

Frost, Melissa

Subject: FW: Definition of Agriculture Notice P16-00344-ORD, hearing 9/21/2016

From: McDowell, John
Sent: Wednesday, September 21, 2016 8:13 AM
To: Frost, Melissa; Gallina, Charlene; Apallas, Chris
Cc: Morrison, David
Subject: FW: Definition of Agriculture Notice P16-00344-ORD, hearing 9/21/2016

Planning Commission Mtg.

SEP 21 2016

Agenda Item # 9C

From: FredBijou@aol.com [mailto:FredBijou@aol.com]

Sent: Tuesday, September 20, 2016 11:19 PM

To: McDowell, John; heather@vinehillranchranch.com; napacommissioner@yahoo.com; tkscottco@aol.com;

jerigillp@outlook.com; brad.wagenkeecht@countyofnapa.org; Luce, Mark; Dillon, Diane; Pedroza, Alfredo; Caldwell, Keith

Cc: jimwelsh@gmail.com; fredbijou@aol.com

Subject: Definition of Agriculture Notice P16-00344-ORD, hearing 9/21/2016

Regarding definition of Agriculture Notice P16-00344-ORD,

As a resident of the Napa Valley for 58 years, most of it has been in the agricultural and wine business. I love this Napa Valley and am very afraid of the direction it is headed and where the "powers that be" are directing it.

Please pay attention to the following objections to the proposal #P16-0034-ORD:

1. "Notwithstanding" is a curious phrase. Why is this included in the proposal?
2. There should be no "implied consent" in this proposal that could circumvent the county approval needed for the application and review for any agricultural property. County approval needs input from residents. There should be no semblance of "implied consent".
3. There is a serious lack of specificity regarding the commercial allowances in this code change.
4. There are so many holes in this proposed Agricultural Zoning Change that would allow a very well paid attorney to drive a train through. For very profit minded "agriculture lovers" The Napa County Planning Dept. has shown time after time a lack of attention to land projects. And a lack of attention and sloppiness with regard to concerns of residents.

Why does this new definition concern me?

- a) Water depletion.
- b) Traffic.
- c) Potential abuse of Napa Valley residents' rights to review projects.
- d) Abuse of "Agriculture" in the Napa Valley

And why did this notice for the Planning Department Meeting 9/21/2016 only appear in the Napa Register on 9/20/16?

Most Sincerely,
Jacqueline Skoda-Welsh
1265 Summit Lake Drive
Angwin, CA 94508
FredBijou@aol.com

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From: [Redacted]

Subject: [Redacted]

Date: [Redacted]

Frost, Melissa

Subject: FW: hearing tomorrow re: definition of agriculture

From: Lois Ann Battuello [<mailto:loisbatt@comcast.net>]
Sent: Tuesday, September 20, 2016 11:47 PM
To: Morrison, David
Subject: hearing tomorrow re: definition of agriculture

Planning Commission Mtg.

SEP 21 2016

Agenda Item # 9C

Hi David,

I am actually one of your fans ... you are without doubt one of the best administrators we have, and I appreciate your decisions to begin digitizing with the Environmental division of your department. My name should be familiar from my concerns about Walt Ranch.

I have an appointment tomorrow at 9:00 a.m. and therefore may not be able to attend the hearing dealing with the definition of agriculture.

However, I have received the staff report. What I find missing is any reference to our highest order of law, which is Measure J. A vote "for" the matter tomorrow flies in the face of Measure J, our highest order of law. I hope you can delay the vote, pending review of Measure J and consultation with County Counsel, as a vote "for" is actually Public Corruption as defined by Federal law.

I wish to inform you that I have served the United States Senate for nearly 20 years. I am also a farm gal, with a family farming north of St. Helena for far more than 100 years. Throughout efforts to preserve the county, I have been privileged to information about rationale and the meaning of Measure J.

I recall in 2002, when Leslie Rudd proposed to develop a gin still near the end of Sulfur Springs Avenue in St. Helena, he was told he could not, as the grain would have to be imported and that is not permitted UNDER MEASURE J and the 1990 General Plan. This is but one of many examples of County Counsel carefully advising the Planning Commission about the letter of the law and the General Plan as it existed. The project was rejected by the Planning Commission and rejected on appeal from the Board of Supervisors. It should be no different now than it was then, save for Joe Peatman, with his "General Plan Update" scheme. Joe determined the scoping for the 2008 General Plan Update and strategically placed people who catered to him on the update committee, so this "definition of agriculture" that was adopted in 2008, and slipped by opponents, is but one example. The state had only requested Napa County include a Housing Element and update the Circulation element, but Joe abused the process with his control and scoped for an EIR for a complete re-writing of the General Plan. All of this was to bring in a decentralized Walt Disney theme park scheme, which already had tie-ins via Disney's California Adventure which opened at about the same time with a vineyard, a Robert Mondavi Winery (later changed to Golden Harvest and then fully removed in 2008), and a wine country restaurant. The sheer losses each month, some \$500,000 for the Mondavi family (see "House of Mondavi"), literally caused them to lose their Napa Valley winery by 2005. In 2005, they had only \$12 million in cash left, and would have been depleted in 6 months had they not arranged a quick fire sale. The matter of the theme park scheme for Napa County and Public Corruption are part of massive Federal investigations. Based on my service to the Senate, the White House, the Southern District of New York, and two Governors, I can assure you terrorist financiers are involved in these schemes.

I was also contacted by a “re-inactor,” Daki, several years ago, who said Bale Mill was the gathering place in Napa County because Dr. Bale had a still. None of that is true, and being from the district and having known through family the decedents and pioneer Kellogg family and Theo Lyman and WW Lyman thereafter, the only time Dr. Bale operated a still was in Monterey, and he got into a bit of trouble because he didn’t have a license from the Californios to operate one. However, the still was for the production of brandy, which was the only form of medication a physician had at that time. The first still in Napa County was sold to Charles Krug who sold it to Prichard in Napa where Charles Krug, who acquired it from General Vallejo, was the wine-maker ... Prichard used it to produce brandy for medicinal purposes, and was licensed to do so.

