



**ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT**

STAFF REPORT

TO: Castro Valley Municipal Advisory Council

HEARING DATE: April 08, 2019

ORDINANCE: Proposed Soil Importing Ordinance

PROPONENT: Alameda County Planning Department

PROPOSAL: **Fill Importing Ordinance** – Development of regulations for the importing of fill onto properties in the unincorporated areas of Alameda County.

AFFECTED PROPERTIES: The proposed Soil Importing Ordinance would affect the unincorporated areas of Alameda County.

The Soil Importing Ordinance would affect the properties zoned as “R”, “L” combining district in the Fairview Specific Plan area, the Castro Valley canyonlands, and East County areas of Sunol, Little Valley, and Buena Vista, and “A” Zoning Districts that are not already subject to another County Permit.

ZONING: Agriculture (“Ag”), Residential (“R”), and Combining Agriculture (“L”) combining zoning districts in the unincorporated Alameda County areas.

GENERAL PLAN DESIGNATION: Within the unincorporated County, Resource Management lands within the Measure D area of the *Castro Valley General Plan* (Page 1-7, Figure 1-1, “Regional Context”), as well as *East County Area Plan* land use designations of Large Parcel Agriculture, Resource Management, and Water Management; as well as areas designated “Residential” within the *Castro Valley General Plan*, *Eden Area Plan*, and *East County Area Plan*.

ENVIRONMENTAL REVIEW: The ordinance updates are Categorically Exempt from the requirements of the California Environmental Quality Act, per Section 15307 – “Actions by Regulatory Agencies for the Protection of Natural Resources”, and Section 15308 – “Actions by Regulatory Agencies for the Protection of the Environment”.

STAFF RECOMMENDATION

Staff recommends that the Castro Valley Municipal Advisory Council take testimony for the most recent proposed ordinance modifications dated March 21, 2019, to establish oversight and regulations for Soil Importing, and make recommendations on the draft ordinance language that staff will forward to the Board of Supervisors for their adoption of an ordinance.

SUMMARY

County Planning Department Staff has met with Supervisor Miley's District 4 Agricultural Advisory Committee. At that District 4 Agriculture Advisory Committee meeting, the majority of those who voiced their opinions recommended a third tier to the soil importing ordinance on Agriculturally Zoned properties, to result in an Administrative Conditional Use Permit process for soil imported at between 10 and 20 cubic yards per acre per year, up to a maximum of 15,000 cubic yards per property per year. This would mean for example, that a 100-acre property in an Agricultural zoning district would be allowed up to 2,000 cubic yards of soil import but only if they first get approval of an Administrative Conditional Use Permit (ACUP). A 1,000 acre property with an approved ACUP would be allowed to import up to 15,000 cubic yards, not the otherwise 20,000 cubic yards that might have been allowed to be imported with the up-to-20 cubic yards per acre per year process.

Based on community input at that meeting, for Agriculturally Zoned property, soil may be imported according to the following schedule:

1. 0 - 10 cubic yards per acre per year, up to a maximum of 5,000 cubic yards per property (defined as an individually assessed and owned assessor's parcel number) per year (refer to section 15.36.050 for Grading Permit exemptions) and less than five feet vertically above any existing grade is permitted from any source. Property owner shall be responsible for ensuring that the soil is not contaminated. Subject to audit to require Bill of Lading only.
2. 10 - 20 cubic yards per acre per year, up to a maximum of 15,000 cubic yards per property per year, whichever value is lowest, or any import in any amount resulting in over five feet vertically above any existing grade (refer to section 15.36.050 for Grading Permit exemptions) would need prior approval of an Administrative Conditional Use Permit in addition to any Grading Permit.
3. More than 20 cubic yards per acre per year, or more than 15,000 cubic yards per property per year, whichever value is lowest, would need prior approval of a Conditional Use Permit in addition to any Grading Permit (refer to section 15.36.050 for Grading Permit exemptions).

At the Sunol Citizens' Advisory Council meeting on Wednesday, March 20, 2019, the Sunol Board members voted 3 to 0, with 2 recusals, to support the staff recommendation to the Board of Supervisors with the following modifications:

1. Forward to the Board of Supervisors the comments made by the public and by the Sunol CAC Board members at the March 20, 2019 hearing. *The Clerk of the Board is compiling summary minutes of the hearing.*
2. Modify the required findings for soil importing to be applicable to Administrative Conditional Use Permit applications in addition to Conditional Use Permit applications. *Text changed to "Administrative Conditional Use Permits and Conditional Use Permits would be subject to Special Findings (for CUPs, this would be in addition to the four State-required CUP findings): ... "*
3. Remove the word "substantially" from finding for soil importing #G from before the word "conforms". *Text changed to "(g) Soil Importing ~~substantially~~ conforms to the adopted "Tier 1 ESL" levels or as modified by the DTSC or the RWQCB."*
4. Add requirement for submittal of documentation of physical address of the originating property in addition to the Bill of Lading when requesting verification of source material from receiving property owners. *Text changed to "0 - 10 cubic yards per acre per year, up to a maximum of 5,000 cubic*

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yards per property (defined as an individually assessed and owned assessor's parcel number) per year (refer to section 15.36.050 for Grading Permit exemptions) and less than five feet vertically above any existing grade is permitted from any source. Property owner shall be responsible for ensuring that the soil is not contaminated. Subject to audit to require Bill of Lading and documentation of source property only."

5. Do not allow soils to be imported from areas expected to be dirty. *Ideally, the County would be able to not allow any import from any areas that have, or are expected to have, dirty soil. However, County staff would need to require each importer to verify the zoning designation of the parcel generating the soil, and the exact land uses going back to some indefinite time in history. This would be true not just originating properties located in the unincorporated County area, but for every parcel and land use within import range – essentially the Bay Area within approximately 100 roadway miles of the receiving property. Staff would also need to make determinations about the expected dirt cleanliness for every conceivable land use in those areas going back decades, such as what use may have clean dirt, versus what use does not. Also, this method would be unreliable, since many agriculturally and residentially zoned properties are dirty as well. It would be simpler to just have the receiving property owner request that the originating property owner test the soil and provide documentation of cleanliness to the State standard (Tier 1 ESL levels). – Staff has left the draft ordinance text unchanged in this respect for now: "0 - 10 cubic yards per acre per year, up to a maximum of 5,000 cubic yards per property (defined as an individually assessed and owned assessor's parcel number) per year (refer to section 15.36.050 for Grading Permit exemptions) and less than five feet vertically above any existing grade is permitted from any source. Property owner shall be responsible for ensuring that the soil is not contaminated. Subject to audit to require Bill of Lading and documentation of source property only".*

6. Provide more regulatory equivalency between the parcels zoned R-1-L (single-family residence with limited agriculture) that are just under 5 acres, and those parcels that have the same zoning but are just over 5 acres in size. *Staff agrees that the issue is not about parcel size, per se, but the land use designation in the Zoning Ordinance. A parcel zoned R-1-L has the primary land use of residential, with additional, limited, agriculture allowed. By contrast, a parcel zoned Agriculture has equal land use of residential or agriculture allowed. Therefore, regarding allowable soil importing, a parcel that is 5 acres in size but zoned R-1-L, should be treated differently than a parcel zoned Agriculture that is also 5 acres in size. This regulatory difference for two properties of the same size but of different zoning districts already exists for allowable construction dimensions, allowable agricultural activities, and discretionary review for various activities on the property. Therefore, staff agrees with the comment that it is not the size of the R-1-L parcel that matters, but rather the zoning of parcels, regardless of size. So, staff agrees to treat all parcels in the R-1-L zoning district the same, regardless of the previously drafted 5-acre size of parcel. The text has been changed to the following: "Tiering System for "L" Combining Districts, and for "R" Zoning Districts located on parcels between 1 acre and 5 acres in size: ... Over 50 cubic yards per acre per year (refer to section 15.36.050 for Grading Permit exemptions): Submit documentation by a licensed Geologist or qualified professional of fill cleanliness to "Tier 1 ESL" levels or as modified by the DTSC or the RWQCB, CUP to include public hearing, notification to neighbors, and truck traffic plan, and Grading Permit. ~~Properties above 5 acres shall comply with Agriculture District regulations.~~"*

