

**Lake, Veronica A.**

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**From:** solanofb@castles.com  
**Sent:** Friday, March 18, 2022 3:08 PM  
**To:** CAO-Clerk  
**Subject:** Agenda item  
**Attachments:** zoning chapter 28.pdf

Hello

Can we request this be added to the agenda or available as a public comment or however it can fit it for item #22-270. We did send each supervisor a copy.

Thank you

*Lisa Shipley*

Executive Director  
Solano County Farm Bureau  
130 Allison Court 2-A  
Vacaville, CA 95688

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# Solano County Farm Bureau

130 Allison Court 2-A Vacaville, CA 95688  
707-449-8044

March 18, 2022

Solano County Supervisors:

Erin Hannigan  
John Vasquez  
Jim Spering  
Monica Brown  
Mitch Mashburn

**2022 SCFB**  
**Board of**  
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**Committee**  
Sean Favero,  
President

William Brazelton,  
1st VP

Dale Crossley  
2nd VP

Jeff Dittmer,  
Secretary/Treasurer

Dear Supervisors:

Thank you for allowing Farm Bureau the opportunity to engage with staff to the level we did. Along with members of the Agricultural Advisory Committee we were able to discuss issues that are of genuine concern and interest to us. Our goal throughout our conversations with County staff was to make sure that as a county we are allowing for value added options and the ability to adapt to changing demands and markets within agricultural community, but also preserving our county's prime ag land. I think that our agricultural community's conversations with county staff were mutually beneficial. Both sides gained a better understanding of the other's perspective and most concerns were resolved and we recommend your approval of those areas of agreement.

We are left with a small number of unresolved questions that we bring to your attention:

**Greenhouses** - We agree that greenhouses can be amazingly productive and should be encouraged. We disagree as to where they are appropriate. Non-soil dependent greenhouses can be located almost anywhere. They should not be placed on prime soils capable of growing some of our county's most valuable crops. Staff has taken the position that they should be allowed by right on any agricultural land based upon a definitional change applying to Williamson Act land. Our California Farm Bureau legal counsel has reviewed this and disagrees with their interpretation. Other counties have reached the same conclusion and have a variety of regulations for greenhouses. We believe that greenhouses should be placed on non-prime ag soils or in the "Dixon Ag Industrial Triangle". This could be accomplished by appropriate standards in a use permit process that evaluates the entire size and scope of a project..

**Breweries and Distilleries** – We agree that breweries and distilleries are growing in popularity and need to be accommodated. Like wineries, they are specialized agricultural processing facilities and should have similar requirements. Wineries are usually located in the midst of the vineyards that grow wine grapes. Breweries and distilleries should have similar requirements such as growing their raw materials on site. Appropriate standards should be developed.



Agricultural Research Facility - We agree that Solano County has great potential for agricultural research. The proposed language has subtracted the words "subordinate to agriculture" from the existing language. The language before you now is substantially improved over what was originally presented, but we believe that "subordinate to agriculture" is still an important concept. Ag Research Facilities should be encouraged on non-prime soils.

Again, the Dixon Triangle would be ideal. Research conducted in conjunction with production agriculture (very common) would not be restricted.

Agritourism – We believe that the definition of Agritourism should be strengthened to tie it more strongly to agriculture. It should also be applied on a regional basis. Suisun Valley has embraced agritourism, but it may not be a good fit everywhere in a county as diverse as Solano. One size does not fit all.

We ask that the board approve the proposed amendments with the exceptions of the four areas mentioned: Greenhouses, Breweries and Distilleries, Agricultural Research Facilities and Agritourism. We ask that the language on those subjects be left unchanged for now and that further work be done on these subjects to develop improved language. Solano County Farm Bureau stands ready to assist in this effort and discussing this with you more.

During our discussions it came to light that there has not been a great deal of interest in the Dixon Triangle since it was created a decade ago. We suggest that serious study be made to determine why. Parcel size? Infrastructure? Regulatory hurdles? A more concerted marketing effort should also be made. This area has potential to be a great asset to Solano County but it will probably take some work to bring it to fruition.

