

SAN JOAQUIN AGRICULTURAL LAW REVIEW

VOLUME 24

2014-15

NUMBER 1

A NEW WAY TO ROOST: HOW LAND USE POLICIES CAN FACILITATE THE CHANGING TIDE OF POULTRY REGULATIONS

I. INTRODUCTION

A. *The New Food Renaissance*

The modern food industry is undergoing a dramatic change.¹ Consumers are beginning to question where their food was grown or raised, what impact its production has on society, and whether there is a better way to produce it.² For some, this inquiry is the product of grassroots movements like the locavores, who source as much of their food as possible from within a 100-mile radius of their homes.³ Others have caught onto these popular social movements by hearing about them through the media, or by seeing an increasing number of organic and locally produced products in grocery stores.⁴ Regardless,

¹ See EMILY BROAD LEIB, HARV. FOOD LAW AND POLICY CLINIC, GOOD LAWS, GOOD FOOD: PUTTING LOCAL FOOD POLICY TO WORK IN OUR COMMUNITIES 1 (2012), available at http://www.law.harvard.edu/academics/clinical/lsc/documents/FINAL_LOCAL_TO_OLKIT2.pdf.

² Mia Shirley, Comment, *Food Ordinances: Encouraging Eating Local*, 37 WM. & MARY ENVTL. L. & POL'Y REV. 511 (2013), available at <http://scholarship.law.wm.edu/wmelpr/vol37/iss2/5>.

³ Emily Leadem, *Issue Overview: History of Locavores*, UNIV. OF OR., available at <http://blogs.uoregon.edu/eleademsu13gateway/> (last visited Mar. 31, 2015).

⁴ Damien C. Adams & Matthew J. Salois, *Local versus organic: A turn in consumer preferences and willingness-to-pay*, RENEWABLE AGRIC. AND FOOD SYS. 1 (2010).

consumer demand for these products has triggered issues, provoked reform, and created many competing interests.⁵

As market data suggests, the demand for locally produced food is growing faster than the domestic supply, particularly when it comes to organics.⁶ In 2012 alone, the organic industry saw \$35 billion in sales—a staggering ten percent growth from 2011.⁷ As a result, the organic food industry has gained clout as a competitive food producer and key player in political and legislative policy decisions.⁸ Policymakers at the federal level have responded to this demand by including a fifty-two million-dollar package in the 2014 Farm Bill.⁹ The package provides competitive grants to local food efforts, including farm-to-fork programs and local processors, financial support for scientific research, and funding to assist low-income households and individuals with tapping into a local food system.¹⁰

In addition to Farm Bill support, federal legislators are proposing additional efforts to facilitate the new food renaissance. The Local Farms, Food, and Jobs Act of 2013, for example, would provide a comprehensive package of reforms designed to support local food sales.¹¹ The reforms would make it easier for people to use food-assistance benefits, like the Supplemental Nutrition Assistance Program and Electronic Benefit Transfers, to purchase local food, and would provide funding to promote farmers' markets and to assist farmers with obtaining organic certifications.¹² Initially introduced in

⁵ Michael Pollan, *The Food Movement, Rising*, NY BOOKS (June 10, 2010), <http://www.nybooks.com/articles/archives/2010/jun/10/food-movement-rising/>.

⁶ Catherine Greene, et al., *Emerging Issues in the U.S. Organic Industry*, ERS REPORT SUMMARY, U.S. DEP'T OF AGRIC. (June 2009), http://www.ers.usda.gov/media/155919/eib55_reportsummary_1_.pdf.

⁷ Matt Cardy, *Demand for organic foods boosts industry's sway*, CBS NEWS (May 17, 2013), <http://www.cbsnews.com/news/demand-for-organic-foods-boosts-industrys-sway/>.

⁸ Cardy, *supra* note 7.

⁹ Jeff Spross, *USDA Sends Some Farm Bill Money to Organic and Local Agriculture*, THINK PROGRESS (Sept. 30, 2014), <http://thinkprogress.org/climate/2014/09/30/3573655/usda-52-million-local-organic-farms/>.

¹⁰ *Id.*

¹¹ Local Farms, Food, and Jobs Act of 2013, H.R. 1414, 113th Congress (2013).

¹² *Id.*

the last congressional session, the bill gained support from almost one hundred legislative co-sponsors before it died.¹³

Even those producers who are reluctant to set sail in the changing tide of food production are faced with an uptick in proposed legislation and regulations that will force them to change their practices, particularly in California. In 2012, California ballot measure Proposition 37 (“Prop 37”) sought to impose new labeling requirements for raw or processed foods that were made from plants or animals containing genetically modified material, or GMOs.¹⁴ Additionally, Prop 37 would have provided the California Department of Public Health with regulatory power over GMO labeling practices, and would have provided private citizens with the right to sue food manufacturers for violating the labeling requirements.¹⁵ Ultimately, Prop 37 failed, but only narrowly, with 51.4 percent of Californians voters approving the measure and 48.6 percent voting against it.¹⁶ Had it passed, California would have been the first state to impose GMO labeling requirements.¹⁷

California has proven to be one of the major testing-grounds for new food regulations like Prop 37. In the realm of cottage food production, California has enacted groundbreaking and precedent-setting regulations that are designed to encourage, support, and facilitate home-based food businesses.¹⁸ Additionally, the Neighborhood Food Act provides tenants and members of homeowners’ associations with the right to grow food for personal consumption despite prohibitions in

¹³ *New Legislation Focuses on Local Foods, Small Farms*, FARM FUTURES (Apr. 3, 2013), <http://farmfutures.com/story-new-legislation-focuses-local-foods-small-farms-0-97006>.

¹⁴ *California Proposition 37, Mandatory Labeling of Genetically Engineered Food (2012)*, BALLOTPEDIA, [http://ballotpedia.org/California_Proposition_37,_Mandatory_Labeling_of_Genetically_Engineered_Food_\(2012\)](http://ballotpedia.org/California_Proposition_37,_Mandatory_Labeling_of_Genetically_Engineered_Food_(2012)) (last visited Mar. 12, 2015) [hereinafter California Proposition 37].

¹⁵ California General Election November 6, 2012, Official Voter Information Guide 54 (Aug. 13, 2012), *available at* <http://vig.cdn.sos.ca.gov/2012/general/pdf/complete-vig-v2.pdf>.

¹⁶ California Proposition 37, *supra* note 14.

¹⁷ See Cally Carswell, *When California Changes Its Chicken Laws, It Affects Everybody*, MODERN FARMER (Nov. 5, 2014), <http://modernfarmer.com/2014/11/egg-law/>.

¹⁸ *The California Homefood Act*, EDIBLE EAST BAY (Aug. 15, 2013), <http://edibleeastbay.com/online-magazine/fall-harvest-2013/the-california-homemade-food-act/>.

lease agreements.¹⁹ As a result of these new regulations, many local governments may decide to revamp their local ordinances and regulations. For example, Tehama County, located in Northern California, has enacted an Interim Urgency Ordinance placing a temporary moratorium on the establishment or expansion of poultry farms without first obtaining a use permit.²⁰ The Tehama County Board of Supervisors also passed a Resolution of Intention to consider amendments to the Tehama County Zoning Ordinances governing poultry and small animal farms.²¹ By doing so, Tehama County has created an opportunity to develop a set of ordinances that accommodate these new regulatory, political, and social pressures, and which may set a precedent for other counties in California.

The remainder of Part I of this Article provides contextual background regarding the recent series of poultry-related regulations that have been enacted in California. Part II discusses Tehama County's Interim Urgency Ordinance and Resolution of Intent. Part III provides an overview of Tehama County's current poultry-related land use regulations. Part IV surveys the poultry-related land use regulations in Fresno County, Merced County, and Sonoma County—three of California's most productive egg and poultry counties. Part V of this Article distills the main components of the three model counties' poultry-related regulations and explores a set of variables and guidelines that Tehama County should consider if it chooses to amend its current zoning code. Finally, Part VI of this Article highlights how land use planning can play a useful role in facilitating the growth of local poultry industries during a time of both social and regulatory transformation.

B. Prop 2, AB 1437, and CDFA Regulations—Oh My!

Eggs in particular and the conditions in which chickens are maintained have drawn heavy focus from a variety of groups.²² For

¹⁹ SUSTAINABLE ECONOMIES LAW CTR., *Governor Brown Signs California's Neighborhood Food Act* (Sept. 29, 2014), <http://www.shareable.net/blog/governor-brown-signs-californias-neighborhood-food-act>.

²⁰ Audio recording: January 6, 2015 Meeting held by the Tehama County Board of Supervisors, *available at* http://tehamacountyca.iqm2.com/Citizens/Detail_Meeting.aspx?ID=4086 (Last Visited: Feb. 9, 2015) [hereinafter Audio Recording].

²¹ *Id.*

²² *See* Carswell, *supra* note 17.

example, consumer demand for eggs from free-range chickens is increasing dramatically, not only in the United States but in many other countries.²³ Conventionally-raised eggs are typically produced using “battery cages,” which afford each hen roughly sixty-seven to eighty-seven square inches of space—approximately the size of a piece of standard paper.²⁴ In 2008, the Humane Society of the United States (“HSUS”) set its sights on California and sponsored Proposition 2, a ballot measure that would impose new baseline requirements for the amount of space that each hen is provided (“Prop 2”).²⁵ On November 4, 2008, 63.5 percent of California voters approved Prop 2—more than any other ballot initiative in the State’s history—ensuring a dramatic shift in California’s egg industry.²⁶ The text of Prop 2 provides:

In addition to other applicable provisions of law, a person shall not tether or confine any covered animal, on a farm, for all or the majority of any day, in a manner that prevents such animal from:

- (a) Lying down, standing up, and fully extending his or her limbs; and (b) Turning around freely.²⁷

These requirements apply to any “egg-laying hen who is kept on a farm” and other animals.²⁸ Egg-laying hens include “any female domesticated chicken, turkey, duck, goose, or guinea fowl kept for the purpose of egg production.”²⁹ Farms are defined as including “land, building, support facilities, and other equipment that are wholly or partially used for the commercial production of animals or animal products used for food or fiber; and does not include live animal markets.”³⁰ Various exceptions apply, including the transportation of egg-laying hens, fairs and exhibitions, and during scientific or

²³ Sarina Locke, *Egg farmers calls for clarity in free range to begin investing*, ABC RURAL (Jun. 5, 2014), <http://www.abc.net.au/news/2014-06-06/free-range-chook-standards/5505482>.

²⁴ Carswell, *supra* note 17.

²⁵ *Id.*

²⁶ Twilight Greenaway, *What a Difference a Cage Makes: California’s Humane Egg Battle*, CIVIL EATS (Sept. 3, 2014), <http://civileats.com/2014/09/03/what-a-difference-a-cage-makes-the-battle-over-humane-egg-production-in-california-heats-up/>; Carswell, *supra* note 17.

²⁷ CAL. HEALTH & SAFETY CODE § 25990 (West, Westlaw through Ch. 2 of 2015 Reg.Sess.).

²⁸ *Id.* § 25991.

²⁹ *Id.*

³⁰ *Id.*

agricultural research.³¹ The new requirements took effect January 1, 2015, providing the domestic egg producers with seven years to prepare.³²

A violation of these provisions constitutes a misdemeanor and is punishable by a fine of up to \$1,000, or by imprisonment in the county jail for a period not to exceed 180 days, or both.³³ Although local law enforcement has authority to enforce Prop 2, significant questions have been raised regarding how police officers will go about actually monitoring compliance throughout the state.³⁴

Shortly after Prop 2 was passed, members of the legislature realized that the measure would cause many egg producers in California to go out of business.³⁵ Because many California Producers utilize cages and confinement units that do not meet Prop 2's requirements, becoming Prop 2 compliant requires those producers and many others to make a substantial investment in their infrastructures.³⁶ According to Prop 2, however, out-of-state producers are not required to comply, giving them a sharp competitive edge.³⁷

Approximately one-third of shell eggs that are consumed in California are imported from other states, including Iowa, Minnesota, Utah, Missouri, and Michigan.³⁸ The University of California Agricultural Issues Center produced an economic summary of the proposed effects of Prop 2 and determined that "any regulation or other factor that raises the costs of egg production in California relative to the cost of egg production in other states will strongly favor expansion of the share of out-of-state eggs in the California market."³⁹ Because "the proposed restrictions on production methods apply only to eggs produced in California, the regulations implied by Prop 2, or a

³¹ *Id.* § 25992.

³² *Id.* § 25990.

³³ *Id.* § 25993.

³⁴ Sasha Khokha, *Who's Watching the Henhouse to Enforce California's New Egg Law?*, KQED NEWS (Jan. 2, 2015), <http://ww2.kqed.org/news/2015/01/02/whos-watching-the-henhouse-to-enforce-californias-new-egg-law>.

³⁵ Carswell, *supra* note 17.

³⁶ DANIEL A. SUMNER, ET AL., UNIV. OF CAL. AGRIC. ISSUES CTR., ECONOMIC EFFECTS OF PROPOSED RESTRICTIONS ON EGG-LAYING HEN HOUSING IN CALIFORNIA, at iv (2008), *available at* <http://aic.ucdavis.edu/publications/eggs/egginitiative.pdf>.

³⁷ *See* Carswell, *supra* note 17.

³⁸ SUMNER, ET AL., *supra* note 36, at iv.

³⁹ *Id.*

similar initiative, would raise California producers costs by at least twenty percent relative to its out-of-state competitors.”⁴⁰

In July 2010, the California Legislature enacted AB 1437, which extends Prop 2’s mandate to out-of-state producers who wish to sell their eggs in California.⁴¹ Out-of-state producers largely opposed AB 1437, and took various steps to combat its requirements. For example, Representative Steve King of Iowa pushed to include the Protect Interstate Commerce Act as part of the 2013 Farm Bill package.⁴² The Act sought to prohibit a state from enacting production standards for food sold in the state if the food was produced or manufactured outside state lines.⁴³ The so-called King Amendment, however, was criticized as having potentially overbroad applications and ultimately stripped from the final version of the 2013 Farm Bill.⁴⁴

Additionally, a number of states joined the Missouri Attorney General in filing suit against California, contending that AB 1437 violated the Commerce Clause of the United States Constitution.⁴⁵ Missouri egg producers, who export approximately one-third of their eggs to California, would be required to make substantial modifications to their infrastructure in order to maintain their share of the California egg market.⁴⁶ However, a federal judge dismissed the suit in October 2014 finding that the states lacked standing to challenge AB 1437.⁴⁷

⁴⁰ *Id.*

⁴¹ See Wyatt Buchanan, *Law Extends State’s Egg Mandates to Imports*, SF GATE (Jul. 7, 2010), <http://www.sfgate.com/bayarea/article/Law-extends-state-s-egg-mandates-to-imports-3182388.php>.

⁴² Lauren Bernadett, *Proposed King Amendment Threatens Broad Spectrum of Food Issues*, FOOD SAFETY NEWS (Nov. 19, 2013), <http://www.foodsafetynews.com/2013/11/proposed-king-amendment-threatens-broad-spectrum-of-food-issues/#.VNafjEvaSZg>.

⁴³ Bernadett, *supra* note 42.

⁴⁴ See Collette Gillian, *Rep. Steve King Fails to Pass Amendment That Threatened Animal Protection*, EXAMINER (Jan. 27, 2014), <http://www.examiner.com/article/rep-steve-king-fails-to-pass-amendment-that-threatened-animal-protection>.

