

**ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT**

STAFF REPORT

TO: Planning Commission

HEARING DATE: August 19, 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 limit soil importing, where there is currently no County regulation, to small quantities before discretionary permits are required within 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”, and per Section 15061.b.3 – “Common Sense Exemption” that CEQA applies only to projects which have the potential for causing a significant effect on the environment.

STAFF RECOMMENDATION

Staff recommends that the Planning Commission take public testimony for the most recent proposed ordinance modifications dated August 8, 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.

SUMMARY

The intent of the Soil Importing ordinance is 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 agriculturally zoned districts soil importing may lead to agricultural activity, but in and of itself, 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.

Input from the Public and Regulatory Agencies:

Over the past 15 months the Soil Importing ordinance has been discussed at various dates at the following community meetings:

Fairview Municipal Advisory Council
Sunol Citizens' Advisory Council
Castro Valley Municipal Advisory Council
Agricultural Advisory Council
Ad-Hoc Community Subcommittee of the Agricultural Advisory Council
District 4 Agricultural Advisory Council
Alameda County Resource Conservation District Board
Alameda County Planning Commission
Alameda County Board of Supervisors

Comments received at these meetings have been at either end of the regulatory spectrum. Community members have expressed concerns that either more regulation and oversight over the importing of soil is needed, or that the proposed soil importing regulations are too restrictive. There are a small number of ranchers and a vintner who would like to continue importing soil, which has in the past been imported in quantities as large as tens-of-thousands to hundreds-of-thousands of cubic yards on rural properties, without much local or State oversight.

However, there is a real possibility of damage to the environment if the soil importing continues without review of the quality of the soil, the location of the imported soil on habitat with potentially sensitive, endangered, or threatened species, the potential for impacts to the groundwater, watercourses, air quality, neighboring properties, and public roadways, and the changes to the use of the land from agriculture and open space to land fill. With the proposed Soil Importing ordinance, the County can regulate the importing of large soil quantities onto rural agricultural and rural residential properties while maintaining the ability of property owners to import soil for legitimate agricultural purposes, such as blending of topsoil, or establishing relatively flat pads for horse arenas and vineyards and orchards.

During the public process for the proposed ordinance, the California Department of Fish and Wildlife (CDFW) and the San Francisco Bay Regional Water Quality Control Board (RWQCB) has submitted letters of concern over the proposed ordinance, mostly on environmental grounds. Generally they believe there should be environmental review on the ordinance itself, and that even the smallest amounts of contaminated soil could damage the environment. They also believe there needs to be additional metrics that consider biological impacts in addition to general cleanliness, and that allowing soil import without oversight may not protect existing habitat and species of concern.

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Staff has considered these comments, has worked with Staff members of these agencies, and has modified the proposed Soil Importing ordinance to include, as much as possible, language to address the concerns of these agencies in anticipation of action on this issue by the Board of Supervisors. There is acknowledgement that the agricultural community needs to be able to import some amounts of soil to conduct legitimate agricultural activities, and the ordinance is drafted with this in mind.

At its hearing of July 13, 2019, the Board of Supervisors took testimony and decided to remand the matter back to the Planning Commission to consider substantive late adjustments to the language of the draft ordinance. As directed to Staff by the Board, these adjustments place substantial responsibility on the soil importers to do preliminary work to identify potential impacts to water features, water quality, biological habitat and special status species; and also to levy a per-cubic-yard fee of \$1.26 on soil imports to fund County staff efforts to oversee and monitor the soil import activities. These changes all appear in the revised draft Ordinance, attached, and are described below.

ANALYSIS

It has been agreed to by the rural community at large that 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, such 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 or other farm animal.

As a general introduction, the ordinance developed by staff proposes a system for regulating Soil Importing based on tiering of review, tied to the amount (volume and depth) of soil import. Staff arrived at this approach after input from surrounding counties of Contra Costa, Santa Clara, Monterey, San Joaquin, and reviews of the regulations in other surrounding Counties. The details of the ordinance are discussed in full below.

Exemptions have also been part of the ordinance discussion, as not all importing of soil material can (or should) be regulated. Some exemptions are already existing, such as through the County's Grading Ordinance and some exemptions are written into the new Soil Importing ordinance. Exemptions were generally discussed in the prior Staff Analysis of May 6 (attached).

Changes based on discussions with State Agencies of jurisdiction:

Since the last hearing before your Commission, Planning Staff worked with staff from the State of California Regional Water Quality Control Board, the State Department of Fish and Wildlife, and the County Environmental Health Department to bring it into better accordance with the comments of the State Agencies and applicable state laws and regulations. Subsequently, and at the direction of the Board, a number of changes and amendments were made. The major areas of concern were the following:

Concern A: Tier 1 Soil environmental Screening Levels (ESLs) alone are not protective of aquatic habitats and special status species.

Resolution A: Language to address this concern in detail was added. It creates a level of complexity to the Ordinance that is potentially difficult to comprehend by Staff or the Public. However, language has been added to provide direction to qualified professionals on how to proceed, and the Ordinance also provides a source of funding adequate to engage 1.5 new Staff positions to help implement and monitor the program; these Staff people would gain expertise quickly on how to deal with projects under the program (more on this below).

Soil has already been defined to include only “earthen material lying above the bedrock,” and to exclude “trash, debris, construction material, or chemicals at measured levels above safe levels for humans watercourses, groundwater, and plants and animals.

New language has been added to require:

- A. Notification by the County Planning Department to the aforementioned State and Federal Agencies of any proposed soil import projects.
- B. Registration of intent by all proponents with the Alameda County Community Development Agency, Planning Department, and payment all administrative fees associated with the proposed Soil Import.
- C. Habitat features including seasonal and perennial ponds, riparian corridors along intermittent, seasonal, and perennial creek channels, rock outcrops in chaparral habitat, upland grassland habitat within 1.7 miles from potential breeding ponds, and burrows, must be protected.
- D. Habitat assessments must be prepared by a Qualified Biologist.
- E. Imported Soil shall not be placed in breeding ponds for special status species or in riparian corridors;
- F. Property owners must consult with U.S. Fish and Wildlife Service (USFWS) and staff at the California Department of Fish and Wildlife (CDFW), if Soil Import areas occur in areas defined on maps found in the East Alameda County Conservation Strategy as habitat for special status species, and/or by the Qualified Biologist, in consultation with the State of California Natural Diversity Database, as providing habitat for special status species.
- G. Before Imported Soil is placed in any ponds, wetland areas, stream channels or canyon bottoms, the property owner must contact the Army Corps of Engineers, appropriate Water Board, and CDFW to discuss the need to obtain permits prior to placing Imported Soil in these features.

Finally, for medium and larger projects, Conditional Use Permits must be adopted with CEQA analysis, and findings must be made that guarantee that water quality and biological resource integrity are protected.

Concern B: Environmental Review for many smaller projects would not adequately assess impacts on biology.

Resolution B: New language has been required to explicitly address the concerns of the presence of special status species or special habitats on any and all of the soil import receiving sites. As currently written in the draft Ordinance, the Tiering system would remove the smallest projects on agricultural lands (less than 1000 cubic yards per year) from any discretionary oversight and evaluation by the CDA, but language has also been modified to apply biological and toxicological evaluation requirements to **all** tiered projects, with evaluation of both the receiving lands and the imported soils, even where environmental review on the smallest projects is not required.

The new language specified for Concern A above explicitly applies to all import and is preceded by the header, “For all Soil Import of any volume:” No project, regardless of size, is excluded from review for biological impact, water protection and coordination with state agencies of jurisdiction.

Concern C: Ordinance does not include detailed protocol to develop a sampling plan capable of establishing that imported soil is sufficiently clean (“acceptable”) for placement in agricultural lands.

Resolution C: The draft Ordinance has been amended to include language for updated screening requirements for a list of analytes for testing and screening in accordance with the standards established by the San Francisco Bay Regional Water Quality Control Board and the County Department of Environmental Health (which the State recognizes as a standard protocol to follow). The Draft Ordinance has also been updated to include language for soil testing for human safety according to established protocols recognized by the State of California Water Resources Control Board San Francisco Bay Region. The language now includes the following

“A. All Soil Imported in accordance with this chapter must not contain chemicals at concentrations that exceed the applicable risk-based screening levels, which shall be verified by a Qualified Professional.

1. Soil Import Documentation prepared or reviewed by a Qualified Professional in accordance with this chapter shall be stored for at least 5 years and shall be available for periodic review and audit by the County Planning Department at any time, up to four times per year.
2. If the review or audit demonstrates the Imported Soil has been inadequately characterized or contains chemicals with concentrations exceeding the applicable risk-based screening levels, then the County Code Enforcement Division may refer the matter to other County, State, and Federal agencies.

And under Definitions:

- Protocols for Soil Import and Export means the County Environmental Health Department’s published document presenting procedures and reporting requirements for characterization and export of proposed Soil sources for Import to another site.
- Qualified Biologist means a professional who, by education, training and experience possess the expertise in the branch of science concerning living organisms adequate to evaluate the impacts of Soil Importing on living organisms.
- Qualified Professional means a licensed geologist or other professional who, by education, training, and experience possesses the expertise necessary to evaluate Soil proposed for Import in accordance with the County’s Protocols for Soil Import and Export to ensure that the Soil is suitable for Import to the site.

Concern D: The Ordinance does not yet include a protocol for selecting the constituents that must be analyzed for in soil to ensure that imported soil is sufficiently clean for placement in agricultural lands.

Resolution D: The draft Ordinance has been amended to include language that adds screening requirements to test the soil in accordance with Tier 1 Environmental Screening Level standards as approved by the San Francisco Bay Regional Water Quality Control Board for this program, and in accordance with the testing, sampling and analysis protocols described above in Resolution C. The Tier 1 ESLs, which are included in and implicit within the protocols, satisfactorily identify constituents that must be analyzed. In all cases, a qualified professional would need to be in charge of soil screening and analysis for these issues.

Concern E: The Ordinance has not been reviewed under the California Environmental Quality Act (CEQA).

Resolution E: CDA Staff has prepared this regulation on the premise that the activity in question – soil import and placement for any agricultural reason and at any level – is already unregulated by the existing County ordinance, and that any stricter regulation on that activity, such as the draft Ordinance, satisfies the concept that natural resources and the environment will receive greater

protection than previously as a result. This type of approval is therefore technically exempt under CEQA Guidelines Section 15307 – “Actions by Regulatory Agencies for the Protection of Natural Resources”, Section 15308 – “Actions by Regulatory Agencies for the Protection of the Environment.”

Staff acknowledges that conducting a CEQA review on this proposal would provide maximum transparency of potential impacts of the soil import activity being regulated, and the most solid foundation for approval of this Ordinance.

The new draft also contains language that is generally substantive in providing protection for water features and biological resources by compliance with all existing laws and regulations, and which also provides guarantees for performance and end use of agriculture:

17.66.020 - Compliance with Existing Laws and Regulations.

- A. Compliance with the regulations and requirements of state and federal regulatory agencies is required, including but not limited to the following:
 - 1. Bay Area Air Quality Management District
 - 2. California Department of Fish and Wildlife
 - 3. California Water Resources Control Board San Francisco Bay Region
 - 4. California Department of Toxic Substances Control
 - 5. United States Fish and Wildlife Service
 - 6. U.S. Army Corps of Engineers
- B. Issuance of a permit or other authorization to Import Soil pursuant to this ordinance shall not constitute an exemption from other applicable laws or regulations, including but not limited to:
 - 1. Alameda County Grading Ordinance
 - 2. Alameda County Watercourse Protection Ordinance
 - 3. Alameda County Health and Safety Ordinances
 - 4. Alameda County Business License Tax ordinance
 - 5. Alameda County Surface Mining Ordinance
 - 6. California Endangered Species Act
 - 7. California Surface Mining and Reclamation Act
 - 8. U.S. Endangered Species Act
 - 9. U.S. Migratory Bird Treaty Act

Among the standard conditions for any Administrative Conditional Use Permit and Conditional Use Permit, all of which provide added protection and requirements that the use is agricultural, include:

- Soil Importing shall be permitted only to the extent necessary to establish or maintain an Agricultural Use presently permitted on the property.
- Soil Import Documentation shall be stored for at least 5 years and shall be available for periodic review and audit by the County Planning Department at any time, up to four times per year. If the review or audit demonstrates inadequate characterization of the Soil Import or Soil contamination with chemical concentrations greater than the applicable risk-based screening levels, then the County Code Enforcement Division may initiate enforcement and abatement proceedings and may refer the matter to other County, State, and Federal agencies.
- Permittee must implement an Agriculture Plan approved by the Planning Director consistent with the schedule for completion included in the Agriculture Plan.
- Annual inspections and reports of soil import and agriculture activities are required.
- Permittee shall provide financial assurances sufficient to guarantee completion of the Agriculture Plan or remediation of the property to pre-Soil Import conditions.

Finally, a per-cubic yard fee of \$1.26 will be levied on imported soil, as an administrative fee to provide staff time to oversee and implement the program described in the Ordinance.

Soil Importing Ordinance Tentative Hearing Schedule:

Board of Supervisors – Tuesday, August 24, 2019 at 1:30 pm

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; adoption of the Ordinance would create no new or previously unregulated impacts of its own.

Therefore, the ordinance updates are considered Categorically 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.

Also applicable is Section 15061.b.3 – “Common Sense Exemption” that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question (in this case, the adoption of the Soil Importing ordinance) may have a significant effect on the environment, the activity is not subject to CEQA.

The subsequent individual 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 Planning Commission take testimony for the proposed ordinance modifications to establish oversight and regulations for Soil Importing, and make recommendations that the Board of Supervisors adopt the Categorical Exemption and the draft Soil Import ordinance language.

ATTACHMENTS

- Draft Planning Commission Resolution

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- County Planning Department Staff's Draft Soil Importing Ordinance as of August 8, 2019
- Staff Analysis, Planning Commission, May 6, 2019

PREPARED BY

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ORDINANCE NO. 2019-_____

**AN ORDINANCE REGULATING SOIL IMPORTING WITHIN THE
UNINCORPORATED AREA OF THE COUNTY OF ALAMEDA**

SECTION I

In enacting this ordinance, the Board of Supervisors of the County of Alameda makes the following findings:

1. The County of Alameda ("County") regulates land uses in the unincorporated area of the County through various regulations including the General Plan, Specific Plans, and Zoning Ordinance (Title 17 of the Alameda County Ordinance Code); and
2. The County's land use regulations govern the types of land uses that are permitted by right or conditionally permitted; and
3. Chapter 17.06 of the Zoning Ordinance specifies the uses that are permitted and conditionally permitted in the Agricultural ("A") District. Uses permitted by right include various traditionally agricultural uses, such as a crop, vine, tree farm, truck garden, plant nursery, greenhouse, or horticulture and grazing, breeding or training of horses or cattle. Conditionally permitted uses include, for example, a sanitary landfill, composting facility, and packing house for fruits or vegetables; and
4. Chapter 17.08 of the Zoning Ordinance specifies the uses that are permitted and conditionally permitted in the Single-family residence ("R-1") District. Uses permitted by right include a one-family dwelling and a field crop, orchard or garden. Conditionally permitted uses include a plant nursery or greenhouse; and
5. Chapter 17.26 of the Zoning Ordinance specifies the uses that are permitted and conditionally permitted in the Combining Agricultural Use ("L") District, which allows limited agricultural uses. Uses permitted by right include various traditionally agricultural uses, such as keeping a limited number of livestock or fowl and grazing. Conditionally permitted uses include keeping additional livestock or fowl, kennel, boarding stable and riding academies, or sales of any product derived from a permitted use; and
6. Other chapters of the Zoning Ordinance establish permitted and conditionally permitted uses in those zoning districts, including, for example, higher-density residential and commercial zoning districts; and
7. The Board of Supervisors acknowledges that some amount of soil amendment or grading may be required for activities that are permitted or conditionally permitted in a particular zoning district; and that, accordingly, some amount of soil importing is permitted by the Zoning Ordinance to facilitate those permitted uses; and
8. The County has identified properties that have been importing large volumes of soil for commercial purposes, particularly in the A District, in a manner that does not appear to be for traditional agricultural uses or pursuant to a conditional use permit for any conditionally permitted use, and it appears that a number of properties are importing soil while claiming the activity will someday yield a use that is permitted in accordance with the Zoning Ordinance; and
9. Accepting high volumes of deliveries or disposal of soil is distinct from the limited scope of soil importing required to facilitate permitted land uses like traditional farming (e.g., crops, orchard) or building a house; and
10. Importing soil raises land use concerns regarding traffic and road safety, noise, and potential environmental issues such as truck emissions, contamination of soil, surface water and groundwater, and risk to special status species from physical modification of habitat; and
11. Importing soil can introduce impacts to soil, surface water and groundwater, natural resources, topographic aesthetics, transportation and traffic to such a degree that if left unregulated, could result in long term detrimental impacts to County resources; and
12. The County has a compelling interest in protecting biological resources and the public health, safety, and welfare of its residents, visitors and businesses, and in preserving the peace and quiet of the

neighborhoods within the unincorporated areas of the County by regulating soil importing as a land use; and

13. For the purposes of regulating soil importing, the California State Water Resources Control Board for the San Francisco Bay Region (Water "Board") recommends that County staff and the regulated community refer to the *Eastern Alameda County Conservation Strategy (EACCS, 2010)* for a documented baseline inventory of biological resources and conservation priorities to be utilized during project-level planning and environmental permitting. EACCS was drafted to convey project-level information for use in permitting and environmental compliance with the federal and state endangered species acts (FESA AND CESA), the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA), and other applicable laws for projects within the study area with impacts on biological resources. The EACCS was intended to 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, and it has not been accepted as a guidance document by the County of Alameda, but it has been accepted as a guidance document by several agencies including USFWS and CDFW.
14. Section 15.36.050 of the County's Grading Ordinance (Chapter 15.36 of the Alameda County Ordinance Code) includes an agricultural exemption, allowing certain grading activities on property zoned as agricultural without a grading permit. In order to qualify for such exemption, the activity must "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 must be "performed in accordance with all applicable laws, regulations, and ordinances of the county;" and
15. Exemption from the Grading Ordinance does not make an activity a permitted land use under the Zoning Ordinance; and
16. Correspondingly, any exemptions provided in this ordinance do not exempt any activity from compliance with any other applicable provision of law, including, but not limited to, the Grading Ordinance. For example, activities that are exempt from this ordinance must nevertheless comply with permit requirements of the Grading Ordinance where the activities would "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" or where such activity was not "performed in accordance with all applicable laws, regulations, and ordinances of the county;" and
17. In light of the concerns noted herein, including but not limited to the potential harms to the safety, health, and welfare of the County residents and the environment due to unregulated soil importing, it is in the interest of immediately preserving the environment and public safety, health and welfare to adopt this ordinance; and
18. This ordinance is categorically exempt from the California Environmental Quality Act (CEQA), because there is no possibility that it will have a significant effect on the environment; is an action by a regulatory agency for the protection of natural resources; and is an action by a regulatory agency for the protection of the environment (CEQA Guidelines sections 15061(b)(3)); 15307; 15308); and
19. The Board of Supervisors considers it necessary to adopt this ordinance to explicitly prohibit certain types of soil importing while implementing a process for ensuring the protection of natural resources and the environment when soil is imported.

NOW, THEREFORE, the Board of Supervisors of the County of Alameda ordains as follows:

SECTION II

The Alameda County Ordinance Code is hereby amended as follows:

Paragraph U is added to Section 17.06.040 (regarding conditional uses in the A district) and reads as follows:

"Soil Importing in accordance with Chapter 17.66."

Paragraph I is added to Section 17.08.040 (regarding conditional uses in the R-1 district) and reads as follows:

“Soil Importing in accordance with Chapter 17.66.”

Paragraph E is added to Section 17.26.040 (regarding conditional uses in the L combining district) and reads as follows:

“Soil Importing in accordance with Chapter 17.66.”

Paragraph h is added to the Little Valley Specific Plan, Chapter IV, Section B.2. (regarding conditional uses) and reads as follows:

“Soil Importing in accordance with Chapter 17.66.”

The following text is added to the Little Valley Specific Plan, Chapter IV, Section B.3. (regarding accessory uses):

“Soil Importing may be permitted as an accessory use in accordance with Chapter 17.66.”

Chapter 17.66 is hereby added to the Ordinance Code and reads as follows:

Chapter 17.66

17.66.010 - Purpose

This ordinance regulates the importing of soil or other fill material in the unincorporated areas of the County to ensure that such importing is related to appropriate land uses in the zoning district, to promote soil stability, to reduce negative environmental impacts, to reduce human health impacts, to reduce the traffic impacts from delivery vehicles, and to reduce the potential transfer of human and ecological risks between properties due to the import of polluted fill materials, and to reduce the potential import of hazardous wastes to properties accepting fill.

17.66.020 - Definitions

As used in this chapter, the following terms are defined as follows:

- A. **Agricultural Use** means the science or practice of farming or ranching, including cultivation of the Soil for the growing of crops or the rearing of animals to provide food, wool, fabric, or other products. This definition includes, for example, crops, orchards, and animal grazing.
- B. **Agriculture Plan** means the written plan submitted by the property owner that outlines the scope and timeline for the proposed Soil Import operation, implementation of the Agricultural Use, and any associated reclamation activities.
- C. **Clean Soil** is defined as natural materials (e.g., soil, clay, silt, sand, gravel, rock, or a mixture or combination for such materials) that have concentrations of naturally occurring chemicals (e.g., metals) at or below background levels at the receiving lot and concentrations of man-made chemicals below applicable risk based screening levels for human health risk, ecological risk (aquatic and terrestrial receptors), and concerns for nuisance and gross contamination.
- D. **Director** means the Director of the Community Development Agency of the County of Alameda, or designee.
- E. **Import** means the bringing of Soil or other fill material onto a lot from an off-site location, for any purpose.
- F. **Organic Mulch** means decomposed or partially decomposed material comprised of leaves, wood, plant materials, discarded food and food scraps, paper or wood products, animal manure, peat or other biological carbon-based materials; organic mulch is not earth material of any origin that has been excavated from the ground.
- G. **Protocols for Soil Import and Export** means the County Environmental Health Department's published document presenting procedures and reporting requirements for characterization and export of proposed Soil sources for Import to another site.