It is the 2008 General Plan that is “in conflict with” Measure J, and this is one of the areas overseen by Joe Peatman, whose license to practice law was ripped from him by Secretary of Homeland Security, Michael Chertoff, whom I also served for years, when he served as head of the Criminal Division under Attorney General Ashcroft at the time of the 9/11 attack. By December 2008, Joe Peatman was retired, yet his legacy in the definition of agriculture lives on, in full conflict with Measure J, in the 2008 update. You are likely not aware of the fact that Sterling Winery holds bicycle events through and around their vineyards in the ag preserve, without permit, because they call it a “marketing event for their winery,” just as others hold “weddings in the vineyards” throughout the county without permits to do so, as marketing events. None of this is permitted by Measure J.

The conduct of Joe and his minions, most of whom laundered money for organized crime (mainly the Chicago Outfit) gained such notoriety that Attorney General Michael Mukasey announced a Public Corruption probe in the Bay Area (specifically running from San Francisco to Napa County) which is ongoing. Public Corruption does not mean that one is accepting bribes, it merely means that one is engaging in a repeat pattern of land use violations. In this case, Measure J, extended by Measure P, controls all land use laws that must be consistent with it, down to and including any General Plan.

At this stage, the five local banks that laundered money for organized crime to create some 70% of the County’s wineries in the valley that will be eliminated (per Napa Valley Register using only “succession” as a reason) have all been shut down by regulators: Napa Valley Bank, Napa National Bank, Napa Community Bank, Vintage Bank, and Charter Oak Bank. That part of the clean-up- is over; yet without knowing prior history, the laundering wineries were able to find accommodations at larger banks unaware of the history of the locals. All of this is carefully watched, I can assure you, and money is being traced back from heroin income of organized crime to 1953 in New York, and subsequent years.

There is far more I could convey, but in the interest of brevity at this time, I urge you to either change your position, based on a review of Measure J, or continue the hearing until such time as I can appear to advise of the national security ramifications of a decision of this type. For decades the Chicago Outfit has been laundering money through Napa County from the sale of everything from cocaine to Osama bin Laden’s Uzbek heroin. To become a part of that milieu would be unfortunate indeed, to facilitate it in any way in contravention of Measure J would likely be considered Public Corruption, and I would not want to see charges handed down to someone who simply doesn’t know what’s really going on in Napa County.

Please CONSULT MEASURE J and quote from it, perhaps stating staff failed to consider the highest order of law in the county before delivering a recommendation to the Board of Supervisors. Let the Supervisors be corrupt, don’t be a part of this! If I can get to the hearing in time, I will go public, but limited to 3 minutes, unfortunately, I wouldn’t be able to make the impression. PLEASE CONSULT MEASURE J and avoid corruption issues.

SEP 21 2016

Agenda Item # 9C

Members of the Napa County Planning Commission

re: Changes to Definition of Agriculture (§18.08.040)

Ostensibly, "The purpose and intent of the proposed ordinance is to conform the definition of agriculture in the County Code with the definition adopted in the 2008 General Plan."

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. 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 - NOT to allow them by right as this proposed change will require.

1) The change to §18.08.040 as presented violates the mandate and intent of the Napa County 2008 General Plan.

Adding these uses into the definition of agriculture §18.08.040 will create consequences that perhaps are unintended, or perhaps intended by certain interested parties.

Regardless of intent, the addition of these uses to §18.08.040 will allow them by right, without a use permit, in any zone that allows "agriculture" as defined by §18.08.040.

Napa County Code mandates that "Agriculture", as defined in §18.08.040 is allowed by right, not a conditional use which requires a use permit.

If the additional uses are added into the base definition of §18.08.040 you will be mandated by at least §§18.16.020 and 18.20.020 to allow such uses 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;

In addition, the uses will be protected by:

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)

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 allowed by right and will be protected by Napa County right-to-farm regulations. Napa County will have no means to mitigate the detrimental impacts of such uses.

2) In addition, the proposed change to §18.08.040 does not limit, nor does it provide the discretion to limit, the processing of agricultural products to those grown on the parcel nor even to those grown within Napa County.

While all wineries permitted or expanded on ag land after adoption of the 1990 WDO are mandated to process 75% grapes grown within Napa County, any other production/processing facilities (*distillery, dehydrator, brewery*) permitted by this definition change will not be required to process any Napa County agricultural products at all. A distillery would be allowed by right (*without a use permit*) to locate on any ag parcel and to process all imported grains while protected by Napa County right-to-farm regulations. A jam-making processing plant would be allowed by right and allowed to import all ingredients so processed.

3) The proposed change to the definition of agriculture in §18.08.040 violates voter-mandated Measure P by redesignating thousands of acres of ag lands to allow industrial and commercial uses by right instead of by use permit. As such, the proposed change to §18.08.040 requires a vote of the people per Measure P.

4) The expansion of industrial and commercial uses on ag lands that will be mandated by right by the proposed change to the definition of agriculture §18.08.040 was not anticipated by the 2008 General Plan nor its environmental review. The processing of agricultural products (*ie: wineries, canneries, distilleries*) is traditionally an industrial use which is becoming increasingly commercial. The adoption of the definition as proposed has broad consequences, intended or not, and, as such, a CEQA environmental review is mandated.

Wineries (*industrial processing facilities*) have been allowed by use permit on Napa County ag land to facilitate the processing of grapes; thus, the argument goes, increasing the economic incentive to keep land in farming (*grapes*).

But to include processing facilities (*without even a requirement to process product from the parcel or from within Napa County*), marketing events (*medieval jousting tournaments*), sales and any "other" accessory uses that may be dreamed up as equal to agriculture is an insult to every farmer who ever existed.

For all these reasons, I urge you NOT to approve the changes to the definition of agriculture, §18.08.040. The consequences, unintended or otherwise, will ultimately facilitate the destruction of

our ag lands, which we are losing daily, inch by inch, through conversion to increasingly urban uses.