⁴⁵ David Pierson, *Egg Prices Likely to Rise Amid Laws Mandating Cage-Free Henhouses*, LA TIMES (Dec. 28, 2014), <http://www.latimes.com/business/la-fi-cage-free-eggs-20141229-story.html#page=1>. Missouri, Alabama, Iowa, Kentucky, Nebraska, and Oklahoma were the six states that filed suit challenging Prop 2’s application to eggs produced out-of-state. *Id.*

⁴⁶ Carla Hall, *Hens Win: Out-of-state Egg Farmers Must Comply with California Law*, LA TIMES (Dec. 6, 2014), <http://www.latimes.com/opinion/opinion-la/la-ol-egg-laying-hens-court-missouri-20141006-story.html>.

⁴⁷ Pierson, *supra* note 45.

The final move in the recent trio of egg-related regulations came from the California Department of Food and Agriculture (“CDFA”). On May 6, 2013, the CDFa adopted new Shell Egg Food Safety (“SEFS”) regulations and made amendments to existing egg marketing regulations under Title 3 of the California Code of Regulations.⁴⁸ Effective January 1, 2015, SEFS set specific requirements for the minimum floor space that each hen must be provided based on the number of hens in each enclosure.⁴⁹ For example, any enclosure containing nine or more birds must provide a minimum of 116 square inches *per hen*.⁵⁰ Enclosures containing a single hen must provide 322 square inches—roughly four to five times the space provided in battery cages.⁵¹ SEFS applies to out-of-state producers as well, providing that “no egg handler or producer may sell or contract to sell a shelled egg for human consumption in California if it is the product of an egg-laying hen that was confined in an enclosure that fails to comply with [these] standards.”⁵²

Unlike Prop 2, SEFS comes with a clear enforcement plan, tasking state farm inspectors with ensuring that these space requirements are met.⁵³ Despite being enacted shortly after Prop 2, the CDFa has stated that the SEFS seeks to require egg producers and egg handlers to comply with food safety requirements in order to reduce the risk of contamination in shell eggs intended for human consumption in California and to implement a labeling requirement that identifies the producer or distributor of the shell eggs and whether the shell eggs comply with SEFS requirements.⁵⁴

C. Egg Producers Scramble to Comply

For some, modifying existing facilities to the SEFS and Prop 2 standards involves removing partitions from existing battery cages in

⁴⁸ CDFa, *New Shell Egg Food Safety Regulations*, available at <http://ucanr.edu/sites/CESonomaAgOmbuds/files/174478.pdf> (last visited Feb. 6, 2015); CAL. CODE OF REGS. tit. 3, State of Cal. Office of Admin. Law 2013-0322-04 S (May 6, 2013), available at <http://www.eggs.org/pdf/ca20130701.pdf>.

⁴⁹ CDFa, *supra* note 48.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² CAL. CODE REGS. tit. 3, § 1350(d) (2014).

⁵³ Khokha, *supra* note 34.

⁵⁴ CAL. CODE OF REGS. tit. 3, *supra*, note 48.

order to make them larger.⁵⁵ Others are constructing entirely new buildings to accommodate the increased space.⁵⁶ For example, 1,000 egg laying hens now require a facility of over 800 square feet.⁵⁷ Despite the construction of new facilities, many farmers are seeing their production capacity drop significantly, operating in some cases with as many as 100,000 fewer birds.⁵⁸ And if Prop 2's requirement was applied nationwide, the financial ramifications would be substantial. A complete overhaul of the battery-cage system across the United States could cost as much as \$10 billion.⁵⁹ This figure is not unrealistic in light of a similar series of events taking place in the European Union.⁶⁰ In 2012, the European Union imposed regulations requiring the use of "enriched cages," which provide space requirements similar to the SEFS and reportedly cost EU producers over \$600 million in modifications.⁶¹

Facility modification and expansion are not the only increased expenditures that egg producers could face if they choose to stay in the industry. Some producers may forgo cages altogether, and opt for entirely cage-free systems. A cage-free operation involves barns where hens roam around the floor, or perch in elevated aviaries.⁶² Access to outside areas is usually provided and the hens are free to mill about at their leisure.⁶³ A cage-free system, however, requires higher feed costs, yields lower egg production overall, and poses higher bird mortality rates—over two times higher than caged birds.⁶⁴ Some

⁵⁵ See Greenaway, *supra* note 26.

⁵⁶ *Id.*

⁵⁷ Jane Wells, *How California Egg Rules Could Affect Everyone's Breakfast*, NBC NEWS (Jan. 2, 2015), <http://www.nbcnews.com/business/consumer/how-california-egg-rules-could-affect-everyones-breakfast-n278531>.

⁵⁸ Greenaway, *supra* note 26.

⁵⁹ Dan Flynn, *CA Law Likely to Increase Egg Prices, But What About Food Safety?*, FOOD SAFETY NEWS (Dec. 21, 2014), <http://www.foodsafetynews.com/2014/12/letter-from-the-editor-21/#.VNUzkEvaSZg>.

⁶⁰ *See id.*

⁶¹ *Id.*

⁶² PROMAR INT'L, IMPACTS OF BANNING CAGE FREE PRODUCTION IN THE UNITED STATES: A REPORT PREPARED FOR UNITED EGG PRODUCERS 2 (Aug. 2009), available at http://www.unitedegg.org/information/pdf/Promar_Study.pdf.

⁶³ *Id.*

⁶⁴ Cami Reister, *To Cage or Not to Cage Chickens*, MICHIGAN LIVE (Jun. 3, 2009), http://www.mlive.com/business/west-michigan/index.ssf/2009/06/to_cage_or_not_to_cage_chicken.html.

reports suggest that cage-free operations incur production costs at least twenty percent higher than cage housing systems.⁶⁵ Moreover, cages help keep chickens separate from their waste, leading to a reduction in diseases and viruses that can spread quickly throughout a free-ranging flock population.⁶⁶ There are other types of production systems to choose from as well.⁶⁷ For example, free-range or pastured eggs are produced from hens that predominately live outdoors, and who are fed grains in addition to being encouraged to forage for insects and wild plants.⁶⁸

Even with the variety of available systems, a decision as to whether investing in the required infrastructure is a worthwhile endeavor for a particular producer often comes down to a matter of scale. For example, “[t]he largest producer in the country is publicly traded Cal-Maine Foods, which boasts 32 million ‘layers,’ or hens that lay eggs.⁶⁹ According to recent reports from Cal-Maine Foods, the company is aiming to have one million hens located in Utah and Texas producing under California-compliant conditions.⁷⁰ For Cal-Maine, one million birds represents only three percent of their total flock—providing Cal-Maine with the resources and profit margins to shift some of its production facilities to California’s new requirements. As another example, Rosemary Farms, operating with approximately 1.3 million hens, has reported spending roughly six million dollars constructing new hen barns in South Dakota that meet California’s new requirements.⁷¹

For many California based and out-of-state producers, reaching compliance is simply not economically feasible.⁷² As a result of Prop 2, many producers will be forced to increase the price of their eggs, with some reports estimating that egg prices will increase between ten and forty percent during 2015.⁷³ Some small-scale producers will be

⁶⁵ SUMNER, ET AL., *supra* note 36, at iii.

⁶⁶ Reister, *supra* note 64.

⁶⁷ *Common Production Systems*, AM. EGG BD., <http://www.aeb.org/foodservice/why-eggs> (last visited Feb. 8, 2015).

⁶⁸ *Id.*

⁶⁹ Wells, *supra* note 57.

⁷⁰ *Id.*

⁷¹ Nick Welsh, *Egg Prices Spike as Prop. 2 Takes Effect*, SANTA BARBARA INDEPENDENT (Jan. 1, 2015), <http://www.independent.com/news/2015/jan/01/egg-prices-spike-prop-2-takes-effect/>.

⁷² See Carswell, *supra* note 17.

⁷³ Wells, *supra* note 57.

forced out of business altogether due to a number of factors—a lack of income to invest in new infrastructure, reduction in flock size, or a drastic reduction in profit margins.⁷⁴

Even for producers who have the will and the wallets to make the necessary modifications, there has been widespread uncertainty regarding what Prop 2 requires. One California egg producer decided to take Prop 2's requirements to the legal mat. According to its plain language, Prop 2 does not provide a specific minimum square footage requirement, or explicitly state that operations must ban cages altogether.⁷⁵ Although the SEFS regulations provide specific space requirements, nothing in the provisions references Prop 2 or ensures producers that adhering to the SEFS will render that producer Prop 2-compliant. In 2010, Fresno County-based commercial egg producer J.S. West & Co. invested \$3.6 million to construct a colony housing system, the first of its kind in the United States, which provides each hen 116 square feet—roughly twice the space provided per bird in conventional battery cages.⁷⁶ In order for J.S. West to bring its entire operation into Prop 2 compliance, however, it needed to spend an additional thirty million dollars.⁷⁷ Without a clear mandate on what Prop 2 compliance requires, that price tag included a dangerous gamble on whether the money would be well spent.⁷⁸

In December 2010, J.S. West filed a lawsuit seeking clarification regarding what type of housing is permissible according to Prop 2.⁷⁹ Time was an additional factor prompting J.S. West to file suit, as the company estimated that it would need approximately thirty-six months to obtain the necessary building permits and to complete construction before Prop 2 took effect on January 1, 2015.⁸⁰ HSUS argued in response that Prop 2 unequivocally requires the use of cage-free systems and that J.S. West's enriched colony system was not

⁷⁴ Neal Ungerleider, *California's New Egg Law*, KCET NEWS/THE NOSH (Jan. 5, 2015), <http://www.kcet.org/living/food/the-nosh/californias-new-egg-law.html>; Ching Lee, *Egg Marketers Await Beginning of New Regulations*, AGALERT (Dec. 3, 2014), <http://www.agalert.com/story/?id=7367>.

⁷⁵ Jonathan McCorkell, *Egg Farmers Ask to Join JS West in Lawsuit*, TURLOCK JOURNAL (Mar. 15, 2011), <http://www.turlockjournal.com/archives/8517/>.

⁷⁶ *Id.*

⁷⁷ Kate Campbell, *Egg Farmer Asks Court to Clarify Prop. 2 Rules*, AGALERT (Dec. 15, 2010), <http://www.agalert.com/story/?id=1648>.

⁷⁸ *Id.*

⁷⁹ McCorkell, *supra* note 75.

⁸⁰ Campbell, *supra* note 77.

compliant.⁸¹ Ultimately, J.S. West and HSUS agreed that the enriched cage facility complied with Prop 2's standards.⁸²

The war over a cage-free mandate, however, is far from over, and many interest groups continue to call for a complete ban on cage systems.⁸³ In 2012, HSUS and the United Egg Producers announced that they had reached an agreement regarding proposed federal legislation that sought to eliminate the use of battery cages nationwide.⁸⁴ Known as the Egg Products Inspection Act of 2012 (H.R. 3798), the act would have required egg producers to provide hens with enriched colony housing similar to what J.S. West installed, including perches, nesting boxes, and scratching areas, and would have imposed specific labeling requirements.⁸⁵ By 2029, the law would have mandated between 124 and 144 square inches of space for each hen, and would have prohibited the installation of any caging that could not be modified to meet those standards.⁸⁶ The bill died before enactment, but not without stirring up public controversy.⁸⁷ Many groups opposed the bill, arguing that a cage of any type is still a cage, and that the only policy worth implementation was a cage-free one.⁸⁸

Until the issue reaches a point of relative stability, many producers and investors may hold off on bolstering and bankrolling egg production altogether. In Australia, for example, free-range egg sales comprise forty percent of the egg market.⁸⁹ Despite the increase in demand, however, Australian egg producers are hesitant to spend money on converting their operations or building new structures for fear of new regulations regarding free-range practices and labeling

⁸¹ McCorkell, *supra* note 75.

⁸² *See id.*

⁸³ *About Cage-Free California*, THE HUMANE SOCIETY OF THE U.S., available at <http://cagefreeca.com> (last visited Feb. 8, 2015).

⁸⁴ Seann Lenihann, *Humane Society of the U.S. Cuts Deal with United Egg Producers to Seek Federal Law*, ANIMAL PEOPLE (Jul. 30, 2011), <http://www.animalpeoplenews.org/anp/2011/07/30/humane-society-of-the-u-s-cuts-deal-with-united-egg-producers-to-see-federal-law/>.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ H.R. 3798 (112th): Egg Products Inspection Act Amendments of 2012, GOVTRACK, available at <https://www.govtrack.us/congress/bills/112/hr3798> (last visited Mar. 30, 2015).

⁸⁸ *Animal Organizations Intensify Opposition to Egg Bill*, HUMANE FARMING ASS'N (Apr. 25, 2012), <http://hfa.org/blog/animal-organizations-intensify-opposition-to-egg-bill/>.

⁸⁹ Locke, *supra* note 23.

requirements.⁹⁰ Many people, including both consumers and producers, are uncertain as to what qualifies as a free-range egg.⁹¹ As a result, investment in the Australian egg industry has declined due to the near-certainty of forthcoming regulations and the uncertainty of what those regulations might require.⁹²

D. Finding Solutions at the Local Level

One of the most effective tools that local governments can use to address the many issues created by the new food renaissance is a land use ordinance.⁹³ At its basic core, zoning is a method by which a local government can control which land uses occur in different parts of a municipality.⁹⁴ Zoning districts are created based on the present and potential uses of the properties within the district, and restrictions are adopted to ensure that those uses occur uniformly and cohesively.⁹⁵ Common examples of zoning districts include: agricultural, residential, commercial, industrial, open space, and mixed use.⁹⁶

Naturally, zoning restrictions have a direct impact on agricultural practices within a certain municipality.⁹⁷ A burgeoning subset of the new food renaissance is the urban agriculture movement, which seeks to establish a wide range of farming activities in suburban areas in order to increase access to fresh and locally grown food.⁹⁸ Many urban agriculturalists have encountered impediments to their movement in local zoning codes.⁹⁹ For example, a residential zone may restrict commercial agriculture, which would render community gardens a prohibited endeavor.¹⁰⁰ Additionally, residential zoning may cap the

⁹⁰ *See id.*

⁹¹ *Id.*

⁹² *See id.*

⁹³ *See* LEIB, *supra* note 1, at 3.

⁹⁴ *Id.* at 28.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *See id.*

⁹⁸ *See* Wood et al., *Promoting the Urban Homestead Reform of Local Land Use Laws to Allow Microlivestock on Residential Lots*, *ECOLOGY LAW CURRENTS* 68 (2010), available at <http://elq.typepad.com/currents/2010/currents37-08-wood-2010-0907.pdf>.

⁹⁹ NINA MUKHERJI & ALFONSO MORALES, AM. PLANNING ASS'N., *ZONING PRACTICE*, *PRACTICE URBAN AGRICULTURE* 2 (Mar. 2010), available at <https://www.planning.org/zoningpractice/2010/pdf/mar.pdf>.