- H. Qualified Biologist means a professional who, by education, training and experience possess the expertise in the branch of science concerning living organisms adequate to evaluate the impacts of Soil Importing on living organisms.
- I. Qualified Professional means a licensed geologist or other professional who, by education, training, and experience possesses the expertise necessary to evaluate Soil proposed for Import in accordance with the County's Protocols for Soil Import and Export to ensure that the Soil is suitable for Import to the site.
- J. Soil means all natural earth material including soil, clay, silt, sand, gravel, rock, or a mixture or combination for such materials. Soil specifically does not include trash, debris, piping of any material, wooden boards, logs, branches or chips, broken concrete or asphalt, metal pieces of any kind, plastic, glass, or other human-made materials.
- K. Soil Import means the bringing of Soil onto a lot from an off-site location, for any purpose.
- L. Soil Import Documentation means technical reports prepared by a Qualified Professional that analyze the Soil to be Imported in accordance with Section 2 (Evaluation of Fill Material Suitability and associated tables) of the County's Protocols for Soil Import and Export.

17.66.030 - General Provisions.

- A. Soil Importing is prohibited in the unincorporated areas of the County except as provided in this chapter.
- B. All Soil Imported in accordance with this chapter must not contain chemicals at concentrations that exceed the applicable risk-based screening levels, which shall be verified by a Qualified Professional.
 - 1. Soil Import Documentation prepared or reviewed by a Qualified Professional in accordance with this chapter shall be stored for at least 5 years and shall be available for periodic review and audit by the County Planning Department at any time, up to four times per year.
 - 2. If the review or audit demonstrates the Imported Soil has been inadequately characterized or contains chemicals with concentrations exceeding the applicable risk-based screening levels, then the County Code Enforcement Division may refer the matter to other County, State, and Federal agencies.
- C. This ordinance does not regulate or prohibit importing the following:
 - 1. Soil purchased from an established retail or wholesale outlet, including hardware stores, soil and stone retailers and wholesalers, landscape centers, and similar commercial soil enterprises. Transport of Soil between properties, such as brokered transports from construction sites, are not considered Soil purchased pursuant to this subsection.
 - 2. Organic Mulch
 - 3. Asphalt grinding or road base (excluding concrete debris), provided that it is used for agricultural road repair only; Importing for other purposes, including for fill, and Importing concrete debris, are prohibited.
 - 4. Movement of Clean Soil from an adjacent lot or a lot separated by no more than a road or utility easement, provided the source lot and destination lot are owned by the same person.
 - 5. Soil or other materials to be used for the purpose of surface mining operations or reclamation as regulated under Chapter 6.80 of the Alameda County General Ordinance Code.
- D. Prohibited Operations.
 - 1. Importing the following materials, or fill material containing the following materials, is not permitted pursuant to this ordinance: trash, debris, piping of any material, wooden boards, logs, branches or chips, broken concrete or asphalt, metal pieces of any kind, plastic, glass, or other human-made materials. This ordinance does not regulate sanitary landfills, which require a Conditional Use Permit (Alameda County General Ordinance Code 17.06.035(A)) and compliance with other applicable federal, state, and local laws.

2. Importing earthen materials that contain or include any of the following is prohibited: any human-made or artificial chemicals, substances or contaminants at concentrations greater than those determined through required testing processes to be both: a) safe for human contact; and b) adequate for protection of: watercourses or ponds and the water contained therein, groundwater located or flowing beneath the surface, and biological habitat and native species found on or known to use the subject lot and surrounding lots.
- E. **Maximum Import per Lot.** For tiers of Soil Import under 17.66.050 and 17.66.060 that do not require discretionary review, Soil Import per lot shall be limited to five years. After the fifth year of Soil Import, an Administrative Conditional Use Permit or Conditional Use Permit will be required for any amount of Soil Imported.
- F. **Expiration.** Any approved Administrative Conditional Use Permit shall expire within one year maximum of its issuance, with the possibility that they may be approved for less time. Any approved Conditional Use Permit shall expire within five years maximum of permit issuance, with the possibility that they may be approved for less time. Proposals to import more soil subsequent to the Administrative Conditional Use Permit or Conditional Use Permit shall require prior approval of a new Conditional Use Permit. No subsequent Administrative Conditional Use Permit shall be possible after the first Administrative Conditional Use Permit is approved for each property.

17.66.040 - Compliance with Existing Laws and Regulations.

- A. Compliance with the regulations and requirements of state and federal regulatory agencies is required, including but not limited to the following:
 1. Bay Area Air Quality Management District
 2. California Department of Fish and Wildlife
 3. California Water Resources Control Board San Francisco Bay Region
 4. California Department of Toxic Substances Control
 5. United States Fish and Wildlife Service
 6. U.S. Army Corps of Engineers
- B. Issuance of a permit or other authorization to Import Soil pursuant to this ordinance shall not constitute an exemption from other applicable laws or regulations, including but not limited to:
 1. Alameda County Grading Ordinance
 2. Alameda County Watercourse Protection Ordinance
 3. Alameda County Health and Safety Ordinances
 4. Alameda County Business License Tax ordinance
 5. Alameda County Surface Mining Ordinance
 6. California Endangered Species Act
 7. California Surface Mining and Reclamation Act
 8. U.S. Endangered Species Act
 9. U.S. Migratory Bird Treaty Act
- C. County Planning Department may provide notice to agencies with jurisdiction over hazardous materials, watercourse and water quality protection, and biological protection of the United States of America and the State of California, including but not limited to each of the above-mentioned agencies, to facilitate enforcement of existing laws and regulations within the jurisdiction of other agencies.
- D. Any proposals to Import Soil, or actions to Import Soil, will be subject to notification by the County Planning Department to the aforementioned State and Federal Agencies.
- E. Soil Importing must be compliant with any applicable Williamson Act Contract.
- F. For all Soil Import of any volume:
 1. Prior to operations, all property owners Importing Soil subject to this ordinance shall register with the Alameda County Community Development Agency, Planning Department, their intended Soil Importing activity, including providing an Agriculture

Plan, and shall pay all administrative fees associated with the proposed Soil Import. Registration shall be in accordance with such forms and procedures as may be adopted by the Director.

2. The following habitat features shall be protected and avoided during the placement of Imported Soil under Tiers 1 or 2 as defined in Sections 17.66.050 and 17.66.060 below:
 - a. Seasonal and perennial ponds, including stock ponds.
 - b. Riparian corridors along intermittent, seasonal, and perennial creek channels.
 - c. Rock outcrops in chaparral habitat.
 - d. Upland grassland habitat within 1.7 miles from potential breeding ponds.
 - e. Burrows.
3. If burrows are present within an area proposed for the placement of Imported Soil, the property owner shall assess the potential presence of special status species at the proposed placement location.
4. A habitat assessment shall be prepared by a Qualified Biologist who has the education, training and experience and possesses the expertise to identify habitat of special status species.
5. Imported Soil shall not be placed in:
 - a. Ponds that may support the breeding of special status species (Note: Property owner must comply with existing laws and regulations prohibiting placing fill material in seasonal or perennial ponds without federal and/or State permits for the placement of fill in ponds); or
 - b. Riparian corridors (Note: Property owner must comply with existing laws and regulations prohibiting placing fill material in riparian corridors associated with ephemeral, intermittent, seasonal, or perennial streams without federal and/or State permits for the placement of fill in streams).
6. Property owner shall consult with U.S. Fish and Wildlife Service (USFWS) and staff at the California Department of Fish and Wildlife (CDFW), if Soil Import is to occur in areas with documented occurrences or potential habitat for special status species as defined on maps found in Chapter 2 and/or Appendix D of the East Alameda County Conservation Strategy (EACCS); or for areas outside of EACCS map coverage, the State of California Natural Diversity Database (CNDDB); and/or by the Qualified Biologist. For the purposes of this paragraph, documented occurrences means points on the CNDDB and/or EACCS maps that identify where species have been recorded. In all cases, the most recent edition of the CNDDB should be utilized.
7. Before Imported Soil is placed in any of the features described below, the property owner shall contact the Army Corps of Engineers, appropriate Water Board, and CDFW to discuss the need to obtain permits prior to placing Imported Soil in these features.
 - a. Areas of soggy ground that remain soggy for at least two weeks during the rainy season.
 - b. Any stream channel with a defined bed and bank (e.g., a topographic change from the adjacent land), no matter how small or how often water flows through the channel in a typical year.
 - c. The bottom of any canyon.
 - d. Any pond or impoundment of water, including stock ponds.

17.66.050 - Tier 1 - Soil Importing on Large Lots in the R-1 District

- A. Soil Importing is permissible on lots at least one acre in size and not more than five acres in size in the R-1 (or equivalent) district in accordance with this chapter.
- B. Any and all Soil Import must be for an Agricultural Use.
- C. The depth of Soil Import shall not exceed three feet above existing grade unless it is Imported in accordance with one of following:

1. A Building Permit from the County Public Works Agency,
 2. A Grading Permit from the County Public Works Agency, or
 3. A Conditional Use Permit issued pursuant to this Title.
- D. Soil Importing is regulated in accordance with the following tiered screening and review levels:
1. Tier 1a - Up to 1 cubic yard per acre per year is permitted as a reasonable accessory use to existing permitted uses.
 2. Tier 1b - Over 1 and up to 10 cubic yards per acre per year, up to a maximum of 30 cubic yards per property per year, may be Imported provided the property owner:
 - a. Submits to the County Planning Department Soil Import Documentation prepared by a Qualified Professional.
 3. Tier 1c - Over 10 and up to 20 cubic yards per acre per year, up to a maximum of 50 cubic yards per property per year, provided the property owner:
 - a. Submits to the County Planning Department Soil Import Documentation prepared by a Qualified Professional;
 - b. Obtains an Administrative Conditional Use Permit pursuant to this Title.
 4. Tier 1d - Over 20 and up to 50 cubic yards per acre per year, up to a maximum of 80 cubic yards per property per year, provided the property owner:
 - a. Submits to the County Planning Department Soil Import Documentation prepared by a Qualified Professional.
 - b. Obtains an Administrative Conditional Use Permit pursuant to this Title; and
 - c. The County Planning Department provides notification to neighbors in accordance with Alameda County Zoning Ordinance Section 17.54.830.D.
 5. Tier 1e - Over 50 cubic yards per acre per year or more than 80 cubic yards per property:
 - a. Submits to the County Planning Department Soil Import Documentation prepared by a Qualified Professional.
 - b. Obtains Conditional Use Permit pursuant to this Title.

17.66.060 - Tier 2 - Soil Importing on Lots in the A District

- A. Soil Importing is permissible on lots in the A (or equivalent) district in accordance with this chapter.
- B. Any and all Soil Import must be for an Agricultural Use.
- C. The depth of Soil Import shall not exceed three feet above existing grade unless it is Imported in accordance with one of following:
 1. A Building Permit from the County Public Works Agency,
 2. A Grading Permit from the County Public Works Agency, or
 3. An Administrative Conditional Use Permit or Conditional Use Permit issued pursuant to this Title.
- D. Soil Importing is regulated in accordance with the following tiered screening and review levels:
 1. Tier 2a - Up to 10 cubic yards per acre per year, up to a maximum of 1,000 cubic yards per property per year and less than three feet vertically in depth above any existing grade is permitted, subject to Section 17.66.030:
 - a. Property owner shall ensure the Imported Soil has been characterized as Clean Soil by a Qualified Professional prior to Importing to the site. Subject to audit of the Soil Import Documentation by the County Planning Department.
 2. Tier 2b - Over 10 and up to 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 a depth of between three and five feet vertically above any existing grade:
 - a. Property owner must obtain an Administrative Conditional Use Permit pursuant to this Title.

3. Tier 2c - Over 20 cubic yards per acre per year or more than 15,000 cubic yards per property per year, whichever is lowest, or any Import in any amount resulting in a depth of over five feet vertically above any existing grade:
 - a. Property owner must obtain a Conditional Use Permit pursuant to this Title.

17.66.070 - Administrative Conditional Use Permit for Soil Importing

- A. An Administrative Conditional Use Permit may be issued in accordance with this chapter (in lieu of Sections 17.52.480, et seq.).
- B. In the districts specified in this title, an Administrative Conditional Use Permit may be issued for Soil Importing provided the proposed project does not require the preparation of a new environmental impact report pursuant to the California Environmental Quality Act (CEQA).
- C. If the proposed project requires a new environmental impact report, it may not be approved via an Administrative Conditional Use Permit but the project proponent may apply for a Conditional Use Permit in accordance with Section 17.54.130 and this chapter.

17.66.080 - Specific Findings for Administrative Conditional Use Permit and Conditional Use Permit

An Administrative Conditional Use Permit or Conditional Use Permit may be issued for Soil Importing only if the proposed use meets the requirements of Section 17.66.070 (Administrative Conditional Use Permit for Soil Importing) or Section 17.54.130 (Conditional uses), as applicable, and the following additional 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 on the property in accordance with Section 17.06.040, Section 17.08.040 or Chapter 17.26 of this title;
- B. Soil Importing will not endanger public and/or private property, will not result in excessive Soil being deposited on any public right-of-way, will not endanger public health and safety, and will not impair groundwater or any spring or existing watercourse, or adversely affect the existence of, or habitat for, special status species under the State or Federal Endangered Species Acts;
- C. Property owner will minimize the impacts to the natural landscape, scenic, biological and aquatic resources, and erosion impacts that may otherwise be caused by the Soil Import;
- D. For Soil Importing associated with a new agricultural building on a development site within the boundaries of a lot, the subject site shall be one that is the most appropriate for the Imported Soil in comparison with other available development sites on the lot, taking into consideration other development constraints and regulations applicable to the lot;
- 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 will conform to any applicable General Plan or Specific Plan policies;
- G. Soil Import Documentation documenting the suitability of the Soil for Import to the lot has been prepared by a Qualified Professional;
- H. Permittee has submitted a truck traffic plan that adequately mitigates impacts from truck traffic generated by the proposed Soil Import; and
Permittee has submitted an Agriculture Plan that specifically describes the proposed Agricultural Use to be facilitated by the proposed Soil Import. The Agriculture Plan must identify a reasonable schedule for completing work needed to implement the Agricultural Use.

17.66.090 - Standard Conditions for Administrative Conditional Use Permit and Conditional Use Permit

- A. Soil Importing shall be permitted only to the extent necessary to establish or maintain an Agricultural Use presently permitted on the property in accordance with Section 17.06.040, Section 17.08.040, or Chapter 17.26 of this title.
- B. The permittee shall obtain and make available to the County Planning Department Soil Import Documentation prepared by a Qualified Professional certifying the suitability of the Soil Import to the site. The Soil Import Documentation must be either:
 - 1. Provided to the permittee from a Qualified Professional retained by the permittee; or
 - 2. Provided to the permittee from a Qualified Professional retained by someone other than the permittee (e.g., the Soil Import source property, the shipper or a third party), that has been independently reviewed by a Qualified Professional retained by the permittee.
- C. Soil Import Documentation shall be stored for at least 5 years and shall be available for periodic review and audit by the County Planning Department at any time, up to four times per year. If the review or audit demonstrates inadequate characterization of the Soil Import or Soil contamination with chemical concentrations greater than the applicable risk-based screening levels, then the County Code Enforcement Division may initiate enforcement and abatement proceedings and may refer the matter to other County, State, and Federal agencies.
- D. Impacts from truck traffic shall be mitigated in accordance with permittee's truck traffic plan.
- E. Permittee shall obtain a Grading Permit from the County Public Works Agency, if applicable.
- F. Permittee shall implement an Agriculture Plan approved by the Planning Director consistent with the schedule for completion included in the Agriculture Plan. Each day the property owner fails to meet the deadlines established by the Agriculture Plan and/or the permit shall constitute a separate offense and is subject to penalty in accordance with Section 17.66.150(C)(2).
- G. Permits shall be limited in duration to the reasonable time required to Import Soil sufficient to implement the Agriculture Plan, up to a maximum of 1 year for Administrative Conditional Use Permits and up to 5 years for Conditional Use Permits.
- H. Annual inspections and reports of soil import and agriculture activities are required. Permittees shall forward an annual report to the Director on each anniversary of the permit issuance date. The annual report shall include a description of the Soil Imported, and the total tonnage of Soil Imported. If requested, a copy of any supporting documentation shall also be provided to the Director.
- I. The Community Development Agency shall arrange for inspection of a soil import operation within six months of receipt of the annual report required by this chapter, to determine whether the soil import operation is in compliance with the approved permit and/or Agriculture Plan, and approved financial assurances. In no event shall less than one inspection be conducted in any calendar year. Said inspections may be conducted by the County and/or its consultants. The permittee shall be solely responsible for the reasonable cost of such inspection, including reasonable consultant costs.
- J. Permittee shall provide financial assurances sufficient to guarantee completion of the Agriculture Plan or remediation of the property to pre-Soil Import conditions.
- K. Permittee shall release the county, and its agents, officers, elected officials, and employees from any injuries, damages, or liabilities of any kind that result from any arrest or prosecution of permittee, delivery operators or brokers, owners or operators of the source material site, or others involved in the Soil Import, for violation of state or federal laws in a form satisfactory to the director.
- L. Permittee shall indemnify and hold harmless the county and its agents, officers, elected officials, and employees for any claims, damages, or injuries arising from issuance of the permit, operation of the Soil Import, adoption or enforcement of conditions of the permit, or the County's compliance with CEQA in a form satisfactory to the director.

17.66.100 - Agriculture Plans - Required Content and Implementation.

- A. Permittee shall Import Soil only in order to implement an Agricultural Use in accordance with an approved Agriculture Plan. Permittee shall ensure that the Agricultural Use is implemented in accordance with conditions of the permit, the Agriculture Plan, and this chapter.
- B. The Agriculture Plan shall specify the amount of soil to be imported by weight and by volume.
- C. Implementation – Complete or Phased
 - 1. The Agricultural Use will be deemed completely implemented when the project is completed (e.g., when construction or all planting is completed) and all approvals required to commence the Agricultural Use (e.g., occupancy permit) have been issued.
 - 2. Implementation may occur in phases. For phased implementation, the establishment of the Agricultural Use may occur over successive periods following completion of Soil Import at successive locations within the lot, as specified in the Agriculture Plan. In all cases, establishment of the Agricultural Use shall take place as soon as practical. Each phase shall be specifically described in the Agriculture Plan and shall include:
 - a. The beginning and expected ending dates for each phase;
 - b. All establishment of agriculture activities required;
 - c. Criteria for measuring completion of specific establishment of agriculture activities; and
 - d. Estimated costs for completion of each phase of establishment of agriculture.
 - 3. Interim Agricultural Uses may be required if phased or complete implementation is not achieved within the timeframe specified in the Agriculture Plan.
- D. Drainage, Erosion and Sediment Control. Agriculture Plans shall address the appropriate control and mitigation for drainage, erosion and sediment control during the Soil Import and implementation of the Agricultural Use. The Agriculture Plan shall specifically address the property owner's plan to comply with the following requirements:
 - 1. Streams, ponds, wetlands or watershed features shall be avoided or, if affected by soil import, restored in the final stage of establishment of agriculture.
 - 2. All activities of soil import or establishment of agriculture shall be designed and carried out to minimize erosion, provide for drainage to natural outlets or interior basins designed for water storage, and to eliminate potholes and similar catchments that could serve as breeding areas for mosquitoes.
 - 3. Silt basins designed to store water during periods of surface runoff shall be equipped with sediment control and removal facilities and protected spillways designed to minimize erosion when such basins have outlet to lower ground.
 - 4. Final grading and drainage shall be designed in a manner to prevent discharge of sediment above natural levels existent prior to soil import operations.
 - 5. Upon complete implementation, no condition shall remain that will or could lead to the degradation of water quality below applicable standards of the regional water quality control board or any other agency with authority over water quality.
- E. Final Slope Gradient. Agriculture Plans shall address the final slope gradient upon the completion of the Soil Import and implementation of the Agricultural Use and any phases thereof. The Agriculture Plan shall specifically address the property owner's plan to comply with the following requirements:
 - 1. Final slopes shall be of such gradient as necessary to provide for slope stability, maintenance of establishment of agriculture, public safety, and the control of drainage, as may be determined by engineering analysis of soils and geologic factors.
 - 2. Final slopes shall not be steeper than two feet horizontal to one foot vertical (2:1) unless the permittee can demonstrate to the satisfaction of the Director that any such steeper slope will not:

- a. Be incompatible with future uses approved for the site;
 - b. Be hazardous to persons that may utilize the site under future uses approved for the site; and
 - c. Reduce the effectiveness of revegetation and erosion control measures where such are necessary.
3. In no event shall the steepness of slopes exceed the critical gradient as determined by an engineering analysis of the slope stability.
- F. Revegetation. Agriculture Plans shall require all lands affected by Soil Importing shall be revegetated for establishment of agriculture unless any such revegetation is determined by the Director to be technically infeasible or not beneficial with respect to the intent of this chapter. Revegetation methods and plant materials utilized for establishment of agriculture shall be appropriate for the topographical, soil and eliminate conditions present at the site. Where agriculture is not to be established, native species shall be used wherever practical.
- G. Additional Requirements. The County may impose additional performance standards as developed either in review of individual projects or through the formulation and adoption of generally applicable performance standards.

17.66.110 - Environmental Review.

- A. All projects shall comply with the California Environmental Quality Act.
- B. The County Planning Department shall be the lead agency for any project requiring environmental review pursuant to the California Environmental Quality Act.

17.66.120 - Fees.

The application fees for a Soil Import permit or approval of an Agriculture Plan, or for modification of an existing permit or approved Agriculture Plan shall be as established by the Board of Supervisors and shall be submitted at the time of application. The County shall establish such fees as it deems necessary to cover the reasonable costs incurred in implementing this chapter and County rations, including but not limited to, processing of applications, annual reports, inspections, monitoring, enforcement and compliance. The permittee shall pay such fees as required by the County, at the time of filing of the Soil Import permit application, Agriculture Plan application, and at such other times as are determined by the County to be appropriate in order to ensure that all reasonable costs of implementing this chapter are borne by the operator.

17.66.130 - Administrative fees.

The property owner shall pay an administrative fee of \$1.26 per ton for all Soil Imported to their lot. The quantity of Soil on which the administrative fee is based shall be the total volume of material projected for Import. The fee is payable prior to commencing Soil Import. For projects with phased implementation plans, the fee is payable prior to commencing the Soil Import for each phase. If the amount of Soil Imported differs from the amount projected, the property owner shall either be invoiced or refunded accordingly.

17.66.140 - Performance Assurance Requirement,

- A. Financial security in a form and amount determined by the Director, shall be furnished to guarantee faithful performance of the work to be done under the terms of the Soil Import permit and Agriculture Plan or to guarantee reclamation and remediation of the affected property to pre-Soil Import conditions, in the event of failure by the Permittee to implement the terms of the conditions of the permit or of this chapter.
- B. Cost estimates for the financial assurance shall be submitted to the Community Development Agency for review and approval prior to the permittee securing financial assurances. The

amount of the financial assurance shall be based upon the estimated costs of implementing the Agriculture Plan or remediating the property to pre-Soil Import conditions.

