

MARIPOSA COUNTY BOARD OF SUPERVISORS
ORDINANCE NO. 888

**AN ORDINANCE APPROVING ZONING AMENDMENT NO. 94-3 AND THE
RIGHT TO AGRICULTURAL ACTIVITY ORDINANCE; MARIPOSA COUNTY,
APPLICANT**

WHEREAS, the Mariposa County Board of Supervisors adopted Resolution No. 94-267 on June 28, 1994 thereby initiating the public review and hearing process to amend the Mariposa County Zoning Ordinance, and to adopt a "right to agricultural activity" ordinance; and

WHEREAS, the Board of Supervisors is responsible for reviewing the proposed amendment and ordinance and the approval or denial of a proposed amendment to the Mariposa County Zoning Ordinance; and

WHEREAS, the Mariposa County Planning Commission and Board of Supervisors have held duly noticed public hearings in accordance with County Code and State Law; and have considered all input, written and verbal, delivered to them.

NOW THEREFORE BE IT ORDAINED, The Mariposa County Board of Supervisors hereby adopts Zoning Amendment No. 94-3 and the "Right to Agricultural Activity" ordinance as delineated in Exhibits "A" and "B" of this ordinance, attached hereto and incorporated herein by reference.

BE IT FURTHER ORDAINED, that the Board of Supervisors adopt the following findings for an environmental review exemption:

1. Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines states "...CEQA applies

only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.”.

2. The ordinance and amendments only address the rights of a commercial agricultural operation to exist in Mariposa County. They do not change the ability of an operation to commence or continue in any particular location. Additionally the ordinance and amendments provide for increased public information and do not change the potential future location of housing units.

BE IT FINALLY ORDAINED, that the recommendation is based upon the recommendation of the Planning Commission Resolution 95-11 and the following findings for approval of the Zoning Amendment and “Right to Agricultural Activity” ordinance:

1. **The amendment is in the general public interest and will not have a significant adverse effect on the general public health, safety, and welfare.**

The amendment will modify the County's policy towards the status of commercial agricultural operations particularly those in zoning designations other than Agricultural Exclusive (AE). The amendment does not permit any use in an area in which it previously was restricted. The amendment does not restrict any use in an area in which it previously was permitted. The amendment applies only to the rights of legally operating commercial agricultural operations to continue.

The amendment will serve to increase the level of protection given to established Agricultural uses within the County. In so doing it will help to insure the continued economic and social benefits agricultural lands and industries provide to Mariposa County. Additionally the preservation of agricultural lands helps to insure the benefits of open space and the preservation of rural character for all County residents and visitors.

2. **The amendment is desirable for the purpose of improving the General Plan with respect to providing a long term**

guide for county development and a short term basis for day to day decision making.

The amendment serves to more clearly define the County's policies and regulations toward agricultural operations. It develops usable definitions which will improve the ability of County Staff to implement the regulations and Residents to understand what is desired and acceptable in accordance with County Code. The amendment will insure that legally conducted commercial agricultural operations can continue to operate. This will facilitate the goals of the General Plan pertaining to agriculture, commerce, and open space. The amendment clarifies the county's long-term commitment to commercial agriculture.

3. The amendment conforms with the requirements of State Law and County policy.

The amendment has been processed in accordance with California Planning and Zoning Law and the County Zoning Ordinance, including noticing and holding of public hearings. The amendment has been determined to be exempt from environmental review in accordance with the California Environmental Quality Act and the County Environmental Review Policies and Procedures.

4. The amendment is consistent with the policies and standards of the Mariposa County General Plan.

As discussed in Finding #1, the amendment is in the general public interest and will not have a significant adverse effect on the general public health, safety, and welfare. The amendment is not inconsistent with any policies, objectives, and standards of the General Plan. The amendment furthers the goals of the General Plan, specifically those listed below.

Section 3.200 of the Mariposa County General Plan Land Use Element establishes specific concerns upon which the Land Use Element policies, goals, and standards are based. These "concerns" include: "The strengthening of the economic and employment opportunities of Mariposa County through the encouragement of appropriate commercial and light industrial activity, protection and expansion of agriculture and forestry, and local processing of raw materials."


Section 6.300(B) of the Mariposa County General Plan Conservation Element lists as a goal: "To preserve and protect lands which are classified for agricultural and forest production to the extent that agricultural development of such lands is economically viable and is to the long-range economic benefit of the community as

a whole, and to promote the preservation and development of such lands through incentives, land use policy and long-range water planning.”


Section 7.601(2) of the Mariposa County General Plan Open Space Element lists as a goal: “To establish policies and standards which provide for, and support, the managed production of natural resources in the County.”