¹⁰⁰ *See id.*

number of egg-laying hens that can be kept on a property—or forbid the keeping of chickens altogether.¹⁰¹ A number of cities have implemented updates to their zoning codes in order to eliminate some of these unintended barriers to urban agriculture, including Milwaukee, Cleveland, Chattanooga, and Boston.¹⁰² Many of the regulations in these cities permit small-scale farming and the limited sale of produce grown in community gardens, while restricting heavy equipment usage, compost operations, and produce-sale hours.¹⁰³

Residential animal husbandry is following a similar path, with an increasing number of cities creating zones that permit the keeping of animals within city limits.¹⁰⁴ Chattanooga, Tennessee has implemented a specific urban agriculture district that permits dairies, stables, crops, and a range of livestock on twenty-acre-minimum lots.¹⁰⁵ The liberalization of chicken keeping in urban areas has been one of the most common land use trends, perhaps due in part to the relatively small size of hens and the moderate amount of space that they require.¹⁰⁶ As a result, many cities are considering revisions to their land use ordinances in order to accommodate these urban homesteading activities.¹⁰⁷

From a sheer land economy perspective, many of these social movements and their regulatory byproducts will put a premium on agricultural land. For instance, as a natural result of Prop 2, egg producers will require more space to produce the same amount of eggs. Additionally, many egg producers have been required to modify or expand existing facilities in order to accommodate more space for more birds and to maintain profit margins. But constructing new facilities is not a matter of walking outside and picking up a hammer. Local governments frequently require permits before building can take place, even for small-scale structures. In the event free-range operations become the requirement, producers nationwide will need to locate new space or completely overhaul their existing facilities.

How municipalities respond to these escalating issues—or whether they respond at all—will have a direct impact on the ability of

¹⁰¹ *See id.* at 6.

¹⁰² *Id.* at 5.

¹⁰³ *Id.* at 6.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Wood et al., *supra* note 98, at 69.

¹⁰⁷ *Id.*

agricultural industries to keep up with product demand, respond to consumer preferences, and to continue to be profitable enterprises.

The recent onslaught of poultry related regulations in California has teed up a prime opportunity for municipalities to reconfigure land use regulations pertaining to poultry. Tehama County, located in the Northern part of California, has risen to the occasion and enacted a temporary moratorium on the establishment or expansion of poultry operations until it can investigate whether amendments to its current zoning scheme are appropriate.¹⁰⁸ Tehama County has the potential to create a precedential set of land use regulations designed to facilitate the establishment of large-scale poultry operations, while also encouraging small-scale local food production. Considering that many of these large-scale poultry operations are looking to relocate or expand their operations to enhance their local presence, Tehama County also has the opportunity to revamp its land use regulations to encourage the relocation of large-scale facilities in Tehama County while also creating clear guidelines for their placement and operation. Also, many existing regulatory schemes fall short when it comes to regulating the gray area between the J.S. West' and the small-scale family farms that sell eggs at the local farmers markets.

There are a number of benefits and incentives that Tehama County can realize by controlling egg production and poultry-related activities within its borders at the local level, including economic, social, and public health benefits.¹⁰⁹ For example, Tehama County can adopt regulations that streamline the permitting process for certain producers, shortening the time it takes them to begin building new facilities, or selling their products at local farmers markets.¹¹⁰ Frequently, local producers gain popularity with the community and notoriety spreads to neighboring counties, providing small and medium scale producers with opportunities to grow their businesses.¹¹¹ Additionally, the range of poultry and egg production facility types is fairly broad. Poultry and egg enterprises range from backyard, free-range operations to large-scale integrated egg

¹⁰⁸ Rich Greene, *Tehama County Supervisors move to put controls on chicken-farming rush*, RED BLUFF DAILY NEWS (Jan. 6, 2015), <http://www.chicoer.com/general-news/20150106/tehama-county-supervisors-move-to-put-controls-on-chicken-farming-rush>.

¹⁰⁹ Shirley, *supra* note 2, at 512.

¹¹⁰ *See id.* at 526.

¹¹¹ *Id.* at 520.

production facilities, which utilize controlled-environment houses and machinery such as egg belts.¹¹² Local governments are in the best position to assess the needs and interests of their residents, to determine which facilities are suitable for their county, and to establish the appropriate land use zones for each production type.

II. TEHAMA COUNTY CALLS A TIMEOUT

A. The Interim Urgency Ordinance and Resolution of Intent

At the January 6, 2015, meeting of the Tehama County Board of Supervisors (“the Board”), the Board passed an Interim Urgency Ordinance (“IUO”) placing a temporary moratorium on “the establishment or expansion of poultry farms which keep, feed, or maintain more than [3,000] chickens, poultry, other fowl, on the premises in all zoning districts without a use permit.”¹¹³ The Board also passed a Resolution of Intention to consider amendments to the Tehama County Zoning Ordinances governing poultry and small animal farms.¹¹⁴ The IUO period will last for forty-five days and will apply to agricultural zoning districts and agricultural land use designations.¹¹⁵ Initially, the IUO sought to temporarily prohibit the establishment or expansion of operations maintaining more than 500 chickens. Following public comment, however, the board increased the number to 3,000 to alleviate unnecessary restriction on smaller operations.¹¹⁶

According to applicable provisions in the California Government Code, the IUO may be extended for ten months and fifteen days following certain notice requirements and a public hearing regarding the proposed extension.¹¹⁷ Following the first extension, the IUO may

¹¹² *Egg Marketing – A Guide for the Production and Sale of Eggs*, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (2003), <http://www.fao.org/docrep/005/y4628e/y4628e03.htm>.

¹¹³ Tehama County Board of Supervisors, Agenda for Tuesday January 6, 2015, available at

http://tehamacountyca.iqm2.com/Citizens/Detail_Meeting.aspx?ID=4086 (last visited: Feb. 9, 2015); see also Audio Recording, *supra* note 20.

¹¹⁴ Audio Recording, *supra* note 20.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ See CAL. GOV'T. CODE § 65858(a) (West, Westlaw through Ch. 2 of 2015 Reg.Sess.); see also *id.* § 65858(b) (providing another method by which an IUO may be adopted which requires “a four-fifths vote following notice pursuant to Section

be extended for an additional twelve-month period according to the same procedures.¹¹⁸ Any extension shall also require a four-fifths vote for adoption. An IUO may only be extended twice.¹¹⁹

The proposed fee for obtaining a permit during the IUO period is \$1,495, which is the standard permit fee in Tehama County.¹²⁰ If the activity to be permitted implicates the California Environmental Quality Act (“CEQA”), the permit fee raises to roughly \$1,800.¹²¹

B. “Big Poultry” and a New Place to Roost

In support of the IUO, the Tehama County Planning Department prepared a Staff Report (“Staff Report”), which briefly references Prop 2 and its imposition of criminal penalties for confining certain animals by preventing them from being able to turn around fully, lie down, stand up, and extend their limbs while encaged.¹²² The Staff Report contends that the passage of Prop 2 is directly responsible for a sharp rise in the number of applications submitted to the Tehama County Planning Department seeking to construct support buildings to house and maintain chickens for the purpose of commercial egg hatching and sales in the agricultural zoning regions.¹²³ In response to the proposed IUO, many interested parties’ comments referenced circulating rumors that a large-scale poultry operation had set its sights on Tehama County and planned to construct a major poultry production facility.¹²⁴ These rumors were echoed by a number of local news sources, and were ultimately confirmed during the January 6 meeting by the Tehama County Planning Commission.¹²⁵

65090 and public hearing, in which case it shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may by a four-fifths vote extend the interim ordinance for 22 months and 15 days.”)

¹¹⁸ See § 65858(a) (Westlaw).

¹¹⁹ *Id.*

¹²⁰ Audio Recording, *supra* note 20.

¹²¹ *Id.*

¹²² Planning Department of Tehama County, Staff Report, January 6, 2015 [hereinafter Staff Report], available at <http://tehamacountyca.iqm2.com/Citizens/FileOpen.aspx?Type=1&ID=1714&Inline=True> (last visited Mar. 12, 2015).

¹²³ *Id.*

¹²⁴ Greene, *supra* note 108.

¹²⁵ *Id.*

According to the County Planning Commission Director, Sean Moore, approximately one dozen operations have contacted the Department regarding the feasibility of relocating their operations to Tehama County.¹²⁶ Moore indicates that some of these operations have drafted plans that include buildings touting dimensions of 650 feet by 62 feet, which would house roughly 20,000 chickens each.¹²⁷ Moore also stated that a major reason for increased interest in Tehama County is the increase in demand from retailers like Trader Joe's and Whole Foods for locally grown and raised food products.¹²⁸

Currently, two of these operations are under construction in the more remote Southwest region of the county.¹²⁹ Moore's comments during the meeting emphasized that the current Tehama County Zoning Code provides for the combination of agricultural districts with residential areas.¹³⁰ Moore contended that the IUO and land use amendments are needed in order to prevent situations in which a large-scale poultry facility is constructed near conflicting land use zones that include schools, hospitals, and business centers.¹³¹

According to the Tehama County Planning Department's Staff Report there are additional justifications for calling a timeout on the establishment or expansion of poultry operations.¹³² Specifically, the Staff Report deemed the IUO imperative to provide the following:

- For the protection of the, health, safety, general welfare, and rural lifestyle of the Citizens of Tehama County;
- To address a recent rise in applications for support buildings to house and maintain chickens for the purpose of commercial egg hatching and sales in agricultural zones;
- To ensure that these types of uses are located in areas throughout Tehama County that are consistent with the Agricultural Land Use Designation policies and Zoning District regulations; and
- Finally, that the Tehama County General Plan (2009 – 2029) Policies, Objectives, and Goals are achieved.¹³³

¹²⁶ Audio Recording, *supra* note 20.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ Staff Report, *supra* note 122.

The Staff Report also asserts that the existing Tehama County zoning regulations are “deficient pertaining to poultry operations and lack clear, concise, and current zoning regulations for these types of land uses.”¹³⁴

Regarding environmental considerations, the Staff Report indicates that the lack of regulations regarding the keeping of chickens and other fowl creates “a risk of potentially significant environmental impacts which are not currently being analyzed or mitigated under the existing ordinance and poses an immediate risk to the health and safety and general welfare of the citizens of Tehama County.”¹³⁵

C. Out of the Frying Pan and Into the Fire?

By its basic terms, many aspects of the IUO are problematic and could create a host of issues, particularly if it is extended for the full two-year period. For example, the IUO is hopelessly vague in its usage of the terms “establishment or expansion,” failing to describe which activities would fall within either category.¹³⁶ If a farmer repairs one of his chicken coops in such a way that it allows more birds to inhabit the structure, does this constitute expansion? Or, is expansion tied to the number of birds that are kept and maintained on the property? Also absent from the IUO’s terms is any reference to a minimum lot size. The only restriction provided is the expansion or establishment of a poultry operation that keeps, feeds, or maintains more than 3,000 birds. As noted during the public comment portion, the maintenance of 3,000 chickens on one acre versus the maintenance of 3,000 chickens on ten acres will create dramatically different implications.

Additionally, during the January 6 meeting, Sean Moore emphasized that the IUO would not impact any existing poultry operations.¹³⁷ Existing poultry operations would be grandfathered in and would most likely not be subject to any future rezoning. Subdivision (c) of the IUO states: “This section shall not prohibit completion of construction of any building or structure for which a building permit was issued prior to the date of adoption of the Ordinance enacting this Section, provided that any modification or expansion of such building must

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ Audio Recording, *supra* note 20.

comply with subdivision (a).”¹³⁸ Without knowing what constitutes establishment or expansion, however, it is difficult to discern which uses are protected under the grandfathering provision.

The Staff Report makes specific mention of how critical it is to identify potential threats to the public welfare, health, and safety that may result if poultry operations remain unregulated.¹³⁹ Beyond these conclusory statements, nothing adequately describes or defines what these potential threats consist of, or the bases for identifying the threats. Notably, the State already provides certain regulations regarding groundwater pollution and environmental impacts of farming operations.

Perhaps the most controversial aspect of the IUO is the fee requirement that many Tehama County residents will have to pay.¹⁴⁰ The fee for obtaining a permit during the IUO period ranges from approximately \$1,500 to \$1,800. For a small outfit, this fee may represent a disproportionately high percentage of the profit margin the farmer receives from his or her poultry operation. In comparison, larger outfits like J.S. West would view the sub-\$2,000 fee as pocket change, and face little deficit in their profit margins as a result of obtaining the permit. Compared to the millions of dollars J.S. West invested in modifying its facilities to Prop 2’s standards, a few thousand dollars for a permitting fee and the ability to construct a new facility from the ground up may actually incentivize larger operations to relocate to Tehama County. Whether the fee should be proportionally tied to the number of acres or birds that the farmer intends to keep or maintain is an issue that should be explored.

III. TEHAMA COUNTY’S CURRENT POULTRY REGULATIONS

It is unsurprising that poultry keeping activities as a whole have been largely unregulated in Tehama County. According to the Tehama County General Plan, chicken and turkey populations “have dramatically declined from nearly 135,000 chickens in 1939 to the point where population estimates are not calculated by the local Ag Commissioner’s office due to today’s low number of poultry in the

¹³⁸ *Id.*

¹³⁹ Staff Report, *supra* note 122.

¹⁴⁰ Audio Recording, *supra* note 20.

County.”¹⁴¹ Cattle are the most common type of livestock in the County, with an estimated cattle population of roughly 68,000 head. Sheep are the second most prevalent livestock commodity at approximately 5,800 head. Hogs are the third largest livestock commodity at approximately 1,000 head.¹⁴² Overall, the leading commodities in Tehama County are walnuts, olives, and almonds.¹⁴³

An overview of Tehama County’s current land use ordinances reveals a number of inconsistencies and points of confusion regarding the regulations that apply to the keeping of chickens and similar fowl.

A. Agriculture Use Classifications

In general, the Tehama County Municipal Code defines agriculture as including “animal husbandry and the production of crops, including farming, dairying, pasturage, aquaculture, horticulture, floriculture, viticulture, apiaries, animal and poultry husbandry, and all uses customarily incidental thereto, but not including semi-heavy agriculture, heavy agriculture, or agricultural processing plants unless specifically provided”¹⁴⁴ The code utilizes a few key terms that encompass a broad spectrum of activities. For example, “agriculture” is defined as “animal husbandry and the production of crops . . . poultry husbandry, and all uses customarily incidental thereto”¹⁴⁵

The code further classifies various agricultural activities into three classifications based on type and intensity. Heavy Agriculture is defined exclusively as commercial slaughterhouses.¹⁴⁶ Semi-Heavy Agriculture includes any use defined under the final classification that is not subject to a limitation on the number of animals that may be kept on a property, hog ranches, fruit and vegetable packing and processing plants, feed yards, and any accessory agricultural uses.¹⁴⁷ Finally, Light Agriculture includes “[f]arms devoted to the hatching, raising,

¹⁴¹ PMC, TEHAMA COUNTY GENERAL PLAN, at 7.0-2 (Mar. 2009), *available at* http://www.tehamagp.com/documents/final_general_plan/Tehama%20County%20General%20Plan%20March%202009.pdf.

¹⁴² *Id.*

¹⁴³ CAL. DEP’T. OF FOOD AND AGRIC., CALIFORNIA COUNTY AGRICULTURAL COMMISSIONERS’ REPORTS 2012, at 16 (2012), *available at* http://www.nass.usda.gov/Statistics_by_State/California/Publications/AgComm/2012/cactb00.pdf [hereinafter CCACR].

¹⁴⁴ TEHAMA COUNTY, CAL., MUNICIPAL CODE, § 17.04.050 (2012).

¹⁴⁵ *Id.* § 7.04.050.

¹⁴⁶ *Id.* § 17.04.330.