- C. If the Board of Zoning Adjustments, following a public hearing, determines that the property owner is financially incapable of implementing the Agriculture Plan or has abandoned its operations prior to implementation, the Director shall:
1. Notify the property owner by personal service or certified mail that the County intends to take appropriate action to forfeit the financial assurance and specify the reasons for so doing.
 2. Allow the property owner at least thirty (30) and up to sixty (60) days after notification to implement the Agriculture Plan.
 3. Proceed to take appropriate action to require forfeiture of the financial assurance if the permittee does not comply with the provisions of Subsection 2.
 4. Use the proceeds from the forfeited financial assurance to implement the Agricultural Use on the property or remediate the property to pre-Soil Import conditions. The property owner shall be responsible for the costs which are in excess of the proceeds from the forfeited financial assurance.

17.66.150 - Violation – Enforcement and Penalties.

- A. If the Director, based upon an annual inspection or otherwise confirmed by an inspection of the property or Soil Import operation, determines that the property or operations are not in compliance with this chapter, the permit, and/or the Agriculture Plan, the County may revoke the permit in accordance with Section 17.54.030 of this Title and may enforce this chapter in accordance with Chapters 17.58 and 17.59 of this Title, as set forth in this section, or as otherwise provided by law.
- B. Fines for each violation may be assessed as follows:
1. Any person, firm or corporation shall be guilty of a separate offense for each and every violation of any provision of this chapter that is committed, continued or permitted by such person and shall be punishable accordingly. Each incident of a vehicle delivering or depositing Soil or other fill material to a property in the unincorporated area of the County shall constitute a separate offense.
 2. Any person, firm or corporation shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this chapter is committed, continued or permitted by such person and shall be punishable accordingly.
 3. The fine for each offense is \$1000 (one thousand dollars).
- C. Procedures and fees for inspections, appeals and abatement shall be as set forth in Chapter 17.59, including Section 17.59.200(D).
- D. In addition to the penalties provided in this chapter, any condition caused or allowed to exist in violation of any of the provisions of this chapter shall be deemed a public nuisance and shall create a cause of action for injunctive relief and civil penalties in accordance with Chapter 17.59 of this Code. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

SECTION III

This ordinance shall take effect and be in force thirty (30) days from and after the date of passage and before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on the ____ day of _____, 2019, by the following called vote:

AYES:
NOES:
EXCUSED:

RICHARD VALLE
President of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors,

By: _____
Deputy Clerk

APPROVED AS TO FORM:
DONNA R. ZIEGLER, COUNTY COUNSEL

By: _____
Heather Littlejohn
Deputy County Counsel

RESOLUTION NO. 19-xx - AT MEETING HELD AUGUST 19, 2019

**RESOLUTION OF THE PLANNING COMMISSION OF THE COUNTY OF ALAMEDA
REGARDING
AN ORDINANCE REGULATING SOIL IMPORTING WITHIN THE
UNINCORPORATED AREA OF THE COUNTY OF ALAMEDA**

**Introduced by Commissioner
Seconded by Commissioner**

WHEREAS the County of Alameda ("County") regulates land uses in the unincorporated area of the County through various regulations including the General Plan, Specific Plans, and Zoning Ordinance (Title 17 of the Alameda County Ordinance Code); and

WHEREAS the County's land use regulations govern the types of land uses that are permitted by right or conditionally permitted; and

WHEREAS Chapter 17.06 of the Zoning Ordinance specifies the uses that are permitted and conditionally permitted in the Agricultural ("A") District. Uses permitted by right include various traditionally agricultural uses, such as a crop, vine, tree farm, truck garden, plant nursery, greenhouse, or horticulture and grazing, breeding or training of horses or cattle. Conditionally permitted uses include, for example, a sanitary landfill, composting facility, and packing house for fruits or vegetables; and

WHEREAS Chapter 17.08 of the Zoning Ordinance specifies the uses that are permitted and conditionally permitted in the Single-family residence ("R-1") District. Uses permitted by right include a one-family dwelling and a field crop, orchard or garden. Conditionally permitted uses include a plant nursery or greenhouse; and

WHEREAS Chapter 17.26 of the Zoning Ordinance specifies the uses that are permitted and conditionally permitted in the Combining Agricultural Use ("L") District, which allows limited agricultural uses. Uses permitted by right include various traditionally agricultural uses, such as keeping a limited number of livestock or fowl and grazing. Conditionally permitted uses include keeping additional livestock or fowl, kennel, boarding stable and riding academies, or sales of any product derived from a permitted use; and

WHEREAS other chapters of the Zoning Ordinance establish permitted and conditionally permitted uses in those zoning districts, including, for example, higher-density residential and commercial zoning districts; and

WHEREAS the Planning Commission acknowledges that some amount of soil amendment or grading may be required for activities that are permitted or conditionally permitted in a particular zoning district; and that, accordingly, some amount of soil importing is permitted by the Zoning Ordinance to facilitate those permitted uses; and

WHEREAS the County has identified properties that have been importing large volumes of soil for commercial purposes, particularly in the A District, in a manner that does not appear to be for traditional agricultural uses or pursuant to a conditional use permit for any conditionally permitted use, and it appears that a number of properties are importing soil while claiming the activity will someday yield a use that is permitted in accordance with the Zoning Ordinance; and

WHEREAS accepting high volumes of deliveries or disposal of soil is distinct from the limited scope of soil importing required to facilitate permitted land uses like traditional farming (e.g., crops, orchard) or building a house; and

WHEREAS importing soil raises land use concerns regarding traffic and road safety, noise, and potential environmental issues such as truck emissions, dust and contaminated soil or fill material; and

WHEREAS importing soil can introduce impacts to groundwater, natural environments, topographic aesthetics, transportation and traffic to such a degree that if left unregulated, could result in long term detrimental impacts to county resources; and

WHEREAS the County has a compelling interest in protecting the public health, safety, and welfare of its residents, visitors and businesses, and in preserving the peace and quiet of the neighborhoods within the unincorporated areas of the County by regulating soil importing as a land use; and

WHEREAS Section 15.36.050 of the County's Grading Ordinance (Chapter 15.36 of the Alameda County Ordinance Code) includes an agricultural exemption, allowing certain grading activities on property zoned as agricultural without a grading permit. In order to qualify for such exemption, the activity must "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 must be "performed in accordance with all applicable laws, regulations, and ordinances of the county;" and

WHEREAS exemption from the Grading Ordinance does not make an activity a permitted land use under the Zoning Ordinance; and

WHEREAS correspondingly, any exemptions provided in this ordinance do not exempt any activity from compliance with any other applicable provision of law, including, but not limited to, the Grading Ordinance. For example, activities that are exempt from this ordinance must nevertheless comply with permit requirements of the Grading Ordinance where the activities would "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" or where such activity was not "performed in accordance with all applicable laws, regulations, and ordinances of the county;" and

WHEREAS in light of the concerns noted herein, including but not limited to the potential harms to the safety, health, and welfare of the County residents and the environment due to unregulated soil importing, it is in the interest of immediately preserving the public safety, health and welfare to adopt this ordinance; and

WHEREAS this ordinance is Categorically Exempt from the California Environmental Quality Act, because there is no possibility that it will have a significant effect on the environment; is an action by a regulatory agency for the protection of natural resources; and is an action by a regulatory agency for the protection of the environment (CEQA Guidelines sections 15061(b)(3)); 15307; 15308); and

WHEREAS the Planning Commission considers it necessary to adopt this ordinance to explicitly prohibit certain types of soil importing while implementing a process for ensuring the protection of natural resources and the environment when soil is imported; and

WHEREAS notice of the public hearing at the Planning Commission, was given as required by law; and

WHEREAS the public hearing at the Planning Commission was held on Monday, August 19, 2019, at the hour of 6:00 pm, at the Alameda County Community Development Agency Public Hearing Room, located at 224 West Winton Avenue, Room 160, Hayward, California; and

WHEREAS public testimony was received in writing and verbally, and entered into the public record, prior to the deliberation and decision by the Planning Commission; and

WHEREAS it is the finding of this Commission that the proposed Soil Importing ordinance herein described is in the public interest because it is consistent with County plans and policies for agricultural, rural residential, and limited agricultural uses, and is consistent with the interests of the health, safety and welfare of the citizens of Alameda County.

NOW, THEREFORE:

BE IT RESOLVED that this Commission does hereby recommends to the Alameda County Board of Supervisors that the Board adopt the Categorical Exemptions from the requirements of the California Environmental Quality Act, per CEQA Guidelines sections 15061(b)(3); 15307; and 15308, and does hereby recommend adoption of the Categorical Exemptions by the Board of Supervisors.

BE IT FURTHER RESOLVED that this Commission does hereby recommend to the Board of Supervisors that the Alameda County Zoning Ordinance be modified with the adoption of the Soil Importing Ordinance as per the attached Draft Ordinance.

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOE:

EXCUSED:

ABSENT:

ABSTAINED:

Chris Bazar, Community Development Director, and
Albert Lopez, Secretary to the County Planning Commission of Alameda County



ALAMEDA COUNTY COMMUNITY DEVELOPMENT REVISED

Chris Bazar
Agency Director

Agenda Item _____ July 23, 2019

July 15, 2019

224 West Winton Ave
Room 110

Hayward, California
94544-1215

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The Honorable Board of Supervisors
County Administration Building
1221 Oak Street, Fifth Floor
Oakland, CA 94612

Dear Board Members:

**SUBJECT: SOIL IMPORT ORDINANCE – ADOPTION OF REGULATIONS
FOR THE IMPORTING OF SOIL ONTO PROPERTIES IN THE
UNINCORPORATED AREAS OF ALAMEDA COUNTY.**

RECOMMENDATION:

Conduct a public hearing and first reading and introduction of an ordinance related to Soil Importing in unincorporated Alameda County.

SUMMARY:

Background: At the October 01, 2018 Transportation and Planning Committee meeting, staff was directed to prepare a Soil Importing ordinance to regulate large soil importers. A soil ordinance would allow for continued operation of legitimate agricultural activities that depend on the periodic replenishment of soil for such uses as top-soil, or one-time importing of soil for such purposes as flattening out terrain for farm animal arenas or row crops.

At your May 21, 2019 hearing, the Board continued this item to give staff time to respond to the comments of State regulatory agencies that had provided input. There was concern that the ordinance was overlooking protections to natural resources and should be expanded in scope. Specifically, the Board requested that staff:

- 1) Require discretionary permits at lower amounts of soil import;
- 2) Include screening methods to address potential impacts to biology and hydrology;
- 3) Require phasing of agricultural operations before additional soil is imported;
- 4) Develop a “tipping” fee for soil importing;
- 5) Increase fines and/or require bonding for imported soil;
- 6) Require registration with the County for soil importing at certain amounts; and
- 7) Establish a finite maximum amount of soil allowed to be imported per property.

The ordinance was updated and presented at the Board’s July 9, 2019 hearing. At that time the Board approved of the ordinance generally, and directed staff to continue the item to July 23rd, with further direction to consider fines for illegal dumping and “tipping fees”.

DISCUSSION:

The changes to the ordinance described below respond to recent direction by the Board of Supervisors and input received from State Regulatory Agencies:

- 1) Reduce the amount of soil to be imported before a discretionary permit, such as an Administrative Conditional Use Permit or a Conditional Use Permit, is required.

There have been no changes to the amount of soil to be imported in R-1 zoning districts as compared to the version of the ordinance that was presented to the Board on May 21, 2019. The regulations as presented in the draft ordinance allow small amounts of soil import with minimal oversight, but for higher amounts permits be required. The table below summarizes the various tiers and the requirements therein:

	Tiers	1a	1b	1c	1d	1e
R-1 Zoning		1 cu yd/ac	1 - 10 cu yd /ac/yr	10 - 20 cu yd /ac/yr	20 - 50 cu yd /ac/yr	over 50 cu yd /ac/yr
			30 cu yd /yr max	50 cu yd /yr max	80 cu yd /yr max	over 80 cu yd /yr
		for Agricultural use				
		3' max vertical depth above existing grade				
		"Soil Import Documentation" by "Qualified Professional"				
		no permit	Statement of Purpose			CUP
			ACUP			
			Neighbor Notification			

The amount of soil allowed to be imported in Agriculturally zoned areas has been reduced from 5,000 cubic yards to 1,000 cubic yards, which is approximately 100 truck-loads. Also, the maximum amount of vertical fill depth dropped to three feet maximum before an Administrative Conditional Use Permit is needed, and to five feet before a Conditional Use Permit is needed:

	Tiers	2a	2b	2c
Agriculture Zoning		up to 10 cu yd /ac/yr 1,000 cu yd /yr max	10 - 20 cu yd /ac/yr 15,000 cu yd /yr max	over 20 cu yd /ac/yr over 15,000 cu yd /yr
		for Agricultural use		
		3' max vertical depth above existing grade	3' - 5' max vertical depth above existing grade	over 5' max vertical depth above existing grade
		"Clean Import Soil" by a "Qualified Professional"	ACUP	CUP
		Audit of "Soil Import Documentation"		

2) Include additional screening methods to address potential impacts to biology and hydrology.

The ordinance defines:

“Clean Imported Soil” as natural materials (e.g., soil, clay, silt, sand, gravel, rock, or a mixture or combination for such materials) that have concentrations of naturally occurring chemicals (e.g., metals) at or below background levels at the receiving (or Import) site and concentrations of man-made chemicals below applicable risk based screening levels for human health risk, ecological risk (aquatic and terrestrial receptors), and concerns for nuisance and gross contamination.

“Soil Import Documentation” as technical reports prepared by a Qualified Professional in accordance with the requirements of the County’s Protocols for Soil Import and Export.

and

“Protocols for Soil Import and Export” as the County Department of Environmental Health’s Guidance document defining procedures and reporting requirements for characterization and export of proposed soil sources for Import to another site.

These definitions address the San Francisco Bay Regional Water Quality Control Board’s concern that soil screening methods should address impacts to biology and hydrology, in addition to impacts to human health. The San Francisco Bay Regional Water Quality Control Board requested that the County Department of Environmental Health’s Guidance be used because it is considered a thorough characterization Guidance document that the Waterboard staff would like to see replicated throughout the State.

3) Require phasing of the agricultural operation before additional soil is imported.

The ordinance has been updated to require establishment of agriculture on lands affected by Soil Import as soon as practical as specified by the Director in the approval of a required Agriculture Plan. Interim establishment of agriculture may also be required for affected lands that have been disturbed and that may be disturbed again in future operations. Establishment of agriculture may be done on an annual basis, in stages compatible with continuing operations, or on completion of all soil import, as approved by the County. Each phase of establishment of agriculture shall be specifically described in the Agriculture Plan and shall include (a) the beginning and expected ending dates for each phase; (b) all agricultural activities required; (c) criteria for measuring completion of specific agricultural activities; and (d) estimated costs for completion of each phase of agricultural activities.

4) Add “tipping” fees for all soil to be imported.

The County conducted an initial fee study to determine an adequate staff time recovery cost of drafting this ordinance, and working on the subsequent enforcement, audits, and discretionary permits. Staff determined that the fees to recover staff costs should be \$1.26 per ton of soil

imported, for all proposed soil to be imported subject to this ordinance. See the summary spreadsheet below.

\$222,980.00	estimate of CUP cost unrecovered in CUP fees (based on an estimate of 20 CUPs for about 575,000 cubic yards)
\$124,600.00	estimate of ACUP cost unrecovered in CUP fees (based on an estimate of 20 ACUPs for about 20,000 cubic yards)
\$25,950.00	estimate of soil importing unrecovered audit tracking costs (based on an estimate of 10 audits per year for about 4,000 cubic yards)
\$373,530.00	estimate of total unrecovered costs for processing projects per year (based on an estimate of 50 projects per year for about 599,000 cubic yards)
\$139,000.00	estimate of unrecovered cost of establishing regulatory program
\$251,680.00	estimate of unrecovered cost of future Code Enforcement
\$764,210.00	unrecovered cost to County of establishing regulatory program, future Code Enforcement, and future audit and discretionary permit cases
	11 previous requests for exemption from moratorium
\$1.26	proposed cost recovery "tipping fee" per cubic yard
	593,200 Estimate of cubic yards for previous requests for exemption from moratorium

- 5) Revise the "tipping fees" based on something other than a calculation per truckload, so that no haulers can reduce their "tipping fees" based on hauling more dirt in larger trailers.**

The ordinance proposes "tipping fees" per ton of soil imported, instead of per cubic yard or per truckload. The tonnage shall be established through manifests and bills of lading from the haulers to the receiving property owners, as part of the audit documentation to be kept on-site for five years.

- 6) Require bonding for imported soil.**

To ensure that the stated use of imported soil is implemented, the ordinance would require a financial security in the form and amount determined by the Director, to guarantee faithful performance of the work to be done under the terms of the Soil Import permit and Agriculture Plan or to guarantee reclamation and remediation of the affected property to pre-Soil Import conditions, in the event of failure by the Permittee to implement the terms of the conditions of the permit. Cost estimates for the financial assurance would be submitted to the Community Development Agency for review and approval prior to the permittee securing financial assurances. The amount of the financial assurance would be based upon the estimated costs of implementing the Agriculture Plan or remediating the property to pre-Soil Import conditions.

- 7) Require registration with the County for all soil importing activity above a certain threshold, but below the discretionary permitting levels.**

The ordinance includes language to require registration with the County Community Development Agency for all soil importing subject to this ordinance, per the language below:

“17.66.040 – Compliance with Existing Laws and Regulations.

F. For all Soil Import of any volume:

1. Prior to operations, all property owners Importing Soil subject to this ordinance shall register with the Alameda County Community Development Agency, Planning Department, their intended Soil Importing activity, including providing an Agriculture Plan, and shall pay all administrative fees associated with the proposed Soil Import. Registration shall be in accordance with such forms and procedures as may be adopted by the Director.”

8) Establish a finite maximum amount of soil allowed to be imported per property.

The ordinance establishes limitations on soil importing to control for cumulative importing activities. Proposals to import soil above an approved amount shall require a subsequent permitting process. This language is included in the ordinance to prevent over-burdening any one parcel with excessive soil, with maximum amounts in some instances.

9) Consider fines for the haulers who dump soil on the right-of-way or otherwise not on private property within the unincorporated County.

Staff recommends against using this ordinance to establish regulation of dumping of soil or other materials on public right-of-way. This Zoning Ordinance regulates land use on private property in the unincorporated areas only. Staff will look to existing ordinances and the already established Illegal Dumping Taskforce to curtail illegal dumping along public streets.

Planning Commission: At their May 06, 2019 public hearing, the Planning Commission voted 4 to 2 with one excused to recommend that the Board of Supervisors approve the Soil Import Ordinance as recommended by staff. Although the ordinance has changed since their review, the substance of the ordinance to regulate soil import and protection of environmental resources remains in place.

CEQA and Environmental Considerations: 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, staff considers that the proposed Soil Importing ordinance is exempt from the requirements of the California Environmental Quality Act, per Categorical Exemptions delineated in 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”; and per Section 15061.b.3 – “Common Sense Exemption” that CEQA applies only to projects which have the potential for causing a significant effect on the environment.

CONCLUSION:

Staff believes adopting an ordinance to regulate an activity that may otherwise occur without any oversight to be positive step to address potential impacts to rural lands within the County. If approved as proposed, the Board could direct staff to include a review of the ordinance at future dates so that any implementation concerns can be reviewed and fixed. At those times, Staff could report on the amount of soil being imported, its proposed use, the ability to test and control for soil quality, and any other pertinent data to analyze trends for this activity.

Staff recommends that the Board of Supervisors take public testimony and conduct the first reading of the ordinance.

FINANCING:

Due to the "tipping fee" and bonding requirements that are part of this ordinance, there is no Net County Cost as a result of this action.