ANALYSIS

Questions from the public on the Soil Importing Ordinance:

There have been some questions raised about the soil already imported on unincorporated properties. There would be a case by case review of any remediation necessary for properties that have already

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imported soil, depending on site conditions and anticipated further development of the property. What is known is that there are 33 sites that Code Enforcement knows about that have imported soil. There are an estimated 200,000 cubic yard of already-imported soil, and an estimated 500,000 cubic yards of soil that people have requested to be allowed to import during the moratorium. However, due to the lack of proper documentation, the cleanliness of that soil has not specifically been determined. There is suspicion, based on the information submitted for some of these properties, that the incorrect cleanliness thresholds were analyzed, so that there is no verification that the already-imported soils are to Tier 1 ESL levels, which is a State standard of clean soil that could be added onto a property for any use.

Currently, there is no proper documentation, although there are suspicions, that most of the soil already imported onto unincorporated properties was not properly analyzed to the higher analysis threshold (the soils were analyzed to determine whether they should be sent to a more restrictive Class I landfill facility such as Kettleman City, or a “common” garbage landfill facility like those at Altamont or Vasco Road.

That analysis of existing imported soil conditions can be done if the Board of Supervisors directs staff, but so far the direction from the Board has been to develop an ordinance that addresses the further importing of soil, not potential remediation of soil already imported. The problems of unregulated soil importing are being addressed with the Soil Importing Ordinance for regulation of soil imports moving forward.

The direction from the Board of Supervisors has been to regulate large amounts of soil being imported to the unincorporated County areas. These soils imports are mostly from construction sites in the urbanized areas. This is what the regulations are aimed toward addressing. However, so far, there has been no discussion from the Board to increase the budget to add staff to Code Enforcement or other County Department such as Grading or Environmental Health to help with enforcement. The Department of Environmental Health has been removed from regulating soil importing in this Ordinance. The Board has not yet directed staff to look at charging fees for soil importing. The majority of the people that County staff have heard from are not in support of fees for all amounts of importing. The current Code violation penalties would continue to apply, based on the penalty schedule in Chapter 17.59 of the Zoning Ordinance, and potential for abatement at the cost to the receiving property owner.

Draft of Soil Importing Ordinance Relative to Single-Family Residential with Limited Agriculture (R-1-L) Zoning Districts:

For property zoned R-1-L, soil may be imported according to the following schedule:

Tiering System for “L” Combining Districts, and for “R” Zoning Districts located on parcels between 1 acre and 5 acres in size:

At no point shall soil fill be more than three feet above existing grade without being imported to build a structure requiring a Building Permit or a Grading Permit, or an automatic Conditional Use Permit shall apply.

1. Up to 1 cubic yard per acre per year (refer to section 15.36.050 for Grading Permit exemptions):

No oversight;

2. 1 - 10 cubic yards per acre per year, up to a maximum of 30 cubic yards per property per year (refer to section 15.36.050 for Grading Permit exemptions):

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Submit documentation by a licensed Geologist or qualified professional of fill cleanliness to “Tier 1 ESL” levels or as modified by the DTSC or the RWQCB;

3. 10 - 20 cubic yards per acre per year, up to 50 cubic yards per property per year (refer to section 15.36.050 for Grading Permit exemptions):

Submit documentation by a licensed Geologist or qualified professional of fill cleanliness to “Tier 1 ESL” levels or as modified by the DTSC or the RWQCB, advise the County the purpose of the soil importation and receive County permission (Administrative Conditional Use Permit);

4. 20 – 50 cubic yards per acre per year, up to a maximum of 80 cubic yards per property per year (refer to section 15.36.050 for Grading Permit exemptions):

Submit documentation by a licensed Geologist or qualified professional of fill cleanliness to “Tier 1 ESL” levels or as modified by the DTSC or the RWQCB, receive County permission (Administrative Conditional Use Permit), and notification to neighbors

5. Over 50 cubic yards per acre per year (refer to section 15.36.050 for Grading Permit exemptions):

Submit documentation by a licensed Geologist or qualified professional of fill cleanliness to “Tier 1 ESL” levels or as modified by the DTSC or the RWQCB, CUP to include public hearing, notification to neighbors, and truck traffic plan, and Grading Permit.

EXEMPTIONS from Tiered Soil Import Requirements:

Below are exemptions to the proposed Soil Import Ordinance.

1. The importing of asphalt grindings, or road base (but not concrete debris), would be left to individual property responsibility. However, the property owner must provide information to the Grading Department of the intended farm-road project to make sure that the proposal does not invoke the Grading Ordinance. Importing of asphalt grindings or road base for agricultural roads shall be handled by one of two ways:
 - a. for new agricultural roads, provide information to the Grading Department of the intended farm-road project to make sure that the proposal does not invoke the Grading Ordinance;
 - b. for existing agricultural roads, maintenance of the existing agricultural roads are exempt from Grading Permits per Grading Ordinance Section 15.36.050.J – Exemptions: “Maintenance of existing firebreaks and private roadways to keep the firebreak or roadway substantially in its original condition;”
2. Importing of organic mulch is exempted from the Soil Importing Ordinance.
3. Does not apply to soil importing from a Licensed and Permitted Retailer or Wholesaler (not Brokers) such a surface mine, a permitted landscape materials business, or similar.
4. Does not apply to fill from adjacent (or separated by no more than a road or utility easement) property owned by the same property owner.

Relationship to the Grading Ordinance:

The County's Grading Ordinance (Chapter 15.36) would continue to apply without modifications.

The Grading Ordinance includes an exemption for fill in any zoning district, as well as an agricultural exemption allowing certain grading activities on A district properties without a Grading Permit if the grading does not endanger any structure or any public or shared access roadway, or cause an impact to any watercourse.

These exemptions from the Grading Ordinance will continue to apply after the adoption of the proposed Soil Importing ordinance. However, exemption from the Grading Ordinance does not make an activity a permitted use under the Zoning Ordinance.

15.36.050 - Exemptions.

The following grading may be done without obtaining a permit:

...

B. A fill that is not intended to support a structure, will not obstruct a drainage course, is not located within a floodplain (as defined in [Chapter 15.40](#) of this title), will not create a surface that is unstable or that would be potentially erodible to the extent of causing an illicit discharge, and that complies with one of the following conditions:

1. Less than two feet in depth and is placed on natural terrain that is sloped less than five units horizontal to one unit vertical (twenty (20) percent slope); or
2. Less than three feet in depth at its deepest point (as measured vertically), creates a stable fill slope no steeper than two units horizontal to one unit vertical (fifty (50) percent slope), and is less than one hundred fifty (150) cubic yards of material; or
3. Less than five feet in depth at its deepest point (as measured vertically), creates a fill slope no steeper than two units horizontal to one unit vertical (fifty (50) percent slope), and is less than fifty (50) cubic yards of material;

...