¹⁴⁷ *Id.* § 17.04.490.

butchering or marketing on a small scale of chickens, turkeys or other fowl or poultry and eggs, . . . or other small animal farms of a similar nature; provided, that not more than one hundred turkeys per acre, in addition to brooding stock, shall be kept, fed, or maintained on a parcel of less than five acres.”¹⁴⁸ The Light Agriculture definition also provides that “[i]n all cases the permissible number of animals per acre shall be computed upon the basis of the nearest equivalent ratio.”¹⁴⁹

According to the IUO, this provision “allows for the keeping and feeding of chickens, poultry, or other fowl in the amount of 100 such animals per acre . . . on parcels less than five acres as a matter of right in many zoning districts, and without any discretionary review.”¹⁵⁰ It is worth nothing, however, that the specific language of the Tehama County Municipal Code references the keeping of “not more than one hundred *turkeys* per acre, in addition to brooding stock”¹⁵¹

B. The Agricultural Districts

In Tehama County, there are four main agricultural districts. The Land Use Element of the Tehama County General Plan provides a specific set of goals for each district.¹⁵² Accordingly, the zoning ordinances make references to the General Plan and these corresponding policies.

The AG-1 Agricultural/Upland District (“AG-1”) is intended to support grazing activities and to provide for areas of intensive and extensive agriculturally compatible uses.¹⁵³ Recreational uses, such as hunting and fishing, are also intended for this zoning area.¹⁵⁴ The primary land use in AG-1 is the grazing of livestock.¹⁵⁵ Secondary uses include tree and row crops, animal husbandry, and semi-heavy agricultural uses.¹⁵⁶ The minimum lot size is 160 acres.¹⁵⁷ Permits are required for enumerated activities, including, among other things,

¹⁴⁸ See *id.* § 17.04.340 (providing that other uses fall under Light Agriculture, including nurseries, orchards, greenhouses, trees and tree crops, vineyards, the grazing of cattle and similar animals, and animal breeding establishments).

¹⁴⁹ *Id.*

¹⁵⁰ Staff Report, *supra* note 122.

¹⁵¹ TEHAMA COUNTY, CAL., MUNICIPAL CODE, § 17.04.340(A) (2012).

¹⁵² PMC, *supra* note 141, at 2.0-1.

¹⁵³ TEHAMA COUNTY, CAL., MUNICIPAL CODE, § 17.04.340(A) (2012).

¹⁵⁴ *Id.* § 17.10.010.

¹⁵⁵ *Id.* § 17.10.020(A).

¹⁵⁶ *Id.* § 17.10.020(B).

¹⁵⁷ *Id.* § 17.10.050.

heavy agricultural uses, dairies and commercial cattle, and hog feed lots.¹⁵⁸ The temporary seasonal sale of agricultural products, like farmers' markets, also requires a permit.¹⁵⁹ Because one of the enumerated activities includes animal husbandry, presumably poultry related activities are authorized in this district.

The AG-2 Agricultural/Valley District ("AG-2") is designed to identify and retain lands suitable for the production of orchard, row, and field crops, as well as nurseries and greenhouses.¹⁶⁰ To the extent possible, nonagricultural uses should not take place where the land might otherwise be used for agricultural production.¹⁶¹ Other permissible activities in this district include grazing, animal husbandry, and semi-heavy agricultural uses that do not require a permit.¹⁶² Similar to AG-1, permits are required for, among other things, heavy agricultural uses, dairies, commercial cattle and hog feed lots, and agricultural support services for the surrounding area.¹⁶³ The minimum lot size is twenty acres.¹⁶⁴ Again, because one of the enumerated activities includes animal husbandry, presumably poultry related activities are authorized in this district.

The AG-3 Agricultural/El Camino District ("AG-3") is intended to identify lands that are suitable for rural residential living opportunities, small-scale orchard and tree crop production, and the limited keeping of animals.¹⁶⁵ This includes small-farm and hobby-farm agricultural production and agricultural supporting land uses.¹⁶⁶ Non-agricultural uses, to the extent permitted, should be limited to rural residential dwellings, agricultural supporting uses, and uses that do not impact agricultural and rural living within the district.¹⁶⁷ Some semi-heavy agricultural uses are authorized without a permit on parcels of twenty acres or larger.¹⁶⁸ Semi-heavy agricultural uses on parcels under twenty acres require a permit.¹⁶⁹ AG-3 differs from the prior two AG

¹⁵⁸ *Id.* § 17.10.030.

¹⁵⁹ *Id.* § 17.10.030(I).

¹⁶⁰ *Id.* § 17.11.010.

¹⁶¹ *Id.*

¹⁶² *Id.* § 17.11.020(B).

¹⁶³ *Id.* § 17.11.030.

¹⁶⁴ *Id.* § 17.11.050.

¹⁶⁵ *Id.* § 17.12.010.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* § 17.12.020(C).

¹⁶⁹ *Id.* § 17.12.020(B).

zones in that it permits “[r]ural residential one-family dwellings, including private garages, guest cottages, and accessory buildings and uses.”¹⁷⁰ Poultry and rabbit farming is expressly permitted, provided that any operation intended for commercial purposes is confined with enclosed structures on parcels of five acres or less.¹⁷¹

The AG-4 Agricultural/Capay District (“AG-4”) is intended to support the production of field and row crops with secondary uses including livestock grazing, animal husbandry, and semi-heavy agricultural uses that do not require a use permit.¹⁷² The minimum lot size is forty acres.¹⁷³ AG-4 also permits “[r]esidential uses accessory to agricultural and permitted commercial recreation operations” and “home occupations” such as cottage food operations.¹⁷⁴ Like the other AG zones, AG-4 requires permits for, among other things, heavy agricultural uses, dairies, and commercial cattle and hog feed lots.¹⁷⁵ Again, the reference to animal husbandry suggests that poultry-keeping activities are permissible in this district.

C. The Residential Districts

Tehama County currently utilizes five residentially oriented zoning districts. In the RE Residential Estate District (“RE”), permitted uses include one-family dwellings, crop and tree farming, and grazing.¹⁷⁶ Expressly prohibited uses include the raising of rabbits, dogs, fowl, or other animals for commercial purposes.¹⁷⁷ The minimum lot size is 10,500 square feet.¹⁷⁸ In the remaining residential districts, property owners are authorized to raise up to twelve hens per lot.¹⁷⁹ This is somewhat surprising considering that the R-4 is intended to promote “higher density residential uses,” as well as professional and institutional uses, and an overall urban residential design.¹⁸⁰

¹⁷⁰ *Id.* § 17.12.020(D).

¹⁷¹ *Id.* § 17.12.020(E).

¹⁷² *Id.* § 17.13.020(A), (B).

¹⁷³ *Id.* § 17.13.050.

¹⁷⁴ *Id.* § 17.13.020(C), (D).

¹⁷⁵ *Id.* § 17.13.030.

¹⁷⁶ *Id.* § 17.14.020(C).

¹⁷⁷ *Id.* § 17.14.020(B).

¹⁷⁸ *Id.* § 17.14.060.

¹⁷⁹ *Id.* § 17.16.020(B).

¹⁸⁰ *See id.* 17.22.010(A).

The A Animal Raising Combining District (“A”) applies to specified residential districts.¹⁸¹ Uses permitted in A overlays include all uses specified in the underlying “R” designation in addition to animal husbandry and livestock farming up to one horse, cow, or similar livestock per acre of land, and poultry and rabbit farming provided that such operations for commercial use are confined within enclosed structures.¹⁸² Individuals must obtain a permit, however, for the keeping of more livestock than permitted on parcels that exceed one acre.¹⁸³

Lastly, Light Agricultural activities are permitted on parcels of two acres or more on select commercial and industrial zones including C-1, C-2, C-3, M-1, and M-2.¹⁸⁴

D. Room for Improvement

Other than general references to animal husbandry, the agricultural zoning regulations do not provide any specific criteria or requirements for the maintenance of poultry operations. Additionally, the three-tiered classification system is vague, only referencing poultry activities under Light Agriculture, and classifying Semi-Heavy Agriculture as activities that are not subject to unit-based restrictions.

Regardless of discrepancies in the current land use scheme, the argument for revamping Tehama County’s poultry-related regulations is bolstered by the uniform permitting requirements that it already imposes on dairies, commercial cattle operations, and commercial hog operations. Moreover, the influx of inquiries from large poultry outfits interested in establishing facilities in Tehama County provides further justification for revising the existing poultry-related land use regulations.

IV. SURVEYING POULTRY LAND USE PRACTICES THROUGHOUT CALIFORNIA

A. Finding the Right Model

During the January 6, 2015 hearing, the Tehama County Planning Commission indicated that it had reviewed the land use ordinances

¹⁸¹ *Id.* § 17.48.010.

¹⁸² *Id.* § 17.48.020(C).

¹⁸³ *Id.* § 17.48.030(C).

¹⁸⁴ *Id.* § 17.08.010(D).

governing poultry activities currently implemented in a number of neighboring counties, including Shasta, Butte, Glenn, Mendocino, Humboldt, and Colusa.¹⁸⁵ Geographical proximity, however, may not be the best method for locating potential poultry land use regulation models. Greater consideration ought to be given to counties that have been hosting large-scale poultry producers for several decades—and who boast the leading gross poultry commodity value to provide credence to the success of their land use schemes.

According to the California County Agricultural Commissioners' Reports of 2012 ("CACR"), the top five California counties with the highest gross "poultry and product" commodity group value are:

- Fresno (\$738,708,000);
- Merced (\$453,790,000);
- Stanislaus (\$357,208,000);
- Riverside (\$82,466,000); and
- San Diego (\$73,577,000).¹⁸⁶

The San Joaquin Valley District is home to the highest grossing poultry production value counties in California.¹⁸⁷ Chicken is ranked as the twelfth largest agricultural production commodity based on 2012 statistics.¹⁸⁸ And when it comes to eggs, 84.3% of the total statewide commodity value is produced in only five counties:

- Merced (24.1%);
- Riverside (21.3%);
- San Diego (17.4%);
- San Bernardino (11.1%); and
- Kern (10.4%).¹⁸⁹

¹⁸⁵ Audio Recording, *supra* note 20.

¹⁸⁶ CCACR, *supra* note 143, at 6.

¹⁸⁷ *See id.* at 7 (explaining the San Joaquin Valley District is comprised of the following counties: Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare).

¹⁸⁸ *Id.* at 9 (indicating grapes are ranked first, with milk/cream and almonds placing second and third, respectively).

¹⁸⁹ *Id.* at 10.

Merced County is responsible for approximately one-fourth of the overall statewide egg commodity production value, producing 98,875,000 dozen eggs in 2012 alone. In 2012, eggs were ranked as the twenty-seventh largest agricultural production commodity.¹⁹⁰ Due to the prevalent and well-established poultry markets in these counties, Tehama County may benefit from utilizing their poultry-related ordinances as potential models if it chooses to craft new poultry-related regulations.

Although it is tempting to adopt the poultry-related ordinances from one of these top-producing counties, land use regulations are not one-size-fits-all. For instance, Fresno County is ranked first out of all fifty-eight California counties for the highest overall gross value of agricultural production, while Tehama County is ranked twenty-ninth—right in the middle.¹⁹¹ This suggests that there may be a greater emphasis placed on agricultural ordinances—and poultry in particular—in Fresno County than in Tehama County. Additionally, Fresno County and many of the other counties comprising the San Joaquin Valley District are home to numerous large-scale producers, such as J.S. West.

Based on the aforementioned statistics, three counties stand out as potentially providing suitable poultry land use models for Tehama County. Fresno County and Merced County are both leaders in poultry and egg production, and are home to both small-scale and large-scale producers. As a third candidate, Sonoma County is ranked sixteenth in overall gross value of agricultural production, excluding timber. Outside of the San Joaquin Valley District's group of heavy hitting poultry and egg producers, Sonoma County, lying in the Central Coast District,¹⁹² boasts the highest gross value of poultry production than any other county, followed closely by Sacramento County (\$43,162,000).¹⁹³ The gross value of poultry production in Sonoma County for 2012 was \$46,633,000, while Tehama County totaled less than \$295,003.¹⁹⁴ Based on these statistics, Sonoma County's poultry-related ordinances could serve as a helpful model that would allow

¹⁹⁰ *Id.* at 9.

¹⁹¹ *Id.* at 7.

¹⁹² *Id.* (explaining the Central Coast District consists of the following counties: Alameda, Contra Costa, Lake, Marin, Monterey, Napa, San Benito, San Francisco, San Luis Obispo, San Mateo, Santa Clara, Santa Cruz, and Sonoma).

¹⁹³ *Id.* at 7.

¹⁹⁴ *Id.*

Tehama County to open the door to larger poultry operations while staying attuned to the numerous small-scale poultry producers within its borders.

B. Fresno County

Fresno County has a number of zoning designations ranging from exclusive agriculture to suburban development. As the following survey illustrates, the Fresno County's ordinances are geared toward ensuring that poultry operations will not interfere with other agricultural or non-agricultural endeavors and that the larger facilities and operations are located a safe distance from residential structures. Additionally, the zoning code features specific regulations regarding the siting and operation of poultry facilities commonly referred to as Section 868.

The Exclusive Agriculture district ("AE") is designed to promote the general well-being of the agricultural community and to guard against encroachments from non-agricultural uses that would be injurious to agricultural endeavors. Subject to Section 868, "the maintaining, breeding, and raising of poultry of all kinds" is permitted without the need for approval.¹⁹⁵ Property owners must obtain a conditional use permit, however, for a number of agricultural activities.¹⁹⁶

The Limited Agricultural District ("LIA") is intended to regulate intensive agricultural uses in areas where they are harmful to less-intensive agricultural operations.¹⁹⁷ This area is also intended to reserve and hold lands for future urban usage.¹⁹⁸ Landowners in this area do not need to obtain a permit for keeping, raising, and breeding poultry provided that the number of birds does not exceed 500.¹⁹⁹ The raising of poultry for Future Farmers of America (FFA), 4-H, and other academic and learning organizations is also allowed.²⁰⁰ Some

¹⁹⁵ FRESNO COUNTY, CAL., ORDINANCE CODE § 816.1(B) (2011).

¹⁹⁶ *Id.* § 816.2.

¹⁹⁷ *Id.* § 817.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* §817.1(C).

²⁰⁰ *Id.* § 817.1(C). See *What is FFA*, FUTURE FARMERS OF AMERICA, <https://www.ffa.org/about/what-is-ffa> (last visited Apr. 29, 2015) (showing FFA is a student-led leadership development organization that prepares students for agricultural careers). See *About 4-H*, 4-H, www.4-h.org/about (last visited Apr. 29, 2015) (stating 4-H is a youth organization administered by the National Institute of Food and Agriculture, a subdivision of the United States Department of Agriculture, dedicated to engaging youth and advancing the field of youth development).

processing activities are permitted in the LIA District provided that it is restricted to agricultural products produced upon the premises.²⁰¹ Any processing or commercial uses not specifically allowed in this district are prohibited.²⁰²

The A-1 Agricultural District (“A-1”) provides for the development of unincorporated lands within Fresno County.²⁰³ The activities permitted and regulations imposed on this area are largely the same as the regulations imposed in the AE Exclusive Agricultural district.²⁰⁴

The A-2 General Agricultural District (“A-2”) is designed to protect areas requiring more protection than the A-1 District, and which do not require the protection of exclusive agricultural zoning.²⁰⁵ Subject to Section 868, a wide variety of poultry keeping activities are authorized in A-2 without the need for prior approval.²⁰⁶ The A-2 District is the first instance in which we see the imposition of setback standards. In A-2, “[a]ll structures housing livestock and poultry shall be located a minimum of forty (40) feet from all buildings used for human habitation, twenty-five (25) feet from side and rear property lines, and one hundred feet from front property lines.”²⁰⁷ These setback requirements do not apply to the pasturing of these animals.²⁰⁸

The Rural Residential District (“RR”) is intended to maintain rural or large lot residential home plots and to allow a limited variety of agricultural activities.²⁰⁹ In RR, landowners are authorized to keep “poultry for domestic use not to exceed five hundred (500) birds.”²¹⁰ Poultry activities associated with 4-H, FFA, and similar educational organizations are also authorized.²¹¹ The RR District is the first instance in which we see a parcel size-based restriction, prohibiting the keeping or maintaining of a poultry facility on lots smaller than 36,000 square feet, or roughly 0.83 acres.²¹² This District also provides setback restrictions, requiring that any structure incidental to poultry

²⁰¹ *Id.* § 817.1(N).