VISION 2026:

The approval of this project meets the 10x goal pathways of Healthcare for All in support of our shared vision of **Safe and Livable Communities, Thriving and Resilient Communities and Healthy Environment.**

Very truly yours,

DocuSigned by:



Chris Basso, Director

Community Development Agency

cc: Susan S. Muranishi, County Administrator
Donna R. Ziegler, County Counsel
Melissa Wilk, Auditor-Controller
Jennifer Schulz, County Administrator's Office
Heather M. Littlejohn, Office of the County Counsel
Sandra Rivera, Community Development Agency

ORDINANCE NO. 2019-_____

**AN ORDINANCE REGULATING SOIL IMPORTING WITHIN THE
UNINCORPORATED AREA OF THE COUNTY OF ALAMEDA
SECTION I**

In enacting this ordinance, the Board of Supervisors of the County of Alameda makes the following findings:

1. The County of Alameda ("County") regulates land uses in the unincorporated area of the County through various regulations including the General Plan, Specific Plans, and Zoning Ordinance (Title 17 of the Alameda County Ordinance Code); and
2. The County's land use regulations govern the types of land uses that are permitted by right or conditionally permitted; and
3. Chapter 17.06 of the Zoning Ordinance specifies the uses that are permitted and conditionally permitted in the Agricultural ("A") District. Uses permitted by right include various traditionally agricultural uses, such as a crop, vine, tree farm, truck garden, plant nursery, greenhouse, or horticulture and grazing, breeding or training of horses or cattle. Conditionally permitted uses include, for example, a sanitary landfill, composting facility, and packing house for fruits or vegetables; and
4. Chapter 17.08 of the Zoning Ordinance specifies the uses that are permitted and conditionally permitted in the Single-family residence ("R-1") District. Uses permitted by right include a one-family dwelling and a field crop, orchard or garden. Conditionally permitted uses include a plant nursery or greenhouse; and
5. Chapter 17.26 of the Zoning Ordinance specifies the uses that are permitted and conditionally permitted in the Combining Agricultural Use ("L") District, which allows limited agricultural uses. Uses permitted by right include various traditionally agricultural uses, such as keeping a limited number of livestock or fowl and grazing. Conditionally permitted uses include keeping additional livestock or fowl, kennel, boarding stable and riding academies, or sales of any product derived from a permitted use; and
6. Other chapters of the Zoning Ordinance establish permitted and conditionally permitted uses in those zoning districts, including, for example, higher-density residential and commercial zoning districts; and
7. The Board of Supervisors acknowledges that some amount of soil amendment or grading may be required for activities that are permitted or conditionally permitted in a particular zoning district; and that, accordingly, some amount of soil importing is permitted by the Zoning Ordinance to facilitate those permitted uses; and
8. The County has identified properties that have been importing large volumes of soil for commercial purposes, particularly in the A District, in a manner that does not appear to be for traditional agricultural uses or pursuant to a conditional use permit for any conditionally permitted use, and it appears that a number of properties are importing soil while claiming the activity will someday yield a use that is permitted in accordance with the Zoning Ordinance; and
9. Accepting high volumes of deliveries or disposal of soil is distinct from the limited scope of soil importing required to facilitate permitted land uses like traditional farming (e.g., crops, orchard) or building a house; and
10. Importing soil raises land use concerns regarding traffic and road safety, noise, and potential environmental issues such as truck emissions, contamination of soil, surface water and groundwater, and risk to special status species from physical modification of habitat; and
11. Importing soil can introduce impacts to soil, surface water and groundwater, natural resources, topographic aesthetics, transportation and traffic to such a degree that if left unregulated, could result in long term detrimental impacts to County resources; and
12. The County has a compelling interest in protecting biological resources and the public health, safety, and welfare of its residents, visitors and businesses, and in preserving the peace and quiet of the neighborhoods within the unincorporated areas of the County by regulating soil importing as a land use; and

13. For the purposes of regulating soil importing, the California State Water Resources Control Board for the San Francisco Bay Region (Water "Board") recommends that County staff and the regulated community refer to the *Eastern Alameda County Conservation Strategy (EACCS, 2010)* for a documented baseline inventory of biological resources and conservation priorities to be utilized during project-level planning and environmental permitting. EACCS was drafted to convey project-level information for use in permitting and environmental compliance with the federal and state endangered species acts (FESA AND CESA), the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA), and other applicable laws for projects within the study area with impacts on biological resources. The EACCS was intended to 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, and it has not been accepted as a guidance document by the County of Alameda, but it has been accepted as a guidance document by several agencies including USFWS and CDFW.
14. Section 15.36.050 of the County's Grading Ordinance (Chapter 15.36 of the Alameda County Ordinance Code) includes an agricultural exemption, allowing certain grading activities on property zoned as agricultural without a grading permit. In order to qualify for such exemption, the activity must "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 must be "performed in accordance with all applicable laws, regulations, and ordinances of the county;" and
15. Exemption from the Grading Ordinance does not make an activity a permitted land use under the Zoning Ordinance; and
16. Correspondingly, any exemptions provided in this ordinance do not exempt any activity from compliance with any other applicable provision of law, including, but not limited to, the Grading Ordinance. For example, activities that are exempt from this ordinance must nevertheless comply with permit requirements of the Grading Ordinance where the activities would "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" or where such activity was not "performed in accordance with all applicable laws, regulations, and ordinances of the county;" and
17. In light of the concerns noted herein, including but not limited to the potential harms to the safety, health, and welfare of the County residents and the environment due to unregulated soil importing, it is in the interest of immediately preserving the environment and public safety, health and welfare to adopt this ordinance; and
18. This ordinance is categorically exempt from the California Environmental Quality Act (CEQA), because there is no possibility that it will have a significant effect on the environment; is an action by a regulatory agency for the protection of natural resources; and is an action by a regulatory agency for the protection of the environment (CEQA Guidelines sections 15061(b)(3)); 15307; 15308); and
19. The Board of Supervisors considers it necessary to adopt this ordinance to explicitly prohibit certain types of soil importing while implementing a process for ensuring the protection of natural resources and the environment when soil is imported.

NOW, THEREFORE, the Board of Supervisors of the County of Alameda ordains as follows:

SECTION II

The Alameda County Ordinance Code is hereby amended as follows:

Paragraph U is added to Section 17.06.040 (regarding conditional uses in the A district) and reads as follows:

"Soil Importing in accordance with Chapter 17.66."

Paragraph I is added to Section 17.08.040 (regarding conditional uses in the R-1 district) and reads as follows:

"Soil Importing in accordance with Chapter 17.66."

Paragraph E is added to Section 17.26.040 (regarding conditional uses in the L combining district) and reads as follows:

"Soil Importing in accordance with Chapter 17.66."

Paragraph h is added to the Little Valley Specific Plan, Chapter IV, Section B.2. (regarding conditional uses) and reads as follows:

"Soil Importing in accordance with Chapter 17.66."

The following text is added to the Little Valley Specific Plan, Chapter IV, Section B.3. (regarding accessory uses):

"Soil Importing may be permitted as an accessory use in accordance with Chapter 17.66."

Chapter 17.66 is hereby added to the Ordinance Code and reads as follows:

Chapter 17.66

17.66.010 - Purpose

This ordinance regulates the importing of soil or other fill material in the unincorporated areas of the County to ensure that such importing is related to appropriate land uses in the zoning district, to promote soil stability, to reduce negative environmental impacts, to reduce human health impacts, to reduce the traffic impacts from delivery vehicles, and to reduce the potential transfer of human and ecological risks between properties due to the import of polluted fill materials, and to reduce the potential import of hazardous wastes to properties accepting fill.

17.66.020 - Definitions

As used in this chapter, the following terms are defined as follows:

- A. **Agricultural Use** means the science or practice of farming or ranching, including cultivation of the Soil for the growing of crops or the rearing of animals to provide food, wool, fabric, or other products. This definition includes, for example, crops, orchards, and animal grazing.
- B. **Agriculture Plan** means the written plan submitted by the property owner that outlines the scope and timeline for the proposed Soil Import operation, implementation of the Agricultural Use, and any associated reclamation activities.
- C. **Clean Soil** is defined as natural materials (e.g., soil, clay, silt, sand, gravel, rock, or a mixture or combination for such materials) that have concentrations of naturally occurring chemicals (e.g., metals) at or below background levels at the receiving lot and concentrations of man-made chemicals below applicable risk based screening levels for human health risk, ecological risk (aquatic and terrestrial receptors), and concerns for nuisance and gross contamination.
- D. **Director** means the Director of the Community Development Agency of the County of Alameda, or designee.
- E. **Import** means the bringing of Soil or other fill material onto a lot from an off-site location, for any purpose.
- F. **Organic Mulch** means decomposed or partially decomposed material comprised of leaves, wood, plant materials, discarded food and food scraps, paper or wood products, animal manure, peat or other biological carbon-based materials; organic mulch is not earth material of any origin that has been excavated from the ground.
- G. **Protocols for Soil Import and Export** means the County Environmental Health Department's published document presenting procedures and reporting requirements for characterization and export of proposed Soil sources for Import to another site.
- H. **Qualified Biologist** means a professional who, by education, training and experience possess the expertise in the branch of science concerning living organisms adequate to evaluate the impacts of Soil Importing on living organisms.
- I. **Qualified Professional** means a licensed geologist or other professional who, by education, training, and experience possesses the expertise necessary to evaluate Soil proposed for Import

in accordance with the County's Protocols for Soil Import and Export to ensure that the Soil is suitable for Import to the site.

- J. Soil means all natural earth material including soil, clay, silt, sand, gravel, rock, or a mixture or combination for such materials. Soil specifically does not include trash, debris, piping of any material, wooden boards, logs, branches or chips, broken concrete or asphalt, metal pieces of any kind, plastic, glass, or other human-made materials.
- K. Soil Import means the bringing of Soil onto a lot from an off-site location, for any purpose.
- L. Soil Import Documentation means technical reports prepared by a Qualified Professional that analyze the Soil to be Imported in accordance with Section 2 (Evaluation of Fill Material Suitability and associated tables) of the County's Protocols for Soil Import and Export.

17.66.030 - General Provisions.

- A. Soil Importing is prohibited in the unincorporated areas of the County except as provided in this chapter.
- B. All Soil Imported in accordance with this chapter must not contain chemicals at concentrations that exceed the applicable risk-based screening levels, which shall be verified by a Qualified Professional.
 - 1. Soil Import Documentation prepared or reviewed by a Qualified Professional in accordance with this chapter shall be stored for at least 5 years and shall be available for periodic review and audit by the County Planning Department at any time, up to four times per year.
 - 2. If the review or audit demonstrates the Imported Soil has been inadequately characterized or contains chemicals with concentrations exceeding the applicable risk-based screening levels, then the County Code Enforcement Division may refer the matter to other County, State, and Federal agencies.
- C. This ordinance does not regulate or prohibit importing the following:
 - 1. Soil purchased from an established retail or wholesale outlet, including hardware stores, soil and stone retailers and wholesalers, landscape centers, and similar commercial soil enterprises. Transport of Soil between properties, such as brokered transports from construction sites, are not considered Soil purchased pursuant to this subsection.
 - 2. Organic Mulch
 - 3. Asphalt grinding or road base (excluding concrete debris), provided that it is used for agricultural road repair only; Importing for other purposes, including for fill, and Importing concrete debris, are prohibited.
 - 4. Movement of Clean Soil from an adjacent lot or a lot separated by no more than a road or utility easement, provided the source lot and destination lot are owned by the same person.
- D. Prohibited Operations.
 - 1. Importing the following materials, or fill material containing the following materials, is not permitted pursuant to this ordinance: trash, debris, piping of any material, wooden boards, logs, branches or chips, broken concrete or asphalt, metal pieces of any kind, plastic, glass, or other human-made materials. This ordinance does not regulate sanitary landfills, which require a Conditional Use Permit (Alameda County General Ordinance Code 17.06.035(A)) and compliance with other applicable federal, state, and local laws.
 - 2. Importing earthen materials that contain or include any of the following is prohibited: any human-made or artificial chemicals, substances or contaminants at concentrations greater than those determined through required testing processes to be both: a) safe for human contact; and b) adequate for protection of: watercourses or ponds and the water contained therein, groundwater located or flowing beneath the surface, and biological habitat and native species found on or known to use the subject lot and surrounding lots.
- E. Maximum Import per Lot. For tiers of Soil Import under 17.66.050 and 17.66.060 that do not require discretionary review, Soil Import per lot shall be limited to five years. After the fifth

year of Soil Import, an Administrative Conditional Use Permit or Conditional Use Permit will be required for any amount of Soil Imported.

- F. Expiration. Any approved Administrative Conditional Use Permit shall expire within one year maximum of its issuance, with the possibility that they may be approved for less time. Any approved Conditional Use Permit shall expire within five years maximum of permit issuance, with the possibility that they may be approved for less time. Proposals to import more soil subsequent to the Administrative Conditional Use Permit or Conditional Use Permit shall require prior approval of a new Conditional Use Permit. No subsequent Administrative Conditional Use Permit shall be possible after the first Administrative Conditional Use Permit is approved for each property.

17.66.040 - Compliance with Existing Laws and Regulations.

- A. Compliance with the regulations and requirements of state and federal regulatory agencies is required, including but not limited to the following:
1. Bay Area Air Quality Management District
 2. California Department of Fish and Wildlife
 3. California Water Resources Control Board San Francisco Bay Region
 4. California Department of Toxic Substances Control
 5. United States Fish and Wildlife Service
 6. U.S. Army Corps of Engineers
- B. Issuance of a permit or other authorization to Import Soil pursuant to this ordinance shall not constitute an exemption from other applicable laws or regulations, including but not limited to:
1. Alameda County Grading Ordinance
 2. Alameda County Watercourse Protection Ordinance
 3. Alameda County Health and Safety Ordinances
 4. Alameda County Business License Tax ordinance
 5. Alameda County Surface Mining Ordinance
 6. California Endangered Species Act
 7. California Surface Mining and Reclamation Act
 8. U.S. Endangered Species Act
 9. U.S. Migratory Bird Treaty Act
- C. County Planning Department may provide notice to agencies with jurisdiction over hazardous materials, watercourse and water quality protection, and biological protection of the United States of America and the State of California, including but not limited to each of the above-mentioned agencies, to facilitate enforcement of existing laws and regulations within the jurisdiction of other agencies.
- D. Any proposals to Import Soil, or actions to Import Soil, will be subject to notification by the County Planning Department to the aforementioned State and Federal Agencies.
- E. Soil Importing must be compliant with any applicable Williamson Act Contract.
- F. For all Soil Import of any volume:
1. Prior to operations, all property owners Importing Soil subject to this ordinance shall register with the Alameda County Community Development Agency, Planning Department, their intended Soil Importing activity, including providing an Agriculture Plan, and shall pay all administrative fees associated with the proposed Soil Import. Registration shall be in accordance with such forms and procedures as may be adopted by the Director.
 2. The following habitat features shall be protected and avoided during the placement of Imported Soil under Tiers 1 or 2 as defined in Sections 17.66.050 and 17.66.060 below:
 - a. Seasonal and perennial ponds, including stock ponds.
 - b. Riparian corridors along intermittent, seasonal, and perennial creek channels.
 - c. Rock outcrops in chaparral habitat.
 - d. Upland grassland habitat within 1.3 miles from potential breeding ponds.

- e. Burrows.
- 3. If burrows are present within an area proposed for the placement of Imported Soil, the property owner shall assess the potential presence of special status species at the proposed placement location.
- 4. A habitat assessment shall be prepared by a Qualified Biologist who has the education, training and experience and possesses the expertise to identify habitat of special status species.
- 5. Imported Soil shall not be placed in:
 - a. Ponds that may support the breeding of special status species (Note: Property owner must comply with existing laws and regulations prohibiting placing fill material in seasonal or perennial ponds without federal and/or State permits for the placement of fill in ponds); or
 - b. Riparian corridors (Note: Property owner must comply with existing laws and regulations prohibiting placing fill material in riparian corridors associated with ephemeral, intermittent, seasonal, or perennial streams without federal and/or State permits for the placement of fill in streams).
- 6. Property owner shall consult with U.S. Fish and Wildlife Service (USFWS) and staff at the California Department of Fish and Wildlife (CDFW), if Soil Import areas occur in areas defined on maps found in Chapter 2 and/or Appendix D of the East Alameda County Conservation Strategy as habitat for special status species, and/or by the Qualified Biologist as providing habitat for special status species.
- 7. Before Imported Soil is placed in any of the features described below, the property owner shall contact the Army Corps of Engineers, appropriate Water Board, and CDFW to discuss the need to obtain permits prior to placing Imported Soil in these features.
 - a. Areas of soggy ground that remain soggy for at least two weeks during the rainy season.
 - b. Any stream channel with a defined bed and bank (e.g., a topographic change from the adjacent land), no matter how small or how often water flows through the channel in a typical year.
 - c. The bottom of any canyon.
 - d. Any pond or impoundment of water, including stock ponds.

17.66.050 - Tier 1 - Soil Importing on Large Lots in the R-1 District

- A. Soil Importing is permissible on lots at least one acre in size and not more than five acres in size in the R-1 (or equivalent) district in accordance with this chapter.
- B. Any and all Soil Import must be for an Agricultural Use.
- C. The depth of Soil Import shall not exceed three feet above existing grade unless it is Imported in accordance with one of following:
 - 1. A Building Permit from the County Public Works Agency,
 - 2. A Grading Permit from the County Public Works Agency, or
 - 3. A Conditional Use Permit issued pursuant to this Title.
- D. Soil Importing is regulated in accordance with the following tiered screening and review levels:
 - 1. Tier 1a - Up to 1 cubic yard per acre per year is permitted as a reasonable accessory use to existing permitted uses.
 - 2. Tier 1b - Over 1 and up to 10 cubic yards per acre per year, up to a maximum of 30 cubic yards per property per year, may be Imported provided the property owner:
 - a. Submits to the County Planning Department Soil Import Documentation prepared by a Qualified Professional.
 - 3. Tier 1c - Over 10 and up to 20 cubic yards per acre per year, up to a maximum of 50 cubic yards per property per year, provided the property owner:
 - a. Submits to the County Planning Department Soil Import Documentation prepared by a Qualified Professional;

- b. Obtains an Administrative Conditional Use Permit pursuant to this Title.
- 4. Tier 1d - Over 20 and up to 50 cubic yards per acre per year, up to a maximum of 80 cubic yards per property per year, provided the property owner:
 - a. Submits to the County Planning Department Soil Import Documentation prepared by a Qualified Professional.
 - b. Obtains an Administrative Conditional Use Permit pursuant to this Title; and
 - c. The County Planning Department provides notification to neighbors in accordance with Alameda County Zoning Ordinance Section 17.54.830.D.
- 5. Tier 1e - Over 50 cubic yards per acre per year or more than 80 cubic yards per property:
 - a. Submits to the County Planning Department Soil Import Documentation prepared by a Qualified Professional.
 - b. Obtains Conditional Use Permit pursuant to this Title.

17.66.060 - Tier 2 - Soil Importing on Lots in the A District

- A. Soil Importing is permissible on lots in the A (or equivalent) district in accordance with this chapter.
- B. Any and all Soil Import must be for an Agricultural Use.
- C. The depth of Soil Import shall not exceed three feet above existing grade unless it is Imported in accordance with one of following:
 - 1. A Building Permit from the County Public Works Agency,
 - 2. A Grading Permit from the County Public Works Agency, or
 - 3. An Administrative Conditional Use Permit or Conditional Use Permit issued pursuant to this Title.
- D. Soil Importing is regulated in accordance with the following tiered screening and review levels:
 - 1. Tier 2a - Up to 10 cubic yards per acre per year, up to a maximum of 1,000 cubic yards per property per year and less than three feet vertically in depth above any existing grade is permitted, subject to Section 17.66.030:
 - a. Property owner shall ensure the Imported Soil has been characterized as Clean Soil by a Qualified Professional prior to Importing to the site. Subject to audit of the Soil Import Documentation by the County Planning Department.
 - 2. Tier 2b - Over 10 and up to 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 a depth of between three and five feet vertically above any existing grade:
 - a. Property owner must obtain an Administrative Conditional Use Permit pursuant to this Title.
 - 3. Tier 2c - Over 20 cubic yards per acre per year or more than 15,000 cubic yards per property per year, whichever is lowest, or any Import in any amount resulting in a depth of over five feet vertically above any existing grade:
 - a. Property owner must obtain a Conditional Use Permit pursuant to this Title.

17.66.070 - Administrative Conditional Use Permit for Soil Importing

- A. An Administrative Conditional Use Permit may be issued in accordance with this chapter (in lieu of Sections 17.52.480, et seq.).
- B. In the districts specified in this title, an Administrative Conditional Use Permit may be issued for Soil Importing provided the proposed project does not require the preparation of a new environmental impact report pursuant to the California Environmental Quality Act (CEQA).
- C. If the proposed project requires a new environmental impact report, it may not be approved via an Administrative Conditional Use Permit but the project proponent may apply for a Conditional Use Permit in accordance with Section 17.54.130 and this chapter.

17.66.080 - Specific Findings for Administrative Conditional Use Permit and Conditional Use Permit

An Administrative Conditional Use Permit or Conditional Use Permit may be issued for Soil Importing only if the proposed use meets the requirements of Section 17.66.070 (Administrative

Conditional Use Permit for Soil Importing) or Section 17.54.130 (Conditional uses), as applicable, and the following additional 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 on the property in accordance with Section 17.06.040, Section 17.08.040 or Chapter 17.26 of this title;
- B. Soil Importing will not endanger public and/or private property, will not result in excessive Soil being deposited on any public right-of-way, will not endanger public health and safety, and will not impair groundwater or any spring or existing watercourse, or adversely affect the existence of, or habitat for, special status species under the State or Federal Endangered Species Acts;
- C. Property owner will minimize the impacts to the natural landscape, scenic, biological and aquatic resources, and erosion impacts that may otherwise be caused by the Soil Import;
- D. For Soil Importing associated with a new agricultural building on a development site within the boundaries of a lot, the subject site shall be one that is the most appropriate for the Imported Soil in comparison with other available development sites on the lot, taking into consideration other development constraints and regulations applicable to the lot;
- 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 will conform to any applicable General Plan or Specific Plan policies;
- G. Soil Import Documentation documenting the suitability of the Soil for Import to the lot has been prepared by a Qualified Professional;
- H. Permittee has submitted a truck traffic plan that adequately mitigates impacts from truck traffic generated by the proposed Soil Import; and
- I. Permittee has submitted an Agriculture Plan that specifically describes the proposed Agricultural Use to be facilitated by the proposed Soil Import. The Agriculture Plan must identify a reasonable schedule for completing work needed to implement the Agricultural Use.

17.66.090 - Standard Conditions for Administrative Conditional Use Permit and Conditional Use Permit

- A. Soil Importing shall be permitted only to the extent necessary to establish or maintain an Agricultural Use presently permitted on the property in accordance with Section 17.06.040, Section 17.08.040 or Chapter 17.26 of this title.
- B. The permittee shall obtain and make available to the County Planning Department Soil Import Documentation prepared by a Qualified Professional certifying the suitability of the Soil Import to the site. The Soil Import Documentation must be either:
 - 1. Provided to the permittee from a Qualified Professional retained by the permittee; or
 - 2. Provided to the permittee from a Qualified Professional retained by someone other than the permittee (e.g., the Soil Import source property, the shipper or a third party), that has been independently reviewed by a Qualified Professional retained by the permittee.
- C. Soil Import Documentation shall be stored for at least 5 years and shall be available for periodic review and audit by the County Planning Department at any time, up to four times per year. If the review or audit demonstrates inadequate characterization of the Soil Import or Soil contamination with chemical concentrations greater than the applicable risk-based screening levels, then the County Code Enforcement Division may initiate enforcement and abatement proceedings and may refer the matter to other County, State, and Federal agencies.
- D. Impacts from truck traffic shall be mitigated in accordance with permittee's truck traffic plan.
- E. Permittee shall obtain a Grading Permit from the County Public Works Agency, if applicable.
- F. Permittee shall implement an Agriculture Plan approved by the Planning Director consistent with the schedule for completion included in the Agriculture Plan. Each day the property owner

fails to meet the deadlines established by the Agriculture Plan and/or the permit shall constitute a separate offense and is subject to penalty in accordance with Section 17.66.150(C)(2).

- G. Permits shall be limited in duration to the reasonable time required to Import Soil sufficient to implement the Agriculture Plan, up to a maximum of 1 year for Administrative Conditional Use Permits and up to 5 years for Conditional Use Permits.
- H. Annual inspections and reports of soil import and agriculture activities are required. Permittees shall forward an annual report to the Director on each anniversary of the permit issuance date. The annual report shall include a description of the Soil Imported, and the total tonnage of Soil Imported. If requested, a copy of any supporting documentation shall also be provided to the Director.
- I. The Community Development Agency shall arrange for inspection of a soil import operation within six months of receipt of the annual report required by this chapter, to determine whether the soil import operation is in compliance with the approved permit and/or Agriculture Plan, and approved financial assurances. In no event shall less than one inspection be conducted in any calendar year. Said inspections may be conducted by the County and/or its consultants. The permittee shall be solely responsible for the reasonable cost of such inspection, including reasonable consultant costs.
- J. Permittee shall provide financial assurances sufficient to guarantee completion of the Agriculture Plan or remediation of the property to pre-Soil Import conditions.
- K. Permittee shall release the county, and its agents, officers, elected officials, and employees from any injuries, damages, or liabilities of any kind that result from any arrest or prosecution of permittee, delivery operators or brokers, owners or operators of the source material site, or others involved in the Soil Import, for violation of state or federal laws in a form satisfactory to the director.
- L. Permittee shall indemnify and hold harmless the county and its agents, officers, elected officials, and employees for any claims, damages, or injuries arising from issuance of the permit, operation of the Soil Import, adoption or enforcement of conditions of the permit, or the County's compliance with CEQA in a form satisfactory to the director.