I also note with dismay that this very critical issue is being moved forward just as the farmers of Napa County are deeply immersed in harvest. Many who should be commenting cannot - we are focused on bringing our crop to market. We only have one chance - we only get paid once a year.

Norma J. Tofanelli
Fourth-generation Napa County farmer

Frost, Melissa

Subject: FW: Comments on change to agricultural definition
Attachments: PC 160921_Ag def.pdf

From: Norma Tofanelli [mailto:keepnvap@sonic.net]
Sent: Tuesday, September 20, 2016 5:43 PM
To: Michael Basayne; Heather Phillips; Anne Cottrell; Terry Scott; Jeri Gill
Cc: Morrison, David; McDowell, John; Frost, Melissa
Subject: Comments on change to agricultural definition

Members of the Napa County Planning Commission

re: Changes to Definition of Agriculture (§18.08.040)

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The mandate of AG/LU-2.1 is to ensure that the identified uses remain conditional uses that require a use permit - NOT to allow them by right as this proposed change will require.

1) The change to §18.08.040 as presented violates the mandate and intent of the Napa County 2008 General Plan.

Adding these uses into the definition of agriculture §18.08.040 will create consequences that perhaps are unintended, or perhaps intended by certain interested parties.

Regardless of intent, the addition of these uses to §18.08.040 will allow them by right, without a use permit, in any zone that allows "agriculture" as defined by §18.08.040.

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2) In addition, the proposed change to §18.08.040 does not limit, nor does it provide the discretion to limit, the processing of agricultural products to those grown on the parcel nor even to those grown within Napa County.

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4) The expansion of industrial and commercial uses on ag lands that will be mandated by right by the proposed change to the definition of agriculture §18.08.040 was not anticipated by the 2008 General Plan nor its environmental review. The processing of agricultural products (*ie: wineries, canneries, distilleries*) is traditionally an industrial use which is becoming increasingly commercial. The adoption of the definition as proposed has broad consequences, intended or not, and, as such, a CEQA environmental review is mandated.

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I also note with dismay that this very critical issue is being moved forward just as the farmers of Napa County are deeply immersed in harvest. Many who should be commenting cannot - we are focused on bringing our crop to market. We only have one chance - we only get paid once a year.

Norma J. Tofanelli
Fourth-generation Napa County farmer

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ELLISON FOLK
Attorney
folk@smwlaw.com

September 20, 2016

Via E-Mail

Members of the Planning Commission
Napa County
1195 Third Street, Suite 210
Napa, California 94559

Planning Commission Mtg.
SEP 21 2016
Agenda Item # 9C

Re: Proposed Amendment of Definition of Agriculture

Dear Chair Basayne and Members of the Planning Commission:

This Firm submits this letter on behalf of the Napa County Farm Bureau to object to the proposed change in the definition of agriculture in the Napa County Zoning Ordinance. For the reasons detailed below, this change is not consistent with the direction in the General Plan and it would have unintended consequences that would severely undermine agricultural use. If adopted as proposed, the amendment would also lead to significant environmental impacts that must be addressed. Therefore, we urge the Planning Commission to reject proposed amendment.

I. Adoption of the Proposed Amendment Would Violate State Planning and Zoning Law.

State law requires public agencies to adopt and maintain a general plan that serves as the constitution for development in a jurisdiction. *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540; Gov't. Code § 65300. The general plan must be internally consistent, and all development must be consistent with the general plan. *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1183. In particular, the County must ensure that zoning ordinances, such as the one now proposed, are consistent with the general plan. Gov't Code § 65860. For the reasons set forth below, the proposed amendment is not consistent with the Napa County General Plan and, in fact, its adoption would render the Plan internally inconsistent. Therefore, the County should reject the proposed amendment and reconsider the definition of agriculture.

A. The Proposed Amendment Is Inconsistent With the Direction in the General Plan.

As proposed, the amendment adds a number of different uses to the definition of “agriculture” in section 18.08.040 of the County Code. Specifically, agriculture would be defined to include:

- Production and processing of agricultural products including agricultural processing facilities notwithstanding requirements for obtaining a conditional use permit;
- Marketing, sales, and other accessory uses that are related, incidental and subordinate to the main agricultural processing use, notwithstanding requirements for obtaining a conditional use permit;
- Farmworker housing as defined in Section 18.08.294;

Staff asserts that this proposal is consistent with the direction in the General Plan to amend the County Code to reflect that the definition of agriculture that appears in the Plan. However, the direction in the General Plan is clear that the amendment of the County Code should ensure that “wineries and other production facilities remain as conditional uses.” As proposed, the amendment will not ensure that these uses remain conditionally permitted; instead it could potentially allow the uses as of right, without the requirement for a permit at all.

The County Code currently identifies the uses that are permitted in the Agricultural Preserve (AP) and Agricultural Watershed (AW) zones without a permit. “Agriculture” is the first use allowed without a permit. Napa County Code §§ 18.16.020, 18.20.020. If the definition of “agriculture” is changed as proposed, all of the uses identified above could be uses permitted by right, without the requirement for a use permit. Although staff has proposed including the language “notwithstanding requirements for obtaining a conditional use permit,” the language is not clear. In fact, it could easily be read to define these uses as permitted uses even if other sections of the zoning code would otherwise require a permit. In other words, the amendments could be interpreted to allow uses involving the processing and production of agricultural products (e.g., a winery or fruit canning facility) by right. Marketing and other uses often associated with wineries that currently require a use permit could also be allowed by right. Farm worker housing would be permitted as of right.

This result is not consistent with the express statement in the General Plan that any amendment to the definition of “agriculture” ensure that the identified uses remain conditional uses that would require a use permit.

B. The Proposal Would Create Inconsistencies in the County Code and the General Plan.

The proposed amendment also renders the County Code internally inconsistent because the County Code already reflects the language in the General Plan that the identified uses be permitted in agricultural zone *with a permit*. See County Code §§18.16.030(H), 18.20.030(I) (allowing for marketing uses such as tours, tastings, and the sale of wine related products); §§18.16.030(A), 18.20.030(B) (farm worker housing); §§18.16.030(K), 18.20.030(O) (processing of agricultural products).] If the goal of the amendment is to allow for marketing and retail sales of agricultural products generally (and not just wine) and to ensure that these uses are subordinate to the agricultural operation, any amendments should be made to this section of the County Code.