Regards,



Sean Favero  
President, Solano County Farm Bureau



**Lake, Veronica A.**

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**From:** Heather M. Minner <Minner@smwlaw.com>  
**Sent:** Tuesday, March 22, 2022 8:35 AM  
**To:** CAO-Clerk  
**Cc:** Curry, Bernadette S.; Duane Kromm; Bob Berman  
**Subject:** Letter to Board re Proposed Zoning Code Amendments (Agenda Item 25)  
**Attachments:** SMW Letter to Board re Proposed Zoning Code Amendments (3-22-22).PDF

Honorable Board Members,

Please see the attached letter, which notes several legal deficiencies prohibiting the Board from adopting the Zoning Code amendments proposed on agenda item 25. We urge you to continue this item until the concerns expressed by the Solano County Farm Bureau and the Solano County Agricultural Advisory Committee can be fully addressed, environmental review performed, and a revised ordinance considered by the Planning Commission.

Sincerely,

Heather Minner



Heather M. Minner  
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HEATHER M. MINNER  
Attorney  
Minner@smwlaw.com

March 22, 2022

*Via Electronic Mail Only*

Solano County Board of Supervisors  
675 Texas Street, Suite 6500  
Fairfield, CA 94533  
[clerk@solanocounty.com](mailto:clerk@solanocounty.com)

Re: County's Response to SMW Letter Commenting on Proposed Zoning Code Amendments for Agricultural Districts

Dear Chair Vasquez and Honorable Members of the Board:

This firm represents the Solano County Orderly Growth Committee in its efforts to preserve open space and working farms throughout the County. In a February 28, 2022 letter to the Board, our office noted that the proposed Zoning Code amendments for agricultural districts could result in significant impacts to agricultural resources, among other impacts, and are therefore subject to environmental review under CEQA. They are not categorically exempt from CEQA under the general rule/common sense exemption as staff had claimed.

In a response dated March 8, 2022, County Counsel's Office now argues that the proposed amendments are not a project subject to CEQA at all. This new CEQA theory is also incorrect. Even if the amendments only expressly allow uses already implicitly allowed, which is not the case, their adoption is still a project under CEQA. Moreover, existing zoning does not allow for these new uses. We are writing to emphasize that the amendments are a project under CEQA that may have significant environmental impacts and therefore must be analyzed during environmental review.

**I. The Proposed Amendments Must be Reconsidered by the Planning Commission and are Inconsistent with the General Plan.**

Other laws also prohibit the Board from adopting the proposed Zoning Code Amendments at its March 22, 2022 meeting. To begin with, because the proposed

amendments differ from what was previously considered by the Planning Commission, the amendments must be reconsidered by the Planning Commission before being adopted by the Board. Gov. Code § 655857. Regardless, the changes also mean that the Board must reintroduce the Ordinance before adopting it at a future meeting. Gov. Code § (§ 65860; *Resource Defense Fund v. County of Santa Cruz* (1982) 133 Cal.App.3d 800.

Finally, some of the amendments would remove existing requirements that non-agricultural uses be incidental to agricultural uses on the property. For example, the amended definition of “Agritourism” suggests that these commercial uses could occur on “agriculturally zoned property,” even if that property is not a working farm or ranch. Similarly, the definition of “Agritourism facility” states that the facility could be incidental to agricultural “in the vicinity.” In addition, the amendments remove language requiring an Agricultural Research Facility to be “subordinate to, and in support of agriculture.”

These amendments conflict with the County’s General Plan, which states that the AG “Agricultural” designation “[p]rovides areas for the practice of agriculture as the primary use, including areas that contribute significantly to the local agricultural economy, and allows for secondary uses that support the economic viability of agriculture.” General Plan page LU-19. Thus, a zoning code amendment allowing non-agricultural uses as a primary use on land designated for Agriculture conflicts with this General Plan policy and would be void under state Planning and Zoning Law. Gov Code § 65860; *Resource Defense Fund v. County of Santa Cruz* (1982) 133 Cal.App.3d 800.