17.66.100 - Agriculture Plans - Required Content and Implementation.

- A. Permittee shall Import Soil only in order to implement an Agricultural Use in accordance with an approved Agriculture Plan. Permittee shall ensure that the Agricultural Use is implemented in accordance with conditions of the permit, the Agriculture Plan, and this chapter.
- B. The Agriculture Plan shall specify the amount of soil to be imported by weight and by volume.
- C. Implementation – Complete or Phased
 - 1. The Agricultural Use will be deemed completely implemented when the project is completed (e.g., when construction or all planting is completed) and all approvals required to commence the Agricultural Use (e.g., occupancy permit) have been issued.
 - 2. Implementation may occur in phases. For phased implementation, the establishment of the Agricultural Use may occur over successive periods following completion of Soil Import at successive locations within the lot, as specified in the Agriculture Plan. In all cases, establishment of the Agricultural Use shall take place as soon as practical. Each phase shall be specifically described in the Agriculture Plan and shall include:
 - a. The beginning and expected ending dates for each phase;
 - b. All establishment of agriculture activities required;
 - c. Criteria for measuring completion of specific establishment of agriculture activities; and
 - d. Estimated costs for completion of each phase of establishment of agriculture.
 - 3. Interim Agricultural Uses may be required if phased or complete implementation is not achieved within the timeframe specified in the Agriculture Plan.
- D. Drainage, Erosion and Sediment Control. Agriculture Plans shall address the appropriate control and mitigation for drainage, erosion and sediment control during the Soil Import and implementation of the Agricultural Use. The Agriculture Plan shall specifically address the property owner's plan to comply with the following requirements:
 - 1. Streams, ponds, wetlands or watershed features shall be avoided or, if affected by soil import, restored in the final stage of establishment of agriculture.
 - 2. All activities of soil import or establishment of agriculture shall be designed and carried out to minimize erosion, provide for drainage to natural outlets or interior basins designed for water storage, and to eliminate potholes and similar catchments that could serve as breeding areas for mosquitoes.
 - 3. Silt basins designed to store water during periods of surface runoff shall be equipped with sediment control and removal facilities and protected spillways designed to minimize erosion when such basins have outlet to lower ground.
 - 4. Final grading and drainage shall be designed in a manner to prevent discharge of sediment above natural levels existent prior to soil import operations.
 - 5. Upon complete implementation, no condition shall remain that will or could lead to the degradation of water quality below applicable standards of the regional water quality control board or any other agency with authority over water quality.
- E. Final Slope Gradient. Agriculture Plans shall address the final slope gradient upon the completion of the Soil Import and implementation of the Agricultural Use and any phases thereof. The Agriculture Plan shall specifically address the property owner's plan to comply with the following requirements:
 - 1. Final slopes shall be of such gradient as necessary to provide for slope stability, maintenance of establishment of agriculture, public safety, and the control of drainage, as may be determined by engineering analysis of soils and geologic factors.
 - 2. Final slopes shall not be steeper than two feet horizontal to one foot vertical (2:1) unless the permittee can demonstrate to the satisfaction of the Director that any such steeper slope will not;

- a. Be incompatible with future uses approved for the site;
 - b. Be hazardous to persons that may utilize the site under future uses approved for the site; and
 - c. Reduce the effectiveness of revegetation and erosion control measures where such are necessary.
3. In no event shall the steepness of slopes exceed the critical gradient as determined by an engineering analysis of the slope stability.
- F. **Revegetation.** Agriculture Plans shall require all lands affected by Soil Importing shall be revegetated for establishment of agriculture unless any such revegetation is determined by the Director to be technically infeasible or not beneficial with respect to the intent of this chapter. Revegetation methods and plant materials utilized for establishment of agriculture shall be appropriate for the topographical, soil and eliminate conditions present at the site. Where agriculture is not to be established, native species shall be used wherever practical.
- G. **Additional Requirements.** The County may impose additional performance standards as developed either in review of individual projects or through the formulation and adoption of generally applicable performance standards.

17.66.110 - Environmental Review.

- A. All projects shall comply with the California Environmental Quality Act.
- B. The County Planning Department shall be the lead agency for any project requiring environmental review pursuant to the California Environmental Quality Act.

17.66.120 - Fees.

The application fees for a Soil Import permit or approval of an Agriculture Plan, or for modification of an existing permit or approved Agriculture Plan shall be as established by the Board of Supervisors and shall be submitted at the time of application. The County shall establish such fees as it deems necessary to cover the reasonable costs incurred in implementing this chapter and County rations, including but not limited to, processing of applications, annual reports, inspections, monitoring, enforcement and compliance. The permittee shall pay such fees as required by the County, at the time of filing of the Soil Import permit application, Agriculture Plan application, and at such other times as are determined by the County to be appropriate in order to ensure that all reasonable costs of implementing this chapter are borne by the operator.

17.66.130 - Administrative fees.

The property owner shall pay an administrative fee of \$1.26 per ton for all Soil Imported to their lot. The quantity of Soil on which the administrative fee is based shall be the total volume of material projected for Import. The fee is payable prior to commencing Soil Import. For projects with phased implementation plans, the fee is payable prior to commencing the Soil Import for each phase. If the amount of Soil Imported differs from the amount projected, the property owner shall either be invoiced or refunded accordingly.

17.66.140 - Performance Assurance Requirement.

- A. Financial security in a form and amount determined by the Director, shall be furnished to guarantee faithful performance of the work to be done under the terms of the Soil Import permit and Agriculture Plan or to guarantee reclamation and remediation of the affected property to pre-Soil Import conditions, in the event of failure by the Permittee to implement the terms of the conditions of the permit or of this chapter.
- B. Cost estimates for the financial assurance shall be submitted to the Community Development Agency for review and approval prior to the permittee securing financial assurances. The amount of the financial assurance shall be based upon the estimated costs of implementing the Agriculture Plan or remediating the property to pre-Soil Import conditions.

- C. If the Board of Zoning Adjustments, following a public hearing, determines that the property owner is financially incapable of implementing the Agriculture Plan or has abandoned its operations prior to implementation, the Director shall:
1. Notify the property owner by personal service or certified mail that the County intends to take appropriate action to forfeit the financial assurance and specify the reasons for so doing.
 2. Allow the property owner at least thirty (30) and up to sixty (60) days after notification to implement the Agriculture Plan.
 3. Proceed to take appropriate action to require forfeiture of the financial assurance if the permittee does not comply with the provisions of Subsection 2.
 4. Use the proceeds from the forfeited financial assurance to implement the Agricultural Use on the property or remediate the property to pre-Soil Import conditions. The property owner shall be responsible for the costs which are in excess of the proceeds from the forfeited financial assurance.

17.66.150 - Violation – Enforcement and Penalties.

- A. If the Director, based upon an annual inspection or otherwise confirmed by an inspection of the property or Soil Import operation, determines that the property or operations are not in compliance with this chapter, the permit, and/or the Agriculture Plan, the County may revoke the permit in accordance with Section 17.54.030 of this Title and may enforce this chapter in accordance with Chapters 17.58 and 17.59 of this Title, as set forth in this section, or as otherwise provided by law.
- B. Fines for each violation may be assessed as follows:
1. Any person, firm or corporation shall be guilty of a separate offense for each and every violation of any provision of this chapter that is committed, continued or permitted by such person and shall be punishable accordingly. Each incident of a vehicle delivering or depositing Soil or other fill material to a property in the unincorporated area of the County shall constitute a separate offense.
 2. Any person, firm or corporation shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this chapter is committed, continued or permitted by such person and shall be punishable accordingly.
 3. The fine for each offense is \$1000 (one thousand dollars).
- C. Procedures and fees for inspections, appeals and abatement shall be as set forth in Chapter 17.59, including Section 17.59.200(D).
- D. In addition to the penalties provided in this chapter, any condition caused or allowed to exist in violation of any of the provisions of this chapter shall be deemed a public nuisance and shall create a cause of action for injunctive relief and civil penalties in accordance with Chapter 17.59 of this Code. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

SECTION III

This ordinance shall take effect and be in force thirty (30) days from and after the date of passage and before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on the ____ day of _____, 2019, by the following called vote:

AYES:

NOES:

EXCUSED:

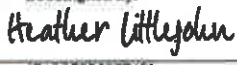
RICHARD VALLE
President of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors,

By: _____
Deputy Clerk

APPROVED AS TO FORM:
DONNA R. ZIEGLER, COUNTY COUNSEL

By: 
Heather Littlejohn
Deputy County Counsel



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
P L A N N I N G D E P A R T M E N T

Agenda Item #6 July 9, 2019

Chris Hauer
Agency Director

June 28, 2019

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Honorable Board of Supervisors
Administration Building
1221 Oak Street, Fifth Floor
Oakland, California 94612

Dear Board Members:

SUBJECT: SOIL IMPORT ORDINANCE – Development of regulations for the importing of soil onto properties in the unincorporated areas of Alameda County.

RECOMMENDATION

Planning Commission: At their May 06, 2019 public hearing, the Planning Commission voted 4 to 2 with one excused to recommend that the Board of Supervisors approve the Soil Import Ordinance as recommended by staff, without the changes as recommended by the State regulatory agencies: the San Francisco Bay Regional Water Quality Control Board (Water Board) and the State Department of Fish and Wildlife (CDFW).

Board of Supervisors: At the

At your May 21, 2019 hearing, the Board continued this item to give staff time to respond to the comments of State regulatory agencies that had provided input. Specifically, the Board requested that staff:

- 1) reduce the amount of soil to be imported before a discretionary permit, such as an Administrative Conditional Use Permit or a Conditional Use Permit, was required;
- 2) include additional screening methods to address potential impacts to biology and hydrology;
- 3) require phasing of the agricultural operation before additional soil is imported;
- 4) add "tipping" fees for all soil to be imported;
- 5) increase fines or require bonding for imported soil;
- 6) require registration with the County for all soil importing activity above a certain threshold, but below the discretionary permitting levels; and
- 7) establish a finite maximum amount of soil allowed to be imported per property.

Staff is updating the ordinance based on the comments from the State regulatory agencies, and the input from your Board. We anticipate that the ordinance will be ready to present for a decision to the Board of Supervisors at the July 23, 2019 Board of Supervisors Regular Meeting.

Staff Recommendation: Staff recommends that the Board of Supervisors continue this item until the Board of Supervisors' Regular Meeting of July 23, 2019.

DISCUSSION

Most Recent Input from Regulatory Agencies

Staff continues to work with the State regulatory agencies on the proposed language for the ordinance. Key input has just been received and it will take some additional coordination with County Counsel to incorporate these comments into the County General Ordinance Code. Staff

intends to complete this work in time to have the item heard at your Board's July 23 Regular meeting; below is a summary of comments received.

Per the Regional Water Quality Control Board, inadequately screened and/or carelessly placed soil can put humans and special status species at risk. Human health can be placed at risk if imported soil contains constituents at levels that are associated with unacceptable risks of cancer or other noncancer based health effects. The most significant risk to special status species from imported soil results from physical modification of essential habitat features for those species.

The Water Board has developed Tier 1 Environmental Screening Levels (ESLs) (*Users Guide: Derivation and Application of Environmental Screening Levels (ESLs), Interim Final* (Water Board, 2019)) that represent constituent levels in soil that serve as an aid in assessing the overall threat (pathways and threat level) at a typical soil/groundwater cleanup site. These screening levels allow for understanding whether threats to human health or the environment are adequately controlled. The Tier 1 Soil ESLs consider risks from direct exposure to both humans and terrestrial species, soil contamination leaching to groundwater, and nuisance odors. The Tier 1 Soil BSL human exposure scenario includes children living and playing on the soil and construction workers working (including excavating) at sites containing the screened soils.

The generic site assumptions used to develop the Tier 1 Soil BSLs do not consider special status species (terrestrial or aquatic). Such special status species may be more sensitive to some constituents than the surrogate species used to develop the terrestrial soil BSLs used as Tier 1 Soil BSLs. However, at this time there is not a list of screening levels appropriate to all special status species that may be present in agricultural lands in Alameda County. Also, identifying special status screening levels on a site-by-site basis would be burdensome to the regulated community. Therefore, risks to special status species from imported soil will be assessed with respect to impacts on habitat features that are essential for the life cycles of special status species.

Placing fill dirt on areas that have special status species, such as seasonal or perennial waterways, stock ponds, riparian corridors, rock outcroppings in chaparral habitat, grasslands within 1.3 miles of breeding ponds, or burrows, can remove essential habitat features for these species and entomb any species present when fill is placed over these areas. Prior to placement of soil on these areas, they should be assessed for the potential presence of special status species. A habitat assessment should be prepared by a qualified biologist who has the education, training and experience and possesses the expertise to identify habitat of special status species.

The Water Board recommends that County staff and the regulated community refer to the *Eastern Alameda County Conservation Strategy (EACCS, 2010)* for a documented baseline inventory of biological resources and conservation priorities to be utilized during project-level planning and environmental permitting. It was designed to convey project-level information for use in permitting and environmental compliance with the federal and state endangered species acts (FESA and CESA), the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA), and other applicable laws for projects within the study area with impacts on biological resources. The EACCS is intended to 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 been accepted as a guidance document by several agencies including USFWS and CDFW. EACCS does not authorize or provide legal coverage for takes of special status species. The landowner should consult with the U.S. Fish and Wildlife Service (USFWS) and staff at the California Department of Fish and Wildlife (CDFW) if the import or export areas occur in areas defined in the EACCS and/or by the qualified biologist as providing habitat for special status species. Habitat maps are available on the East Alameda County Conservation Strategy website (http://eastalcoconservation.org/documents/eaccs_ch3_oct2010.pdf).

CDFW has discretionary authority over activities that could result in the "take" of any species listed as candidate, threatened, endangered pursuant to California Endangered Species Act (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.

Summary of other Federal and State Laws that Protect Jurisdictional Waters

The State regulatory agencies have also reminded the regulated community and County staff that, regardless of the draft County soil importing ordinance, there are additional Federal and State laws that protect local waterways, including perennial and seasonal wetlands; ephemeral, intermittent, seasonal, and perennial creeks; seasonal ponds; perennial ponds; and lakes. Regulated ponds usually include stock ponds in the area covered by the Ordinance.

- Federal Clean Water Act prohibits the placement of fill in waters of the U.S. without first obtaining permits from the U.S. Army Corps of Engineers (Corps).
- The California Porter-Cologne Water Quality Act prohibits the discharge of fill to waters of the State without first obtaining Waste Discharge Requirement's from the appropriate Regional Water Quality Control Board.
- CDFW requires a Lake and Streambed Alteration (LSA) Notification, pursuant to Fish and Game Code section 1600 et. seq., for project activities affecting stock ponds, lakes, or streams and associated riparian habitat.

Areas that may be regulated as waters of the U.S. and/or waters of the State include the following:

- Areas of soggy ground that remain soggy for at least two weeks during the rainy season.
- Any creek channel with a defined bed and bank (e.g., a topographic change from the adjacent land), no matter how small or how often water flows through the channel in a typical year.
- The bottom of any canyon is likely to contain a regulated creek channel.
- Any pond or impoundment of water, including stock ponds.

CONCLUSION

Based on the input by the State regulatory agencies summarized above, Staff is drafting an ordinance that includes screening investigation protocols to protect land and water species before the soil is placed on the receiving property. Staff anticipates that the last remaining step in this process – to format the ordinance for adoption to the County General Ordinance Code – will be completed in time to agendaize for your Board's July 23 Regular meeting.

Very truly yours,



Chris Beyer, Director
Community Development Agency

Attachments: Table of State Agency Concerns and Recommended Ordinance Revisions

TABLE 1: State Agency Concerns and Possible Ordinance Revisions

NOTE: Issues 1 – 10 are from San Francisco Bay Region; State Water Quality Control Board, letter of April 8, 2019. Issues 11 – 17 are from California Department of Fish and Wildlife, letter of February 7, 2019.

CONCERN	DESCRIPTION OF ISSUE	POSSIBLE SOLUTION
1. Lead Agency Staffing Inadequate	As lead agency for this Zoning Ordinance modification, general staffing and subject matter expertise at CDA is minimal. Additional staff or consulting services for CDA will become necessary on a permanent basis unless other County Agencies can provide staff with appropriate expertise and time to manage the technical and field requirements for the tasks implied by the ordinance language.	Additional subject matter expertise could be explored and developed.
2. Unlimited Intent of Ordinance	<p>The Ordinance does not include the following additional reasons for its adoption:</p> <p>(a) to ensure that potential human and ecological risks are not transferred between properties due to the import of polluted fill materials;</p> <p>(b) to ensure that hazardous wastes are not imported to properties accepting fill.</p> <p>These reasons are easily stated, but both imply a highly technical and complex set of requirements that cannot be easily expressed for general use in a land use ordinance. The proposed ordinance itself is missing some of the technical aspects of these reasons, as explained below.</p>	<p>Amend Paragraph 17.66.010, Purpose, to include:</p> <p><i>"...to ensure that potential human and ecological risks are not transferred between properties due to the import of polluted fill materials, and to ensure that hazardous wastes are not imported to properties accepting fill."</i></p> <p>And</p> <p>Include various amendments as generally described below to strengthen ordinance language to address technical requirements.</p>

CONCERN	DESCRIPTION OF ISSUE	POSSIBLE SOLUTION
<p>3. Soil Fill in Jurisdictional Wetlands not addressed</p>	<p>The Ordinance does not caution the regulated community against the placement of imported soil in jurisdictional waters of the State and waters of the U.S., such as creeks and wetlands. It has been assumed that these regulations are left to the Army Corps of Engineers, CDFW, and the Water Board, who have jurisdiction over ephemeral and intermittent creek channels, and the County Public Works Agency, which has jurisdiction over some watersheds.</p> <p>To prevent members of the regulated community from inadvertently placing fill in such waters, the Ordinance's text could be expanded to clarify that the placement of soil in any channels with defined bed and banks, any ponds, and any wetland areas is likely to require state and/or federal authorization, and that failure to obtain appropriate authorization prior to placing fill in those waters may result in state and/or federal enforcement action. To prevent inadvertent violations of state and federal law, the Ordinance should require that property owners have a jurisdictional delineation of waters of the state and of the U.S. performed at sites at which the placement of imported fill is proposed.</p>	<p>The Draft Ordinance already contains Section 17.66.040, Compliance with Existing Laws and Regulations, which specifies compliance with the requirements of these numerous other agencies. That language does not explicitly specify jurisdictional delineation of waters of the state and the U.S. Technically, this is already a legal requirement in order to avoid violations of state and federal law; however, such a directive could be added to ensure that the delineation is done:</p> <p><i>"Owners of property receiving imported soil shall have a jurisdictional delineation of waters of the state and of the U.S. performed at sites at which the placement of imported fill is proposed."</i></p>
<p>4. Tier 1 Soil environmental Screening Levels (ESLs) alone are not protective of aquatic habitats and special status species.</p>	<p>The Tier 1 ESLs are intended for evaluating polluted properties, and the concentration levels represent thresholds in soil and groundwater that present insignificant risk or concerns (e.g., odors) to humans, upland terrestrial receptors, and aquatic water column receptors. The ESLs do not address the potential erosion of soil/fill material, dissolved transport in stormwater, or the potential pollution of wetland/stream sediment.</p> <p>The Ordinance could be revised to include a definition of acceptable fill. The ESLs may be used to determine "acceptable" fill for placement in upland areas provided</p>	<p>Language to address this concern in detail would add a level of complexity to the Ordinance that could be difficult to comprehend by Staff or the Public. However, some general language could be added to provide direction to qualified professionals on how to proceed.</p> <p>Soil has already been defined to include only "earthen material lying above the bedrock," and to exclude "trash, debris, piping of any material, wooden boards, logs, branches or chips, broken concrete or asphalt, metal pieces of any kind,</p>

TABLE 1: State Agency Concerns and Possible Ordinance Revisions

NOTE: Issues 1 – 10 are from San Francisco Bay Region, State Water Quality Control Board, letter of April 8, 2019. Issues 11 – 17 are from California Department of Fish and Wildlife, letter of February 7, 2019.