PASSED AND ADOPTED by the Mariposa County Board of Supervisors on the 25th day of July 1995, by the following vote:

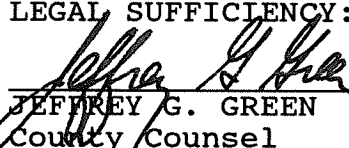
AYES: REILLY, BALMAIN, STEWART
NOES: NONE
ABSENT: TABER
ABSTAINED: PARKER



Garry R. Parker
Mariposa County Board of Supervisors

ATTEST:


MARGIE WILLIAMS
Clerk of the Board

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:


JEFFREY G. GREEN
County Counsel

EXHIBIT "A"

Chapter 18.04

RIGHT TO AGRICULTURAL ACTIVITY

Sections:

18.04.010	Definitions
18.04.020	Findings and Policy
18.04.030	Nuisance
18.04.040	Disclosure
18.04.050	Notice
18.04.060	Penalty for Violation
18.04.070	Separability
18.04.080	Precedence

18.04.010 Definitions.

A. "Agricultural land" shall mean all that real property within the boundaries of Mariposa County currently used for agricultural activities or operations or upon which agricultural activities or operations may in the future be established.

B. "Agricultural activity or operation" shall mean any activity or operation which has to do with agriculture and shall include, but not be limited to, the cultivation and tillage of the soil; dairying; the production, irrigation, frost protection, cultivation, growing, harvesting and processing of any agricultural commodity, including viticulture, horticulture, timber or apiculture; the raising of livestock, fur-bearing animals, fish or poultry; and any commercial agricultural practices performed as incident to or in conjunction with such operations, including preparation for market, delivery to storage or to market, or to carriers for transportation to market.

C. "Commercial purposes" shall mean an activity or operation that is primarily conducted for commercial use or sale of an agricultural product or commodity on the activity or operation site with financial gain as the primary aim.

D. "Nuisance" shall mean anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.

E. "Private nuisance" shall mean every nuisance which is not included in the definition of a public nuisance.

F. "Public nuisance" shall mean a nuisance which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

18.04.020 Findings and Policy.

A. It is the declared policy of this County to enhance and encourage agricultural operations within the County. It is the further intent of this County to provide to the residents of this County proper notification of the County's recognition and support through this ordinance of those persons' and/or entities' right to conduct agricultural activity.

B. Where non-agricultural land uses extend into agricultural areas or exist side by side, agricultural operations frequently become the subject of nuisance complaints due to lack of information about such operations. As a result, agricultural operators are forced to cease or curtail their operations. Such actions discourage investment in farm improvements to the detriment of adjacent agricultural uses and the economic viability of the County's agricultural industry as a whole. It is the purpose and intent of this section to reduce the loss to the County of its agricultural resources by clarifying the circumstances under which agricultural operations may be considered a nuisance. This ordinance is not to be construed as in any way modifying or abridging state law as set out in the California Civil Code, Health and Safety Code, Fish and Game Code, Food and Agricultural Code, Division 7 of the Water Code, or any other applicable provision of state law relative to nuisances; rather, it is only to be utilized in the interpretation and enforcement of the provisions of this code and County regulations.

C. An additional purpose of this ordinance is to promote a good neighbor policy by advising purchasers and users of property adjacent to or near agricultural operations of the inherent potential effects associated with such purchase or residence. Such concerns may include, but are not limited to, the noise, odor, dust, chemicals, smoke and hours of operation that may accompany agricultural operations. It is intended that, through mandatory disclosure, purchasers and users will better understand the impact of living near agricultural operations and be prepared to accept attendant conditions as the natural result of living in or near rural areas.

18.04.030 Nuisance.

No existing or future agricultural activity, operation, or facility or appurtenances thereof, conducted or maintained for commercial purposes, and in a manner consistent with proper and accepted customs, standards, and practices and with all chapters of the Mariposa County Code, as established and followed by similar agricultural operations, shall be or become a nuisance, public or private, pursuant to the Mariposa County Code, after the same has been in operation for more than one year if it was not a nuisance at the time it began. The provisions of this section shall not apply whenever a nuisance results from agricultural operations inconsistent with accepted customs, standards, and practices or contrary to local, state, or federal ordinances, laws, and regulations.

18.04.040 Disclosure.

A. Pursuant to Section 1102.6a of the California Civil Code, it is intended by this section to require disclosures in addition to those disclosures required by Section 1102.6 of the California Civil Code.