F. Any of the following activities conducted on property that is zoned as agricultural in accordance with the provisions of [Title 17](#) of the general ordinance code, provided that any such activity will not result in a cut or fill the failure of which could endanger any structure intended for human or animal occupancy or any public or shared access roadway, or that could obstruct, damage, or cause an illicit discharge to any watercourse or other drainage facility, and provided that such activity is being performed in accordance with all applicable laws, regulations, and ordinances of the county:

1. Grading associated with agricultural operations;

Soil Import Moratorium:

A second extension to the Soil Importing Moratorium was adopted by the Board of Supervisors on September 18, 2018. The Soil Importing Moratorium is set to expire on March 17, 2019, pursuant to Government Code Section 65858.

Draft Soil Importing Ordinance of March 21, 2019:

See attached.

Soil Importing Ordinance Tentative Community Meeting and Hearing Schedule:

Agricultural Advisory Committee of the Board of Supervisors – Tuesday, April 23, 2019
Planning Commission – Monday, May 6, 2019
Transportation and Planning – Tuesday, May 6, 2019
Board of Supervisors – Tuesday, June 4, 2019

CALIFORNIA ENVIRONMENTAL QUALITY ACT

Currently, there is no regulation for importing soil if a property owner claims agricultural exemptions. The Soil Importing Ordinance would place restrictions on and close an existing loophole for properties that are currently accepting soil without County regulation. The proposed Soil Importing Ordinance is intended and drafted for the purpose of preservation of the environment and natural resources within unincorporated Alameda County.

Therefore, the ordinance updates are considered Categorical Exempt from the requirements of the California Environmental Quality Act, per Section 15307 – “Actions by Regulatory Agencies for the Protection of Natural Resources”: Class 7 consists of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. Examples include but are not limited to wildlife preservation activities of the State Department of Fish and Game. Construction activities are not included in this exemption.

Also applicable is Section 15308 – “Actions by Regulatory Agencies for the Protection of the Environment”: Class 8 consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environmental degradation are not included in this exemption.

The subsequent soil importing proposals would be subject to either CEQA applicable exemptions, or applicable Initial Studies to determine potential effects to the environment from the proposed amounts of soil to be imported.

CONCLUSION

Planning Department staff recommends that the Castro Valley Municipal Advisory Council take testimony for the proposed ordinance modifications to establish oversight and regulations for Soil Importing, and make recommendations on the draft ordinance language for staff to forward to the Board of Supervisors for their adoption of an ordinance.

ATTACHMENTS

- County Planning Department Staff’s Draft Soil Importing Ordinance as of March 21, 2019
- Letter from the California Department of Fish and Wildlife
- Letter from Alameda County Resource Conservation District, dated September 17, 2019
- Soil Import Summary in Other Jurisdictions

PREPARED BY

Rodrigo Orduña, Assistant Planning Director

**Fill Import Ordinance for properties in unincorporated areas of the County of Alameda
as of March 21, 2019**

Intent:

To regulate the importing of fill (fill material imported from other than verified clean retail outlets), so that the land use does not become a landfill, soil stability and cleanliness is verified by the County, potential impacts to sensitive species are addressed, and truck trips do not cause congestion.

Fill Importing is a separate activity from other uses, such as agriculture. Within Agriculture zoning districts, soil importing may lead to agricultural activity, but in and of itself, it is a separate activity that needs to be regulated, due to the potential for adverse impacts to the land and water (underground or surface), sensitive species, and neighboring properties.

Grading of own dirt on the same property is not subject to Fill Importing regulations.

Staff Proposal for Soil Importing Ordinance as of March 21, 2019:

The proposed Soil Importing Ordinance would affect the unincorporated areas of Alameda County.

The Soil Importing Ordinance would affect the properties zoned as "R", "L" combining district in the Fairview Area Specific Plan area, the Castro Valley canyonlands, and East County areas of Sunol, Buena Vista, Little Valley, and "A" Zoning Districts that are not already subject to another County Permit:

After input from surrounding counties of Contra Costa, Santa Clara, Monterey, San Joaquin, conversation with Supervisor District 1 office, and stakeholders such as Agriculture Advisory Committee and District 4 Agriculture Advisory Committee groups, Fairview MAC members, and Sunol Citizens Advisory Council, staff proposes a system for regulating Soil Importing based on tiering of review, per the general concept below. However, the Grading Ordinance still applies, and all other regional (such as but not limited to: Bay Area Air Quality Management District, Regional Water Quality Control Board), Williamson Act Contract, State, and Federal rules still apply.

The importing of asphalt grindings, or road base (but not concrete debris), would be left to individual property responsibility. However, the property owner must provide information to the Grading Department of the intended farm-road project to make sure that the proposal does not invoke the Grading Ordinance. Importing of asphalt grindings or road base for agricultural roads shall be handled by one of two ways:

- a. for new agricultural roads, provide information to the Grading Department of the intended farm-road project to make sure that the proposal does not invoke the Grading Ordinance;
- b. for existing agricultural roads, maintenance of the existing agricultural roads are exempt from Grading Permits per Grading Ordinance Section 15.36.050.J – Exemptions: "Maintenance of existing firebreaks and private roadways to keep the firebreak or roadway substantially in its original condition;"

**Fill Import Ordinance for properties in unincorporated areas of the County of Alameda
as of March 21, 2019**

Tiering System for “L” Combining Districts, and for “R” Zoning Districts located on parcels between 1 acre and 5 acres in size:

At no point shall soil fill be more than three feet above existing grade without being imported to build a structure requiring a Building Permit or a Grading Permit, or an automatic Conditional Use Permit shall apply.

1. Up to 1 cubic yard per acre per year (refer to section 15.36.050 for Grading Permit exemptions):

No oversight;

2. 1 - 10 cubic yards per acre per year, up to a maximum of 30 cubic yards per property per year (refer to section 15.36.050 for Grading Permit exemptions):

Submit documentation by a licensed Geologist or qualified professional of fill cleanliness to “Tier 1 ESL” levels or as modified by the DTSC or the RWQCB;

3. 10 - 20 cubic yards per acre per year, up to 50 cubic yards per property per year (refer to section 15.36.050 for Grading Permit exemptions):

Submit documentation by a licensed Geologist or qualified professional of fill cleanliness to “Tier 1 ESL” levels or as modified by the DTSC or the RWQCB, advise the County the purpose of the soil importation and receive County permission (Administrative Conditional Use Permit);

4. 20 – 50 cubic yards per acre per year, up to a maximum of 80 cubic yards per property per year (refer to section 15.36.050 for Grading Permit exemptions):

Submit documentation by a licensed Geologist or qualified professional of fill cleanliness to “Tier 1 ESL” levels or as modified by the DTSC or the RWQCB, receive County permission (Administrative Conditional Use Permit), and notification to neighbors

5. Over 50 cubic yards per acre per year (refer to section 15.36.050 for Grading Permit exemptions):

Submit documentation by a licensed Geologist or qualified professional of fill cleanliness to “Tier 1 ESL” levels or as modified by the DTSC or the RWQCB, CUP to include public hearing, notification to neighbors, and truck traffic plan, and Grading Permit.

~~Properties above 5 acres shall comply with Agriculture District regulations.~~

EXEMPTIONS from Tiered Soil Import Requirements:

Importing of organic mulch is exempted from the Soil Importing Ordinance.