²⁰² *Id.* § 817.4.

²⁰³ *Id.* § 847.

²⁰⁴ *Id.* § 847.1.

²⁰⁵ *Id.* § 819.

²⁰⁶ *Id.* § 819.1(B).

²⁰⁷ *Id.* § 819.5(F)(3).

²⁰⁸ *Id.*

²⁰⁹ *Id.* § 820.

²¹⁰ *Id.* § 820.1(L).

²¹¹ *Id.*

²¹² *Id.*

keeping be located forty feet or more from structures used for human habitation, twenty-five feet from the rear and side lot lines, and 100 feet from the front lot lines.²¹³

The R-A Single Family Residential-Agricultural District (“R-A”) provides for the single family residential homes in a moderately rural environment with a minimum lot size of 36,000 square feet.²¹⁴ The R-A District permits the “maintaining, breeding and raising of poultry of all kinds for commercial use, subject to the provisions of 868, provided that no commercial poultry facility shall be kept or maintained upon a lot containing less than thirty-six thousand (36,000) square feet.”²¹⁵ Residents in this zoning district may maintain, breed, and raise up to five hundred birds, and FFA, 4-H and similar organizations may also conduct poultry raising activities. In no circumstance, whether commercial or domestic, shall a poultry facility be maintained on a lot less than 36,000 square feet.²¹⁶ Like previously discussed Districts, R-A requires setback distances of forty feet from any building used for habitation, twenty-five feet from the rear and side property lines, and one hundred feet from the front property lines.²¹⁷

Similarly, the RS Rural Settlement District (“RS”), is intended to allow small, unincorporated settlements hosting a mixture of uses, imposes poultry regulations virtually identical to the R-A District.

The R-1-A and R-1-AH Single Family Residential Districts (R-1-A/AH”) are designed to promote the development of single-family residences on lots of 20,000 square feet or more.²¹⁸ Without a permit, property owners are allowed to keep up to twenty-four hens, rabbits, or similar animals for domestic uses.²¹⁹ The same setback schematic employed in other Districts applies in R-1-A/AH as well.²²⁰ In the R-1 Single Family Residential District (“R-1”) featuring minimum lot sizes of 6,000 feet, poultry and rabbit raising is expressly prohibited.²²¹

The C-6 General Commercial District (“C-6”) authorizes retail poultry and rabbit sales, including incidental slaughtering and dressing

²¹³ *Id.* § 820.5(F)(3).

²¹⁴ *Id.* § 821.

²¹⁵ *Id.* § 821.1(F).

²¹⁶ *Id.* § 821.1(G).

²¹⁷ *Id.* § 821.5(F)(3).

²¹⁸ *Id.* § 822.

²¹⁹ *Id.* § 822.1(E).

²²⁰ *See id.* § 822.5(F)(3).

²²¹ *Id.* § 826.4(D.)

without prior approval.²²² Similarly, the M-3 Heavy Industrial District (“M-3”) authorizes animal and poultry slaughtering or packing after obtaining a conditional use permit.²²³

Perhaps the most attractive feature of Fresno County’s poultry regulation is its clear-cut regulations governing the siting and operation of large-scale poultry facilities (“Section 868”). Section 868 begins by stating that its regulations “are intended to address the nuisance and environmental problems created from inappropriately located and operated poultry facilities.” Section 868 “applies to all new poultry facilities and to conversions and additions to existing poultry facilities.” The introduction to Section 868 provides specific exceptions for certain poultry-related practices, including:

- (a) the raising or keeping of poultry for domestic use, (not to exceed 500 birds);
- (b) poultry for FFA, 4H, and similar organizations;
- (c) the repair, maintenance, replacement, and upgrading of legally existing poultry facilities provided such work does not increase the capacity of the facility; and
- (d) the conversion of legally existing poultry facilities, except for the conversion to ‘eating egg producing’ facilities or ‘pullets for eating egg production’ facilities, provided there is no increase in size and number of structures.²²⁴

The regulations differentiate between six types of poultry facilities. First, unconfined operations include “any poultry facility where birds are predominately raised in open pens with or without shades and are subject to the elements.”²²⁵ Second, semi-confined operations are “poultry facilities where birds are raised within fully enclosed climate-controlled structure[s] part of the time, but also are released into open pens at intervals.”²²⁶ Third, totally confined operations are defined as any “poultry facility where all birds are housed within fully enclosed climate-controlled structures and where no open pens are utilized.”²²⁷ Next, environmentally controlled facilities refer to poultry facilities that have “solid side and end walls with all openings sealed except for fan exists.”²²⁸ The final two facilities, eating egg producing and pullets

²²² *Id.* § 838.1(78)

²²³ *Id.* § 845.3(5).

²²⁴ *Id.* § 868.

²²⁵ *Id.* § 868(B)(1).

²²⁶ *Id.* § 868(B)(2).

²²⁷ *Id.* § 868(B)(3).

²²⁸ *Id.* § 868(B)(4).

for eating egg production each refer to facilities that produce eggs and pullets commercially for human consumption.²²⁹

The standards governing the location of egg and poultry operations aim to prevent the location of a facility near dwellings or other activities that are not compatible. The regulations refer to a windshed area and micro-windshed area, which measure and indicate certain distances in which impacts from the facility are tangible. Section 868 requires, among other things, that “[a]ll poultry facilities shall be set back a minimum of 50 feet from all property lines, ditches, canals or other waterways, and 100 feet from all public roads.”²³⁰ Additionally, poultry facilities are prohibited in instances where an established citrus or fruit orchard, vineyard, or vegetable farm would be located anywhere within the proposed facilities’ windshed area, with the exception of environmentally controlled and totally confined facilities.²³¹

Additional regulations require the grower/owner to prepare a management plan based on specific Management Guidelines for Poultry Facilities specifying the operational practices that will be required to control nuisances like flies, feathers, dust, and odors.²³² The Health Department must review and approve the plan prior to the issuance of permits from the Public Works & Development Services Department.²³³ The overall application must be completed on forms provided by the Public Works & Development Services Department and are required to include any information necessary for the County to determine whether the application meets applicable requirements.²³⁴

After issuance of a poultry permit, the County has ten days to send a notice to each property owner located within one-half mile from the proposed facility informing them of the permit issuance and providing them with the name and contact information for the facility operator.²³⁵

C. Merced County

²²⁹ *Id.* § 868(B)(5), (B)(6).

²³⁰ *Id.* § 868(C)(4).

²³¹ *Id.* § 868(C)(3).

²³² *Id.* § 868(D).

²³³ *Id.*

²³⁴ *Id.* § 868(E).

²³⁵ *Id.* § 868(G).

Merced County is the largest egg producer in California and contributes the second largest gross poultry production value in California.²³⁶ Predominately a dairy-producing county, Merced is home to 335 dairies and approximately forty-five poultry facilities.²³⁷ The poultry-related ordinances and regulations adopted in Merced County are similar to Fresno County's, but are packaged differently, relying primarily on charts to indicate which uses are permitted in each zone.

A unique feature of Merced County is its inclusion of poultry-related regulations in its animal code.²³⁸ This section is intended "to provide for the control and regulation of the use of land and structures for agricultural-commercial turkey, chicken, game bird, or other fowl operations."²³⁹ According to these provisions, a "[t]urkey ranch/farm" is defined as

an enterprise specifically established for the purpose of raising turkeys for sale for meat, for production of turkey eggs for sale to hatcheries or hatching on premises and selling the poults, for raising for sale as breeding stock, or any combination of the three, and does not include turkeys raised for family use only.²⁴⁰

Similarly, a "[c]hicken ranch/farm" is defined as

an enterprise specifically established for the purpose of raising poultry (chickens) for sale of meat, for the production of eggs for public consumption or baking and/or cooking use, for the production of eggs for sale to hatcheries or hatching on premises and selling the poults, for sale as breeding or replacement stock, or any combination of the four, and does not include chickens raised for family use only.²⁴¹

According to these regulations, a permit is required for "agricultural-commercial turkey, chicken, game bird, or other fowl operations" where they fall under any of the following categories:

1. New operations;

²³⁶ CCACR, *supra* note 143, at 7.

²³⁷ *Agricultural Waste Management Loan Program*, MERCED COUNTY, <http://www.co.merced.ca.us/index.aspx?NID=1240> (last visited Feb. 3, 2015).

²³⁸ MERCED COUNTY, CAL., CODE §§ 7.08.010-7.08.090 (2014).

²³⁹ *Id.* § 7.08.010.

²⁴⁰ *Id.* § 7.08.020(A).

²⁴¹ *Id.* § 7.08.020(B).

2. Enlargement of existing legal operations;
3. Re-establishment of prior existing legal operations which have not been in operation for a period of one (1) year or more as of the present date; [or]
4. The conversion of a turkey operation into a chicken operation, or vice versa.²⁴²

Prior to obtaining a permit, a resident must “submit to the County division of environmental health for approval, a wastewater management plan indicating how solid and liquid waste will be managed to prevent vector breeding, dust, odors, groundwater, and surface water pollution.”²⁴³

The animal code sets out approximately eight general requirements that apply to the keeping of poultry in confined operations, including cages.²⁴⁴ The central objectives of these regulations are to reduce odors and fly production, and to minimize the impact of dust and feathers.²⁴⁵ A comparable set of regulations applies to range-based poultry operations, which seek to accomplish the same nuisance-minimizing objectives.²⁴⁶ Regarding setback requirements, the animal code provides that any poultry-related building or structure must be located at least one-hundred-fifty feet from a public road, fifty feet from an interior property line, and fifty feet from a rear property line.²⁴⁷ In some instances, a setback of one hundred fifty feet may be imposed depending on the use of the adjacent property.²⁴⁸ Poultry-related facilities are also subject to specific setbacks from residential structures depending on the particular land use zone in which the property is located.²⁴⁹

Regarding land use zoning, Merced County features three main agricultural zones. Overall, some type of permit is required for most activities in each of the three agriculture zones, including agricultural processing plants, crop/orchard/vineyard production, and ranch/farm offices.²⁵⁰

²⁴² *Id.* § 7.08.030(A)(1)-(4).

²⁴³ *Id.* § 7.08.030(B).

²⁴⁴ *Id.* § 7.08.050.

²⁴⁵ *See id.* § 7.08.050.

²⁴⁶ *See id.* § 7.08.060.

²⁴⁷ *Id.* § 7.08.080.

²⁴⁸ *Id.* § 7.08.080.

²⁴⁹ *Id.* § 7.08.080.

²⁵⁰ *See id.* § 18.48.020 (describing the three types of permits that a landowner may be required to obtain: Plot Plan Review Permits, Administrative Permits, and Conditional Use Permits).

First, the A-1 General Agricultural Zone (“A-1”) is intended to provide areas for more intensive farming operations and agricultural commercial and/or industrial uses depending on the proximity to urban areas. The minimum parcel size is typically forty acres, but plots of twenty acres may be approved provided that agricultural production will not be impacted due to the size reduction.²⁵¹

The A-1-40 General Agricultural Zone (“A-1-40”) is designed to provide areas for maximum agricultural production and the greatest variety of farming activities, including commercial and industrial uses that depend on specific environmental conditions and that require substantial parcel sizes located far away from urban areas. The minimum lot size is forty acres.²⁵²

The A-2 Exclusive Agricultural Zone (“A-2”) is designed to allow for greatly expanded agricultural enterprises that need a substantial amount of land, requiring larger parcel size minimums of 160 acres. This Zone is also intended to provide open space, typically including wildlife habitat, foothill and wetlands locations, grazing and pastureland, and recreational sites.²⁵³

Merced County features seven different residential zones. The A-R Agricultural-Residential Zone (“A-R”), is designed to support rural residential development, hobby farming, and limited animal raising operations with less than a full range of urban services.²⁵⁴ Property owners in the A-R zone may keep up to five birds per acre parcel without obtaining a permit.²⁵⁵ The keeping of additional animals requires approval from the planning director, and commercial operations are not allowed.²⁵⁶ In the remaining residential zones, the raising and keeping of animals is authorized in all but one zone, subject to obtaining a permit, and is largely limited to household pets.²⁵⁷ Additionally, in five of those zones, the raising and keeping of animals is deemed “[a]n interim use only until urbanization occurs in the immediate area.”²⁵⁸

Property owners in the three agricultural zones and in the A-R Zone may keep up to two roosters without a permit. To keep more than two

²⁵¹ *Id.* § 18.02.010(B)(1),

²⁵² *Id.* § 18.02.010(B)(2).

²⁵³ *Id.* § 18.02.010(B)(3).

²⁵⁴ *Id.* § 18.08.010(B)(1).

²⁵⁵ *Id.* § 18.48.030.

²⁵⁶ *Id.* § 18.48.030.

²⁵⁷ *Id.* §§ 18.08.020, 18.48.030.

²⁵⁸ *Id.* § 18.08.020, n.1.

roosters, the property owner must comply with the Animal Confinement Facility regulations. The planning director has discretion to allow educational projects, like FFA and 4-H, in two of the remaining residential zones subject to certain standards.²⁵⁹

Like Fresno, Merced has enacted a general set of regulations for so-called Animal Confinement Facilities (“ACF Regulations”).²⁶⁰ The stated purpose for the ACF Regulations is to “provide for the design, construction, operation and management of animal confinement facilities in Merced County by regulations . . . deemed to be necessary for the protection of the quality of the environment and safeguarding the health, safety, and general welfare of the population.”²⁶¹ The ACF Regulations apply to animals that are “corralled, penned, or otherwise caused to remain in restricted areas for agricultural-commercial purposes where feeding is other than grazing for more than forty-five (45) days during the year.”²⁶² Overall, the ACF Regulations are tailored more toward cattle operations, but due to the many similarities between large-scale cattle facilities and large-scale poultry facilities, it is useful to evaluate the requirements that they impose.²⁶³ School projects, 4-H, fairs, and other educational endeavors, however, are exempt from the ACF Regulations.²⁶⁴ ACFs can only be located in the agricultural zones: A-1, A-1-40, and A-2.²⁶⁵

A main feature of the ACF Regulation is the use of a windshed map very similar to the one used in Fresno County, requiring specified setback distances for facilities.²⁶⁶ A bulk of the regulations deal with the siting of new facilities, requiring that any new facility be located more than one-half mile from the nearest boundary of any highway interchange, residentially designated property, and sensitive uses like hospitals, schools, parks, or wildlife refuges.²⁶⁷ New single-family residences that are not part of an existing ACF must be located at least one thousand feet from an existing ACF, unless the existing ACF owner provides written permission.²⁶⁸ These requirements also apply

²⁵⁹ *Id.* § 18.48.030, tbl. 18-21, n.4.