The amendment to the definition of agriculture also creates the risk that uses such as marketing events, processing and sale of agricultural products, and farmworker housing will be protected by the County’s Right to Farm Ordinance. Because this Ordinance incorporates the definition of agriculture set forth in section 18.08.040, the new definition of agriculture could permit a range of activities—including parties, canneries, and new housing—without even the ability to control them through nuisance abatement. If these uses are permitted without a permit as the amendments appear to allow, the County would have no effective way to limit the impacts of these uses.

Finally, this amendment demonstrates the internal inconsistency between the General Plan’s direction to amend the definition of agriculture and the requirements of Measure P, which require a vote of the people before agricultural land can be redesignated. The amendments would effectively redesignate thousands of acres of AP and AW land for uses that are not agricultural. For example, amending the definition of agriculture to include “processing of agricultural products” would allow uses that are typically considered commercial or light industrial on agriculturally zoned land. While it might be acceptable to allow for a small-scale processing operation limited to the canning of products grown on site as a conditionally permitted, accessory use to an agricultural operation, the proposed amendments could allow these uses as of right. To make matters worse, the amendment would not even require that this use be limited to the processing of agricultural products grown on site or in connection with an existing agricultural operation. As a result, the proposed amendment is inconsistent with Measure P and would require a vote of the people before it can become effective.

C. The County Should Not Amend the Definition of Agriculture in the County Code, But Should Ensure that the Provisions of the Code Maintain the Limits on Accessory Uses Contemplated by the General Plan and State Law.

As the current proposal demonstrates, it is not possible to amend the definition of agriculture without creating an inconsistency in the County Code and the General Plan itself. Because of the way the County Code is structured, any change in the definition of agriculture means that the uses become uses as of right rather than uses that require a permit.

Rather than amend the definition of agriculture in the County Code in a way that creates this problem, the County should adopt a definition of agriculture that more closely reflects the goals of Measure P and ensures that any accessory uses remain clearly subordinate to agricultural uses. The Farm Bureau previously suggested that the County adopt the definition of agriculture that is used by the state in its right to farm legislation, which defines agriculture as:

the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural commodity including timber, viticulture, apiculture, or horticulture, the raising of livestock, fur bearing animals, fish, or poultry, and any practices performed by a farmer or on a farm as incident to or in conjunction with those farming operations, including preparation for market, delivery to storage or to market, or delivery to carriers for transportation to market.

Cal. Civ. Code § 3482.5(e); See September 28, 2015 letter from NCFB to Napa County Planning Commission. If the County wishes to allow accessory uses, such as educational marketing events that are clearly subordinate to the agricultural use with the issuance of a permit, it can do so by policy in the General Plan.

II. The County Cannot Approve the Proposed Amendments Without Conducting Environmental Review Under CEQA.

The adoption or amendment of a zoning ordinance is a project under CEQA. Public Resources Code §21065; CEQA 15378 (a)(1). Although staff takes the position that the amendment merely implements the General Plan, the proposed amendments would effectively allow the development—without any environmental or discretionary review—of a range of uses currently limited by permits and compliance with CEQA. These uses will undoubtedly result in a change in the environment beyond what would be

permitted under the County's current regulations, which clearly require a permit for wineries and other uses, such as marketing events. As such, the amendment constitutes a project under CEQA. Pub. Res. Code §21065. In fact, these uses will undoubtedly have potentially significant environmental impacts, including traffic, water use, and noise. *See, e.g.*, Mitigated Negative Declaration for Reata Winery.
<http://services.countyofnapa.org/AgendaNet/GranicusMeetingDocuments.aspx?id=3275>

The County must disclose and mitigate these impacts before it can approve the proposed amendment to the County Code.

Conclusion

Therefore, we respectfully urge the Planning Commission to reject the proposed amendments and reconsider the definition of agriculture in order that it remains consistent with the intent of the General Plan that agricultural uses are protected in the County and remain the highest and best use of land within the Agricultural Preserve and the Agricultural Watershed designations, while permitting marketing, sales, and other accessory uses that are related, incidental and subordinate to the main agricultural processing use.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Ellison Folk

Gallina, Charlene

From: McDowell, John
Sent: Tuesday, September 20, 2016 5:41 PM
To: Gallina, Charlene
Subject: FW: Proposed Amendment of Definition of Agriculture
Attachments: LTR to Planning Commission re Proposed Amendment of Definition of Agriculture 09.20.2016.PDF

From: Patricia Larkin [<mailto:larkin@smwlaw.com>]
Sent: Tuesday, September 20, 2016 3:28 PM
To: napacommissioner@yahoo.com
Cc: heather@vinehillranch.com; anne.cottrell@lucene.com; tkscottco@aol.com; JeriGillPC@outlook.com; McDowell, John; Ellison Folk
Subject: Proposed Amendment of Definition of Agriculture

Dear Chair Basayne and Members of the Planning Commission:

Please see attached a letter from Ellison Folk of this office. Please contact me should you have difficulty opening the pdf attachment.

Patricia Larkin
Legal Secretary
Shute, Mihaly & Weinberger LLP
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September 20, 2016

Napa County Planning Commission
1195 Third Street
Napa, CA 94558

Planning Commission Mtg.

SEP 21 2016

Agenda Item # 9C

Planning Commissioners:

As you well know, Agriculture is the life of Napa County. While it is important for County codes to be consistent in their definitions, I believe that the definition of agriculture needs to be more clearly defined than it is in the 2008 General Plan before the definition is updated in the Napa County Code.