Does not apply to soil importing from a Licensed and Permitted Retailer or Wholesaler (not Brokers) such a surface mine, a permitted landscape materials business, or similar.

Does not apply to fill from adjacent (or separated by no more than a road or utility easement) property owned by the same property owner.

**Fill Import Ordinance for properties in unincorporated areas of the County of Alameda
as of March 21, 2019**

Tiering System for Agricultural (“A”) District [Note: this is reduced or changed for the other Zoning Districts, including the Residential and Combining Agricultural Use (“L”) Districts]:

Any and all soil import must be for agricultural use or purpose. All soil import for claim of agricultural use must only be imported for grading associated with agricultural operations, including routine agricultural work (routine leveling, plowing, harrowing, disking, ridging, listing, cultivating, on-site drainage ditches, brush removal, preparation for ranch roads related solely for the purpose of accessing agricultural fields, creation of stock ponds and similar operations necessary for the preparation and maintenance of field crops). “Routine” is defined as any activity normally associated with the planting of crops, preparation of land thereof for the root zone of crops or orchards, or raising/grazing of livestock.

EXEMPTIONS from Tiered Soil Import Requirements:

Importing of organic mulch is exempted from the Soil Importing Ordinance.

Does not apply to soil importing from a Licensed and Permitted Retailer or Wholesaler (not Brokers) such a surface mine, a permitted landscape materials business, or similar.

Does not apply to fill from adjacent (or separated by no more than a road or utility easement) property owned by the same property owner.

Does not apply to fill transported from any parcel to any parcel when both are located in the same zoning designation of “A” – Agriculture, or PD based on the “A” – Agriculture zoning designation, except that:

(1) when the source parcel has been determined to have been under cultivation or in concentrated animal agriculture (barns, feedlots, chemical treatment facilities, etc.) in the previous 50 years, standard tests for agricultural chemical residue contaminants (pesticides, herbicides, fertilizers) shall be conducted to State of California Tier 1 ESL levels, and when that fill is not found to be compliant with this standard, and/or

(2) when the source parcel is located adjacent to a freeway, state route, or arterial roadway as defined by the County Public Works Agency, standard tests for lead and asbestos contamination shall be conducted to State of California Tier 1 ESL levels, and when that fill is not found to be compliant with this standard:

then that fill shall not be authorized for transport to a location that is not a licensed, permitted Class II or Class I landfill as appropriate under State law, until and unless that soil is remediated to Tier I ESL standards for the tested contaminants.

All native materials removal operations on source properties for native materials in the “A-Agriculture” Zoning District shall comply with the California *Surface Mining and Reclamation Act* of 1975 (*SMARA*, Public Resources Code, Sections 2710-2796), the policies of the Alameda County East County Area Plan regarding surface mining, and the Alameda County Surface Mining Ordinance (General Ordinance Code, [Title 6 - HEALTH AND SAFETY, Chapter 6.80 - SURFACE MINING AND RECLAMATION](#)).

[Explanation of insertion of the above paragraph:

(a) any excavation for export larger than 1,000 cubic yards is not exempted from a Mine Permit UNLESS they can show that the *source* site is being graded for “farming,” (SMO Section 6.80.050(A)(1 and 2) and

**Fill Import Ordinance for properties in unincorporated areas of the County of Alameda
as of March 21, 2019**

(b) a mine permit may not be approved anywhere in the county EXCEPT on or adjacent to an existing permitted minesite (ECAP Policy 155, per Measure D)

Tiering System for Soil Import in "A" – Agriculture zoning districts:

At no point shall soil fill be more than five feet above existing grade without being imported to build a structure requiring a Building Permit or a Grading Permit, or else an Administrative Conditional Use Permit shall automatically apply.

Soil may be imported according to the following schedule:

1. **0 - 10 cubic yards per acre per year, up to a maximum of 5,000 cubic yards per property (defined as an individually assessed and owned assessor's parcel number) per year (refer to section 15.36.050 for Grading Permit exemptions) and less than five feet vertically above any existing grade is permitted from any source. Property owner shall be responsible for ensuring that the soil is not contaminated. Subject to audit to require Bill of Lading and documentation of source property only.**
2. **10 - 20 cubic yards per acre per year, up to a maximum of 15,000 cubic yards per property per year, whichever value is lowest, or any import in any amount resulting in over five feet vertically above any existing grade (refer to section 15 36.050 for Grading Permit exemptions) would need prior approval of an **Administrative Conditional Use Permit** in addition to any Grading Permit.**
3. **More than 20 cubic yards per acre per year, or more than 15,000 cubic yards per property per year, whichever value is lowest, would need prior approval of a **Conditional Use Permit** in addition to any Grading Permit (refer to section 15.36.050 for Grading Permit exemptions).**

For **Conditional Use Permit** approval, the importing property owner would need to notify the County prior to Soil Importing activity by submitting written documentation to demonstrate that the use of the soil being imported is for a legitimate agricultural activity. The agricultural activity would need to be documented in the **Conditional Use Permit** project description and conditions of approval. In order for an Agriculture property owner to demonstrate legitimate agricultural use on the property, they must also need to provide evidence of available water for the proposed agricultural use.

A **Conditional Use Permit** would involve review for potential impacts to the environment (CEQA), referral to other County agencies, obtaining Grading Permit or Grading Exemption, referral to regional, State, and Federal departments.

A **Conditional Use Permit** would involve notifying the neighbors, a public hearing at the Board of Zoning Adjustments, and submittal for approval of a truck delivery plan.

After issuance of the **Conditional Use Permit**, any Soil Importing activity would need proof of cleanliness ("Tier 1 ESL" levels or as modified by the DTSC or the RWQCB), subject to County Code Enforcement audits at any time, up to four times per year. To have the documentation ready for any County audits, unless the necessary documentation as described is provided by the generating source site, the receiving property owner must hire a licensed engineer or geologist to review the documentation from the exporting property owner. The County Environmental Health Department would not get involved unless the audits show something of concern to Code Enforcement.

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Administrative Conditional Use Permits and Conditional Use Permits would be subject to Special Findings (~~for CUPs, this would be~~ in addition to the four State-required CUP findings):

Soil Importing approval may be granted if all of the following findings are made:

- (a) The amount, design, location, and the nature of any proposed Soil Importing is necessary to establish or maintain an Agricultural use presently permitted by law on the property.
- (b) The Soil Importing will not endanger public and/or private property, endanger public health and safety, will not result in excessive deposition of debris or soil sediments on any public right-of-way, or impair any spring or existing watercourse.
- (c) Soil Importing will minimize impacts to the natural landscape, scenic, biological and aquatic resources, and minimize erosion impacts.
- (d) For Soil Importing associated with a new Agricultural building on a development site, the subject site shall be one that is the most appropriate for the imported soil in comparison with other available development sites, taking into consideration other development constraints and regulations applicable to the property.
- (e) Soil Importing and associated grading improvements will conform to the natural terrain and existing topography of the site as much as possible, and should not create a significant visual change.
- (f) Soil Importing conforms to any applicable General Plan or Specific Plan policies; and
- (g) Soil Importing ~~substantially~~ conforms to the adopted " Tier 1 ESL" levels or as modified by the DTSC or the RWQCB.



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
(707) 428-2002
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



February 7, 2019

Mr. Rodrigo Orduña, AICP
Assistant Planning Director
Alameda County Planning Department
Community Development Agency
224 West Winton Avenue, Suite 111
Hayward, CA 94544

Dear Mr. Orduña:

Subject: Draft Soil Importing Ordinance, Alameda County

The California Department of Fish and Wildlife (CDFW) has reviewed the draft Soil Importing Ordinance (Ordinance or Project) proposed for Alameda County. CDFW understands that the draft Ordinance would replace the existing ordinance in order to provide updated soil importing standards for the protection of land and water (underground and surface), sensitive species, and neighboring properties.