²⁶⁰ *Id.* §§ 18.48.01-18.48.09.

²⁶¹ *Id.* § 18.48.010.

²⁶² *Id.* § 18.48.020.

²⁶³ *See id.* § 18.48.020.

²⁶⁴ *Id.* § 18.48.020.

²⁶⁵ *Id.* § 18.02.020(A).

²⁶⁶ *Id.* § 18.48.040.

²⁶⁷ *Id.* § 18.48.040(B)(1)(a).

²⁶⁸ *Id.* § 18.48.040(B)(1)(b)(2).

to the expansion of any existing facilities where the expansion will result in a ten percent increase in total animal units.²⁶⁹ The addition of new structures requires either an administrative permit or a conditional use permit depending on the number of existing structures within the windshed area.²⁷⁰

The ACF also provides a number of general regulations that impose various requirements.²⁷¹ One of the regulations provides that any deceased animal must be removed from the site within three business days and disposed of at a licensed rendering facility or by other approved means.²⁷² Additionally, deceased animals “should be shielded from public view and not constitute a nuisance.”²⁷³

D. Sonoma County

Sonoma County has adopted agriculturally intensive zones as well as zones designed to facilitate cohesiveness between rural residential developments and moderately-intensive agricultural activities.²⁷⁴

The Land Intensive District (“LIA”) is designed to enhance and protect lands ideally suited for permanent agricultural use and to promote high production per acre.²⁷⁵ In this District, parcels larger than two acres are authorized to raise, feed, maintain, and breed farm animals.²⁷⁶ Where the farming involves animals that are continuously confined, including poultry, “which may result in concentrations of animal waste, the use shall be subject to issuance of a zoning permit based upon written approval of the Sonoma County Health Services Department and the applicable regional water quality control board of a confined animal management plan (“CAMP”).”²⁷⁷ The CAMP must include provisions for:

- (1) Containment of waste to the site; (2) Reuse or disposal of waste in accordance with health and/or water quality regulations; (3) Mitigation of potential water quality impacts due to surface runoff or waste; and (4)

²⁶⁹ *Id.* § 18.48.040(A)(1).

²⁷⁰ *See id.* § 18.48.040.

²⁷¹ *See id.* § 18.48.050.

²⁷² *Id.* § 18.48.050(A).

²⁷³ *Id.*

²⁷⁴ *See generally* SONOMA COUNTY, CAL., MUNICIPAL CODE § 26-02-140 (2013) (detailing the different agricultural uses permitted in Sonoma County).

²⁷⁵ *Id.* § 26-04-005.

²⁷⁶ *Id.* § 26-04-010.

²⁷⁷ *Id.* § 26-04-010(a).

Control of vectors.²⁷⁸

Section 26-04-010 also requires that any confined animal use that will be established within five hundred feet of a nonagricultural land use category must obtain prior approval and a use permit.²⁷⁹ It is worth noting that the language of this subsection would appear to allow the keeping and maintaining of chickens or similar fowl that will not be continuously confined, and without any flock size restrictions.

For parcels containing two acres or less, property owners may raise, feed, maintain, and breed, without a permit, “not more than one (1) of the following per twenty thousand (20,000) square feet of area:

- (1) Five (5) hogs or pigs,
- (2) One (1) horse, mule, cow or steer,
- (3) Five (5) goats, sheep or similar animals,
- (4) Fifty (50) chickens or similar fowl,
- (5) Fifty (50) ducks or geese or one hundred (100) rabbits or similar animals,
- (6) The above limitations may be modified by the planning director upon submittal of a proposal statement which describes the extent of the domestic farming use and which is signed by the owners of all property within three hundred feet (300) of the subject property. The planning director may require the applicant to obtain a use permit if the director determines that the project might be detrimental to surrounding uses . . .²⁸⁰

One acre equals 43,560 square feet. Under the 20,000 square foot limitation, a property owner is permitted to keep 2.178 units of animals. Accordingly, in Sonoma County, the maximum number of chickens or similar fowl that property owners on parcels of two acre or less may keep is roughly 217 birds. This provision allows property owners to seek exceptions from the planning director following submittal of written statements from each neighbor within 300 feet of the property.²⁸¹

In any instance, 4-H and FFA projects are permitted provided that the parcel is at least 20,000 square feet and the project advisor submits a letter of project authorization in advance.²⁸² The planning director

²⁷⁸ *Id.* § 26-04-010(a)(1)-(4).

²⁷⁹ *Id.* § 26-04-010(a).

²⁸⁰ *Id.* § 26-04-010(b).

²⁸¹ *Id.* § 26-04-010(b).

²⁸² *Id.* § 26-04-010(b)(7).

has discretion to require the applicant to obtain a use permit when the project may become a detriment to surrounding uses.²⁸³

Other uses requiring a permit in the LIA District include livestock feed yards, animal sales yards, processing agricultural products not grown or produced primarily on site or in the local area, slaughterhouses, and animal processing plants.²⁸⁴

The Land Extensive Agriculture District (“LEA”) is designed to protect lands best suited for permanent agricultural use and which are capable of relatively low production per acre of land.²⁸⁵ The minimum lot size in LEA is 1.5 acres.²⁸⁶ Similar to LIA, on parcels exceeding two acres in the LEA District, landowners may raise, feed, maintain, and breed poultry without obtaining a permit.²⁸⁷ Where the usage involves continuously confined animals, including poultry, the landowner must submit a CAMP and obtain approval from the county health services department and regional water quality control board. Proposed confined animal uses within 500 feet of nonagricultural uses must obtain a use permit.²⁸⁸ Also, similar to LIA, for parcels of two acres or more in the LEA District, landowners may raise, feed, maintain, and breed poultry subject to the same unit-per-20,000 square-foot requirements, i.e., fifty chickens or similar fowl, and fifty ducks or geese.²⁸⁹ The same provisions regarding requests for modifications from the planning director are available to LEA residents. FFA and 4-H activities are permitted without limitation on parcel size provided the parcel is at least 20,000 square feet. In some instances, the planning director for the educational program may be required to obtain a use permit where the project may be detrimental to surrounding uses.²⁹⁰

The LEA District requires a use permit for the “processing of agricultural products of a type grown or produced primarily on site or in the local area”²⁹¹ Animal processing plants and rendering

²⁸³ *Id.*

²⁸⁴ *Id.* § 26-04-020.

²⁸⁵ *Id.* § 26-06-005.

²⁸⁶ *Id.* § 26-06-030(b).

²⁸⁷ *Id.* § 26-06-010(a).

²⁸⁸ *Id.* § 26-06-010(a)(1)-(4).

²⁸⁹ *Id.* § 26-06-010(b)(1)-(6).

²⁹⁰ *Id.* § 26-06-010(b)(7).

²⁹¹ *Id.* § 26-06-020(g).

plants are also allowed subject to criteria set out in the Sonoma County General Plan.²⁹²

The Diverse Agriculture District (“DA”) protects land where the soil, climate, and water conditions support farming, but where small acreage, intensive farming, and part-time farming activities predominate. In this District, farming may not be the principal occupation of the farmer.²⁹³ The minimum lot size is ten acres, subject to certain enumerated exceptions that are tailored to the General Plan’s agriculture goals.²⁹⁴ The same ordinances that govern the keeping of poultry in LIA and LEA apply to DA, requiring permits based on certain factors such as whether the animal operation will be continuously confined and whether it will be established on a parcel greater or smaller than two acres.²⁹⁵ Activities that necessitate a permit include feed yards, yards for animal sales, preparing and processing agricultural products not produced on site or in the local area, slaughterhouses, and animal processing plants.²⁹⁶

The first noticeable deviation from the confined animal distinction and relativity to parcel size appears in the Resources and Rural Development District (“RDD”). The RDD district is designed to provide for the protection of lands required for environmental purposes like timber production and habitat. It is also intended to create low-density residential developments and recreational/visitor-serving uses.²⁹⁷ The minimum lot size in the RDD District is twenty acres in most cases, with an exception providing for 1.5 acre lots in situations involving clustering for residential developments.²⁹⁸ In RDD, property owners on two acres or less are subject to the same animal unit requirements as the LIA, LEA, and DA Districts, i.e., fifty chickens, ducks, geese, and similar fowl.²⁹⁹ On parcels exceeding two acres, however, animal industries are restricted to the raising, feeding, maintaining, and breeding of horses, cattle, sheep, goats, and similar animals.³⁰⁰ Landowners must seek approval for “[t]he raising, feeding, maintaining and breeding of poultry, fowl, rabbits . . . which are

²⁹² *Id.* § 26-06-020(h).

²⁹³ *Id.* § 26-08-005.

²⁹⁴ *Id.* § 26-08-030(b).

²⁹⁵ *Id.* § 26-08-010(a), (b).

²⁹⁶ *Id.* § 26-08-020.

²⁹⁷ *Id.* § 26-10-005.

²⁹⁸ *Id.* § 26-10-030(b).

²⁹⁹ *Id.* § 26-08-010(a).

³⁰⁰ *Id.* § 26-08-010(b).

continuously confined in and around barns, corrals and similar areas for other than domestic purposes.”³⁰¹ The incidental processing and/or temporary/seasonal sales or promotion of these animals is permitted as long as the animals were raised on site.³⁰² Permits are also required for any agricultural processing of products grown on site or produced in the immediate area, livestock feed yards, animal sales yards, and slaughterhouses.³⁰³

The Agriculture and Residential District (“AR”) is designed to provide for crops, animal husbandry, and rural residential uses.³⁰⁴ The minimum lot size is between one and one-half acres.³⁰⁵ The same standard applies for parcels of two acres or less, i.e., fifty chickens, ducks, geese, or similar fowl per 20,000 square feet.³⁰⁶ Parcels exceeding two acres may be used for keeping horses, cattle, sheep, goats, and similar animals.³⁰⁷ A permit is required for “[t]he raising, feeding, maintaining and breeding of poultry [and] fowl . . . which are continuously confined in and around barns, corrals and similar areas for other than domestic purposes,” and for the “[i]ncidental processing of such animals which are raised on site.”³⁰⁸ Some of the heavier agricultural uses, like slaughterhouses, feed lots, and animal rendering plants, are not authorized with or without a permit in AR, but the planning director has discretion to approve non-residential uses that are similar or compatible in nature to other uses described in AR.³⁰⁹

Last, the Rural Residential District (“RR”) is intended to preserve rural characteristics and amenities of lands that are ideal for low-density residential development, and where rural residential uses are to take precedence over permitted agricultural uses. This District categorically excludes agricultural service uses.³¹⁰ The minimum lot size is 20,000 square feet, and 1.5 acres in some instances.³¹¹ Landowners are permitted to keep fifty chickens, ducks, geese, or similar animals per 20,000 square feet on parcels containing five acres

³⁰¹ *Id.* § 26-10-020(d).

³⁰² *Id.* § 26-10-020(d).

³⁰³ *Id.* § 26-10-020.

³⁰⁴ *Id.* § 26-16-005.

³⁰⁵ *Id.* § 26-16-030(b).

³⁰⁶ *Id.* § 26-16-010(f).

³⁰⁷ *Id.* § 26-16-010(g).

³⁰⁸ *Id.* § 26-16-020(a).

³⁰⁹ *Id.* § 26-16-020(w), (x).

³¹⁰ *Id.* § 26-18-005.

³¹¹ *Id.* § 26-18-030(b).

or less. Where the parcel size exceeds five acres, the landowner may keep additional chickens or other fowl by obtaining a use permit.³¹²

Among the residential designations, the keeping of poultry is authorized only in the Low Density Residential District (“R1”), subject to obtaining a permit, and is limited to the raising, feeding and maintaining of no more than six chickens. Additionally, a chicken coop and a secure enclosure which prevents animal trespass must be constructed, and “[t]he coop and pen shall be located in the rear yard of the property and maintained in a sanitary condition.”³¹³

V. SETTING A PRECEDENT IN TEHAMA COUNTY

A. *Providing Specific Regulations for Large-Scale Operations*

Perhaps the most standout aspect of both Fresno and Merced Counties’ poultry ordinances is the use of a single set of regulations to govern large-scale facilities. If Tehama County wishes to make its land use regulations more suitable for large-scale companies, it should consider adopting a similar universal regulation. Doing so would also enable Tehama County to enact clear guidelines and safeguards to protect residents and existing agricultural operations from coming into conflict with new large-scale operations. It would also provide companies interested in setting up shop in Tehama County with a clear set of instructions outlining what is required.

There is a slight difference in scope between Fresno County’s Section 868 and the ACF Regulations established in Merced. By their very nature, the ACF Regulations apply to confined animal operations where feeding is conducted by a non-grazing method for forty-five days or more during the year.³¹⁴ Conversely, Section 868 is tailored specifically to poultry operations, applies to both confined and unconfined operations and clearly covers both egg producing operations and meat-bird producing operations.³¹⁵ Section 868 clearly states the activities to which it does not apply, i.e., “the raising or keeping of poultry for domestic use, (not to exceed 500 birds).”³¹⁶

The ACF Regulations also clearly provide limitations on the zoning districts in which they may be located, restricting facilities to the three

³¹² *Id.* § 26-18-010(d).

³¹³ *Id.* § 26-20-005(t).

³¹⁴ MERCED COUNTY, CAL., CODE § 18.48.020 (2014).

³¹⁵ FRESNO COUNTY, CAL., ORDINANCE CODE § 868(B) (2011).

³¹⁶ *Id.* § 868.

agricultural zones and the most agriculturally oriented residential zone.³¹⁷ Conversely, Section 868 omits any reference to zoning districts.³¹⁸

Unlike the ACF Regulations, Section 868 requires the grower/owner to submit a management plan based on a set of guidelines detailing the mitigation efforts to be used and requiring approval from the Health Department prior to issuance of a permit from the Public Works & Development Services Department.³¹⁹ Conversely, the ACF Regulations provide more specific operational guidelines than Section 868, requiring the removal of dead animals within a specified time frame and requiring the facility to minimize nuisances caused by mosquitoes, flies, odors, and dust.³²⁰ The ACF Regulations also require that storm water that has come into contact with manure and other wastewater must be maintained onsite and disposed of appropriately.³²¹ Section 868 does not include either of these provisions.³²²

Both Fresno County and Merced County utilize a windshed map in order to delineate the setback requirements for the facility in relation to residential uses, schools, hospitals, etc.³²³ A windshed map depicts “the wind flow pattern on the downside of an existing building.”³²⁴ The locational criteria or siting standards employed by both regulatory schemes are similar, striving to ensure that non-compatible uses are kept out of the windshed area. Section 868 prohibits the permitting of certain types of facilities when residences or other crop production activities would be located within the windshed area.³²⁵ The ACF Regulations ensure that poultry facilities are located an appropriate distance from wildlife areas, residences, and other sensitive uses.³²⁶

Finally, both schemes make some provision for the conversion or modification of existing facilities. Section 868 states that its provisions

³¹⁷ MERCED COUNTY, CAL., CODE § 18.48.030 (2014).

³¹⁸ See FRESNO COUNTY, CAL., ORDINANCE CODE § 868 (2011).

³¹⁹ *Id.* § 868(D).

³²⁰ MERCED COUNTY, CAL., CODE § 18.48.050(A) (2014).