I applaud the intent of the new definition, to help ensure that retail sales and marketing are always incidental and supplemental to the main agricultural use of the property. I would hope to see the definition take an extra step to close some of the loop holes that are left up to interpretation under the current 2008 General Plan definition. Under Section 2, subsection H part 4, the sale of "wine related products" is acceptable with the granting of that condition in the use permit. The term "wine related products" should be more clearly defined to exclude merchandise such as branded t-shirts, hats, etc. Such a broad term leaves room for the exploitation of the privilege of selling anything that is not exclusively an agricultural product.

Before approving the definition of agriculture set forth in the 2008 General Plan, I would ask you to more clearly define "wine related products" in terms of retail sales. While branded cork screws and wine glasses may be directly related to the enjoyment of the wine purchased, apparel and other knick knacks are not. Please keep the Ag Preserve and the businesses that operate within it focused on agriculture.

Sincerely,

Kara Taddei
7391 St. Helena Hwy.
Napa, CA 94558

Gallina, Charlene

From: McDowell, John
Sent: Tuesday, September 20, 2016 5:40 PM
To: Gallina, Charlene
Subject: FW: Note to the Planning Commission on the Definition of Ag
Attachments: Definition of Ag Letter.docx

From: Kara Taddei [<mailto:ktaddeivineyards@gmail.com>]
Sent: Tuesday, September 20, 2016 3:21 PM
To: McDowell, John
Subject: Note to the Planning Commission on the Definition of Ag

Hi Mr. McDowell-

Can you please forward the attached letter to the members of the planning commission ahead of their meeting tomorrow? Please let me know if you have any questions. Thank you.

Kara

--

Kara Taddei
Taddei Vineyards
7391 St. Helena Hwy.
P.O. Box 121
Oakville, CA 94562

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Direct Dial:
310-798-2400 Ext. 5

September 20, 2016

Via Email david.morrison@countvofnapa.org

Napa County Planning Commission
David Morrison, Director of Planning
County Administration Building
1195 Third Street, 2nd Floor
Napa, CA 94559

Planning Commission Mtg.

SEP 21 2016

Agenda Item # 9c

Re: September 21, 2016 Agenda, Item 9c.: Agriculture Definition Ordinance,
P16-00344-ORD

Dear Mr. Morrison and Honorable Commissioners:

On behalf of the Friends of the Napa County Agricultural Preserve, we submit these comments on the proposed Ordinance Amending Napa County Code Section 18.08.040 Regarding the Definition of Agriculture (“Ordinance”).

The Ordinance would change the definition of “agriculture” in the County Code to include: (1) the production and processing of agricultural products; (2) marketing, sales, and other accessory uses that are related, incidental, and subordinate to the main agricultural use; and (3) farmworker housing. Although, at first glance, the proposed language appears to conform to the definition of agriculture adopted in the 2008 General Plan and Agricultural Preservation Action Item AG/LU-2.1, a closer look at existing provisions of the County Code compels the opposite conclusion. Adoption of the proposed Ordinance would result in new land uses becoming permissible “by right” in the AP and AW districts, where conditional use permits are currently required. This result is contrary to the intent of the Agricultural Preservation policies of the 2008 General Plan and Measures P and J. Amending the definition of “agriculture” would also bring new land uses under the protection of the County’s Right to Farm Ordinance, thereby reducing the County’s ability to control these uses or their adverse environmental impacts.

Application of the proposed amendment would result in changes to land use with likely significant, adverse environmental impacts that were not analyzed in the environmental impact report (EIR) certified for the 2008 General Plan. Consequently,

the County's proposal to adopt the Ordinance without conducting additional environmental review pursuant to the California Environmental Quality Act (CEQA) is unlawful.

Finally, the County's proposed amendment to the definition of agriculture is not necessary, as existing provisions the County Code satisfy the 2008 General Plan's Agricultural Preservation policies. The Friends of the Napa County Agricultural Preserve urge the County to reject this ill-conceived Ordinance.

I. The Language of the Proposed Amendment Introduces Unnecessary Confusion into the Napa County Code.

"Agriculture" is defined by Section 18.08.040 of the Napa County Code to include the growing and raising of trees, vines, shrubs, and other crops; grazing and feeding of livestock; animal husbandry; sale of agricultural products grown and raised on the premises; and farm management.

Production and processing of agricultural products, marketing and sales, and farmworker housing are allowable in Agricultural Preserve ("AP") districts if a use permit is obtained. (Napa County Code § 18.16.03.) The same uses are allowable in Agricultural Watershed ("AW") districts "only upon grant of a use permit." (Napa County Code § 18.20.030.)

As proposed by the Ordinance, the definition of "agriculture" contained in section 18.08.040 would be amended to include:

- (D) Production and processing of agricultural products, including agricultural processing facilities notwithstanding requirements for obtaining a conditional use permit;
- (E) Marketing, sales, and other accessory uses that are related, incidental and subordinate to the main agricultural processing use, notwithstanding requirements for obtaining a conditional use permit;
- (F) Farmworker housing as defined in Section 18.08.294

Action Item AG/LU-2.1 of the 2008 General Plan states:

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... and that marketing activities and other accessory uses remain incidental and subordinate to the main use.

(emphasis added.)

The County maintains that the phrase “notwithstanding requirements for obtaining a conditional use permit” was added to the proposed definition in order to ensure that wineries and other production facilities remain conditional uses, consistent with General Plan Action Item AG/LU-2.1.

Unfortunately, the use of the term “notwithstanding” is ambiguous. As defined by Merriam-Webster, notwithstanding means, “without being prevented by (something).” (<http://www.merriam-webster.com/dictionary/notwithstanding>.) If this phrase were to be inserted into the proposed amended section 18.08.040(D), it would read that “agriculture” is:

Production and processing of agricultural products, including agricultural processing facilities, without being prevented by requirements for obtaining a conditional use permit.

Thus, using the plain meaning of “notwithstanding,” the proposed Ordinance would remove the requirements for a use permit for production, processing, and marketing activities from County Code. When interpreting statutes, courts “start with the statute’s words, assigning them their usual and ordinary meanings. If the words themselves are not ambiguous, we presume the Legislature meant what it said, and the statute’s plain meaning governs.” (*Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1190.) This is inconsistent with Napa County Code sections 18.16.03 and 18.20.030 and with Action Item AG/LU-2.1. Thus, the proposed Ordinance introduces unnecessary confusion into the County Code and should be rejected.