According to the Alameda County Community Development Agency Planning Department (County) Staff Report prepared for the Agricultural Advisory Community and for the January 22, 2019 hearing, the proposed Ordinance updates are being reviewed for potential impacts to the environment as required by California Environmental Quality Act (CEQA) with a draft Initial Study. The County Staff Report indicates that the draft Initial Study is anticipated to result in a Negative Declaration, meaning that no significant impacts to the environment would result from the proposed Ordinance updates.

CDFW is submitting comments on the draft Ordinance to inform the County, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Ordinance.

CDFW ROLE

CDFW is a Trustee Agency with responsibility under CEQA (Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as a California Endangered Species Act (CESA) permit, a Lake or Streambed Alteration (LSA) Agreement, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

REGULATORY REQUIREMENTS

California Endangered Species Act and Native Plant Protection Act

CDFW has discretionary authority over activities that could result in the "take" of any species listed as candidate, threatened, endangered pursuant to CESA (Fish and Game Code, § 2050

et seq.) or rare species under the Native Plant Protection Act (NPPA). (Fish and Game Code, § 1900 et seq.). A CESA permit must be obtained if the project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the project. Issuance of a CESA permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the project and mitigation measures may be required in order to obtain a CESA Permit.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the project proponent's obligation to comply with Fish and Game Code section 2080.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or Incidental Take Permit) until it has complied with CEQA as a Responsible Agency.

BIOLOGICAL RESOURCES

CDFW commends the County for addressing the increase in soil importation within Alameda County and for taking action to protect the environment. However, CDFW anticipates that significant impacts to the environment will result from the proposed Ordinance since the areas covered under the Ordinance are known to provide habitat for state and federally listed species and other special-status species. Suitable habitat is present within unincorporated Alameda County and the other areas affected by the Ordinance for the federally and state threatened California tiger salamander (*Ambystoma californiense*) and Alameda whipsnake (*Masticophis lateralis euryxanthus*), federally endangered and state threatened San Joaquin kit fox (*Vulpes macrotis mutica*), state threatened Swainson's hawk (*Buteo swainsoni*), Fully Protected Species golden eagle (*Aquila chrysaetos*) and white-tailed kite (*Elanus leucurus*), state Species of Special Concern American badger (*Taxidea taxus*), pacific pond turtle (*Actinemys marmorata*), western burrowing owl (*Athene cunicularia*) and loggerhead shrike (*Lanius ludovicianus*), federally threatened and state Species of Special Concern California red-legged frog (*Rana draytonii*), as well as other special-status wildlife species. Suitable habitat exists for several special-status plants such as the federally and state endangered large-flowered fiddleneck (*Amsinckia grandiflora*) and state endangered Livermore tarplant (*Deinandra bacigalupii*) as well as San Joaquin spearscale (*Extriplex joaquinana*) and brittlescale (*Atriplex depressa*) which are

included on the California Native Plant Society (CNPS) Inventory of Rare and Endangered Plants list 1B.2 (rare, threatened, or endangered in CA and elsewhere), and Congdon's tarplant (*Centromadia parryi* ssp. *Congdonii*) which has a CNPS Rare Plant Rank of 1B.1 (seriously endangered in California).

Take of special-status species in the form of mortality (i.e., "kill") may occur as a result of soil importation activities from heavy equipment/vehicle strikes; burrow collapse associated with earthwork, removal of vegetation or burial of vegetation, earthwork activities at the Project site resulting in crushing or suffocation, entrapment and desiccation of underground individuals; crushing by heavy equipment and materials, or under the weight of vehicles driving through habitat; entombment of individuals from deposition of stockpiled soil over occupied burrows, and during vegetation, top soil, or soil compaction, and development of access roads.

Indirect impacts of the importation of soil could also include adverse effects to the special-status species related to temporal losses, increased habitat fragmentation and edge effects, and the Project's incremental contribution to cumulative impacts. These potential impacts include stress resulting from noise and vibrations from ground disturbance, equipment operation, and traffic; stress resulting from capture and relocation; increased exposure or stress from disorientation; introduction or spread of invasive species; and long-term effects due to displacement from preferred habitat, loss of foraging habitat, changes in drainage patterns that favor different vegetative growth, increased pollution, increased competition for food and space, loss of breeding and burrowing habitat used for shelter, reproduction, and escape cover and increased vulnerability to predation. Individuals displaced due to habitat loss and degradation may be unable to survive in adjacent areas if these areas are at carrying capacity or are unsuitable for colonization. Therefore, CDFW advises a Negative Declaration is not appropriate for this Project.

Additional CDFW Jurisdiction

The following information may also assist the County in identifying potential Project impacts, which through compliance with Fish and Game Code and the California Code of Regulations, would be avoided or minimized.

Fully Protected Species

CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. "Take" of any fully protected species is generally prohibited and CDFW cannot authorize "take" except in limited circumstances; for example, under the authority of the Natural Community Conservation Planning Act. (Fish and Game Code, § 2800 et seq.).

Birds

CDFW has jurisdiction over actions that may result in the disturbance or destruction of nests or the unauthorized "take" of birds. Fish and Game Code sections 3503, 3503.5, and 3513 prohibit the following: unlawful "take," possession or needless destruction of the nest or eggs of any bird; unlawful "take," possession, or destruction of any birds-of-prey or their nests or eggs; and unlawful "take" of any migratory nongame bird.

Water Pollution

It is unlawful to deposit in, permit to pass into, or place where it can pass into the "Waters of the State" any (1) petroleum, acid, coal or oil tar, lampblack, aniline, asphalt, bitumen, or residuary product of petroleum, or carbonaceous material or substance, (2) refuse, liquid or solid, from any refinery, gas house, tannery, distillery, chemical works, mill, or factory of any kind, (3) sawdust, shavings, slabs, or edgings, (4) any factory refuse, lime, or slag, (5) *Cocculus indicus*, (6) substance or material deleterious to fish, plant life, mammals, or bird life. (Fish and Game Code, § 5650). "Waters of the state," "waters of this state" and "state waters" have the same meaning as "waters of the state" as defined in subdivision (e) of Section 13050 of the Water Code. (Fish and Game Code, § 89.1). "Waters of the state" means any surface water or groundwater, including saline waters, within the boundaries of the state.

SCOPE AND CONTENT OF ENVIRONMENTAL INFORMATION

CDFW offers the following guidance as to the scope and content of the environmental information to be included in the CEQA document.

Intended Uses of the CEQA document and CDFW's Role as a Responsible Agency

The CEQA document should articulate the intended uses of the CEQA document and specify that CDFW is anticipated to be a Responsible Agency that will use the CEQA document in its decision making for the Project. (CEQA Guidelines, § 15124). Note that CDFW must comply with CEQA prior to issuing a CESA Incidental Take Permit (ITP) or LSA Agreement. As such, CDFW may consider the lead agency's CEQA documentation. To minimize additional requirements by CDFW and/or under CEQA, the CEQA document should fully disclose potential Project impacts on CESA- or NPPA-listed species and any river, lake, or stream, and provide adequate avoidance, minimization, mitigation, monitoring and reporting measures for issuance of the ITP or LSA Agreement.