## **II. CEQA applies to adoption of the proposed zoning code amendments.**

Incredibly, counsel’s response now claims that the ordinance is not a project subject to CEQA. This claim is unsupported and contradicts decades of well-established law.

### **A. The Proposed Amendments are a Project Under CEQA Because They Could Encourage New Projects.**

Under CEQA, a “project” includes any agency activity “which *may* cause either a direct physical change . . . or a reasonably foreseeable indirect physical change in the environment.” Pub. Resources Code § 21065 (emphasis added); CEQA Guidelines § 15378(a). Furthermore, an indirect physical change is reasonably foreseeable if it is one that “the activity is capable, at least in theory, of causing.” *See Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1197 (citing

Guidelines § 15064(d)(3)). It is not necessary to show that physical changes will actually occur. *Id.* at 1198.

Counsel’s response cites *Union of Medical Marijuana Patients*, to argue that zoning code amendments are not project subject to CEQA unless they permit the establishment of entirely new businesses or land uses. This argument fails for two reasons.

First, the California Supreme Court in *Union of Medical Marijuana Patients*, expressly stated that “inconsistency with prior permissible land uses is not necessary for an activity to constitute a project,” citing with approval its earlier holding in *Muzzy Ranch*. 7 Cal.5th at 1199. In *Muzzy Ranch*, the Court found that the Travis Air Force Base land use compatibility plan was a project under CEQA, even though the plan simply set forth model land use policies that would set residential development in certain areas near the airport at the same levels permitted under existing general plans. *Id.* at 1195. In other words, the plan did not allow any new land uses yet it was still a project subject to CEQA. This is because there was a “plausible” theory that the plan could direct growth elsewhere in the future. *Id.* at 1196, 1199.

Here, even if the Zoning Code amendments simply make express what is already implied, which is not the case, doing so could encourage more of those uses to be applied for and developed in the County. Project applicants would not need to rely on uncertain Zoning Administrator decisions or legal interpretations and therefore will be more likely to propose these uses, which would now be expressly allowed.

Indeed, the County has already admitted that the purpose of these amendments is to facilitate growth. *See* SMW February 28, 2022 Letter at 2 (approval necessary for anticipated biomass and biodigester facility); Agenda Submittal to Planning Commission (January 20, 2022) (“The project consists of updating our agricultural zoning districts . . . to accommodate the increasing number of agricultural service and support activities”); Attachment 1 (describing these zoning code amendments as an “economic improvement opportunity”). Thus, the ordinance constitutes a project under CEQA and requires environmental review.<sup>1</sup>

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<sup>1</sup> In discussing potential alternatives to the proposed Ordinance the Agenda Submittal suggest that the proposed changes are “ministerial” in nature. We assume this is not intended to suggest that the ordinance is exempt from CEQA as a ministerial action, given that amending a zoning code is clearly discretionary and the Board has numerous options for how the amendments are drafted, as the various iterations demonstrate.

**B. Regardless, the Proposed Amendments In Fact Allow New Uses**

Second, the proposed amendments in fact allow new uses.

**1. Agritourism and agritourism facility**

Counsel's response letter does not address the myriad uses which are currently explicitly prohibited as an "agritourism" use and not otherwise allowed in zoning districts. For example, musical entertainment, racetracks, public golf courses, fairgrounds, and gun clubs. Yet these uses would be allowed as an agrotourism facility under the proposed ordinance. *See* SMW's February 28, 2022 Letter at 3.

**C. Breweries and distilleries**

Next, counsel argues that the ordinance "proposes only to explicitly recognize breweries and distilleries . . . consistent with existing County practice and law." However, the cited Civil Code section 3482.6 is immaterial. It protects existing agricultural processing facilities from nuisance lawsuits when new development is built next to them. Nothing in this provision mandates permission of breweries and distilleries on agricultural land, much less without any environmental review. Additionally, counsel recognizes that the Board has authority to regulate breweries and distilleries. *See* Response at 3 ("The County could take the same approach with breweries and/or distilleries, but such new brewery-specific or distillery-specific land use regulations are not being proposed").