II. The Proposed Amendment Would Allow Production, Processing, and Marketing Uses in AP and AW Districts “By Right”.

The County’s interpretation of “notwithstanding” aside, other provisions of the Napa County Code permit “agriculture” to occur “by right” in AP and AW Districts. For example, section 18.16.020 mandates, “The following uses shall be allowed in all AP districts *without use permits*: A) Agriculture.” (emphasis added.) Section 18.20.020 contains the same mandate for AW districts. Thus, the proposed Ordinance would actually prevent the County from requiring use permits for production, processing, and marketing facilities and activities.

III. Environmental Review of the Proposed Amendment is Required.

The Board Agenda Letter states that the proposed amendment to the definition of “agriculture” is consistent with the 2008 General Plan for which an environmental impact report was prepared and certified. If this amendment was truly consistent with the General Plan, additional environmental review would not be required pursuant to Section 15183 of the CEQA Guidelines, which seeks to avoid the preparation of repetitive environmental studies. Section 15183 is limited to “projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified.” (CEQA Guidelines § 15182 (a), (d).)

However, as detailed above, the proposed Ordinance is inconsistent with Action Item AG/LU-2.1. Instead of “ensuring that wineries and other production facilities remain as conditional uses...and that marketing activities and other accessory uses remain incidental and subordinate to the main use,” the proposed Ordinance would make these facilities and accessory uses allowable “by right” in the County’s AP and AW districts. Thus, the proposed amendment is inconsistent with the 2008 General Plan, and it cannot be assumed that the EIR prepared for the General Plan evaluated the impacts of extending “by right” allowances to these uses. CEQA Guidelines section 15183 does not apply, and environmental review of the proposed Ordinance is required.

Further, even if section 15183 did apply to the proposed Ordinance, environmental review of the County must still review effects of the project which “were not analyzed as significant effects in a prior EIR on the ... general plan with which the project is consistent.” (CEQA Guidelines § 15183 (b)(2).) Put simply, environmental review is required for policies that fall outside of the scope of what was contemplated in the 2008 General Plan.

Since the 2008 General Plan implemented Agricultural Preservation policies emphasizing the need for use permits in AP and AW districts, a policy that would have the opposite effect would not have been analyzed in the EIR. The 2008 General Plan would not have analyzed a situation in which the County did not individually permit facilities for the production and processing of agricultural products and marketing activities. For example, “agricultural processing facilities” now permitted “by right” in AW and AP districts could include distilleries. The 2008 General Plan did not evaluate the likely significant impacts of “by right” distilleries, including traffic congestion and air quality impacts caused by visitors attracted to distillery tasting rooms, importation of distillery raw materials into the County, and the shipment of distillery-produced products out of the County.

Additional CEQA review is necessary to ensure that all of the environmental impacts associated with new instances of these facilities and activities are properly disclosed, analyzed, and mitigated before the County approves changes to the definition of “agriculture.”

Further, CEQA requires an EIR to disclose and evaluate a project’s consistency with adopted planning documents, including General Plans. Any inconsistencies between a proposed project and applicable plans must be discussed in an EIR. (CEQA Guidelines § 15125(d); *City of Long Beach v. Los Angeles Unif. School Dist.* (2009) 176 Cal. App. 4th 889, 918; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal. App. 4th 859, 874.) This project’s obvious inconsistency with the 2008 General Plan requires preparation of an EIR. (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783-4.)

IV. The Proposed Ordinance Would Subvert Measures J and P.

The proposed Ordinance’s alternation to the definition of “agriculture” would also violate Measure J and Measure P. Together, these voter initiatives prevent the rezoning of agricultural land unless it is approved by County voters. By broadening the definition of “agriculture” to include processing and production facilities, as well marketing activities, the Ordinance would result in agricultural land being used for canneries, distilleries, or other purposes not contemplated by the Measures, without a vote of the people.

V. The Amendment May Prevent County Regulation of Covered Uses.

The proposed Ordinance would also implicate the County’s Right to Farm Ordinance. The Right to Farm Ordinance covers “agriculture” as defined by section 18.08.040 of the County Code. (Napa County Code § 2.94.010.) The Right to Farm Ordinance covers “all operations necessary to conduct agriculture.” (*Id.* subd. (4).) Specifically, the Ordinance protects agricultural activities, operations, and facilities from being declared nuisances subject to County enforcement:

No existing or future agricultural activity, operation or facility, or any of its appurtenances, conducted or maintained for commercial purposes in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality, *shall be or become a nuisance, public or private*, due to any changed condition in or about the county...

(Napa County Code § 2.94.020, emphasis added.) The Right to Farm Ordinance was passed to protect Napa County's longstanding agricultural operations from encroaching urban development. Under the proposed agriculture definition Ordinance, however, the Right to Farm Ordinance could restrict the County's efforts to regulate distilleries, canneries, wineries, or other expanded "agriculture" uses that cause significant adverse environmental effects in the future. The proposed Ordinance should be denied.

VI. The Proposed Amendment May Have Other Unintended Consequences.

In 1990, Napa County passed a Winery Definition ordinance that requires all new wineries to use 75 percent Napa County-grown grapes. This ordinance was passed to protect the integrity of Napa County as a wine-growing region. However, with the expansion of the definition of "agriculture" to include production and processing of seemingly any agricultural products, the proposed definition Ordinance could permit "by right" distilleries on AP and AP district land. Instead of protecting the County's wine industry, the Ordinance could encourage a proliferation of other uses that rely on imported agricultural products.