B. Upon any transfer of real property by gift, sale, exchange, installment land sale contract, lease with an option to purchase, any other option to purchase, or ground lease coupled with improvements, or transfer of residential stock cooperative improved with dwelling units, the transferor shall require that the disclosure statement set forth in Section 18.04.040(C) shall be signed by the grantee, purchaser, or lessee.

C. The disclosure required by Section 18.04.040(B) is set forth herein, and shall contain, and be in the form of, the following:

"REAL ESTATE TRANSFER DISCLOSURE STATEMENT

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE COUNTY OF MARIPOSA, STATE OF CALIFORNIA, DESCRIBED AS

_____. THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE-DESCRIBED PROPERTY IN COMPLIANCE WITH MARIPOSA COUNTY CODE SECTION _____. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTION OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

(I)

SELLER INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in a real estate transaction dealing with the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property. THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AS REQUIRED BY THE COUNTY OF MARIPOSA AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

The County of Mariposa permits properly conducted agricultural operations within the County. You may be subject to inconveniences or discomfort arising from such operations including but not limited to: noise, odors, fumes, dust, smoke, insects, operation of machinery (including aircraft) during any 24-hour period, storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendmets, herbicides and pesticides. One or more of the inconveniences described may occur as a result of any

agricultural operation which is in conformance with existing laws and regulations and accepted customs and standards. You should be prepared to accept such inconveniences or discomfort as a normal and necessary aspect of living in a county with a strong rural character and an active agricultural sector. Mariposa County has determined that no existing or future agricultural activity, operation, or facility or appurtenances thereof, conducted or maintained for commercial purposes, and in a manner consistent with proper and accepted customs, standards, and practices and with all chapters of the Mariposa County Code, as established and followed by similar agricultural operations, shall be or become a nuisance, public or private, pursuant to the Mariposa County Code, after the same has been in operation for more than one year if it was not a nuisance at the time it began. If you have any questions concerning this policy, please contact the Mariposa County Planning and Building Department.

Seller certifies that the information herein is true and correct to the best of Seller's knowledge as of the date signed by the Seller.

Seller _____ Date _____

Seller _____ Date _____

(II)

BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTION OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER(S) AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTION/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller _____ Date _____ Buyer _____ Date _____

Seller _____ Date _____ Buyer _____ Date _____

Agent (Broker representing Seller):
 _____ By _____ Date _____

(Associate licensee or Broker signature)

Agent (Broker obtaining the offer):
 _____ By _____ Date _____

(Associate licensee or Broker signature)

State of _____)
 County of _____) ss.

On this _____ day of _____, 19____, before me, the undersigned Notary Public, personally appeared

_____ Personally known to me. _____ Provided to me on the basis of satisfactory evidence to be the person(s) whose name(s) _____ subscribed to the within instrument and acknowledged that _____ executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

Present Assessors Parcel No. _____

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY."

D. If a Buyer refuses to sign the disclosure statement set forth in Section 18.04.040(C), the transferor may comply with the requirements of this ordinance by delivering the statement to the Buyer as provided in Section 18.04.040(C) and affixing and signing the following declaration to the statement:

I, (name), have delivered a copy of the foregoing disclosure statement as required by law to (Buyer's name), who has refused to sign.

I declare the foregoing to be true.

Date: _____

Signature

Print Name: _____

E. Forms for the disclosure statement set forth in Section 18.04.040(C) shall be printed and made available to property owners and real estate agents by the Mariposa County Planning and Building Department.

18.04.050 Notice.

A. The Mariposa County Planning and Building Department shall provide all applicants for building permits for new residential construction or mobile home installation with a "Right-to-Agricultural Activity Notice" in substantially the form provided in Section 18.04.050(B).

B. To provide all property owners with constructive notice of Mariposa County's right-to-agricultural activity policy, this chapter of County Code shall be recorded with the Mariposa County Recorder.

"Mariposa County Right-to-Agricultural Activity Ordinance"

The County of Mariposa permits properly conducted agricultural operations within the County and it is the declared policy of this County to enhance and encourage agricultural operations within the County. It is the further intent of this County to provide to the residents of this County proper notification of the County's recognition and support of those persons' and/or entities' right to conduct agricultural activity. Residents of property on or near agricultural land should be prepared to accept the inconveniences or discomfort arising from such operations. Such discomfort or inconveniences may include, but are not limited to: noise, odors, fumes, dust, smoke, insects, operation of machinery (including aircraft) during any 24-hour period, storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides. One or more of the inconveniences described may occur as a result of any agricultural operation which is in conformance with existing laws and regulations and accepted customs and standards. You should be prepared to accept such inconveniences or discomfort as a normal and necessary aspect of living in a county with a strong rural character and an active agricultural sector.

