intent is to clarify that the use must be accessory to a bona fide on-site agriculture use, which would still be subject to administrative permit approval process.

Accessory uses, by definition, have to be subordinate in size to the area of the principal use. Staff has proposed to make it so that the total area would be no more than 50 percent of the cultivated area, which would reduce it essentially to half of what it could be under the current code.

Staff is bringing this back to the Committee to look at the four alternatives. Those include staff's initial draft amendment; staff proposed alternative amendment, which addresses the Committee's directives; the Hendrix proposal, which would make off-site accessory landscaping services "special exception" uses subject to public hearings; and the Simmons/Campbell amendment, which would essentially eliminate the use in the agriculture zoning districts.

Once the Committee makes a decision on its recommendation, the next step will be for staff to schedule the matter for a Planning & Zoning Commission hearing for that Commission to weigh in, and then bring it forward to the County Commission at a hearing for a final determination.

The AAC members, Staff and audience then entered into a lengthy discussion regarding off-site agricultural accessory landscaping services and agriculture.

Chairperson Adair followed up with the following suggestions to the Committee Members; (1) we can adopt Staff recommendations as is or with the suggestions that have been brought forward; (2) we can eliminate lawn cutting completely as an accessory; or (3) leave it the way it is and send it back to the County Commission.

Commissioner Adams made the suggestion that whatever the Committee decides to do, that the Committee make some motion of approval, disapproval with amendments, whatever you want to do to whatever is being presented today, and then send that back to the Planning & Zoning so we can continue this process.

The AAC members and Staff then entered into a lengthy discussion regarding the lawn mowing language.

Mr. Howard made a Motion and was seconded by Mr. Sexton to change the language to include no lawn mowing. After a lengthy discussion, Mr. Howard withdrew the Motion. After further discussion the Motion was restated.

ON MOTION BY Mr. Howard, seconded by Mr. Sexton, the Motion fails (2-4) to change the language of Section 1, Page 1, on Attachment 4.

Chairperson Adair indicated that the comments that he has suggested is that we add the administrative approval to the full extent of an administrative permit (i.e., make it subject to Planning and Zoning Commission approval). That we take the language of Number 2 on Page 2, the total parking/drive/building area and transfer that to Number 3 and change the language on Number 3 to include total parking drive and building area.

ON MOTION BY Mr. Howard, seconded by Mr. Sexton, unanimously (6-0) approved to change the language on Number 3 to include total parking drive and building area.

Chairperson Adair asked for a motion on administrative approval that it fall into a traditional sense of administrative approval, which is including the scrutiny of P&Z. It would come under the consent agenda. They would review what Staff has done, possibly talk to the Applicant. If there are any questions, they take care of it. Assuring that something doesn't get through that shouldn't get through and making sure that the Applicant is compliant with the intent.

The AAC members and Staff then entered into a lengthy discussion regarding administrative approval.

ON MOTION BY Mr. Sexton, seconded by Ms. Kirkland, unanimously (6-0) approved recommending applying the administrative permit site plan review process, subject to Planning & Zoning Commission approval.

Update of Verification of Exemption Affidavit for Nonresidential Farm Building Agriculture

Roland DeBlois, County Community Development Director, presented an overview on the verification of Exemption Affidavit for Nonresidential Farm Building Agriculture. At the last meeting there was some discussion that the County had an elective or voluntary Exemption Affidavit for nonresidential farm building. As explained at the last meeting, it's not required but it is something that the County encourages when someone comes in and asks if their proposed building is AG exempt. It is something that can be filled out that staff would verify that it meets the exemption. It is kept on record so that if a question comes up, staff has that information. Since the last meeting, staff has revised those forms and made some footnotes on the Affidavit that it is elective and voluntary.

The AAC members and staff then entered into a discussion regarding verification of Exemption Affidavit.

Other Business

Chairperson Adair recommended that the Committee next meet, as per the Agriculture Advisory Committee's previously determined regular meeting schedule, on the 4th Thursday of January, which would be January 23rd, 2020. The topic for that meeting is to look at ramifications of the changing landscape in these different AG areas.