That breweries may have been permitted before by the County under special circumstances does not mean they were in fact allowed uses. Further, wineries using distilled spirits as part of their winemaking process does not make them a distillery. Regardless, wineries are currently expressly excluded from the current definition of agricultural processing facility.

**D. Farm equipment sales and farm and ranch supply stores**

The proposed ordinance removes the requirement that farm equipment sales and supply stores be "incidental to the principal agricultural use on the property." The Ordinance would thus allow for commercial operations to entirely occupy agricultural lands or displace existing agricultural uses. Moreover, counsel's response admits that this change is proposed in order to allow uses to "expand to meet changing opportunities and market conditions." The potential impacts of these new or expanded operations must be analyzed.

### **E. Greenhouses**

Currently, the zoning regulations' definition for "agricultural accessory building" does not include "greenhouse" in any capacity. Further, an accessory structure must be incidental to the principle use of the land, and the broadly defined greenhouses could constitute the principal use. This is why the existing definition excludes uses such as dairies.

Contrary to counsel's claims, nothing in AB 365 required the County to allow greenhouses in all agricultural zoning districts. Moreover, the law does not limit the County's ability to protect prime agricultural land from being paved over for greenhouses, which may easily be sited elsewhere. That the Legislature intended to avoid a Williamson Act contract from being cancelled due to crop production in a greenhouse, does not limit local zoning authority. AB 365 does not include the type of unambiguous intent to preempt local zoning that courts require. As the California Supreme Court has stated, local jurisdictions' "inherent local police power includes broad authority to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders, and preemption by state law is not lightly presumed." *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729, 738, 754-55 (local law prohibiting activity permitted by state law is not preempted because it is possible to "simultaneously comply with both").

As the Agricultural Advisory Committee and other commenters have noted, unlike open field operations, greenhouses will likely result in paving over valuable agricultural land and thus result in environmental impacts. See also Attachment 2, highlighting water quality concerns associated with greenhouses in the County. Counsel's response fails to address these concerns.

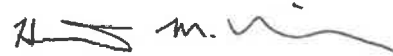
### **III. Conclusion**

Given the potential for significant environmental impacts to occur as a result of the proposed Zoning Code amendments, as explained in our February 28 letter, we urge the County to refrain from adopting the proposed amendments before conducting environmental review under CEQA. Counsel's response does not address many of the key concerns raised by the Committee and other interested parties. Letters submitted by the Solano County Farm Bureau and the Solano County Agricultural Advisory Committee propose alternatives to the proposed amendments that deserve serious consideration by the Board.

Solano County Board of Supervisors  
March 22, 2022  
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Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Heather M. Minner

CC: Bernadette Curry, County Counsel  
Bob Berman, Chair, Solano County Orderly Growth Committee  
Duane Kromm, Solano County Orderly Growth Committee

1486523.2

# ATTACHMENT 1

Land Use & Transportation Committee

June 22, 2021

Staff Update Memorandum

**1. Item #2: Economic Improvement Opportunities**

a. Phase 1 (tentative PC hearing Sept 2021 - tentative BOS hearing November 2021)

1. General Plan (GP) Amendments –
  - ii. Update Municipal Service Area (MSA) boundary to reflect the areas that cities will serve with public services (sewer and water).
  - iii. Update GP policies for County regulation of development near cities
2. Zoning text amendment –
  - i. *Exclusive Ag district*: update code to address rapidly changing technologies pertaining to food and fiber production
    - a. Amend definitions to reflect emerging technological changes
    - b. Amend list of permitted uses to reflect needs of emerging technology i.e. addition of value-added components to the farm
  - ii. *Highway Commercial district*: update the district regulations to add additional commercial services and uses for the travelling / motoring public.
3. Update the Uniform Rules and Regulations for the Williamson Act Contracts:
  - i. Incorporate changes to the zoning regulations to include:
    1. Suisun Valley uses (ag tourism)
    2. Allow certain uses during non-renewal
    3. Allow conversion to add conservation easements

b. Phase 2 (tentative PC hearing March 2022 - tentative BOS hearing May 2022)