Mariposa County has determined that no existing or future agricultural activity, operation, or facility or appurtenances thereof, conducted or maintained for commercial purposes, and in a manner consistent with proper and accepted customs, standards, and practices and with all chapters of the Mariposa County Code, as established and followed by similar agricultural operations, shall be or become a nuisance, public or private, pursuant to the Mariposa County Code, after the same has been in operation for more than one year if it was not a nuisance at the time it began. If you have any questions concerning this policy, please contact the Mariposa County Planning and Building Department."

18.04.060 Penalty for Violation.

Noncompliance with any provision of this ordinance shall not affect title to real property, nor prevent the recording of any document. Any person who violates any provision of this ordinance is guilty of an infraction punishable pursuant to County Code Section 1.20.030.

18.04.070 Separability.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, it shall not affect the remaining portions of the ordinance.

18.04.080 Precedence.

This ordinance shall take precedence over all ordinances or parts of ordinances, or resolutions or parts of resolutions in conflict herewith and to the extent they do conflict with this ordinance they are hereby repealed with respect to the conflict and no more.

EXHIBIT "B"

AMENDMENTS TO TITLE 17 MARIPOSA COUNTY ZONING ORDINANCE

Amend Section 17.108.060(A) to read as follows:

A. ~~Agriculture and grazing: Animal husbandry and the production of crops, plus the sale of agricultural products. Notwithstanding anything to the contrary contained herein, it shall be a violation of this Title for any landowner, tenant, or person in possession or control of land in Mariposa County to conduct any agricultural use, horticultural use, viticultural use, silvicultural use, or agricultural enterprise, including but not limited to, grazing, animal husbandry, production of crops, or sale of agricultural products, on land in Mariposa County, in such a manner as to constitute either a private or public nuisance. Agricultural uses, including but not limited to animal husbandry, livestock grazing, the production of crops, horticulture, viticulture, silviculture, sale of agricultural products, and accessory uses and structures appurtenant to the agricultural use, subject to the following standards:~~

1. The provisions of this section shall not be applicable in the AE zone and in town planning areas with specific land use policies and zoning regulations developed in accordance with Section 17.12.010(a).
2. The agricultural use shall not be conducted in such a manner as to constitute a nuisance, public or private.
3. Notwithstanding anything to the contrary contained herein, no existing or future agricultural activity, operation, or facility or appurtenances thereof, conducted or maintained for commercial purposes, in a manner consistent with proper and accepted customs, standards, and practices and with all chapters of the Mariposa County Code as established and followed by similar agricultural uses, shall be or become a nuisance, public or private, pursuant to this section or Chapter 18.04 of County Code, after the same has been in operation for more than one year if it was not a nuisance at the time it began. The provisions of this section shall not apply whenever a nuisance results from agricultural operations inconsistent with accepted practices and standards or contrary to local, state, or federal ordinances, laws, and regulations.
4. In any enforcement action to determine if an agricultural use is a nuisance, public or private, the burden shall be upon the landowner, tenant, or person in possession or control of the land upon which the agricultural use is located to provide evidence to the Planning Director of

the date of commencement of the agricultural use and the characteristics of the use at the date of commencement.

Amend definition for "agricultural use" as contained in Chapter 17.148 to read as follows:

Agricultural use activity or operation:

"Agricultural Use activity or operation" shall mean any use activity or operation which has to do with agriculture ~~including but not limited to horticultural use, viticultural use, silvicultural use, and agricultural enterprises~~ and shall include, but not be limited to, the cultivation and tillage of the soil; dairying; the production, irrigation, frost protection, cultivation, growing, harvesting and processing of any agricultural commodity, including viticulture, horticulture, timber or apiculture; the raising of livestock, fur-bearing animals, fish or poultry; and any commercial agricultural practices performed as incident to or in conjunction with such operations, including preparation for market, delivery to storage or to market, or to carriers for transportation to market.

Add definition for "commercial purposes" to Chapter 17.148 as follows:

Commercial purposes:

"Commercial purposes" shall mean an activity or operation that is primarily conducted for commercial use or sale of an agricultural product or commodity on the activity or operation site with financial gain as the primary aim.

Add definition for "nuisance" to Chapter 17.148 as follows:

Nuisance:

"Nuisance" shall mean anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.

Add definition for "nuisance, private" to Chapter 17.148 as follows:

Every nuisance which is not a public nuisance.

Add definition for "nuisance, public" to Chapter 17.148 as follows:

A nuisance which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.