VII. The Amendment is Not Necessary to Satisfy the Intent of the 2008 General Plan.

We urge the County to reject the proposed Ordinance because the amendment is not required to satisfy the direction contained in General Plan Action Item AG/LU-2.1. Wineries and other production facilities are already defined and categorized as conditional uses in the Napa County Code. Sections 18.16.03 and 18.20.030 already provide for use permits for agricultural products, marketing and sales, and farmworker housing. Other provisions of the Code already provide exemptions from use permits for farmworker housing. (Napa County Code § 18.16.020(M).) Additionally, the Napa County Code already defines and requires use permits for wineries. (Napa County Code §§ 18.16.030, 18.20.030, 18.08.640.) In addition to its unintended adverse consequences, the proposed Ordinance should be rejected because it is unnecessary to effectuate the Action Items of the General Plan.

Conclusion

Thank you for considering our comments. We look forward to the County's abandonment of this proposed Ordinance, or to the review of an environmental document that adequately reflects the proposed Ordinance's significant environmental impacts and that contains a thorough analysis of alternatives and mitigation measures designed to reduce and avoid these adverse impacts on Napa County.

Napa County Planning Commission
September 20, 2016
Page 7 of 7

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle N. Black". The signature is fluid and cursive, with a large, stylized initial "M" and "B".

Michelle N. Black

Gallina, Charlene

Subject: FW: Agenda Item 9c - Agriculture Definition Ordinance
Attachments: Friends of Napa County Ag Preserve PC meeting.pdf

From: Michelle Black [<mailto:mnb@cbcearthlaw.com>]
Sent: Tuesday, September 20, 2016 4:59 PM
To: Morrison, David
Cc: Amy Minter
Subject: Agenda Item 9c - Agriculture Definition Ordinance

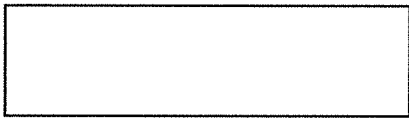
Good evening, Mr. Morrison -

Attached, please find a letter regarding Agenda Item 9c of the September 21, 2016 Planning Commission Agenda, submitted on behalf of the Friends of the Napa County Agricultural Preserve.

Please contact me if you have any difficulties with the attachment.

Thank you,

Michelle N. Black



2200 Pacific Coast Highway, Suite 318
Hermosa Beach, CA 90254
Phone: (310) 798-2400
Fax: (310) 798-2402
www.cbcearthlaw.com

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Frost, Melissa

Subject: FW: Recommended changes to the Definition of Agriculture on next week's PC agenda

Planning Commission Mtg.

From: Eve Kahn [mailto:evkah@yaho.com]

Sent: Thursday, September 15, 2016 1:00 PM

To: Morrison, David

Cc: Anderson, Laura; Anne Cottrell; Heather Phillips; Terry Scott; Mike Basayne; Jeri Gill

Subject: Recommended changes to the Definition of Agriculture on next week's PC agenda

SEP 21 2016

Agenda Item # 9C

David - many thanks for considering my question and amending your/staff's recommended changes to 18.08.040 so that it is quite clear that conditional use permits are ,or may be, required for production & processing of agricultural products, marketing, sales, and other accessory uses.

It is appropriate to begin the discussion at next week's meeting but I respectfully submit that the impacts (intended and/or unintended) need to be identified, analyzed and brought into the discussion before a final vote is taken by the Planning Commission. When this same item came up at APAC I identified one such impact - "The Right to Farm" policy AG/LU-15 which references AG/LU-2 and therefore 18.08.040.

Laura Anderson, Minh Tran and I met and Laura agreed to review the various wording in the County's ordinances as well as reconcile the wording in the Real Estate Disclosures given to each parcel owner upon purchase. This task is still in queue.

Most people associate the Right to Farm with planting, irrigation, frost protection, spraying, raising, breeding, harvesting, etc. The changes in agricultural practices, increases in marketing activities, use of drones, and use of outdoor spaces changes the nature of inconvenience or discomforts and what is a nuisance if such operations are legal, consistent with accepted customs and standards [wording from Real Estate Disclosure]. The Right to Farm was put in place to protect the rights of agricultural operations. But how are we protecting the adjacent property owners and their rights to privacy and quiet enjoyment?

I recommend that the Right to Farm and other possible policies and ordinances impacted by the changes to the Definition of Agriculture be included into the discussion and recommended changes go forward to the Board as a whole.

Regards, Eve

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GAMBLE

FAMILY VINEYARDS

September 20, 2016

Planning Commission Mtg.

Members of the Planning Commission
Napa County
1195 Third Street, Suite 210
Napa, California 94559

SEP 21 2016
Agenda Item # 9C

RE: Definition of Agriculture

Chair Basayne and Members of the Planning Commission,

The Planning Commission is being asked to make an unusual decision today. We are starting with a Definition of Agriculture from the 2008 General Plan Steering Committee that is now recognized to have legal vulnerabilities that conflict with the spirit and intent of the General Plan's provisions designed to ensure the protection of agriculture. You are now being asked to advance a modified version of the original definition, with the objective of adding necessary clarification. However, instead of clarifying the Definition of Agriculture, the proposed modifications add complexity and further issues of legal interpretation through the use of sub-points.

In 2008 the General Plan Steering Committee, on which I served, moved to revise the Definition of Agriculture to embrace the marketing and sale of wine within the primary definition of agriculture referenced by Napa County's General Plan (AG/LU-2). Nearly 7 years later, in 2015, AG/LU-2 having not been implemented by the Board of Supervisors, it came to light during discussions within the Agricultural Protection Advisory Committee (APAC) that the implementation of AG/LU-2 would create conflict with the General Plan and the Right to Farm Ordinance.

By proposing modifications to 2008's proposed AG/LU-2, The County appears to agree these vulnerabilities exist. These proposed modifications to the definition do not adequately address the issues raised by the underlying faulty definition, but in fact could actually intensify them.

In addition, by recommending these revisions, the County is in essence changing the definition that came out of the General Plan Steering Committee. If we are going to explore altering the proposed definition, I recommend the definition of agriculture submitted by the Napa County Farm Bureau to the Planning Commission on September 28, 2015:

Agriculture is the raising of crops, trees, and livestock. The production and processing of agricultural products, farm management activities, farm worker housing, and related accessory uses may be permitted and must remain related, subordinate, and incidental to the main use.

