

20 March 2017

Napa County Board of Supervisors  
Chair Alfredo Pedroza and Supervisors:  
Brad Wagenknecht  
Ryan Gregory  
Diane Dillon  
Belia Ramos

re: Changes to Definition of Agriculture (§18.08.040)

The stated "purpose and intent of the proposed ordinance amendments are to conform the definition of agriculture in the County Code with the definition adopted in the 2008 General Plan." AG/LU-2.1 is relied upon for authority.

**Action Item AG/LU-2.1:** Amend County Code to reflect the definition of "agriculture" as set forth within this plan, ensuring that wineries and other production facilities remain as conditional uses except as provided for in Policy AG/LU-16, and that marketing activities and other accessory uses remain incidental and subordinate to the main use.

AG/LU-2.1 does NOT mandate amending Napa County Code §18.08.040 to include additional uses into the definition of agriculture. These additional uses have already been populated into the code, *ie*: §§ 18.08.370, 18.08.620, 18.16.030 and 18.20.030. Marketing activities at wineries have been further clarified by Ordinance No. 1340 and Resolution No. 2010-48.

The mandate of AG/LU-2.1 is to ensure that the identified uses remain conditional uses that require a use permit. As currently proposed, the ordinance, instead, has the potential to undermine our agricultural land protections by unnecessarily creating conflict and uncertainty within the code itself.

**1) The proposed ordinance amendments §18.08.040.D & .E create conflict within current code.**

§§18.16.020 and 18.20.020 mandate that "Agriculture" **shall** be allowed in all AP and AW districts **without a use permit**:

**Chapter 18.16 AP AGRICULTURAL PRESERVE DISTRICT**

§18.16.020 - Uses allowed without a use permit.

The following uses shall be allowed in all AP districts without use permits:

A. Agriculture;

**Chapter 18.20 AW AGRICULTURAL WATERSHED DISTRICT**

§18.20.020 - Uses allowed without a use permit.

The following uses shall be allowed in all AW districts without use permits:

A. Agriculture;

If §18.08.040 is amended to include **additional uses to be conditioned by use permit** (§18.08.040 D & E), those sections will be in conflict with the mandate of §§18.16.020 and 18.20.020 to allow "agriculture" (*as defined by §18.08.040*) without a use permit ("*by right*").

How will such conflict and uncertainty ultimately be resolved? Instead of ensuring that these uses remain "incidental and subordinate", addition of these uses into the definition of "Agriculture"

§18.08.040 may ultimately allow them by right, without a use permit, in any zone that allows "agriculture" as defined by §18.08.040.

**2) Such accessory uses will also be protected by Napa County's "right to farm":**

**Chapter 2.94 AGRICULTURE AND RIGHT TO FARM**

§2.94.010 - Definitions.

"Agriculture" shall have the same meaning as "agriculture" as defined in Section 18.08.040 of this code.

§2.94.010 (4)

"Agricultural operation" means all operations necessary to conduct agriculture as defined in Section 18.08.040 of this code...

§2.94.020 - Right to farm - Conditions.

No existing or future agricultural activity, operation or facility, or any of its appurtenances, ... shall be or become a nuisance, public or private, due to any changed condition in or about the county, ...

*(Emphasis added)*

Marketing and such "accessory" uses clearly are not intended to be afforded Napa County's right-to-farm protections. But, the word "shall" is mandatory and legally binding - it allows no discretionary interpretation. Once the proposed definition is adopted, **all** uses identified in §18.08.040 will be protected by Napa County right-to-farm regulations. Napa County will have no means to mitigate the detrimental impacts of such urban uses on ag lands.

Not only does the ordinance as presented have the potential to create conflict within County code, it is redundant and not necessary to achieve the mandate of AG/LU-2.1, which is to ensure that the identified uses remain conditional uses that require a use permit. Current code already requires agricultural processing facilities to obtain use permits; "marketing, sales and other accessory uses" are already conditioned by use permit and required by code to be "incidental and subordinate to the main use".

I urge you NOT to carelessly approve changes to the definition of agriculture, §18.08.040. The consequences, unintended or otherwise, will ultimately facilitate even more destruction of our ag lands, which we are losing daily, inch by inch, through conversion to increasingly urban uses, under the mask of "agriculture."

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