

# Nonresidential and Agricultural Building Definitions

Recommendation to the Board of Supervisors  
From Agricultural Advisory Committee:

To bring consistency to the general plan, the Alameda County Agricultural Advisory Committee recommends the Board of Supervisors to amend Title 17 of the Municipal Code, Section 17.04.010 – Definitions, to be consistent with Title 15 of the county Municipal Code definitions for **nonresidential building** and **agricultural building**, as those definitions were previously adopted unanimously by the Board of Supervisors as Ordinance No.: 2019-59.

Definition	Alameda County Public Works Title 15 and California Title 24 definitions ordained by the Board of Supervisors	Planning Department Ad Hoc Definitions	Recommendation
Agricultural Building	<b>Title 24 Part 2 Section 202 Definitions</b> <b>AGRICULTURAL BUILDING.</b> A structure designed and constructed to house farm implements, hay, grain, poultry, livestock or other horticultural products. This structure shall not be a place of human habitation or a place of employment where agricultural products are processed, treated or packaged, nor shall it be a place used by the public.	An agricultural building is a nonresidential building.	To bring consistency to the General Plan the Zoning Ordinance (Title 17) will be amended to adopt the Public Building Ordinance (Title 15) definition for “agricultural building.”
Nonresidential Building  Title 24 Definition	<b>Title 24, Part 6, Section 100.1 Definitions</b> <b>NONRESIDENTIAL BUILDING</b> is any building which is identified in the California Building Code Table; Description of Occupancy as Group A, B, E, F, H, M, or S; and is a U; as defined by Part 2 of Title 24 of the California Code of Regulation.	A nonresidential building includes an agricultural building.	To bring consistency to the General Plan the Zoning Ordinance (Title 17) will be amended to adopt the Public Building Ordinance (Title 15) definition for “nonresidential building.”
Nonresidential Building  Public Resources Code Section 25130	<b>PUBLIC RESOURCES CODE – PRC</b> <b>CHAPTER 2. Definitions</b> <i>(Chapter 2 added by Stats. 1974, Ch. 276. )</i> <b>25130.</b> “Nonresidential” building means any building which is <i>heated or cooled in its interior</i> , (italics added) and is of an occupancy type other than Type H, I, or J, as defined in the Uniform Building Code, 1973 edition, as adopted by the International Conference of Building Officials. <i>(Added by Stats. 1977, Ch. 846.)</i>  Uniform Building Code, 1973 edition Group J Occupancies Defined Sec. 1501. Group J Occupancies shall be: Division 1. Private garages, carports, sheds, and agricultural buildings. Division 2. Fences over 6 feet high, tanks, and towers		Adopt Resources Code Section 25130 as a Finding to support the recommendation.

## Background

The East County Area Plan (ECAP) restricts the floor area ratio (FAR) of nonresidential buildings in the Large Parcel Agriculture, Resource Management, and Water Management Land use designations to .01 percent.<sup>1</sup> The FAR restriction applied to greenhouses is limited to .025 on LPA parcels. The effect of the restriction is to prevent the development of excessive commercial, industrial, and other urban type uses on agricultural properties. Other than greenhouses as mentioned, ECAP does not restrict the floor area ratio of agricultural buildings on those land use designations.

The Board of Supervisors has previously ordained the Public Works Department to exclude agricultural buildings from the nonresidential building definition. California Public Resources Code Section 25130, adopted as a legislative act in 1977, is the foundation of the nonresidential building definition and agricultural building exemption.

Contrary to the state and Public Works definitions, the Planning Department has developed an ad hoc definition for nonresidential building that does not exempt agricultural buildings. The Planning Department definition is not consistent with the Public Works definition, the California Title 24 Code of Regulations, nor the California Public Resources Code. The Planning Department's definition for nonresidential building is also inconsistent with the East County Area Plan Purpose to "enhance agriculture and agricultural lands" as well as Measure D Findings that deliberately affirms the fact that agriculture is "key to preserving open lands".<sup>2</sup> Also, the failure to exempt agricultural buildings is inconsistent with a 1991 action by the Board of Supervisors to exempt agricultural buildings from Site Development Review "to avoid interfering with agricultural activities." It is an oxymoron to restrict agricultural buildings as a means to enhance agriculture.

California Government Code 65860 states county "zoning ordinances shall be consistent with the general plan of the county."<sup>3</sup>The floor area ratio restriction of agricultural buildings is a restrictive land use that is not "compatible with the objectives, policies, general land uses, and programs specified"<sup>4</sup> within the East County Area Plan. GC Section 65860 directs that when the zoning ordinance is inconsistent with the general plan "the zoning ordinance shall be amended within a reasonable time so that it is consistent with the general plan as amended."

The Planning Department ad hoc definition for nonresidential building has created controversy and affected the success of agriculture for nearly two decades. Extensive anecdotal reports, and an inflation adjusted evaluation of the Alameda County Crop Report, support the failure of agricultural enhancement in Alameda County. The Agricultural Advisory Committee, Cannabis Stakeholders, and Winegrowers Association have agreed, agricultural buildings are exempt from the nonresidential definition.<sup>5</sup>

This adjustment is technical, not substantive, and a requirement of California Government Code Section 65860.

### Findings

We further recommend the Board of Supervisors makes the following findings of fact in support of this ordinance:

- 1) The Board of Supervisors finds and declares that the current implementation of Measure D has failed to meet the Purpose to "enhance agriculture and agricultural lands."
- 2) The Measure D Section 2 Findings are additional facts that inform this ordinance and are significant to developing consistency between the Zoning Ordinance and General Plan:
  - a. Measure D Section 2 Finding (c) Agriculture: The protection of existing agriculture is important to Alameda County. Agriculture remains a major contributor to the County's diversified economy. It is key to preserving open lands. Agriculture can only be maintained and enhanced if the voters of the County make a firm commitment to its preservation.
  - b. Measure D Section 2 Finding (d) Open Lands: Preservation of agriculture and other open lands protects air and water quality, contributes to health and recreation, offers habitat for plants and animals, provides visual enjoyment and beauty, gives a sense of history and community, and generally is important to the quality of our lives.
  - c. Measure D Section 2 Finding (l) Within the meaning of California Evidence Code Section 669.5(c)(3), this ordinance is designed to protect agricultural use as defined in Government

Code Section 51201(b)<sup>6</sup> and open space land as defined in Government Code Section 65560(b)<sup>7</sup>.

- 3) Adoption of the recommended definitions will bring consistency to the general plan as directed by California Government Code 65860.
- 4) Public Resources Code Section 25130 is the source definition for nonresidential building and agricultural building.
- 5) Adoption of these definitions is not substantive as agricultural buildings are infrastructure necessary for agricultural uses as defined in Government Code Section 51201(b), open space land as defined in Government Code Section 65560(b) and "within the meaning of California Evidence Code Section 669.5(c)(3) and will not result in a decrease of land available for agricultural uses.
- 6) Adoption of these definitions is a technical adjustment since it relates to the agricultural science standards, techniques, and infrastructure necessary for enhancement of agricultural land and land uses.