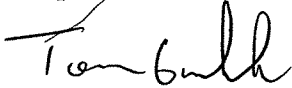
Agricultural processing includes crushing; wastewater disposal; aging, processing; bottling, storage, and shipping of bulk wine; office and laboratories.

Uses accessory to a winery include retail sales of wine; tours and tastings; marketing activities for the education and development of consumers and members of the wine trade regarding wine produced by the winery; and limited non-commercial food service; retail sale of wine-related items; display of art or items of historical, ecological, or viticultural significance; child care centers; and temporary events.

Under this approach, accessory uses continue to be related, subordinate and incidental to the main use. By keeping accessory uses reasonably compatible with, and not changing the character of the primary agricultural use, the legal vulnerabilities 2008's AG/LU-2 has caused The County, and thus the risks to existing winery entitlement valuations, are mitigated.

This definition succinctly and clearly achieves the objectives of the proposed 2008 General Plan revision, while eliminating what are now recognized as unintended consequences associated with the adoption of the 2008 definition as originally drafted.

Respectfully submitted,

A handwritten signature in black ink that reads "Tom Gamble". The signature is written in a cursive style with a prominent initial "T".

Tom Gamble
Gamble Family Vineyards
Oakville, CA

Member, 2008 General Plan Steering Committee

Frost, Melissa

Subject: FW: Definition of Ag Letter
Attachments: Definition of Agriculture Letter Planning Commission 09.20.16.pdf

From: Tom Gamble [<mailto:Tom@GambleFamilyVineyards.com>]
Sent: Tuesday, September 20, 2016 3:47 PM
To: Morrison, David
Cc: McDowell, John; Planning
Subject: Definition of Ag Letter

David,
I regret I cannot attend in person. Attached are my thoughts on the matter. Good luck on this thorny matter.
Tom Gamble

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SEP 21 2016

My name is Jim Welsh and I live at 1265 Summit Lake Drive in Angwin.

Agenda Item # 9C

~~You come here today claiming that, "The purpose and intent of the proposed ordinance is to conform the definition of agriculture in the County Code with the definition adopted in the 2008 General Plan."~~

The clear intention of General Plan Action Item AG/LU-2.1 is to ensure that accessory uses remain conditional uses requiring a use permit -- ***NOT*** to allow these uses by ***right***, as this proposed change will instead ensure.

The proposed code change perverts both the mandate and the intent of the General Plan.

Instead of providing the mandated ensurance, it imbues accessory uses with the same legal status as true agriculture.

It is even so negligent as to specifically remove any requirement for use permit compliance as a condition of having the benefit of the wide umbrella of legal coverage afforded "agriculture" ~~with~~ with this "notwithstanding" ~~language~~ language.

County Code Sections 18.16.020 and 18.20.020 ***require*** that anything defined as "agriculture" SHALL be allowed ****without a use permit****.

"Agriculture" is also protected under the "Right To Farm" provisions of the Code.

The word "shall" used in sections 18.16.020 and 18.20.020 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 allowed by right and will be protected by Napa County right-to-farm regulations. Napa County will have no legal means to mitigate the detrimental impacts of such uses.

The proposed change to §18.08.040 also violates voter-mandated Measure P by redesignating thousands of acres of ag lands to allow industrial and commercial uses by right instead of by use permit. Accordingly, the proposed change to §18.08.040 requires a vote of the people per Measure P.

I respectfully submit that the mandate and intent of Action Item AG/LU-2.1 can be salvaged with two changes to the wording of proposed subsection 18.08.040"E", to wit:

First, replace the words "that are" with the phrase "only insofar as as they remain", and to also replace the word "notwithstanding" with the phrase, "and comply with all".

In other words, rewrite subsection "E" to read,

"Marketing, sales, and other accessory uses only insofar as as they remain related, incidental and subordinate to the main agricultural processing use, and comply with all requirements for obtaining a conditional use permit."

Jim Welsh 707-965-9548

~~1265 Summit Lake Drive, Angwin, CA 94908~~

NAPA COUNTY PLANNING COMMISSION

SEPT 21 2016

ITEM 9C

DEFINITION OF AG

Geoff Ellsworth
geoffellsworth@
yahoo.com

I OBJECT ^{TO} ANY CHANGE IN THE DEFINITION OF AGRICULTURE WITHOUT A VOTE OF THE CITIZENS, AS ESTABLISHED BY MEASURE J/P. I believe it should not have been changed in 2008 without a vote of the people as it intensifies commercial use. TO MAKE THAT CHANGE WITHOUT A VOTE OF THE PEOPLE VIOLATES MEASURE J/P AS WELL AS ~~STATE~~ CALIFORNIA STATE GOVERNMENT CODES 66451.22, 65589.5 AND 65561.

I WOULD ALSO LIKE TO KNOW WHO'S IDEA IT WAS TO CHANGE THE DEFINITION OF AGRICULTURE IN 2008?

 continue to
 One point I wanted to ask is on what authority can Napa County officials change the definition of a word?

Would a local government body be able to change the meaning of the word "the" in Napa County?

I made the point at the PC meeting on the 7th that the words in the General Plan are held in trust by the officials, they do not own the words and therefore do not have the authority to change them, the words belong to the people, and to change them without our permission or knowledge would be a violation of the public trust

While they may have the authority to change agricultural zoning, I can't see how they have the authority to change the actual word agriculture.

The great danger I see is if ^{someone has} they see they have the ability to change a word with such importance as agriculture, what other words could they decide to change that might start limiting our freedoms or ability to speak up against such practice?

What if they decided to change the word "assemble" as it pertains to Right to Assemble. ^{someone} It might sound like I'm overthinking this

but I think we're looking at a civil rights issue here if they believe they have the right to "spirit away" the meanings of the words in public documents held in trust, is it a pilloining of something that belongs to the people?

I'M A BIG SUPPORTER OF AGRICULTURE
 I'M AN EVEN BIGGER SUPPORTER OF CIVIL RIGHTS