1. General Plan Amendment – study area between Vacaville and Dixon
2. Special study area to be established (consultant to be selected in Summer 2021)
3. New zoning districts established to implement the project
4. Possible ballot measure to amend the Land Use Diagram – November 2022

**2. Item #3: Pleasants Valley (tentative PC hearing Jan 2022 - tentative BOS hearing March 2022)**

- a. Zoning Study - update agricultural zoning district to reflect needs of PV property owners
- b. Outreach to key stakeholder groups (*internal process and expedited*)
  1. Option 1 – outside consultant (*longer duration anticipated*)
- c. Environmental review of zoning changes

**3. Item #4: Williamson Act Review**

Staff will provide an update on status of review performed to date and recommended options.

#### **4. Item #5: Rule 20A Effort & the Public Utilities Commission Proposed Decisions**

Staff will discuss the recent decision (April 2021) by PG&E that they do not have ownership of power poles/interests in the Fairgrounds, resulting in undergrounding of those lines not being eligible for Rule 20A funds. Staff is evaluating areas such as Suisun Valley, Homeacres/Starr Subdivision, Pleasants Valley, English Hills, as well as potential collaborative City/County boundary areas, though new alternatives will need to be shorter runs with lower numbers of private service connections unless the County negotiates additional Rule 20A credits from other jurisdictions.

The latest Public Utilities Commission Proposed decisions were issued in April 2021 and staff provided the following comments:

1. Support for provisions to broaden the eligibility of Rule 20A where poles impede pedestrian, bicycle, and ADA access.
2. Support for the proposed decision to not sunset Rule 20A at this time.
3. Opposed to discontinuation of Rule 20A work credit allocations.
4. Opposed to the restriction on work credit trading between agencies.
5. General comment that the proposed decisions/restrictions will make it more difficult for agencies to deliver Rule 20A projects.

The PUC has not yet responded to the comments they received on their latest Proposed Decisions.

# ATTACHMENT 2

**From:** [Emlen, Bill F.](#)  
**To:** [Schmidtbauer, Terry](#)  
**Subject:** FW: Gotham Greens Evaporation Pond  
**Date:** Wednesday, May 5, 2021 8:16:20 AM  
**Attachments:** [image002.png](#)

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Terry: Another one to try and figure out. Let's discuss. This is a high profile economic development project. I believe Sheila is setting up a call for you and I to talk with him.

**From:** Mike Zee <mikezee@gothamgreens.com>  
**Sent:** Wednesday, May 5, 2021 7:11 AM  
**To:** Emlen, Bill F. <WFEmlen@SolanoCounty.com>  
**Cc:** Hearon, Sheila M. <SMHearon@SolanoCounty.com>  
**Subject:** Gotham Greens Evaporation Pond

Hi Bill,

I hope you are well. Wanted to give you a quick update on our project. We are down to the final stretch of our greenhouse construction. We only have about four or five months to go. One item I did want to bring to your attention and seek advice, is on an evaporation pond we are planning to build to capture our RO high salinity wastewater along with our irrigation, nutrient wastewater. We recently hit a snag with the Central Valley Regional Water Quality Control Board permitting process. In my correspondences with our assigned permitting officer, we were going down a six week permitting timeline but just recently, more individuals have gotten involved on the Title 27 and Non-Chapter 15 side of things saying that the permit process will take a year minimum starting now. This is obviously very concerning since we are planning to open in a month. Are you available this week to speak for twenty minutes on the matter? I can be made available at any time as this has become my highest priority.

Thank you!



MIKE ZEE

Director, Development + Construction

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