Project Description

In order to evaluate Project impacts on biological resources, it will be necessary to include all Project activities that may result in a potentially significant impact on biological resources.

Biological Expertise

Project proponents often engage the services of biologists experienced in conducting CEQA analysis in order to develop a project description that contains sufficient information to evaluate impacts on biological resources. CDFW strongly recommends this approach and encourages the County to ensure that Project engineering, soils, and construction experts are available to collaborate with biologists in preparing a complete and accurate Project description.

Detail Project Activities

The Project description should detail activities that result in any type of ground disturbance, including "minor" disturbances (e.g., trampling, soil erosion, runoff, and sedimentation), visual disturbance (e.g., bare soils), auditory disturbance (i.e., noise), and respiratory disturbance (e.g., dust). For example, the Project description should include information on work areas, temporary and permanent access roads, equipment staging and storage areas, sources of water withdrawal (for dust control), stockpile storage, post-project destination of runoff from the Project site, and potential spills and leaks.

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In addition, changes in existing agricultural land uses should be described. For instance, the importation of soil could alter soil compaction, local hydrology, sediment runoff rates, land cover, pesticide/herbicide use, and water use and storage.

Identify Setbacks

The Project description should identify setback distances from flood zones, wetlands, streams and lakes (including both perennial and episodic), and ponds, including hydrologically connected surface and ground water that sustains riparian and upland habitat. It should identify and evaluate potential aquifer cross-contamination sources such as septic systems, and hazardous geological materials such as arsenic, asbestos, nitrates, etc.

Environmental Setting

The CEQA document must include a description of the environmental setting (i.e., baseline or existing physical conditions) that contains sufficient information to understand the significant impacts of the Project. (CEQA Guidelines, §15125).

The Eastern Alameda County Conservation Strategy (EACCS, 2010) provides a baseline inventory of biological resources and conservation priorities to be utilized by local agencies and resource agencies during project-level planning and environmental permitting. It was designed to convey project-level permitting and environmental compliance of the federal and state endangered species acts, CEQA, the National Environmental Policy Act, and other applicable laws for all projects within the study area with impacts on biological resources. The EACCS was a joint effort including, but not limited to, the cities of Pleasanton, Dublin, and Livermore; Zone 7, Alameda County, East Bay Regional Park District, U.S. Fish and Wildlife Service (USFWS) and CDFW. The EACCS is intended support and streamline the permitting process. EACCS does not create new regulations or change the process by which a project applicant obtains permits for authorization to impact biological resources, but it has, in fact, been accepted as a guidance document by several agencies including USFWS and CDFW. Several of the species potentially impacted by this Project are included as focal species in the EACCS, such as California tiger salamander, Alameda whipsnake, Congdon's tarplant, western burrowing owl and American badger.

The County, as Lead Agency, should rely on the EACCS as a guidance document for compiling the above information. This source is not intended to be comprehensive and generally provides coarse data that may not be at the level of detail necessary to establish baseline conditions; however, the data may be useful for analyzing cumulative impacts. The EACCS documents are available here: <http://www.eastalco-conservation.org/documents.html>.

IMPACTS AND MITIGATION

As with the environmental setting, the CEQA document should focus on adequately analyzing impacts and providing mitigation for biological resources likely to be impacted by multiple subsequent Project activities. For example, if many activities could impact California tiger salamander, the CEQA document impact analysis and mitigation for the species should be adequate for most site-specific analyses.

Impact Thresholds

CEQA applies to significant project-related environmental impacts, including cumulative impacts. Therefore, a clearly defined threshold by which the significance of impacts is measured is necessary. Appendix G of the CEQA Guidelines identifies significance thresholds for biological resources impacts, including Mandatory Findings of Significance. These thresholds are generally sufficiently comprehensive; however, additional considerations for determining impacts on wetlands is recommended because, as previously indicated, resource agencies, including CDFW, do not necessarily use the same criteria to identify wetlands.

CEQA Appendix G Biological Resources Checklist:

- a) **Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?**

Species addressed by this threshold include but are not necessarily limited to the following categories.

- Listed as rare, threatened, or endangered under federal law.
- Listed as rare, threatened, endangered, candidate, or fully-protected under state law.
- Listed by the California Board of Forestry and Fire Protection, U.S. Forest Service; Bureau of Land Management, or other land managing agency.
- California Rare Plant Rank (CRPR) of 1 through 4 (<http://www.cnps.org/cnps/rareplants/ranking.php>)
- California Species of Special Concern (<http://www.dfg.ca.gov/wildlife/nongame/ssc/>)
- A local or regional rare plant or animal identified in a local or regional plan, policy, or regulation.
- Meets the criteria of CEQA Guidelines section 15380 endangered, rare, or threatened species

Project direct and indirect impacts on each candidate, sensitive or special-status plant and animal species and their habitats should be thoroughly addressed. Impacts are based on the sensitivity of each biological resource receptor; in this case each identified species and habitat. Examples are included below.

- Clearing and grading vegetation, and removing or diverting surface or ground water away from habitat that is dependent upon it, may degrade water quality, harm or destroy aquatic, riparian, and upland habitats, and ultimately cause a reduction in plant and animal species abundance and diversity. For example, removed or compromised vegetation that previously shaded aquatic habitat could allow more sunlight to warm waters, causing increased water temperatures and decreased dissolved oxygen. In turn, this can reduce species diversity and abundance.
- Dewatering (as supplied by groundwater, precipitation, and surface water) riparian, upland, and surface water habitats may remove plant root access to groundwater.

- Covering existing habitat with imported soil may degrade habitat for species dependent on the pre-existing habitat, causing a reduction of native plant and animal abundance and diversity.
- Erosion may result in sedimentation that leads to downslope impacts on terrestrial and aquatic habitats.
- Clearing/grading may result in the colonization of invasive plant species that reduce habitat quality.
- Noise at even moderate levels (40-60 dB) is associated with physiological and behavioral changes in birds, terrestrial mammals, amphibians, and bats. The CEQA document should analyze Project noise contributions to ensure that truck traffic and heavy equipment operation do not significantly impact the local fauna.
- Hazardous features could trap, displace, or lead to death of wildlife. Examples include: materials to control erosion using gabions or non-biodegradable meshes; night lighting; stockpiled vegetation and soils; tarped areas; trash, garbage and open containers; and oil leaks from heavy equipment. These potential impacts should be evaluated to reduce or eliminate risks to wildlife.
- Removing individual special-status plant species or populations, disturbing associated soil seed banks sustaining populations and their genetic adaptations, clearing suitable habitat occupied by special-status plant species, and removal of habitats supporting their pollinators and dispersal agents, could result in potentially significant impacts.
- Adverse edge impacts typically arise when natural habitats are disturbed and farmed. Adverse edge impacts extend varying distances from the source of impact depending upon the issue and location. Establishing protective buffers can effectively minimize these impacts.
- Access routes should also be analyzed for biological impacts if new roads and new grading is required for Project sites. Construction of new access routes can lead to many substantial adverse impacts on watershed integrity and wildlife, including an increased risk of poaching in remote areas.

Appropriate species-specific mitigation measures should be included for each potentially significant impact. On-site habitat restoration or enhancement should be considered and detailed. If on-site mitigation is not feasible, then off-site mitigation through habitat creation and/or acquisition and preservation in perpetuity should be considered.