CONCERN	DESCRIPTION OF ISSUE	POSSIBLE SOLUTION
	<p>that: (a) no material classifiable as a hazardous waste is imported; (b) any materials placed at the surface are compliant with the polychlorinated biphenyls (PCBs) Total Maximum Daily Load (TMDL) (Water Board 2017); and (c) the fill material is not placed in or adjacent to any sensitive environments (e.g., wetlands; riparian corridors of any ephemeral, intermittent or perennial streams, or the stream channels; or endangered species habitats).</p> <p>In rural and agricultural areas, contaminants in fill soil may pose a significant risk to animals, including listed species. Some agricultural lands in Alameda County include designated critical habitat for species listed under the Federal Endangered Species Act. Levels of contaminants in soil that pose negligible risk to humans may be toxic to CTS and/or CRLF or inhibit the successful breeding of these species.</p> <p>The Ordinance currently does not include provisions to protect biology and habitat from adverse effects of soil fill import. Ideally, at any site at which imported fill may be washed by precipitation into creeks, ponds, or wetlands, the cleanliness of imported soil should be additionally screened using ecological screening levels that are protective of aquatic species, including special status species. This would add a level of complexity to the Ordinance that could be difficult to comprehend by Staff or the Public.</p>	<p>plastic, glass, or other human-made materials"; or "human-made or artificial chemicals, substances or contaminants at measured levels greater than those determined through required testing processes to be safe for human contact, adequate for protection of watercourses or ponds and the water contained therein, groundwater located or flowing beneath the surface, and protection of biological habitat and native species found on or known to use the parcel site and surrounding parcels. Soil specifically does not include Organic Mulch."</p> <p>In order to satisfy this concern, language would need to be added that would protect wetlands, stream channels, bodies of water and endangered species habitats. An example of this could read as follows:</p> <p><i>"Testing of Soil for Ecological Screening.</i></p> <p>A. For all soil import subject to an ACUP or CUP as described in 17.66.050 and 17.66.060, all soils shall be tested for Ecological Risk Factors and compatibility with onsite water quality, watercourse and streambed preservation and habitat / special status and aquatic species protection according to protocols and standards recognized by the State of California Water Resources Control Board San Francisco Bay Region and the State of California Department of Fish and Wildlife."</p>

TABLE 1: State Agency Concerns and Possible Ordinance Revisions

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CONCERN	DESCRIPTION OF ISSUE	POSSIBLE SOLUTION
3. Acceptable protocols may include, but not be limited to, thorough testing and screening of potential soil for import for all potential applicable contaminants, substances or naturally-occurring hazardous elements and compounds under the supervision of a professional(s) with experience in toxicology, analytical chemistry and statistics; sampling and screening of onsite soils of the receiving parcel(s) for compatibility with soil to be imported; characterization of the receiving parcel(s) for biological habitat, watercourse protection and special status / aquatic species; and when necessary, a Habitat Conservation Plan or other mitigation for adverse effects on watercourses, habitat or biology approved by the State of California Department of Fish and Wildlife."		
5. Environmental Review for many smaller projects would not adequately assess impacts on biology.	Ideally and legally, prior to receiving permission to import soil to an agricultural property, the property owner would be directed to have a biological assessment performed to identify the presence of any sensitive biological receptors, such as riparian habitats, ponds, wetlands, or special status species, including the presence of critical habitat for a special status species. If special status species are present, appropriate soil constituent screening levels should be selected to protect the listed species from constituents that may be transported in sediment or leached from sediment into habitat for those species. In addition to identifying appropriate screening levels, the biological assessment should examine the ways in which habitat may be	As described above, new language would be required to explicitly address the concerns of the presence of special status species or special habitats on any of the soil import receiving sites. As currently written in the draft Ordinance, the Tiering system would remove many smaller projects on agricultural lands from any such oversight and evaluation. This concern is difficult to address without either: (1) Eliminating the Tiering system proposed in draft Ordinance, which allows smaller

TABLE 1: State Agency Concerns and Possible Ordinance Revisions

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CONCERN	DESCRIPTION OF ISSUE	POSSIBLE SOLUTION
	<p>compromised by the Import of fill. Where habitat used by special status species may be negatively impacted, the property owner should be directed to consult with CDFW and the U.S. Fish and Wildlife Service.</p> <p>Currently, no such specific requirement is included in the draft Ordinance. For all soil fill import action on properties where no Conditional Use Permit is required – up to 15,000 cubic yards per year in many cases – no environmental review would be required. This may mean that no vehicle for soil characterization prior to receipt would be available to the lead agency. The potential for receipt of uncharacterized contaminated soil or placement of soil that would pose a risk to biology and ecology could be substantial.</p>	<p>projects to proceed without proactive oversight by the County; or</p> <p>(2) Revising the text to apply biological and toxicological evaluation requirements as shown above to all tiered projects or a much larger subset of them, with evaluation of both the receiving lands and the imported soils, including smaller ones.</p>
<p>6. Ordinance does not include detailed protocol to develop a sampling plan capable of establishing that imported soil is sufficiently clean ("acceptable") for placement in agricultural lands.</p>	<p>The Ordinance does not explicitly provide guidance for assessing the cleanliness of soil proposed for importation to agricultural lands. In assessing contaminant levels in soils, it is standard practice to specify the minimum sampling density necessary to establish that the soils have been sufficiently characterized [...](The Ordinance leaves out details [to assess cleanliness of soils], which include the following standard procedures in the evaluation of soils:</p> <ul style="list-style-type: none"> • Required minimum sampling density; • A protocol for determining that sufficient samples have been collected • List of analytes that must be tested for in the soil; • Analytical methods considered acceptable to assessing concentrations of contaminants in soils; • Required reporting levels for analytical methods; • Protocols for assessing data when method reporting limits are higher than appropriate screening levels; 	<p>Amend the draft Ordinance to include language as follows, to either augment or replace existing language as appropriate:</p> <p>"Screening Requirements (Appropriate List of Analytes for Testing / Screening).</p> <p><i>Soil shall be screened in accordance with Sections 17.66.050 and 17.66.060 above and the following requirements:</i></p> <ol style="list-style-type: none"> 1. Tier 1 ES1 2. Other Screening Levels as described in this Section, 3. The soil shall be tested in accordance with the standards established by the San Francisco Bay Regional Water Quality Control Board in its "Beneficial Use of Dredged

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CONCERN	DESCRIPTION OF ISSUE	POSSIBLE SOLUTION
	<ul style="list-style-type: none"> • Acceptable calculations for establishing the likely range of contaminant concentrations in soils; • Acceptable quality assurance/quality control procedures to ensure that data are of sufficient quality to be used in screening prospective soil fill. • Specification of the level of certainty required for concluding that soil has met the appropriate screening guidelines (e.g., whether an 80 percent upper confidence interval or a 90 percent upper confidence level would be an acceptable metric for comparison with appropriate screening levels). <p>Water Board staff have suggested two protocols that may be of use in the Ordinance: (a) the Alameda County Department of Environmental Health – Local Oversight Program’s August 1, 2018, Fill Material Characterization Guidance (the underlying documents for which are referenced in the Ordinance text); and (b) the Hawai’i Department of Health’s October 2017 Guidance for Soil Stockpile Characterization and Evaluation of Imported and Exported Fill Material.</p>	<p><i>Materials: Sediment Screening and Testing Guidelines, Draft staff report” (2000), as amended, or other source recommended by the State of California Water Resources Control Board San Francisco Bay Region.</i></p> <p><i>Testing of Soil for Human Safety According to Established Protocols.</i></p> <p><i>For all soil import subject to an ACUP or CLUP as described in 17.66.050 and 17.66.060, all soils shall be tested for compliance with Tier 1 ESL according to protocols and standards recognized by the State of California Water Resources Control Board San Francisco Bay Region, and the Alameda County Department of Environmental Health.</i></p> <p><i>Acceptable protocol may include those set forth in the County Department of Environmental Health document, “Fill Material Characterization Guidance” (August 1, 2018 or later versions), or similar protocol as approved by the State of California Water Resources Control Board San Francisco Bay Region.”</i></p>

TABLE 1: State Agency Concerns and Possible Ordinance Revisions

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<p>7. The Ordinance does not yet include a protocol for selecting the constituents that must be analyzed for in soil to ensure that imported soil is sufficiently clean for placement in agricultural lands.</p>	<p>The Ordinance does not describe how to determine which elements and chemicals must be included in the list of analytes to be measured in soil proposed for import to agricultural lands. The text does describe required analytes in soil imported from agricultural lands or imported from areas adjacent to roadways, but the rationale used in each of those discussions is incomplete.</p> <p>The Ordinance requires that soils derived from a source that has been in agricultural production in the last 50 years must be analyzed for agricultural chemicals (fertilizers, herbicides, and pesticides). Residential areas with lawns and commercial properties with landscaping are also likely to have residues of fertilizers, herbicides, and pesticides in soils. Water Board staff have observed that the upper two to three feet of soils used in agricultural production usually have pesticide levels that are not compatible with placement in or adjacent to aquatic habitat.</p> <p>The Ordinance requires that soils adjacent to a freeway, state route, or major arterial roadway be analyzed for asbestos and lead contamination. This list could be expanded to include copper, which is present in many brake shoe formulations and is highly toxic to aquatic life. Soils adjacent to roadways should also be tested for petroleum hydrocarbons and combustion byproducts (e.g., PAHs). Also, since electric power lines often parallel roadways, soils adjacent to roadways should be tested for PCBs, which were a constituent of transformer fluids for many years. Finally, since maintenance crews often use herbicides to control road side vegetation, these soils should be analyzed for herbicides.</p>	<p>Amend the draft Ordinance to include language as follows, to either augment or replace existing language as appropriate:</p> <p>"Screening Requirements (Appropriate List of Analytes for Testing / Screening).</p> <p>Soil shall be screened in accordance with Sections 17.66.050 and 17.66.060 above and the following requirements:</p> <ol style="list-style-type: none"> 1. Tier 1 ESL 2. Other Screening Levels as described in this Section, 3. The soil shall be tested in accordance with the standards established by the (San Francisco Bay Regional Water Quality Control Board in its "Beneficial Use of Dredged Materials: Sediment Screening and Testing Guidelines: Draft staff report" (2000), as amended, or other source recommended by the State of California Water Resources Control Board San Francisco Bay Region. <p>Amend Paragraph 17.66.060(EX2) to include recommended testing for copper, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), and common roadside herbicides.</p> <p>In all cases, a qualified professional (defined in the Ordinance as a licensed geologist or other professional who, by education, training and</p>

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CONCERN	DESCRIPTION OF ISSUE	POSSIBLE SOLUTION
	<p>The Ordinance's language regarding asbestos could be updated...Information regarding the regulation of airborne asbestos is available from the Air Resources Board. Information regarding managing asbestos hazardous waste is available from the Department of Toxic Substances Control.</p> <p>Beyond listing potential agricultural- and transportation-related contaminants, the Ordinance does not yet provide guidance on the appropriate list of analytes to be selected for screening soils. Unless specific documentation exists for a given source of soil that rules out some classes of contaminants, Water Board staff suggests that soils should be screened for a full suite of metals, volatile organic compounds, semi-volatile organic compounds, polycyclic aromatic hydrocarbons, PCBs, pesticides, herbicides, and fertilizers. The full list of analytes presented in the Beneficial Reuse of Dredged Materials: Sediment Screening and Testing Guidelines. Draft staff report (Regional Water Quality Control Board, 2000) should be used in testing soils, unless sufficient documentation is available to exclude the likely presence of a class of contaminants in a soil source. Such documentation may include Phase 1 and Phase 2 Environmental Site Assessments of the proposed source site.</p>	<p>experience possesses the expertise in testing and analyzing soils necessary to accurately evaluate the chemical properties of the soil, including but not limited to, the ability to determine appropriate screening levels for toxicity for various applications and land uses) would need to be in charge of soil screening and analysis for these issues.</p>
<p>8. Ordinance does not include protocol for screening imported soil for materials other than elements and chemicals that may negatively impact habitat quality at US receiving sites.</p>	<p>In addition to screening soils for harmful levels of elements and chemicals, the Ordinance should set requirements for trash and invasive plant species seedstocks. To prevent imported soil from functioning as a landfill, the Ordinance should specify screening protocols to ensure that the imported soil does not contain significant trash or debris. Also, invasive plant species are dominant in many developed areas of the County. Depositing fill soil in agricultural areas may introduce new seed stocks from</p>	<p>The draft Ordinance already includes language that explicitly excludes any trash or debris as fitting the definition of soil. Any soil not pre-screened for this material is not permitted to be imported.</p> <p>Staff has not yet been able to determine whether an adequate method of screening large masses of soil for noxious and weedy seeds, or whether this problem can be surmounted. It may be possible to</p>

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	<p>invasive species into habitat at the fill site and compromise populations of native plant species. The Ordinance should include protocols that minimize and avoid the spread of invasive plant seed stock.</p>	<p>achieve this task after seed germination at the receiving site using a method called soil solarization, but this requires intensive work and a large amount of land across which to spread the soil, and may be impractical for all but very small volumes of soil. Moreover, most land in Alameda County is already adversely affected by invasive nonnative species which have become common.</p>
<p>9. Ordinance exempts soils from analysis if obtained within the same zoning designation of Agriculture or PD or if imported from a Licensed and Permitted Retailer or Wholesaler.</p>	<p>The Ordinance does not require soil to be tested if it is imported from the same zoning designation or if soil is imported from a Licensed and Permitted Retailer or Wholesaler. Technical bases for these exemptions are not provided.</p> <p>Because of the combination of alluvial and tectonic processes in the shaping of landforms in the Bay Area, the chemical compositions of soils can vary significantly over relatively small distances. In addition, some Bay Area soils have elevated levels of metals that are toxic to wildlife at relatively low concentrations, including arsenic, cadmium, mercury, nickel, selenium, and thallium. In subregions in which elevated levels of these metals occur in soils, the local flora and fauna have often adapted to these metals over many generations. Moving soils from such a source area to an area that does not contain elevated levels of some of these metals is likely to have a negative impact on flora and fauna at the fill location. This is not addressed in the Ordinance.</p>	<p>For soils to be moved within the same zoning designation, from one agricultural parcel to another, language similar to that described above would provide adequate testing of the soils, but Paragraph 17.66.060(E) would need to be amended to eliminate the exemption allowed under the language: <i>"exemption for imports from a source parcel within the Agricultural (A) district in the unincorporated areas of the County of Alameda or equivalent districts in other jurisdictions shall be exempt from the tiered requirements above..."</i></p> <p>Licensed and permitted retailers or wholesalers include surface mining operations and home and garden supply businesses who sell landscaping materials, either in bulk or in small quantities. Water Board staff assert that these businesses do not always screen soils for potential toxicity to special status species, and also assert that unless retailers and wholesalers have data available that demonstrates that constituents in the soils do not exceed acceptable concentrations for safe exposure of special status species, soil from these sources should be tested to verify that it is safe to use in potential listed species habitat. CDA staff acknowledges that this may be the case, but this</p>

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CONCERN	DESCRIPTION OF ISSUE	POSSIBLE SOLUTION
<p>10. The Ordinance has not been reviewed under the California Environmental Quality Act (CEQA).</p>	<p>The County proposes to satisfy the requirements for review under CEQA by referencing the Categorical Exemptions from review under Sections 15307 and 15308 of the CEQA Guidelines.</p> <p>15307. Actions by Regulatory Agencies for Protection of Natural Resources</p> <p>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.</p> <p>15308. Actions by Regulatory Agencies for Protection of the Environment</p> <p>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.</p> <p>Water Board Staff have expressed concern that the regulation proposed are not sufficiently protective of wildlife, including special status wildlife and associated</p>	<p>would go far beyond any kind of regulation ever envisioned by the County, would affect materials that have not been involved in the problems this Ordinance is designed to correct, and would go beyond the intention of the Ordinance.</p> <p>CDA Staff has prepared this regulation on the premise that the activity in question – soil import and placement for any agricultural reason and at any level – is already unregulated under existing County ordinance, and that any stricter regulation on that activity, such as the draft Ordinance, satisfies the concept that natural resources and the environment will receive greater protection than previously as a result.</p> <p>It is acknowledged that conducting a CEQA review on this proposal would provide maximum transparency of potential impacts of the soil import activity being regulated, and the most solid legal foundation for approval of this Ordinance.</p>

TABLE 1: State Agency Concerns and Possible Ordinance Revisions

CONCERN	DESCRIPTION OF ISSUE	POSSIBLE SOLUTION
<p>11. California Endangered Species Act and Native Plant Protection Act</p>	<p>critical habitat, to satisfy the requirements of these exemptions and justify use of the proposed categorical exemptions.</p> <p>CDFW has discretionary authority over activities that could result in the "take" of any species listed as candidate, threatened, endangered pursuant to California Endangered Species Act (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.</p>	<p>The Draft Ordinance already contains Section 17.66.040, Compliance with Existing Laws and Regulations, which specifies compliance with the requirements of these numerous other agencies, including CDFW. That language does not explicitly specify jurisdictional authority over the "take" of any species listed as candidate, threatened, or endangered pursuant to CESA or rare plant species under the Native Plant Protection Act (NPPA), or that a CESA permit must be obtained.</p> <p>Technically, this is already a legal requirement in order to avoid violations of state and federal law, and for those proposals that require CEQA analysis, these obligations would be fulfilled. However, there is the risk of missed obligations for consultation with the relevant State agencies for projects that fall under Tiers in which no County permit would be required and no CEQA analysis would be performed.</p> <p>There are multiple ways to address this issue. The following directive could be added to ensure that the obligation is known and fulfilled for all properties receiving imported soil:</p> <p><i>"Owners of property receiving imported soil shall consult with CDFW and if required, obtain a CESA permit if the project has the potential to result in</i></p>

TABLE 1: State Agency Concerns and Possible Ordinance Revisions

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CONCERN	DESCRIPTION OF ISSUE	POSSIBLE SOLUTION
		<p>"take" of plants or animals listed under CESA, either during construction or over the life of the soil import 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."</p> <p>Or, as in No. 5 above, this level of consultation could be explicitly required for all or most Tiers of soil import; or finally, the Tiering system could be discarded in favor of full permitting, environmental analysis and soil screening for all import projects large and small.</p> <p>In all of these scenarios, however, the obligation of lead agency status for any CEQA analysis required to fulfill this obligation would fall to the County.</p> <p>As in No. 11, The Draft Ordinance already contains Section 17.56.040, Compliance with Existing Laws and Regulations, which specifies compliance with the requirements of numerous other agencies, including CDFW.</p> <p>Also, as for No. 11, a directive could be added to ensure that the obligation is known and fulfilled for all properties receiving imported soil:</p> <p><i>"Owners of property receiving imported soil shall consult with CDFW and if necessary, prepare an LSA</i></p>
12. Lake and Streambed Alteration	<p>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</p>	

TABLE 1: State Agency Concerns and Possible Ordinance Revisions

CONCERN	DESCRIPTION OF ISSUE	POSSIBLE SOLUTION
	<p>Agreement (or Incidental Take Permit) until it has complied with CEQA as a Responsible Agency.</p>	<p><i>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. Issuance of a LSA Agreement is subject to consideration of a CEQA document for the Project."</i></p> <p>Or, as in Nos. 5 and 11 above, this level of consultation could be explicitly required for all or most Tiers of soil import; or finally, the Tiering system could be discarded in favor of full permitting, environmental analysis and soil screening for all import projects large and small.</p> <p>In all of these scenarios, however, the obligation of lead agency status for any CEQA analysis required to fulfill this obligation would fall to the County.</p>
<p>13. Ordinance will result in significant biological impacts; substantial CEQA analysis should be required.</p>	<p>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 for numerous federally and state threatened species.</p>	<p>CDA Staff has prepared this regulation on the premise that the activity in question – soil import and placement for any agricultural reason and at any level – is already permitted and unregulated under existing County ordinance, and that any stricter regulation on that activity, such as the draft Ordinance, satisfies the CEQA Guidelines concept that natural resources and the environment will receive greater protection than previously as a</p>

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	<p>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.</p> <p>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. Therefore, CDFW advises a Negative Declaration is not appropriate for this Project.</p>	<p>result.</p> <p>It is acknowledged that conducting a CEQA review on this proposal would provide maximum transparency of potential impacts of the soil import activity being regulated, and the most solid legal foundation for approval of this Ordinance.</p>
<p>1A. Fully Protected Species and Birds</p>	<p>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.).</p> <p>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</p>	<p>The Draft Ordinance already contains Section 17.66.040, Compliance with Existing Laws and Regulations, which specifies compliance with the requirements of numerous other agencies, including CDFW.</p> <p>As in Nos. 5, 11 and 12 above, a directive could be added to encourage initial communication between all project proponents and CDFW, or CEQA review could be required for all Tiers of projects to ensure that these concerns are addressed.</p>

TABLE 1: State Agency Concerns and Possible Ordinance Revisions

CONCERN	DESCRIPTION OF ISSUE	POSSIBLE SOLUTION
15. Water Pollution	<p>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.</p> <p>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) Coccidius indicus, (6) substance or material deleterious to fish, plant life, mammals, or bird life. (Fish and Game Code, § 5650)..."Waters of the state" means any surface water or groundwater, including saline waters, within the boundaries of the state.</p>	<p>Please refer to Nos. 2 – 9 above. In these, Staff has attempted to develop possible methods to address concerns about effects to Waters of the State. The current draft ordinance does not currently include language to this effect for all Tiers of soil import.</p>

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CONCERN	DESCRIPTION OF ISSUE	POSSIBLE SOLUTION
16. Scope and content of Environmental Review	The commenting agency, CDFW, provides an extensive template for analyzing and assessing the level of environmental impacts that could arise from adoption of the Ordinance and the types of soil import / agricultural projects that could be allowed or permitted under it. The comment focuses exclusively on the preferred CEQA process, an EIR, that the agency encourages, whether for the Ordinance in a cumulative way or for individual projects that may result.	CDA Staff has prepared this regulation on the premise that the activity in question – soil import and placement for any agricultural reason and at any level – is already permitted and unregulated under existing County ordinance, and that any stricter regulation on that activity, such as the draft Ordinance, satisfies the CEQA Guidelines concept that natural resources and the environment will receive greater protection than previously as a result.
		It is acknowledged that conducting a CEQA review on this proposal would provide maximum transparency of potential impacts of the soil import activity being regulated, and the most solid legal foundation for approval of this Ordinance.
17. Filing Fees	CDFW anticipates that the Ordinance will have an impact to fish and/or wildlife habitat, and assessment of filing fees is necessary. (Pub. Resources Code, § 21 089; Fish and Game Code, § 711.4). Fees are payable upon filing of the Notice of Determination.	If the process for this Ordinance should shift toward a CEQA analysis, staff recommends consideration of the environmental review template provided by CDFW. This recommendation also applies to individual projects pursuant to the Ordinance so far as permitting authority by County will allow. If the process for adoption of this Ordinance should shift toward a CEQA analysis, the County would pay the appropriate filing fee as required by law. However, each implementation project under this Ordinance that requires a CEQA analysis will likewise be required to pay the filing fee.

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ALAMEDA COUNTY DEPARTMENT OF ENVIRONMENTAL HEALTH LOCAL OVERSIGHT PROGRAM	Revision Date: NA
	ISSUE DATE: August 1, 2018
	Previous Revisions: NA
SUBJECT: Fill Material Characterization Guidance	

INTRODUCTION:

This document has been prepared by Alameda County Department of Environmental Health (ACDEH) to provide guidance regarding the characterization of fill materials to determine: (a) the suitability of the fill material for import to sites within Alameda County, including but not limited to agricultural lands, redevelopment sites, and environmental cleanup sites, and (b) the suitability of the fill material for export from environmental cleanup sites regulated by ACDEH and re-use at other locations.

The use of imported fill material has recently come under scrutiny in Alameda County due to the identification of agricultural properties in rural portions of the county that have been importing large volumes of fill material. These areas have a diverse natural environment including biological habitats, aquatic environments, wetlands, and critical groundwater basins, which require protection and have the potential to be adversely impacted from contaminated fill material.

There are currently no established standards in the statutes or regulations that address environmental requirements for imported fill material. However, regulatory guidance documents have been developed by the California Environmental Protection Agency (CalEPA), Department of Toxic Substances Control (DTSC) and the San Francisco Regional Water Quality Control Board (the "Regional Water Board") regarding the characterization and sourcing of imported fill material. The CalEPA guidance documents were prepared to address fill material being imported to active environmental cleanup sites, however, are also applicable to other sites where imported fill material may pose a risk to sensitive receptors and the environment.