³²¹ *Id.* § 18.48.050(E).

³²² FRESNO COUNTY, CAL., ORDINANCE CODE § 868 (2011).

³²³ See *id.* § 868, Diagram A; MERCED COUNTY, CAL., CODE § 18.48.040 (2014).

³²⁴ Charles Goan, *Site Selection Factors for New Poultry Facilities*, UNIV. OF TENN., <https://utextension.tennessee.edu/publications/Documents/SP592.pdf> (last visited Feb. 8, 2015).

³²⁵ FRESNO COUNTY, CAL., ORDINANCE CODE § 868(C) (2011).

³²⁶ MERCED COUNTY, CAL., CODE § 18.48.040 (2014).

“shall apply to all new poultry facilities and to conversions and additions to existing poultry facilities”³²⁷ Exempted from this requirement, however, is “the conversion of legally existing poultry facilities, except for the conversion to ‘eating egg producing’ facilities or ‘pullets for eating egg production’ facilities, provided there is no increase in size and number of structures.”³²⁸ The ACF Regulations’ requirements regarding expansions and modifications are more specific. A permit is required for “the expansion of an existing facility with a maximum (10) percent increase in the number of animal units.”³²⁹ A new facility or the expansion of an existing facility requires a permit, with the level of permit that is required is based on the number of existing buildings within the windshed area.³³⁰

To strike a balance between these schemes, Tehama County could use Section 868 as the initial framework and draw from some of the specific regulations incorporated in the ACF Regulations. Section 868 is broader in scope, encompassing both confined and unconfined operations. Ensuring a mechanism for regulating unconfined, free-range operations is important given the continued push for a free-range mandate from several interests groups. Also, Section 868 requires growers/owners to submit a management plan, which would provide the Tehama County Planning Department with the ability to ensure that any health and environmental concerns are addressed appropriately prior to permitting the facility. Adopting some of the more conduct-specific regulations utilized in the ACF Regulations would allow Tehama County to set clear policy standards that apply to producers universally. Regardless of the framework it chooses, Tehama County would benefit from utilizing a windshed map to guide the siting of facilities so as to ensure that they would not be placed close to conflicting uses, like schools and residential areas.

B. Implementing a Permitting Scheme

In the event Tehama County chooses to forgo a universal poultry regulation like Section 868 and the ACF Regulations, it should develop a thorough permitting scheme that incorporates a number of factors. Even if Tehama County does adopt a large-scale poultry

³²⁷ FRESNO COUNTY, CAL., ORDINANCE CODE § 868 (2011).

³²⁸ *Id.*

³²⁹ MERCED COUNTY, CAL., CODE § 18.48.040(A)(1) (2014).

³³⁰ *Id.* § 18.48.040(A)(2)-(3).

regulation, it may still wish to provide permitting requirements for mid-size and/or small-scale operations that fall outside the scope of a universal large-scale regulatory scheme. For example, Tehama County could restrict application of a universal large-scale regulatory scheme to operations that maintain a certain flock size, likely in the tens of thousands. This would ensure that small-scale producers would not be saddled with the same regulatory pressures, which could very well end up driving them out of business.

1. The Purpose of Underlying Zoning District

Whether a particular area is geared more toward agricultural activity or residential uses will have a substantial impact on the extent to which Tehama should permit poultry-related uses. Tehama County currently utilizes four agricultural zoning districts and a range of residential districts of varying densities.³³¹ In Merced County, poultry-keeping activities are virtually restricted to the agricultural districts, whereas in Fresno County the maintaining of poultry is not district-specific, but instead primarily tied to flock size.

In Fresno County, for example, the Exclusive Agriculture district is highly agriculture-centric and facilitates the most intensive agricultural practices.³³² In this zone, “[t]he maintaining, breeding, and raising of poultry of all kinds” is permitted.³³³ In the Rural Residential district, however, a flock size limitation of 500 birds and a minimum lot size of 36,000 square feet are imposed.³³⁴ As this example demonstrates, the underlying land use zones can also help ensure that large-scale poultry activities are restricted to zoning districts that serve the most agriculturally intensive uses. This will provide sufficient distance from higher-density residential and suburban centers—policy concerns underscored by the Tehama County Planning Department.

The extent to which a county desires to facilitate the comingling of agricultural and residential uses is also important to consider. For example, in Merced County, there are three main agricultural districts, one hybrid agricultural residential district, and a number of residential districts with increasing housing densities. In Fresno County and

³³¹ See generally TEHAMA COUNTY, CAL., MUNICIPAL CODE, tit. 17 (2012).

³³² See FRESNO COUNTY, CAL., ORDINANCE CODE § 816 (2011).

³³³ See *id.* § 816.1(B) (stating that poultry raising activities are permitted subject to the regulations set forth in Section 868 governing the siting and operation of poultry facilities).

³³⁴ *Id.* § 820.1(L).

Sonoma County, however, many blended zones are used, in which a combination of residential and moderate to light agricultural activities are permitted.

The division between agricultural activities and residential activities is not as clear in Tehama County. One of the central features of Tehama's scheme is a three-tiered classification of agricultural activities. Light Agriculture is defined as including "farms devoted to the hatching, raising, butchering or marketing on a small scale of chickens, turkeys or other fowl or poultry and eggs . . . provided that not more than one hundred turkeys per acre, in addition to brooding stock, shall be kept, fed, or maintained on a parcel of less than five acres."³³⁵ If Tehama wants to adopt more specific regulations governing the keeping of poultry, like Sonoma County, then it may need to strike this use from the definition of Light Agriculture so that it can be addressed in a new provision.

Noticeably absent from the bulk of Tehama County's ordinances governing the four main agricultural districts are references to poultry activities. In fact, the only instance in which a direct reference to poultry activities is made is under the AG-3 Agricultural District, which expressly permits poultry and rabbit farming provided that any commercial operation is confined with enclosed structures on parcels of five acres or less.³³⁶ Additionally, the keeping of fowl is expressly permitted in only one of the residential districts, the Residential Estate District, and is limited to non-commercial uses.³³⁷ The remaining residential lots permit the raising of up to twelve hens.³³⁸ Some of the districts reference light agricultural activities.

In comparison with Fresno County, Merced County, and Sonoma County in particular, Tehama County's current land use regulation of poultry activities is underdeveloped. The ordinances fail to utilize cohesive parameters, such as flock size restrictions, setback requirements, or relationship to parcel size, and largely fail to distinguish between confined and unconfined operations. Implementation of these variables may help Tehama County achieve its policy goals of promoting small-scale poultry production, production for personal use, and facilitating expansion of its poultry industry.

³³⁵ TEHAMA COUNTY, CAL., MUNICIPAL CODE, § 17.04.340 (2012).

³³⁶ *Id.* § 17.12.020(E).

³³⁷ *Id.* § 17.14.020(B).

³³⁸ *Id.* §§ 17.16.020(B), 17.18.020(A), 17.18.030, 17.20.020(A), 17.22.020(A).

2. *Confined versus Unconfined*

Tehama County's current zoning regulations governing poultry may benefit from incorporating more distinctions between confined and unconfined operations. Currently, the AG-3 district provides that commercial poultry activities must be confined with enclosed structures on parcels of five acres or less, while the A combining district requires commercial poultry activities to be confined.³³⁹ If Tehama County is concerned about the impact of confined poultry operations on nearby nonagricultural uses, it should consider employing permitting requirements similar to Sonoma County's. Both Merced County and Sonoma County distinguish between confined versus unconfined poultry operations.³⁴⁰ In Merced County, regulations are tailored to suit the respective concerns raised by confined and unconfined poultry operations, while in Sonoma County, parcels containing two acres or more, any confined operation must obtain a permit and submit a confined animal management plan.³⁴¹ By distinguishing between confined and unconfined operations, Tehama County can ensure that the particular impacts created by either operation, i.e., noise or odor, will be addressed and mitigated appropriately.

Additionally, many of the public comments in response to Tehama's IUO indicated that free-ranging poultry activities are prevalent throughout the county.³⁴² Tehama County has the option of only imposing a permit requirement for confinement-based operations while leaving free-range activities unregulated. This would address Tehama County resident's concern that they would be unable to continue their operations due to the burden of permitting fees.³⁴³ Additionally, imposing permitting requirements for confined facilities will be especially important if Tehama County forgoes adopting a universal regulation for large-scale poultry facilities, like Section 868 and the ACF Regulations.

In comparison, Fresno County's land use ordinances are less concerned with whether an operation is confined or unconfined.

³³⁹ *Id.* §§ 17.12.020(E), 17.48.020(C).

³⁴⁰ *See* MERCED COUNTY, CAL., CODE §§ 7.08.050(A)-(H), 7.08.060(A)-(H) (2014); SONOMA COUNTY, CAL., MUNICIPAL CODE § 26-04-010(a)(1)-(4) (2013).

³⁴¹ *See* MERCED COUNTY, CAL., CODE §§ 7.08.050(A)-(H), 7.08.060(A)-(H) (2014); *see* SONOMA COUNTY, CAL., MUNICIPAL CODE § 26-04-010(a)(1)-(4) (2013).

³⁴² Audio Recording, *supra* note 20.

³⁴³ *Id.*

Section 868, however, requiring a permit for operations exceeding 500 domestic fowl, applies to both confined and unconfined operations.³⁴⁴ Should Tehama County forgo a “confined versus unconfined” variable like Sonoma County’s, it should consider adopting an omnibus model like Section 868 that encompasses both confined and unconfined operations. However, because many of the environmental and public health concerns associated with poultry raising activities are the product of confined operations, Tehama County may wish to regulate them on a district-by-district level.³⁴⁵

3. Flock Size Restrictions

Fresno County uses a simple flock size restriction policy, which is incorporated as part of Section 868, governing the siting of poultry facilities.³⁴⁶ According to Section 868, residents may keep up to 500 chickens for domestic use without needing to obtain a permit.³⁴⁷ Noticeably, the flock size restriction is not correlated to a parcel size, or based on whether the poultry will be confined. Instead, as the agricultural districts change from intensive uses to more diverse uses with smaller minimum parcel sizes, setback requirements are employed to ensure that poultry are kept at a reasonable distance from buildings intended for human habitation.³⁴⁸

Flock size restrictions are not a main feature of Merced County’s animal code regulations or zoning scheme. Rather, ACF Regulations apply to any instance in which animals are confined for a period of 45 days or more during the year, and the animal code omits any reference to a limit on the number of birds that may be maintained for commercial chicken or turkey farms.³⁴⁹ ACFs may only be located in the agriculturally-oriented zoning districts.³⁵⁰ Accordingly, it would appear that any entirely free-range poultry operation in which the birds are confined for less than 45 days per year would not be subject to the ACF Regulations. Merced’s only flock size restriction pertains to

³⁴⁴ See FRESNO COUNTY, CAL, ORDINANCE CODE § 868 (2011).

³⁴⁵ KIP WILEY ET AL., CONFINED ANIMAL FACILITIES IN CALIFORNIA 14-15 (2004), available at <http://sor.senate.ca.gov/sites/sor.senate.ca.gov/files/%7BD51D1D55-1B1F-4268-80CC-C636EE939A06%7D.pdf>.

³⁴⁶ See FRESNO COUNTY, CAL., ORDINANCE CODE § 868 (2011).

³⁴⁷ *Id.*

³⁴⁸ *Id.* § 819.5(F)(3).

³⁴⁹ See MERCED COUNTY, CAL., CODE § 18.48.020 (2014).

³⁵⁰ See *id.* § 18.02.020(A).

roosters, providing that residents in the agricultural zones must obtain a permit to keep more than two roosters.³⁵¹

In comparison with Fresno and Merced, Sonoma County provides more detailed flock size restrictions. The core of Sonoma County's flock size restriction regulations are based on the size of the parcel and whether the flock will be confined.³⁵² More specifically, landowners in the agricultural zoning districts may keep, without a permit, up to fifty chickens or fowl per 20,000 acres of land on parcels of two acres or less. This restriction amounts to a cap of 434 birds on the two-acre parcel, or 217 birds per acre. Additionally, the requirement applies regardless of the manner in which the poultry are kept, i.e., confined versus pastured.

For parcels exceeding two acres, property owners who wish to use continuously confined poultry operations must obtain a permit.³⁵³ The permitting process involves submission of a Confined Animal Management Plan, which must be approved by the Sonoma County Health Services Department and the regional water quality control board.³⁵⁴ Like Merced County, it would appear that the maintenance of predominately outdoor free-range chickens is not subject to restrictions on parcels consisting of two acres or more. For its residentially-oriented zoning districts, Sonoma County permits the keeping of chickens on parcels of two acres or less subject to the same unit restrictions, but requires a permit for the keeping of poultry in confined operations. The ordinances do not appear to require submission of a Confined Animal Management Plan as part of the permitting process.

The discrepancy between forgoing a flock size restriction in Fresno and Merced Counties compared to Sonoma County's pervasive utilization of this variable is likely correlated to the fact that Fresno and Merced Counties are home to more large-scale egg and poultry operations, with Merced County boasting the highest egg production across the state. Sonoma County's flock size restrictions are much more detailed because Sonoma is home to a more diverse array of industries and residential communities, and likely experiences greater incidences of poultry being maintained for domestic purposes. According to the public comments submitted in response to the IUO,

³⁵¹ *Id.* § 18.48.030, Table 18-21, fn. 4.

³⁵² SONOMA COUNTY, CAL., MUNICIPAL CODE § 26-04-010(b) (2013).

³⁵³ *Id.* § § 26-04-010(a)(1)-(4).

³⁵⁴ *Id.* § 26-04-010(a)(1)-(4).

many residents in Tehama County want to ensure that they will preserve the ability to maintain small to mid-size flocks on their property. Accordingly, Sonoma County's model may be a good fit for Tehama County. By only capping flock size on smaller parcels, the planning department can oversee the keeping of poultry in the higher-density and more residentially-oriented areas while simultaneously unburdening the maintaining of large to mid-size flocks on larger parcels where there are fewer concerns regarding the health and safety implications. This will be especially important if Tehama County forgoes implementation of universal regulations such as Section 868 and the ACF Regulations.

4. Relationship to Lot Size

Using a lot size restriction or correlative variable is an effective way to regulate the number of birds that may be maintained on a particular parcel. For example, Fresno County utilizes lot size restrictions in districts that permit higher incidences of rural usage, such as the Rural Residential District and the R-A Single Family Residential-Agricultural District. In these districts, poultry related activities conducted on lots smaller than 36,000 square feet, or roughly 0.83 acres, are prohibited.³⁵⁵ In the high-density, single-family residential districts, minimum lot sizes are 6,000 square feet and poultry raising activities are prohibited.³⁵⁶ Sonoma County utilizes lot size restrictions, basing most of its permitting requirements on whether the lot consists of more or less than two acres.³⁵⁷ Merced County generally does not utilize lot size restrictions.³⁵⁸

As these examples indicate, lot size based restrictions are a helpful tool where a county desires to limit the number of birds that may be maintained in higher density or mixed-use zoning districts. In predominately agricultural districts, there is less concern with restricting the number of birds per acre because minimum lot sizes are typically expansive. Lot size restrictions may become of particular import if the push to ban cages altogether achieves success. Compared to conventional cage operations, free-range egg production requires

³⁵⁵ FRESNO COUNTY, CAL., ORDINANCE CODE § 820.1(L) (2011).

³⁵⁶ *Id.* § 826.4(D).