The CEQA document should include a mitigation measure that states that the Project applicant will consult with CDFW for any Project activity that may result in "take" of CESA- or NPPA-listed species, and that for unavoidable "take" the applicant will submit an ITP application to CDFW and receive authorization prior to implementing the project. In such cases, early consultation with CDFW is encouraged because significant modification to a subsequent Project activity and mitigation measures, and an additional CEQA environmental document, may be required. Additionally, "take" of species listed under the federal Endangered Species Act would require a separate authorization from the USFWS.

- b) **Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or USFWS?**

Project direct and indirect impacts on riparian habitat or other sensitive natural communities should be evaluated and quantified as feasible at the program level.

Appropriate mitigation measures should be included for each potentially significant impact (e.g., restoration, permanent setbacks). Plans for restoration and revegetation should be prepared by individuals with expertise in the local California ecosystem and native plant revegetation techniques.

For Project activities potentially impacting ephemeral streams, herbaceous vegetation, woody vegetation, and woodlands also serve to protect the integrity of ephemeral streams and help maintain natural sedimentation processes. The CEQA document should require effective setbacks to maintain appropriately-sized vegetated buffer areas adjoining ephemeral streams.

The CEQA document should require that, prior to the commencement of any Project activity that will substantially divert or obstruct the natural flow of any river, stream or lake; substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake; or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, the project applicant must submit a complete LSA notification package and fee to CDFW. In such cases, early consultation with CDFW is encouraged.

- c) **Would the Project have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?**

As previously indicated, all resource agencies do not use the same criteria to identify wetlands. CDFW and USFWS identify areas as wetlands if they exhibit wetland hydrology, hydric soils, or hydrophytic vegetation. The CEQA document should analyze impacts on wetlands that may or may not be considered federally protected wetlands.

Project direct and indirect impacts on wetlands should be carefully evaluated. For example, Project impacts could include changes in drainage patterns on and downstream of Project sites; changes in the volume, velocity, and frequency of existing and post-Project surface and subsurface flows; polluted runoff; and soil erosion and/or sedimentation in wetlands; and impacts on groundwater and aquifer sources.

Protection of water quality and natural hydrology is a vital component for conserving fish and wildlife resources. Water quality is regulated by state and federal laws, which are primarily administered by the State Water Resources Control Board and nine Regional Water Quality Control Boards, and the U.S. Army Corps of Engineers. CDFW strongly discourages development in wetlands or conversion of wetlands to uplands. Any development or conversion that would result in a reduction of wetland acreage or habitat values should include mitigation that assures "no net loss" of wetland habitat values or acreage. Development and conversion include, but are not limited to, conversion to subsurface drains, placement of fill or building of structures within the wetland, and channelization or

removal of materials from the streambed. All wetlands and watercourses, intermittent or perennial, should be retained and provided with substantial setbacks to the maximum extent feasible, to preserve the riparian and aquatic values and maintain their value to on-site and off-site wildlife populations.

d) Would the project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

Project direct and indirect impacts on wildlife movement areas, linkages, corridors, and nursery sites (e.g., bat maternity and roosting colonies; rookeries; amphibian breeding, rearing and dispersal sites; reptile burrow and nesting sites; and fish and other aquatic organism spawning, rearing, and movement habitat) should be analyzed.

The CEQA document should stipulate that clearing or covering of vegetation, and other activities that may adversely affect breeding birds, should occur outside of the peak avian breeding season, which is generally from February 1 through August 31, or as early as January 15 for some raptors, as feasible. If vegetation clearing or other activities are necessary during breeding season, the CEQA document should require that a qualified biologist, experienced with conducting breeding bird surveys, conduct such surveys prior to work in the area. If an active breeding site is identified, the qualified biologist should establish and demarcate a buffer zone, which may be several hundred feet, depending on the species and local conditions (e.g., ambient levels of human activity, screening vegetation, or other factors) between the Project activities and the breeding site to avoid breeding activity interruption. The buffer zone must remain in place until the young have fledged or the breeding site is no longer active, as determined by a qualified biologist.

The CEQA document should also analyze the impact of Project activities on the ability of aquatic organisms to migrate freely within their range. Improperly designed or constructed stream crossings and water diversions have often become barriers to the migration and passage of aquatic organisms. The CEQA document should require that Project activities involving stream crossings and water diversions be designed, constructed, and operated to maintain passage for aquatic organisms to move freely within streams.

e) Would the project conflict with any local policies or ordinances protecting biological resources (such as a tree preservation policy or ordinance), or conflict with the provisions of an adopted Habitat Conservation Plan (HCP), Natural Community Conservation Plan (NCCP), or other approved local, regional, or state habitat conservation plan?

CDFW recommends that the CEQA document require Project consistency with the aforementioned policies, ordinances, plans, and conversation land goals as part of the *Project Description*.

Alternatively, the CEQA document should analyze potential Project conflicts with local policies or ordinances protecting biological resources; regional conservation planning approaches, including proposed Regional Conservation Investment Strategies; conservation

and mitigation banks; and conservation elements in county general plans; conserved land areas including properties with habitat conserved through conservation easements or fee title ownership by federal, state and local government; and land trusts for the purpose of conserving and restoring habitat.

Such conflicts could result in significant impacts on biological resources.

Mandatory Findings of Significance: Would the project substantially degrade the quality of the environment; substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community; substantially reduce the number or restrict the range of an endangered, rare, or threatened species?

The CEQA document should specifically analyze the mandatory findings of significance for potentially impacted fish, wildlife, and habitats.

For example, the potential for a substantial reduction in the number or range of each potentially impacted endangered, rare, or threatened species should be analyzed. Species meeting the criteria for endangered, threatened, or rare may include species that are not necessarily listed under the state or federal Endangered Species Acts; for example, California Species of Special Concern. (CEQA Guidelines, §15380).

Cumulative Impacts

A key CEQA document advantage is that the Lead Agency can ensure consideration of cumulative impacts that might be slighted in a case-by-case analysis. [CEQA Guidelines, § 15168, subd. (b)(2)]. The CEQA document must consider past, existing, and reasonably foreseeable impacts when evaluating whether the Project may significantly impact each resource in CEQA Guidelines Appendix G. (CEQA Guidelines, § 15130).

There are numerous past soil importation projects and other activities that have adversely impacted the biological resources. Many impacts are exacerbated because they are not addressed by current regulatory processes of CDFW and other agencies. For example, impacts from conversion of upland habitat (e.g., grasslands and oak woodlands) to vineyards or farming. The CEQA document should analyze cumulative impacts on sensitive biological resources, including but not limited to special-status species and their habitats, and rare natural communities.

FILING FEES

CDFW anticipates that the Project will have an impact to fish and/or wildlife habitat, and assessment of filing fees is necessary. (Pub. Resources Code, § 21089; Fish and Game Code, § 711.4). Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW.

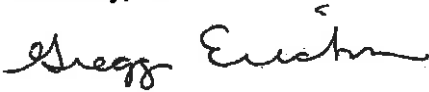
FUTURE COORDINATION

CDFW appreciates the opportunity to comment on the Ordinance. CDFW staff is available to meet with you to further clarify our comments and provide technical assistance on any changes

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necessary to protect resources. If you have any questions, please contact Ms. Marcia Grefsrud, Environmental Scientist, at (707) 644-2812; or Ms. Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 944-5541.