This guidance document has been prepared by ACDEH to ensure that unsuitable fill material is not introduced onto properties with sensitive land uses and to provide clarification of the process of evaluating the suitability of fill material. This document addresses both human health and ecological risk associated with exposure pathways to fill material and identifies fill sources which are unsuitable for use as fill material based on current and historic land use activities as discussed in the CalEPA guidance documents and as required by other authorities specific to Alameda County. The protocols and criteria presented in this document are intended to be sufficiently conservative to be applicable to all sites regardless of land use or other site characteristics. Alternative criteria for fill characterization and suitability may be proposed for consideration by ACDEH via submittal of a site-specific soil import management plan and associated supporting technical documents.

This guidance document was prepared based on the following:

- (1) Regulatory guidance documents adopted by the DTSC and Regional Water Board;
- (2) Applicable risk based screening levels;
- (3) Regional background levels;
- (4) Other criteria provided to ACDEH by designated Groundwater Basin Managers within Alameda County; and
- (5) Accepted industry practices.

FILL MATERIAL CHARACTERIZATION GUIDANCE

August 1, 2018

Section 1 of this guidance document discusses criteria for assessing and identifying potentially suitable fill material sources. Section 2 discusses the evaluation of the suitability of potential fill material. Section 3 discusses ACDEH's fill material Import suitability determination process. Section 4 describes the conditions and reporting requirements for importing suitable fill material.

1. ASSESSMENT OF POTENTIALLY SUITABLE FILL MATERIAL SOURCES

Suitable fill materials are materials that will not have an adverse effect on human health or the environment when imported. Prior to collecting analytical data to confirm suitability of potential fill material, potential source areas should be screened based on historical land use and material composition.

Historic and current land use at, and in the vicinity of, the parcel containing the proposed fill material should be evaluated for environmental impacts to determine the applicable laboratory analysis that should be conducted to characterize the fill material. This assessment consists of the review of historical records and typically consists of conducting a phase one environmental site assessment (Phase I ESA) or preliminary environmental assessment (PEA) within six months of the assessment. The assessment should be sufficient to identify Recognized Environmental Conditions (RECs). RECs are typically associated with the production, use, storage, transport, recycling, or disposal of hazardous materials or waste at or in the vicinity of the parcel being evaluated and are used to determine what potential contaminants may be present and therefore should be analyzed for.

Fill material from parcels with the following conditions are not suitable for use as a proposed fill material source without additional evaluation and approval from ACDEH beyond what is required in this guidance:

- a. Regulated environmental cleanup sites; or
- b. Unaddressed or insufficiently addressed RECs; or
- c. Current or historic industrial land uses; or
- d. Current or historic unacceptable commercial land uses. Unacceptable commercial land uses are operations that generate revenue through, or that significantly involve:
 - i. Manufacturing, repairing, or restoring operations; or
 - ii. Providing maintenance services; or
 - iii. The use, storage, transport, or disposal of hazardous materials or waste.
- e. Materials containing animal or human waste or debris such as lumber, metal, or refuse

2. EVALUATION OF FILL MATERIAL SUITABILITY

Proposed fill material source areas that are considered potentially suitable based on the initial screening of historic and current land use must be sampled, analyzed, and meet applicable environmental and human health risk levels before a final determination of the suitability of the proposed fill material can be made. Sampling protocols and strategies, and laboratory analyses vary based on conditions at the location being sampled, the type of compounds that are being evaluated, and the volume of fill material. Samples must be collected and analyzed in a manner sufficient to characterize the lateral and vertical extents of the proposed fill material source area. Minimum sampling and analysis requirements to evaluate the suitability of a proposed fill material source area are derived from various regulatory guidance documents, industry best practices, and requirements from designated Groundwater Basin Managers within Alameda County which are described in further detail below.

2.1. Minimum Analytical Requirements

Minimum analytical requirements for characterization of potentially suitable fill material proposed for Import to a destination (a) outside of the jurisdiction of Zone 7 Water Agency (Zone 7); or (b) within the jurisdiction of Zone 7

are provided in Table 1a and Table 1b, respectively. Sampling and laboratory analysis must be conducted in accordance with the following requirements:

- A. All analysis must be performed in accordance with the United States Environmental Protection Agency's (USEPA's) SW-864 Compendium;
- B. Analysis of samples must be completed and reported by an analytical laboratory accredited by the California State Environmental Laboratory Accreditation Program and the National Environmental Laboratory Accreditation Program;
- C. The laboratory reporting limits must not exceed the screening levels adopted by ACDEH as described in Section 2.4 below;
- D. The laboratory reporting limits must be reported on a dry-weight basis; and
- E. The results of the laboratory analysis must be reported in a standard laboratory data package, including a summary of the quality control and quality assurance sample results and chain of custody documentation.

2.2. Minimum Sampling Requirements

Sampling for the characterization of potentially suitable fill material must be conducted under the direct charge of a professional engineer or geologist licensed in the state of California and in accordance with industry best practices including, but not limited to those discussed in the subsections below.

2.2.1. Vapor Forming Compounds

Vapor forming compounds consist of volatile organic compounds (VOCs) and semi-volatile organic compounds (SVOCs) that readily form a vapor when exposed to air. In order to minimize volatilization of VOCs and SVOCs during sample collection, and ensure that analytical results are representative of the proposed fill material, discrete samples must be collected and analyzed in accordance with United States Environmental Protection Agency (USEPA) Method 5035. Composite sampling is not acceptable for the evaluation of VOCs and SVOCs.

2.2.2. Composite Sampling

Composite sampling is acceptable under the following conditions:

1. Analysis is for non-vapor forming chemicals;
2. The composite sample is comprised of no more than 4 discrete samples;
3. The composite sample is comprised of roughly equivalent masses of each of the discrete samples;
4. Sufficient mass of discrete samples from each of the composited locations are submitted so as to allow for analysis of the discrete samples; and
5. Each of the discrete samples that comprise the composite sample must be analyzed in the event that the composite sample exceeds 25% of the applicable screening level.

2.2.3. In Situ Characterization

Pre-excavation (e.g., In Situ) characterization of potentially suitable fill materials must meet the minimum requirements for provided in Table 2a (for Import to a destination outside of the jurisdiction of Zone 7 Water Agency's jurisdiction) and Table 2b (for import to a destination within the Zone 7 Water Agency's jurisdiction). Additional requirements include:

- Characterization of soil lithology in the proposed source area using the Unified Soil Classification System from the ground surface to the total depth of the proposed excavation for the fill material. The

characterized soil lithology at each sample location must be presented as a soil boring log and must be reviewed and stamped by a registered geologist.

- Collection and analysis of at least one sample from each sample location for every five feet below ground surface that the proposed fill area extends.
- Characterization of layers of proposed fill material that exhibit significantly different geological characteristics or lithologies as separate sources. For example, if soil at a site generally consists of clay from the ground surface to a depth of 3 feet below ground surface with interbedded silts and sands beyond, the clay layer should be characterized and managed one source and the interbedded silts and sands should be characterized as a second source.
- Use of direct push technology for sample collection and analyses for VOCs and SVOCs. Samples collected for analysis of non-vapor forming compounds may be collected using direct push technology, augers, or from a bucket, sidewall, or base sample from "pot hole" excavations.

2.2.4. Stockpile Characterization

The minimum sample quantities for the characterization of potentially suitable fill materials that have been excavated and stockpiled are based on the total volume of the stockpiled fill material and are summarized in Table 3. Stockpiles must be generated from the same source area, must be segregated by fill material composition, and be located on the parcel generating the proposed fill material. Samples being analyzed for VOCs and SVOCs must be collected from at least 1 foot below the exposed surface of the stockpile.

2.3. Conditions Requiring Additional Sampling and Analysis

In addition to the minimum sampling requirements identified above, the following conditions, if present, require additional sampling and analysis as indicated:

1. **Evidence of Contamination** – Samples must be collected and analyzed from any locations where there is evidence of contamination such as strong odors, staining, observable sheen or free product, stressed vegetation, and/or elevated responses from field screening instruments such as a photoionization detector.
2. **Contaminants Associated with Surface Deposition** – When characterization for contaminants associated with surface deposition (e.g., pesticides, herbicides, fungicides, asbestos, and lead) are required for fill material characterization, representative samples must be collected from surface and near surface soils in accordance with the following:
 - For in situ characterization, one sample should be collected from each of the following intervals from each sample location: 0 to 6 inches below ground surface; 6 inches to 2 feet below ground surface; and 2 feet to 3 feet below ground surface; and
 - For stockpiled fill materials, fill material from the surface and near surface (0 to 3 feet below ground surface) must be segregated from other fill material and characterized as a separate potential fill source.
3. **Groundwater and Saturated Soil** – If groundwater or saturated soil is encountered during fill characterization or excavation, the following additional samples must be collected and analyzed:
 - One soil sample per sample location from immediately above the saturated soil (i.e., the capillary fringe); and
 - One groundwater sample from each soil boring, excavation, or dewatering well in which groundwater is encountered.

4. **Dewatering** – If dewatering is conducted to support excavation of potentially suitable fill material, characterization of the fill material must be conducted after dewatering has been implemented and soil is no longer saturated.

2.4. Screening Levels

To be considered suitable fill material, analytical results of the fill characterization sampling must be less than applicable environmental and human health risk based screening levels.

2.4.1. Default Screening Levels

ACDEH has adopted the Regional Water Board's Tier 1 Environmental Screening Levels dated February 2016 (ESLs) as default screening levels for all constituents with the following exception:

- **Arsenic:** the screening level for arsenic adopted by ACDEH is 11.00 milligrams of arsenic per kilogram of sample. This concentration based on the upper estimate (99th percentile) for regional background levels of arsenic in the urbanized San Francisco bay region³.

The use of Tier 1 ESLs as a default screening level is applicable to all sites regardless of land use or other site characteristics.

2.4.2. Alternative Screening Levels

In the event that fill characterization fails the default screening levels, alternative screening levels may be proposed for consideration by ACDEH via submittal of a site-specific soil import management plan. The soil import management plan must include a site-specific risk assessment for the receiving location and associated supporting technical documents.

The use of hazardous waste characteristic of toxicity levels (California Code of Regulations Title 22 Section 66261.24) as a screening level to evaluate the suitability of the import of soils is unacceptable for all sites except for appropriately designed and permitted treatment, storage, disposal, or recycling facilities.

3. ACDEH FILL MATERIAL IMPORT SUITABILITY DETERMINATION PROCESS

To obtain a determination from ACDEH that a proposed fill material is suitable, ACDEH requires submittal of a technical report (the "Fill Material Characterization Report") documenting the characterization of the proposed fill material. This technical report must contain, at a minimum, the following element:

- A. A cover letter from the owner of the proposed fill source material with the following statement: "I have read and acknowledge the content, recommendations, and/or conclusions contained in the attached document or report submitted on my behalf to ACDEH". This cover letter must be signed by the owner of the proposed fill source material or a legally authorized representative of the owner of the proposed fill source material;
- B. A statement that fill material characterization was conducted under the responsible charge of a registered professional with licensure in the state of California. This statement must be accompanied by the signed and dated seal of the licensed registered professional with responsible charge;
- C. Narrative identifying and summarizing the following elements:
 - a. The location, assessor's parcel number, and physical address of the proposed fill material source area;
 - b. A summary of historical land uses and operations conducted at and in the vicinity of the proposed fill material source area with citations for supporting documentation;

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- c. Identification and description of any Identified RECs;
 - d. A summary of fill material characterization efforts conducted, including a description of sampling and analysis and applicable geology and hydrogeology within the proposed fill material source area;
 - e. A summary of the results of analytical sampling; and
 - f. Recommendations and conclusions for the suitability of proposed fill material.
- D. Tables summarizing the site characterization analytical data;
- E. A completed Proposed Fill Material Source Characterization Summary Form. A copy of this form is provided in pdf in Attachment A. An excel spreadsheet of this form is available on request;
- F. Figure(s) depicting the following elements:
- a. Sample locations;
 - b. Parcel lines and parcel numbers;
 - c. Lateral extent(s) and depth(s) of the proposed fill material source area(s);
 - d. Location of any Identified RECs;
 - e. Location of known current and historic infrastructure including structures, roadways, utilities, and any above ground or below ground storage tanks.
- G. Boring logs depicting the geology, sample depths, and any encountered groundwater from each sample location;
- H. Copies of laboratory analytical data;
- I. Copies of supporting environmental documents such as Phase I ESA, PEA, or historic subsurface investigation reports.

The Fill Material Characterization Report and supporting documentation must be submitted to ACDEH via email to deh.toptoxic@acgov.org and upload to the State Water Board's GeoTracker database. ACDEH will review the Fill Material Characterization Report and will issue a directive letter that (a) determines that the proposed fill material is suitable for import; (b) requests additional characterization; or (c) determines that the proposed fill material is not suitable for import. ACDEH's determination will include conditions described in Section 4 and may include additional conditions or requirements.

4. CONDITIONS OF ACDEH FILL MATERIAL IMPORT SUITABILITY DETERMINATION

As a condition of import, a technical report be submitted to ACDEH via email and uploaded to GeoTracker documenting the import of soil (the "Soil Import Summary Report"). The report must be uploaded to the GeoTracker information repositories for both the fill material source area and the destination. Please note that for locations importing soil from multiple sources, a single report can be submitted that documents import from multiple sources. For locations in which soil import activities last more than one year, a Soil Import Summary Report must be submitted on a semi-annual basis for the duration of import activities. The Soil Import Summary Report must contain the following elements at a minimum:

- A. A cover letter from the owner of the proposed fill source material that states, at a minimum, the following: "I have read and acknowledge the content, recommendations, and/or conclusions contained in the attached document or report submitted on my behalf to ACDEH." This cover letter must be signed by the

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owner of the proposed fill source material or a legally authorized representative of the owner of the proposed fill source material;

- B. The technical report must include a statement that fill material characterization was conducted under the responsible charge of a registered professional with licensure in the state of California. This statement must be accompanied by the signed and dated seal of the licensed registered professional with responsible charge;
- C. Summary tables of soil import logs. These logs must include the following information for each delivery of fill material: arrival date, manifest number or truck tag, quantity of fill material delivered, originating facility, and profile number;
- D. A figure depicting the location and depth of imported soil. If fill material from multiple sources has been imported, the location and depth of imported soil from each source must be distinguished;
- E. Copies of all manifests or other documentation of soil import as an appendix; and
- F. Copies of all fill characterization profiles as an appendix.

5. CLOSING

If you have questions or comments regarding the requirements and guidance presented in this document, please do not hesitate to contact ACDEH. This document was prepared by, or under the direction of, the undersigned.



Dylan Roe, P.E. C73703
Chief
Land Water Division



Jonathan Sanders
Senior Hazardous Materials Specialist
Local Oversight and Site Cleanup Program

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ENCLOSURES

Tables

Table 1a	Minimum Required Analyses for Characterization of Fill Material for Off-Site Reuse for Receiving Facilities Located outside of Zone 7 Water Agency Jurisdictional Boundaries
Table 1b	Minimum Required Analyses for Characterization of Fill Material for Off-Site Reuse for Receiving Facilities Located within Zone 7 Water Agency Jurisdictional Boundaries
Table 2a	Minimum Required Sample Density and Spacing for In Situ (Pre-excavation) Characterization of Proposed Fill Material Sources for Receiving Facilities Located outside of Zone 7 Water Agency's Jurisdictional Boundaries
Table 2b	Minimum Required Sample Density and Spacing for In Situ (Pre-excavation) Characterization of Proposed Fill Material Sources for Receiving Facilities Located within Zone 7 Water Agency's Jurisdictional Boundaries
Table 3	Minimum Required Sample Density and Spacing for Stockpile (Post-Excavation) Characterization of Proposed Fill Material Sources

Appendices

Appendix A	Proposed Fill Material Source Characterization Summary Form
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REFERENCES

1. DRAFT Technical Reference Document: Characterization and Reuse of Petroleum Hydrocarbon Impact Soil as Inert Waste. San Francisco Bay Regional Water Quality Control Board. October 2006.
2. Environmental Screening Levels (ESLs) revision 3. San Francisco Bay Regional Water Quality Control Board. February 2016.
3. Establishing Background Arsenic in Soil of the Urbanized San Francisco Bay Region. Duverge. December 2011
4. Information Advisory: Clean Imported Fill Material. Department of Toxic Substances Control (DTSC). October 2001.
5. Interim Guidance for Sampling Agricultural Properties revision 3. Department of Toxic Substances Control. August 7, 2008.
6. Preliminary Endangerment Assessment Guidance Manual. Department of Toxic Substances Control. January 1994. Revised October 2015.

TABLES

Table 1a
Minimum Required Analyses for Characterization of Fill Material for Off-Site Reuse
for Receiving Facilities Located outside of Zone 7 Water Agency Jurisdictional Boundaries

Laboratory Analysis(s)	Analytical Method	Current and Historic Land Use At or Within 500 Feet of Fill Source Area				Current and Historic Land Use at Parcel(s) Containing Fill Source Area		
		Major Roadway or Freeway	Mining Area or Rock Quarry	Regulated Cleanup Site and RECs	Agricultural	Residential / Acceptable Commercial(2)	Existing Historic Engineered Fill(3)	Industrial / Unacceptable Commercial
California Title 22 Metals (4)	USEPA 60108 and/or USEPA 7471A	X	X	Additional As Required	X	X	X(5)	N/A
Asbestos	PLM or OSHA 191	(Lead Only)	X	Additional As Required		X	X(5)	N/A
pH	USEPA 9045D		(PLM)	Additional As Required		(OSHA 191)	X(5)	N/A
Pesticides	USEPA 8141A; and USEPA 8151A; and USEPA 8081A or 8080A		X	Additional As Required			X(5)	N/A
VOCs	USEPA 8260B with collection by USEPA 5035			Additional As Required	X		X(5)	N/A
SVOCs & PAHs	USEPA 8270C SIM	X (PAHs Only)		Additional As Required			X(5)	N/A
TPH	USEPA 8015M	X(5)	X(5)	Additional As Required			X(5)	N/A
PCBs	USEPA 8082 or 8080A			Additional As Required		X	X(5)	N/A

Adapted from Department of Toxic Substances Control's Information Advisory Clean Imported Fill Material dated October 2001.

Notes:

- (1) All analysis should be performed in accordance with USEPA SW-846 methods. A standard laboratory data package, including a summary of the QA/QC (Quality Assurance/Quality Control) sample results must accompany all analytical reports;
- (2) Acceptable commercial land use excludes any commercial use that generates revenue from manufacturing, repair/restoration, maintenance/cleaning, or the storage/transport of hazardous materials;
- (3) Existing homogeneous engineered fill. Fill containing waste or debris or that is heterogeneous is not acceptable for off-site reuse.
- (4) Include when Hexavalent Chromium analysis required by USEPA method 7199
- (5) Analysis required by Alameda County Department of Environmental Health;

Abbreviations:

USEPA -United States Environmental Protection Agency
 N/A - Not Acceptable for off-site re-use
 PLM - Polarized Light Microscopy
 OSHA - Occupational Safety and Health Administration Testing Method Number
 SIM - Selected Ion Monitoring
 VOCs - Volatile Organic Compounds
 SVOCs - Semi-Volatile Organic Compounds
 PAHs - Poly Aromatic Hydrocarbons
 TPH - Total Petroleum Hydrocarbons as reported for gasoline range, diesel range, and motor oil range
 PCBs - Polychlorinated Biphenyls;

Table 1b
Minimum Required Analyses for Characterization of Fill Material for Off-Site Reuse
for Receiving Facilities Located within Zone 7 Water Agency Jurisdictional Boundaries

Laboratory Analysis ⁽¹⁾	Analytical Method	Current and Historic Land Use At or Within 500 Feet of Fill Source Area			Current and Historic Land Use at Parcel(s) Containing Fill Source Area		
		Major Roadway or Freeway	Mining Area or Rock Quarry	Regulated Cleanup Site and RECs	Agricultural	Residential / Acceptable Commercial ⁽²⁾	Existing Historic Engineered Fill ⁽³⁾ Industrial / Unacceptable Commercial
California Title 22 Metals ⁽⁴⁾	USEPA 6010B and/or USEPA 7471A	X	X	Additional As Required	X	X	X ^(5, 6) N/A
Asbestos	PLM or OSHA 191		X	Additional As Required		X (OSHA 191)	X ^(5, 6) N/A
pH	USEPA 9045D		X	Additional As Required			X ^(5, 6) N/A
Pesticides	USEPA 8141A; and USEPA 8151A; and USEPA 8081A or 8080A	X ⁽⁶⁾	X ⁽⁶⁾	Additional As Required	X	X ⁽⁶⁾	X ^(5, 6) N/A
VOCs	USEPA 8260B with collection by USEPA 5035			Additional As Required			X ^(5, 6) N/A
SVOCs & PAHs	USEPA 8270C SIM	X (PAHs Only)		Additional As Required		X	X ^(5, 6) N/A
TPH	USEPA 8015M	X ^(5, 6)	X ^(5, 6)	Additional As Required		X	X ^(5, 6) N/A
PCBs	USEPA 8082 or 8080A			Additional As Required		X	X ^(5, 6) N/A

Adapted from Department of Toxic Substances Control's Information Advisory Clean Imported Fill Material dated October 2001.