³⁵⁷ SONOMA COUNTY, CAL., MUNICIPAL CODE § 26-04-010(b) (2013).

³⁵⁸ *See generally* MERCED COUNTY, CAL., CODE §§ 7.08, 18.08.020, 18.48.030 (2014).

significantly more acreage and feed supply.³⁵⁹ For example, imposing free-range requirements nationwide would likely result in a thirteen percent increase in feed requirements, and would necessitate an additional 523,000 acres of corn and soybeans.³⁶⁰

5. Setback requirements

Imposing setback requirements for poultry structures is not a novel concept across the United States, particularly considering the recent rise of urban farming.³⁶¹ The goal of a setback requirement is to provide protection to the public from the noise and odors that are emitted from poultry structures.³⁶² The length of the setback requirement often varies with the number of animals that are permitted in a specific zone.³⁶³ Additionally, setbacks are useful for controlling flock sizes from becoming too large in high-density residential uses and ensuring that the birds are provided with sufficient space.³⁶⁴

While seemingly beneficial, setback distances can become prohibitory for small-scale farmers, particularly when the setback distance is so large that the owner/operator must buy new or additional land in order to conduct a worthwhile operation. A 1,500-setback requirement, for example, would demand a substantial parcel size in order to construct a facility or operation that would generate enough poultry or egg production to be profitable. In Georgia, for example, a state with a large poultry industry, imposition of a universal setback requirement of 1,500 feet “would eliminate more than 80 percent of the poultry production operations and could cause concentration of production with the largest, most wealthy landowners.”³⁶⁵

A few proximities to consider when implementing setback requirements are: residences, property lines, schools, churches, parks and other sensitive uses, wells, and wildlife areas.³⁶⁶ In addition to setback requirements, some poultry operations utilize vegetable

³⁵⁹ PROMAR INT’L, *supra* note 62, at 34.

³⁶⁰ *Id.*

³⁶¹ See Wood et al., *supra* note 98, at 75-76.

³⁶² *Poultry Production Manual*, UNIV. OF KY., http://www2.ca.uky.edu/poultryprofitability/Production_manual/Chapter19_Vegetative_buffer_strips/Chapter19_myth.html (last updated Mar. 25, 2014).

³⁶³ Wood et al., *supra* note 98, at 75.

³⁶⁴ *Id.*

³⁶⁵ *Poultry Production Manual*, *supra* note 362.

³⁶⁶ Goan, *supra* note 324.

buffers or diversion fences near facility exhaust fans in order to reduce odor and dust emissions.³⁶⁷ One of the main components of Fresno County's poultry zoning ordinances is a series of setback requirements, particularly in districts with higher instances of residential use.³⁶⁸ In general, the setback rules require poultry-related structures to be placed at least forty feet from any structure used for human habitation, 100 feet from front lot lines, and twenty-five feet from side and rear lot lines.³⁶⁹ Currently, Tehama County imposes a setback requirement for chicken houses in the AG-3 district and the A combining district, requiring that chicken houses are located at least fifty feet from front property lines, ten feet from side property lines, and forty feet from any building.³⁷⁰

6. Permitting Fees

One of the main concerns expressed by Tehama County residents is the cost of obtaining a permit to maintain chickens and poultry during the IUO period.³⁷¹ For some, the roughly \$1,500 fee encompasses a significant portion of the profit margins yielded from poultry-raising activities, and may in some instances pose a barrier to chicken operations altogether.³⁷² One potential solution to this issue is the implementation of reduced taxes for farms or chicken operations that meet certain zoning requirements.³⁷³ For example, reduced-cost permits or permit fee waivers can be made available to farmers who keep or maintain chickens for personal consumption, or who only sell or trade eggs locally or at farmers markets. Alternatively, Tehama County could impose a tiered permitting scheme based on the intensity of the proposed use. For example, the large-scale poultry operations that would fall under Section 868 and the ACF Regulations likely warrant more extensive and in-depth review than less intensive operations, particularly when the use is limited to personal consumption.

7. Neighbor Consent & Notice

³⁶⁷ *Poultry Production Manual*, *supra* note 362.

³⁶⁸ FRESNO COUNTY, CAL., ORDINANCE CODE § 819.5(F)(3).

³⁶⁹ *Id.* § 819.5(F)(3).

³⁷⁰ TEHAMA COUNTY, CAL., MUNICIPAL CODE, §§ 17.12.050, 17.48.040 (2012).

³⁷¹ Audio Recording, *supra* note 20.

³⁷² *Id.*

³⁷³ *See* LEIB, *supra* note 1, at 95.

According to the backyard chicken laws in several municipalities around the country, residents are required to obtain consent from neighbors before they may obtain a permit to keep chickens.³⁷⁴ The consent requirements range from obtaining written consent from each abutting neighbor to certifying that the owner will maintain the backyard chickens according to specific requirements.³⁷⁵ In Annapolis, Maryland, neighbors must complete a number of items provided on a to-do list attached to the permit application.³⁷⁶ Annapolis residents who wish to keep backyard chickens must receive approval from all abutting neighbors prior to obtaining a permit.³⁷⁷ Similarly, in Ann Arbor, Michigan, urban dwellers may keep up to four hens provided each adjacent neighbor signs a written Adjacent Neighbor Consent Form.³⁷⁸

If Tehama County considers implementing some form of neighbor consent requirement, it should use well-thought out definitions and parameters. For example, simply requiring consent from a neighbor raises questions regarding who falls within this category: abutting properties, properties on the same block? To be clear, Tehama County should designate neighbors as either abutting properties or require consent from individuals residing within a certain proximity from the proposed chicken coop. Additionally, Tehama County should be prepared for backlash from many residents who consider consent requirements for the keeping of chickens to be unduly restrictive, especially in light of the lack of consent requirements for the keeping of dogs, cats, and other domestic pets.

Instead of opposing a consent requirement, Tehama County could consider establishing a clear system for neighbors to report backyard chicken activities as a nuisance, particularly where odor, dust, or noise becomes an issue. Many municipalities who do not impose consent

³⁷⁴ *Backyard Chickens in the City of Annapolis Permit Application and Information Packet*, CITY OF ANNAPOLIS (Apr. 2012), <http://www.annapolis.gov/docs/default-source/forms-permits-and-licenses/backyard-chicken-registry-and-approval-form.pdf?sfvrsn=12>.

³⁷⁵ *Id.*

³⁷⁶ *Id.*

³⁷⁷ *Id.*

³⁷⁸ *City of Ann Arbor Permit to Keep Backyard Chickens*, CITY OF ANN ARBOR, <http://www.a2gov.org/departments/city-clerk/Documents/Chicken%20Permit-Revised%206-1-11.pdf> (last visited Feb. 10, 2015).

requirements funnel neighbor's issues with backyard chickens through a nuisance-based system.³⁷⁹

C. Local Food Ordinances

In March 2011, Sedgwick, Maine passed a precedent-setting Local Food and Community Self-Governance Ordinance by unanimous vote.³⁸⁰ The ordinance is designed to “promot[e] self-reliance, the preservation of family farms, and local food traditions.”³⁸¹ According to its terms, the ordinance exempts direct-market sales from local producers to consumers from state and federal regulations.³⁸² As a result, local farmers are exempted from paying the hefty fees associated with selling their goods and residents are incentivized to purchase locally produced food.³⁸³

These ordinances create a platform for local government to establish policies that support small-scale local food producers and create incentives for residents to purchase their products. The efforts to pass these ordinances, however, are commonly met with opposition from various sources, including state authorities.³⁸⁴ In November 2011, the state of Maine took legal action against a raw milk producer, Dan Brown, alleging that he violated several provisions of Maine's health and safety laws.³⁸⁵ The State alleged that Brown had (1) sold raw milk

³⁷⁹ Jaime Bouvier, *Illegal Fowl: A Survey of Municipal Laws Relating to Backyard Poultry and a Model Ordinance for Regulating City Chickens*, ENVTL. LAW REPORTER, 42 ELR 10888 (9-2012), available at <http://s3.amazonaws.com/mocobyc/SSRN-id2119494.pdf>.

³⁸⁰ *Maine Town Passes Landmark Local Food Ordinance*, FOOD FOR MAINE'S FUTURE (Mar. 7, 2011), <http://savingseeds.wordpress.com/2011/03/07/maine-town-passes-landmark-local-food-ordinance/>; see also Rebekah Wilce, *Local Food Ordinances from Maine to California*, PR WATCH (Oct. 10, 2011), <http://www.prwatch.org/news/2011/10/11034/local-food-ordinances-maine-california>.

³⁸¹ FOOD FOR MAINE'S FUTURE, *supra* note 380; Wilce, *supra* note 380.

³⁸² TOWN OF SEDGWICK, ME., LOCAL FOOD AND COMMUNITY SELF-GOVERNANCE ORDINANCE § 2, available at <http://www.sedgwickmaine.org/images/stories/local-food-ordinance.pdf> (last visited Mar. 12, 2015).

³⁸³ *Id.*

³⁸⁴ Alli Condra, *Local Food Ordinance Proposed on West Coast*, FOOD SAFETY NEWS (Feb. 20, 2012), <http://www.foodsafetynews.com/2012/02/local-food-ordinance-takes-hold-on-west-coast/#.VNa480vaSZg>.

³⁸⁵ *Dan Brown Hearing in Maine Food Sovereignty Case: Judge Finds Raw Milk Not a 'Local Food'*, FARM TO CONSUMER LEGAL DEF. FUND (May 7, 2013), http://www.farmtoconsumer.org/news_wp/?p=7718.

without possessing a milk distributor's license; (2) sold raw milk that did not bear the necessary warning label; and (3) sold foods prepared in his kitchen without first obtaining a retail food license.³⁸⁶ The raw milk producer had been selling the milk at local farmers' markets and at his own farm stand in Blue Hill, Maine, one of five towns that had enacted a local food ordinance.³⁸⁷

The trial court ruled against Brown, finding the unpasteurized milk and homemade food products were not protected by the local food ordinance.³⁸⁸ Brown appealed the ruling to the Maine Supreme Court, who ultimately declared that state regulators are responsible for ensuring public health and proper business practices, and that Blue Hill's ordinance took local foods outside of that protection.³⁸⁹ The Maine Supreme Court rejected the many arguments put forth by proponents of the local food ordinance, concluding instead that the ordinance "would be constitutionally invalid and preempted only to the extent that it purports to exempt from state and federal requirements the distribution of milk and operation of food establishments."³⁹⁰ The Justices did note, however, that Brown was free to continue selling vegetables and produce from his farm stand without obtaining a food establishment license.³⁹¹

A number of California counties have already considered, and in some cases implemented, local food self-governance ordinances, including Santa Cruz, Nevada, San Luis Obispo, and El Dorado.³⁹² For example, the El Dorado County Board of Supervisors adopted a Local Food and Community Self-Governance Ordinance, which provides that the County "shall not adopt any ordinance, resolution or regulation providing for licensing or inspection of the growing, production, and processing of Local Foods on Family Farms in the

³⁸⁶ *Id.*

³⁸⁷ *Id.*

³⁸⁸ *Id.*

³⁸⁹ David Gumpert, *Public Health Takes Precedence Over All, Maine Supreme Court Says in Blow to Food Sovereignty*, THE COMPLETE PATIENT (Jun. 18, 2014), [http://thecompletepatient.com/article/2014/june/18/"public-health"-takes-precedence-over-all-maine-supreme-court-says-blow-food](http://thecompletepatient.com/article/2014/june/18/).

³⁹⁰ *Id.*

³⁹¹ *Id.*

³⁹² Wilce, *supra* note 380.

County of El Dorado.”³⁹³ The definition of Family Farms includes farms where the only sale of food consists of food grown or produced on the property, and all sales are made directly to patrons for home consumption.³⁹⁴ To qualify as a Family Farm, the owner/operator must forgo certain sales devices like storefronts and roadside stands, and must refrain from advertising its products.³⁹⁵ Additionally, the ordinance contains a clear policy goal to exempt local food producers and processors from licensure or inspection by state agencies.³⁹⁶ The ordinance clearly states, however, that it does not seek “to abrogate or negate the effectiveness of federal or state law in the County of El Dorado.”³⁹⁷ According to the California Constitution, the State reserves the right to regulate food for public safety.³⁹⁸

If Tehama County considers enacting a local food ordinance to support and regulate the growth of its local poultry industry, it should craft it carefully in light of state and federal laws. The *Brown* case in Blue Hill, Maine, serves as an excellent example: although the local food ordinance was able to facilitate the unlicensed sale of produce and vegetables, the State’s requirements regarding the licensing of dairy operations preempted the local food ordinance’s provisions. When it comes to regulating small-scale egg production and farming activities, however, a local food ordinance can facilitate the establishment of clear policies and goals supporting the local industry.

³⁹³ EL DORADO COUNTY, CAL., ORDINANCE NO. 4990, at 3 (Dec. 2012), available at <https://eldorado.legistar.com/LegislationDetail.aspx?ID=1252838&GUID=C0E64F73-9D64-4AD9-AEBC-244F370D6389>.

³⁹⁴ *Id.* at 2.

³⁹⁵ *Id.*

³⁹⁶ *Id.* at 4.

³⁹⁷ *Id.*

³⁹⁸ Lisa R. Pruitt, *Food Sovereignty Movement Spawns Struggle for Local Control* (Feb. 6, 2012), <http://aglaw.blogspot.com/2012/02/food-sovereignty-movement-spawns-state.html>.

VI. CONCLUSION

The new food renaissance has created a tidal wave of change and reform across many levels. From a social standpoint, the local food movement strives to strengthen community bonds and bolster local enterprise by providing access to food products grown and produced nearby. Legislators across the country and in D.C. have sponsored bills and in some cases successfully enacted legislation that gives momentum and power to the new food renaissance. While some agricultural professionals have taken impassioned stances on the appropriateness of these movements, many others are simply trying to stay afloat amidst the sea change.

California in particular has spearheaded many reforms and laws designed to bolster the new food renaissance's goals. When it comes to poultry, both in-state and out-of-state producers are facing an onslaught of new regulations and requirements governing the way they produce poultry and eggs. At the local level, municipalities are in the best position to assess the impact that these new regulations will have on local industry and to use land use planning to facilitate these changes. As large-scale producers look to broaden their presence in order to provide more locally grown products, small-scale producers strive to ensure that they will retain their share of the market and that new regulations will not drive them out of business.

In light of these dynamic and sometimes adversarial interests, local governments must strive to create balance through land use planning. It is likely the case that one-size-fits-all land use regulations will no longer work for poultry practices and that cities and counties will need to craft regulations that can accommodate a broader range of agricultural uses. Tehama County has set itself to task, investigating whether its current land use scheme is sufficient to handle the shifting direction of the poultry industry and the regulatory pressures that it has experienced recently. Tehama County should utilize this opportunity to get ahead of the many issues and policy questions that have yet to be answered, and to find a workable set of land use regulations that suit larger operations such as J.S West just as well as they suit small-scale producers like Dan Brown.

There is a real danger in both failing to implement new land use policies and implementing policies that fail to strike a balance between the varied interests involved. Either scenario would likely stifle Tehama County's poultry industry by discouraging large-scale outfits from establishing new facilities that in turn provide jobs and

strengthen the local economy or by alienating small-scale producers and preventing them from engaging in practices that have characterized their family for generations. As Tehama County embarks on this investigative endeavor and considers different land use planning schemes, it should make sure that it does not throw the hen out with the henhouse.

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