Sincerely,



Gregg Erickson
Regional Manager
Bay Delta Region

ec: Ryan Olah, ryan_olah@fws.gov
U.S. Fish and Wildlife Service

Brian Wines, Brian.Wines@waterboards.ca.gov
San Francisco Regional Water Quality Control Board

Katherine Boxer, katherine.boxer@acrcd.org
Alameda County Resource Conservation District



Alameda County Board of Supervisors
Transportation and Planning Committee

September 17, 2018

Dear Board Members,

The Alameda County Resource Conservation Districts' Board of Director's appreciates the opportunity to comment on the proposed Fill Importing Ordinance. The mission of the Alameda County Resource Conservation District (ACRCD) is to serve as a lead conservation agency in Alameda County. It seeks to protect and enhance agriculture in Alameda County by assisting private farmers and ranchers as well as local agencies. The ACRCD provides technical and project management assistance for activities such as the development of resource management plans, natural resources inventories and wildlife species preservation activities including baseline studies, habitat restoration, planning, and implementation. We also provide environmentally sensitive solutions for local agencies, perform watershed restoration and resilience projects, and support and enhance production agriculture, ranching, and open space lands.

The ACRCD Board represents diverse interests and includes multi-generation Alameda County ranchers. The Board is very well informed regarding best practices in ranching and agriculture, regularly developing and approving policies and ACRCD projects that reflect the critical interests of preservation and sustainability of the region's natural resources including the watershed, wildlife and plant species, human health and safety and of course the economic viability of specific practices, whether voluntary or imposed by regulations.

In consultation with senior management of the Alameda County Community Development Department's Planning Division, regarding the County's concerns and goals with the proposed Fill-Importing Ordinance, the ACRCD Board of Directors recognizes the vital importance of instituting the proposed ordinance and fully supports the objectives of the ordinance. The decision on this ordinance will have permanent impacts. To enable the County to complete its due diligence in the development of this comprehensive initiative, **a minimum six-month extension of the existing Fill Importing Moratorium is essential.** It is critical that the Fill Importing Ordinance is fair and balanced while concurrently fully considering the potential long-term ecological impacts on the region's natural resources and protecting existing agricultural operations.

Board of Directors

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The ACRCB Board does strongly recommend, as noted in the Alameda County Community Development Department's memo to the Transportation and Planning Committee, that government agencies with regulatory environmental and wildlife preservation responsibilities be included in the review and comment period for their respective written findings regarding the draft ordinance, that potential impacts to the water quality of the watershed be evaluated relative to testing specifications, fill quantities and locations need to be identified and that statewide Natural Diversity databases be reviewed for the presence of listed threatened and endangered species. Also, the U.S. Fish and Wildlife Service designates critical habitat to ensure sensitive species are not being disturbed. The California Department of Fish and Wildlife manages listed threatened and endangered species protection requirements in CA. Both of these agencies should be integrated into a County Fill Importing review process on agricultural lands and unincorporated area properties. This information would inform the landowner of required actions they must take in significantly modifying the usage of their lands. In addition, a landowner must first demonstrate the availability of water *on their property* for the proposed agricultural use, when importing large amounts of fill.

Further the Board recommends that Soil Importing be limited to specific agricultural activities, such as repairing farm roads and culverts, developing/repairing arenas, orchards, vineyards and agricultural structures. The ACRCB Board emphasized that no filling of canyons be allowed and that tall fills in the hundreds of vertical feet also should not be permissible. The Board recommends that a deed restriction or disclosure be required on the area of the fill acknowledging that if the fill was for agricultural purposes that fill areas may only be used for such purposes. The ACRCB Board recommended a three-tiered system, as described the Community Development Department correspondence. The Board of Directors strongly stated that if the Soil Importing exceeds the requirements of the disclosed agricultural needs of the project, then the property would immediately transition from Agricultural Use to a Landfill designation.

Other items the ACRCB Board of Directors finds of great concern include the continuous use of rural roads by heavy load trucks resulting in major damage to the roads that County taxpayers ultimately pay for and which must be used by other nearby agricultural operations. Rural roads were not designed or built to sustain the impacts of frequent heavy truck traffic of this type.

It has been stated that much of the fill coming into Alameda County is from the rapid growth and development occurring in other Bay area counties. The fill may be bringing hazardous to toxic material to agricultural land which will impact not just the land on which the fill is placed, but also adjoining lands of farmers and ranchers not involved in fill operations. It may impact threatened and endangered species on adjoining or down-stream property. The Ordinance should have enforcement mechanisms to protect agricultural operations and natural resources. All imported soils must possess a verifiable bill of lading, soil manifest from the originating site, or other evidence of cleanliness ("Tier 1 ESL" levels), to be approved by the Alameda County Environmental Health Department. Any soils identified to contain specific hazardous materials of concern, in quantities of concern, will not be usable as agricultural fill pursuant to the Alameda County Zoning Ordinance.

The ACRCDD Board of Directors would like to emphasize that the Alameda County Resource Conservation District is a CA special district with no regulatory authority. Our comments are being provided at the request of the Community Development Agency. As we develop and implement voluntary compliance projects we encourage the County to develop an educational outreach program to educate agricultural producers, ranchers and landowners with large property holdings; regarding the implications of fill importing activities. If large quantities of hazardous materials contaminated fill is dumped on a large property, it then becomes the land-owners responsibility for clean-up and appropriate disposal of the hazardous soils into a designated landfill. Costs for clean up could run into millions of dollars and the land-owner's responsibility for clean up is in perpetuity. Fines would also be imposed by regulatory agencies.

In summary the Alameda County Resource Conservation District Board of Directors fully supports the development and implementation of a Fill Importing Ordinance. The ordinance will have permanent impacts on agriculture and natural resources. The premature lifting of a moratorium will also have immediate and permanent impacts. The Community Development Department's request for an additional 6 months to develop a fair and equitable ordinance that protects agricultural operations and the environment is reasonable, and the ACRCDD looks forward to providing additional input during that time.

The Board wishes to commend the Alameda County Community Development Agency for its proactive diligence and conscientiousness in considering the multiplicity of concerns prior to recommending enactment of the Ordinance.

The ACRCDD Board and CEO Katherine Boxer are happy to make themselves available as needed. Thank you.

Sincerely,



Mark V. Connolly, Rancher
Acting President



Darrel Sweet, Rancher
Vice-President

	Allow soil importing	Allowed amounts of soil import without Grading Permit	Permit(s) Required	Cleanliness Review
Contra Costa County	yes	at or less than 3 feet for up to 200 cubic yards; minor leveling less than 3 feet	Grading Permit	relies on owner's engineer to certify that the imported fill is clean on permitted projects
Santa Clara County	yes	routine agricultural work for slopes less than 20% (<i>routine leveling, plowing, harrowing, disking, ridging, listing, cultivating, on-site drainage ditches, brush removal, preparation for ranch roads related solely for the purpose of accessing agricultural fields, creation of stock ponds and similar operations necessary for the preparation and maintenance of field crops</i>); allows cuts or fills less than 150 cubic yards, or 5 feet or less in vertical depth; requires findings for granting of Grading Permits; grading permits are required to make a large area flat for grow crops	Grading Permit	relies on owner's engineer to certify that the imported fill is clean on permitted projects; fill for exempt projects are not verified in any way; if there is an initial notice of violation that needs to be legalized or abated, might require that the importer obtain a letter from the source of the soil certifying that the soil is clean.
San Joaquin County	yes	less than 1 ft in depth if slope less than 1/5; less than 3 ft in depth if no structures and less than 50 cubic yards	Grading Permit	relies on owner's engineer to certify that the imported fill is clean on permitted projects
Monterey County	yes	maximum 1 foot in depth if slope is 20%; or 3 feet in depth for a maximum of 100 cubic yards per site	Grading Permit	relies on owner's engineer to certify that the imported fill is clean on permitted projects