Notes:

- (1) All analysis should be performed in accordance with USEPA SW-846 methods. A standard laboratory data package, including a summary of the QA/QC (Quality Assurance/Quality Control) sample results must accompany all analytical reports;
- (2) Acceptable commercial land use consists excludes any commercial use that generates revenue from manufacturing, repair/restoration, maintenance/cleaning, or the storage/transport of hazardous materials;
- (3) Existing homogeneous engineered fill. Fill containing waste or debris or that is heterogeneous is not acceptable for off-site reuse.
- (4) Include when Hexavalent Chromium analysis required by USEPA method 7199
- (5) Analysis required by Alameda County Department of Environmental Health;
- (6) Analysis required by Zone 7 Water Agency

Abbreviations:

USEPA - United States Environmental Protection Agency
N/A - Not Acceptable for off-site re-use
PLM - Polarized Light Microscopy
OSHA - Occupational Safety and Health Administration Testing Method Number
SIM - Selected Ion Monitoring
VOCs - Volatile Organic Compounds
SVOCs - Semi-Volatile Organic Compounds
PAHs - Poly Aromatic Hydrocarbons
TPH - Total Petroleum Hydrocarbons as reported for gasoline range, diesel range, and motor oil range
PCBs - Polychlorinated Biphenyls;

Table 2a

**Minimum Required Sample Density and Spacing for In Situ (Pre-excavation) Characterization of Proposed Fill Material Sources
for Receiving Facilities Located outside of Zone 7 Water Agency's Jurisdictional Boundaries**

Requirements	Size of Contiguous Fill Source	Minimum Lateral Sample Distribution	Minimum Vertical Sample Distribution
(1) Additional lateral sample locations may be required to address identified RECs;			
(2) Additional samples must be collected from fill material that exhibits signs of potential contamination (e.g., strong odor, staining, presence of sheen or free product, stressed vegetation in the vicinity, elevated response from photo-ionization detector);	≤2.0 acres	4 sample locations. <u>AND</u> Sample Locations must be distributed throughout the fill material source area.	1 sample collected and analyzed per sample location. <u>AND</u> 1 sample collected and analyzed for every 5 feet bgs. <u>AND</u> 1 sample collected from each layer exhibiting different geological characteristics or lithology encountered.
(3) Fill source area cannot be located on parcel(s) with historic industrial or unacceptable commercial land uses or parcel(s) associated with regulated environmental cleanup sites unless approved by regulatory oversight agency;			
(4) Samples that are collected, but not planned for analysis must be submitted with the samples planned for analysis under chain of custody to an appropriately certified analytical laboratory. The samples that are not planned for analysis must remain on hold with the laboratory until ACDEH has issued a determination regarding the suitability of fill material for import and released the un-analyzed samples for disposal;	≥2.0 acres <4.0 acres	1 sample location per 0.5 acre. <u>AND</u> Sample Locations must be distributed throughout the fill material source area.	1 sample collected and analyzed per sample location. <u>AND</u> 1 sample collected and analyzed for every 5 feet bgs. <u>AND</u> 1 sample collected from each layer exhibiting different geological characteristics or lithology encountered.
(5) When contaminants associated with surface deposition (e.g. pesticides, asbestos, and lead) are required to be evaluated, ACDEH requires the following additional samples be collected from each sample location: One sample from 0 to 6 inches bgs, One sample from 6 inches to 2 feet bgs, One sample from 2 feet to 3 feet bgs. One of these samples must be selected for analysis for each sample location;			
(6) If groundwater is encountered, ACDEH requires the following additional samples be collected and analyzed: One sample per Sample Location from immediately above the saturated fill material (i.e., the capillary fringe); One groundwater samples must be collected and analyzed for each boring, excavation, or dewatering well in which groundwater is encountered.	≥4 acres <10.0 acres	8 sample locations. <u>AND</u> Sample Locations must be distributed throughout the fill material source area.	1 sample collected and analyzed per sample location. <u>AND</u> 1 sample collected and analyzed for every 5 feet bgs. <u>AND</u> 1 sample collected from each layer exhibiting different geological characteristics or lithology encountered.
(7) If dewatering will be conducted to support excavation below an existing water table, ACDEH requires that, historically saturated fill material be sampled after dewatering is in effect.			
(8) Composite sampling may or may not be appropriate, depending on the quality and homogeneity of the source/borrow area and compounds of concern.	≥10.0 acres	8 sample locations. <u>AND</u> Sample Locations must be distributed throughout the fill material source area.	4 sample collected and analyzed per sample location. <u>AND</u> 1 sample collected and analyzed for every 5 feet bgs. <u>AND</u> 1 sample collected from each layer exhibiting different geological characteristics or lithology encountered.

Table 2b

**Minimum Required Sample Density and Spacing for In Situ (Pre-excavation) Characterization of Proposed Fill Material Sources
for Receiving Facilities Located within Zone 7 Water Agency's Jurisdictional Boundaries**

Requirements	Size of Contiguous Fill Source	Minimum Lateral Sample Distribution	Minimum Vertical Sample Distribution
(1) Additional lateral sample locations may be required to address identified RECs			
(2) Additional samples must be collected from fill material that exhibits signs of potential contamination (e.g., strong odor, staining, presence of sheen or free product, stressed vegetation in the vicinity, elevated response from photo-ionization detector)	<2.0 acres	8 sample locations. <u>AND</u> Sample Locations must be distributed throughout the fill material source area.	1 sample collected and analyzed per sample location. <u>AND</u> 1 sample collected and analyzed for every 5 feet bgs. <u>AND</u> 1 sample collected from each layer exhibiting different geological characteristics or lithology encountered.
(3) Fill source area cannot be located on parcel(s) with historic industrial or unacceptable commercial land uses or parcel(s) associated with regulated environmental cleanup sites unless approved by regulatory oversight agency;			
(4) Samples that are collected, but not planned for analysis must be submitted with the samples planned for analysis under chain of custody to an appropriately certified analytical laboratory. The samples that are not planned for analysis must remain on hold with the laboratory until ACDEH has issued a determination regarding the suitability of fill material for import and released the un-analyzed samples for disposal;	≥2.0 acres AND <4.0 acres	1 sample location per 0.25 acre. <u>AND</u> Sample Locations must be distributed throughout the fill material source area.	1 sample collected and analyzed per sample location. <u>AND</u> 1 sample collected and analyzed for every 5 feet bgs. <u>AND</u> 1 sample collected from each layer exhibiting different geological characteristics or lithology encountered.
(5) When contaminants associated with surface deposition (e.g. pesticides, asbestos, and lead) are required to be evaluated, ACDEH requires the following additional samples be collected from each sample location: One sample from 0 to 6 inches bgs; One sample from 6 inches to 2 feet bgs; and One sample from 2 feet to 3 feet bgs. One of these samples must be selected for analysis for each sample location;	≥4 acres AND <10.0 acres	16 sample locations. <u>AND</u> Sample Locations must be distributed throughout the fill material source area.	1 sample collected and analyzed per sample location. <u>AND</u> 1 sample collected and analyzed for every 5 feet bgs. <u>AND</u> 1 sample collected from each layer exhibiting different geological characteristics or lithology encountered.
(6) If groundwater is encountered, ACDEH requires the following additional samples be collected and analyzed: One sample per Sample Location from immediately above the saturated fill material (i.e., the capillary fringe); One groundwater samples must be collected and analyzed for each boring, excavation, or dewatering well in which groundwater is encountered.			
(7) If dewatering will be conducted to support excavation below an existing water table, ACDEH requires that, historically saturated fill material be samples after dewatering is in effect.			
(8) Composite sampling may or may not be appropriate, depending on the quality and homogeneity of the fill material and compounds of concern.	≥10.0 acres	16 sample locations. <u>AND</u> Sample Locations must be distributed throughout the fill material source area.	4 sample collected and analyzed per sample location. <u>AND</u> 1 sample collected and analyzed for every 5 feet bgs. <u>AND</u> 1 sample collected from each layer exhibiting different geological characteristics or lithology encountered.

Table 3

**Minimum Required Sample Density and Spacing for Stockpile (Post-Excavation)
Characterization of Proposed Fill Material Sources for Receiving Facilities**

Requirements	Size of Fill Source	Minimum Number of Fill Material Samples to be Collected
<p>(1) Top Soil (0 to 6 inches bgs) and near surface soil (6 inches to 3 feet bgs) must be stockpiled separately if sampling for contaminants associated with surface deposition (e.g. pesticides, asbestos, and lead) (0-6 inches below ground surface) is required;</p> <p>(2) 4-point composite samples may be used in lieu of discrete samples for analysis other than VOCs and SVOCs, however, the total number of samples must be preserved;</p> <p>(3) VOC and SVOC samples are to be collected from fill material at least 1 foot into the stockpile;</p>	≤1,000 yd ³	1 sample collected and analyzed per 250 cubic yards of stockpiled fill material.
	>1,000 yd ³ & <5,000 yd ³	4 samples collected and analyzed for first 1,000 cubic yards <u>AND</u> 1 sample for each additional 500 cubic yards.
	≥5,000 yd ³	12 samples collected and analyzed for first 5,000 cubic yards <u>AND</u> 1 sample for each additional 1,000 cubic yards.

ATTACHMENT A

Proposed Fill Material Source Characterization Summary Form

Proposed Fill Material Source Characterization Summary Form

[illegible]

Are REC, CREC, or HREC associated with any parcels? If so, what parcels, and what are the associated CDCs?

Notes:

- (1) Commercial activities that do not meet the Unacceptable Commercial criterion. Typically, Acceptable Commercial facilities are retail, restaurants or service providers (professional, legal, integrated technology, etc.).
- (2) Commercial activities that generate revenue through or that significantly involve manufacturing, repairing, restoring, or providing maintenance services or the transport, storage, and disposal of hazardous materials.
- (3) Land use sit, or within 500 feet of the parcel(s) containing the fill source
- (4) Does not include additional sampling that may be required by the regulatory oversight agency overseeing the environmental cleanup site where the fill source is located
- Still inconsistent or not removed for off-site reuse at this time and must be discarded at a permitted TSDU. Please consult with a permitted TSDU for sampling requirements in accordance by the TSDU.

Alameda County Water District

[illegible]

As required by applicable permitted TSPs

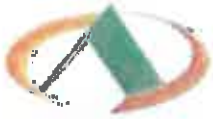
ASTM
ASTM E1577-13
Controlled Recrystallized Environmental Condition as defined in ASTM E1577-13
As required by accepting performance ISO 9001

Hydrate Recognized Environmental Condition as defined in ASTM E1577-13

DEF Recombinant Environmental Condition as defined in ASTM E1527-13

[illegible]

Zone 7 Winter Agency



**ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT**

STAFF REPORT

TO: Planning Commission

HEARING DATE: May 06, 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 limit soil importing, where there is currently no County regulation, to small quantities before discretionary permits are required within 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", and per Section 15061.b.3 – "Common Sense Exemption" that CEQA applies only to projects which have the potential for causing a significant effect on the environment.

STAFF RECOMMENDATION

Staff recommends that the Planning Commission take public 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.

SUMMARY

The intent of the Soil Importing ordinance is 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 agriculturally zoned districts soil importing may lead to agricultural activity, but in and of itself, 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.

Input from the Public and Regulatory Agencies:

Over the past 12 months the Soil Importing ordinance has been discussed at various dates at the following community meetings:

Fairview Municipal Advisory Council
Sunol Citizens' Advisory Council
Castro Valley Municipal Advisory Council
Agricultural Advisory Council
Ad-Hoc Community Subcommittee of the Agricultural Advisory Council
District 4 Agricultural Advisory Council
Alameda County Resource Conservation District Board

Comments received at these meetings have been at either end of the regulatory spectrum. Community members have expressed concerns that either more regulation and oversight over the importing of soil is needed, or that the proposed soil importing regulations are too restrictive. There are a small number of ranchers and a vintner who would like to continue importing soil, which has in the past been imported in quantities as large as tens-of-thousands to hundreds-of-thousands of cubic yards on rural properties, without much local or State oversight.

However, there is a real possibility of damage to the environment if the soil importing continues without review of the quality of the soil, the location of the imported soil on habitat with potentially sensitive, endangered, or threatened species, the potential for impacts to the groundwater, watercourses, air quality, neighboring properties, and public roadways, and the changes to the use of the land from agriculture and open space to land fill. With the proposed Soil Importing ordinance, the County can regulate the importing of large soil quantities onto rural agricultural and rural residential properties while maintaining the ability of property owners to import soil for legitimate agricultural purposes, such as blending of topsoil, or establishing relatively flat pads for horse arenas and vineyards and orchards.

During the public process for the proposed ordinance, the California Department of Fish and Wildlife (CDFW) and the San Francisco Bay Regional Water Quality Control Board (RWQCB) submitted letters of concern over the proposed ordinance, mostly on environmental grounds. Generally they believe there should be environmental review on the ordinance itself, and that even the smallest amounts of contaminated soil could damage the environment. They also believe there needs to be additional metrics that consider biological impacts in addition to general cleanliness, and that allowing soil import without oversight may not protect existing habitat and species of concern.

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Staff has considered these comments and has modified the proposed Soil Importing ordinance as much as possible in anticipation of action on this issue by the Board of Supervisors. There is acknowledgement that the agricultural community needs to be able to import some amounts of soil to conduct legitimate agricultural activities, and the ordinance is drafted with this in mind.

While staff has responded to the comments from the resource agencies and updated the draft Soil Importing ordinance to a certain degree, there remain some outstanding concerns that have not been addressed. Staff has prepared a table of comments (attached) from the RWQCB and CDFW which describes how the draft Soil Importing ordinance may be able to address outstanding concerns, or would have difficulty addressing those comments if the goal remains to allow rural ranchers and farmers to continue to import soil for agricultural purposes.

CEOA and Environmental Considerations:

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, staff considers that the proposed Soil Importing ordinance is exempt from the requirements of the California Environmental Quality Act, as explained in detail below.

Staff acknowledges that while the proposed Soil Importing ordinance is not yet drafted to the satisfaction of the State regulatory bodies, or to some community members concerned about protecting the environment, some level of acceptable risk needs to be acknowledged if the Soil Importing ordinance is adopted as originally conceived. If the Soil Importing ordinance is written to regulate all amounts of soil importing, the requirements would likely be considered too onerous to effectively continue farming and ranching activities.

ANALYSIS

It has been agreed to by the rural community at large that 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, such 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 or other farm animal.

As a general introduction, the ordinance developed by staff proposes a system for regulating Soil Importing based on tiering of review, tied to the amount (volume and depth) of soil import. Staff arrived at this approach after input from surrounding counties of Contra Costa, Santa Clara, Monterey, San Joaquin, and reviews of the regulations in other surrounding Counties. The details of the ordinance are discussed in full below.

Exemptions have also been part of the ordinance discussion, as not all importing of soil material can (or should) be regulated. Some exemptions are already existing, such as through the County's Grading Ordinance and some exemptions are written into the new Soil Importing ordinance. Exemptions are generally discussed below.

- 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

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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 is exempt from Grading Permits per Grading Ordinance Section 15.36.050J - Exemptions: "Maintenance of existing firebreaks and private roadways to keep the firebreak or roadway substantially in its original condition;"
- Importing of organic mulch is exempted from the Soil Importing ordinance.
 - The Soil Importing ordinance does not apply to soil importing from a Licensed and Permitted Retailer or Wholesaler (not Brokers) such as surface mine, a permitted landscape materials business, or similar.
 - It also 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.

Notwithstanding the above, exemptions to the proposed Soil Importing ordinance do not exempt any activity from compliance with any other applicable provision of law, including, but not limited to, the Grading Ordinance (discussed in detail below), Regional Air District, State Water Quality Control Board and the Department of Fish and Wildlife.

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 (§15.36.050) 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. The exemptions contained in the grading ordinance are described below:

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

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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;

Comments from previous community meetings:

At the February 28, 2019, 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.

The public also recommended that should County audits result in no violation for cleanliness, the County would be responsible for payment of the cost of verification of the quality of the soil. Staff does not agree with this recommendation but will bring it forward for discussion at the Planning Commission, Transportation and Planning Committee, and Board of Supervisors.

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.

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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 March 20, 2019, Sunol Citizens' Advisory Council meeting, 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. *See the attached minutes of the meeting as compiled by the Clerk of the Board Office.*
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 owner. *Text changed to "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."*
5. Do not allow soils to be imported from areas expected to be dirty. *Ideally, the County would be able to prohibit any import from 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

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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.~~"

At the April 8, 2019, Castro Valley Municipal Advisory Council meeting, the Castro Valley MAC voted 6 to 0 to recommend approval of the Fill Importing Ordinance with the modifications to the "R" and "L" applicable fill standards such that Tier 1 ESL levels of cleanliness are not required until over 50 cubic yards per acre per year are imported onto property. All other instances of county review for smaller amounts of soil importing in the "R" and "L" zoning districts would be subject to audit to require Bill of Lading and documentation of source property only.

At the April 23, 2019, Agricultural Advisory Committee meeting, the Committee board-members voted unanimously to recommend that the Board of Supervisors adopt the ordinance as presented by staff. However, there was a member of the Committee and at least one member of the public who cautioned that the Board of Supervisors should adopt a version of the soil importing ordinance that is more responsive to the comments received in the April 8, 2019 letter from the San Francisco Bay Regional Water Quality Control Board (RWQCB – see attached letter). The Committee member and member of the public voiced concern that the RWQCB and the California State Department of Fish and Wildlife (CDFW – see attached letter dated February 7, 2019) have expressed dissatisfaction with the proposed ordinance as currently drafted, and recommended that the soil importing ordinance be drafted to address the eleven comments in the RWQCB letter. Staff had responded to most of the comments with minor changes to the draft ordinance, and those changes are reflected in the attached draft version of the ordinance. Further discussion on the draft ordinance is included below.

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 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.

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Currently, there is no proper documentation, although there is the possibility, 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 up to this point 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 current Code violation penalties would continue to apply, based on the penalty schedule in Chapter 17.39 of the Zoning Ordinance, and potential for abatement at the cost to the receiving property owner.

Although there has been some discussion about collecting fees (likely on a volume or weight basis) the Board has not yet directed staff to look at charging fees for soil importing. Most of the input staff has received on this issue is not in support of fees for soil importing.

Soil Importing Ordinance Tentative Hearing Schedule:

Transportation and Planning – Monday, May 6, 2019 at 12:00 noon
Planning Commission – Monday, May 6, 2019 at 6:00 pm
Board of Supervisors – Tuesday, May 21, 2019 at 1:30 pm

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 Categorically 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.

Also applicable is Section 15061.b.3 – "Common Sense Exemption" that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question (in this case, the adoption of the Soil Importing ordinance) may have a significant effect on the environment, the activity is not subject to CEQA.

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The subsequent individual 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 Planning Commission take testimony for the proposed ordinance modifications to establish oversight and regulations for Soil Importing, and make recommendations that the Board of Supervisors adopt the Categorical Exemption and the draft Soil Import ordinance language.

ATTACHMENTS

- Table 1: State Agency Concerns and Possible Ordinance Revisions
- Draft Planning Commission Resolution
- County Planning Department Staff's Draft Soil Importing Ordinance as of April 30, 2019
- Letter from San Francisco Bay Regional Water Quality Control Board
- Letter from the California Department of Fish and Wildlife
- Letter from Alameda County Resource Conservation District
- Letter from Alameda Creek Alliance
- Letter from Ohlone Audubon Society
- Letter from Citizens Committee to Complete the Refuge
- Letter from Bruce King
- Letter from Diana Hanna
- Fill Regulations from Nearby Counties
- Minutes of March 20, 2019 Sunol Citizens' Advisory Council hearing

PREPARED BY

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TABLE 1: State Agency Concerns and Possible Ordinance Revisions

NOTE: Issues 1 – 10 are from San Francisco Bay Region, State Water Quality Control Board, letter of April 8, 2019. Issues 11 – 17 are from California Department of Fish and Wildlife, letter of February 7, 2019.

CONCERN	DESCRIPTION OF ISSUE	POSSIBLE SOLUTION
1. Lead Agency Staffing Inadequate	As lead agency for this Zoning Ordinance modification, general staffing and subject matter expertise at CDA is minimal. Additional staff or consulting services for CDA will become necessary on a permanent basis unless other County Agencies can provide staff with appropriate expertise and time to manage the technical and field requirements for the tasks implied by the ordinance language.	Additional subject matter expertise could be explored and developed.
2. Limited Intent of Ordinance	<p>The Ordinance does not include the following additional reasons for its adoption:</p> <p>(a) to ensure that potential human and ecological risks are not transferred between properties due to the import of polluted fill materials;</p> <p>(b) to ensure that hazardous wastes are not imported to properties accepting fill.</p> <p>These reasons are easily stated, but both imply a highly technical and complex set of requirements that cannot be easily expressed for general use in a land use ordinance. The proposed ordinance itself is missing some of the technical aspects of these reasons, as explained below.</p>	<p>Amend Paragraph 17.66.010, Purpose, to include:</p> <p><i>“...to ensure that potential human and ecological risks are not transferred between properties due to the import of polluted fill materials, and to ensure that hazardous wastes are not imported to properties accepting fill.”</i></p> <p>And</p> <p>Include various amendments as generally described below to strengthen ordinance language to address technical requirements.</p>

CONCERN	DESCRIPTION OF ISSUE	POSSIBLE SOLUTION
3. Soil Fill in Jurisdictional Waters not addressed	<p>The Ordinance does not caution the regulated community against the placement of imported soil in jurisdictional waters of the State and waters of the U.S., such as creeks and wetlands. It has been assumed that these regulations are left to the Army Corps of Engineers, CDFW, and the Water Board, who have jurisdiction over ephemeral and intermittent creek channels, and the County Public Works Agency, which has jurisdiction over some watersheds.</p> <p>To prevent members of the regulated community from inadvertently placing fill in such waters, the Ordinance's text could be expanded to clarify that the placement of soil in any channels with defined bed and banks, any ponds, and any wetland areas is likely to require state and/or federal authorization, and that failure to obtain appropriate authorization prior to placing fill in those waters may result in state and/or federal enforcement action. To prevent inadvertent violations of state and federal law, the Ordinance should require that property owners have a jurisdictional delineation of waters of the state and of the U.S. performed at sites at which the placement of imported fill is proposed.</p>	<p>The Draft Ordinance already contains Section 17.66.040, Compliance with Existing Laws and Regulations, which specifies compliance with the requirements of these numerous other agencies. That language does not explicitly specify jurisdictional delineation of waters of the state and the U.S. Technically, this is already a legal requirement in order to avoid violations of state and federal law; however, such a directive could be added to ensure that the delineation is done:</p> <p><i>"Owners of property receiving imported soil shall have a jurisdictional delineation of waters of the state and of the U.S. performed at sites at which the placement of imported fill is proposed."</i></p>
4. Tier 1 Soil environmental Screening Levels (ESLs) alone are not protective of aquatic habitats and special status species.	<p>The Tier 1 ESLs are intended for evaluating polluted properties, and the concentration levels represent thresholds in soil and groundwater that present insignificant risk or concerns (e.g., odors) to humans, upland terrestrial receptors, and aquatic water column receptors. The ESLs do not address the potential erosion of soil/fill material, dissolved transport in stormwater, or the potential pollution of wetland/stream sediment.</p> <p>The Ordinance could be revised to include a definition of acceptable fill. The ESLs may be used to determine "acceptable" fill for placement in upland areas provided</p>	<p>Language to address this concern in detail would add a level of complexity to the Ordinance that could be difficult to comprehend by Staff or the Public. However, some general language could be added to provide direction to qualified professionals on how to proceed.</p> <p>Soil has already been defined to include only "earthen material lying above the bedrock," and to exclude "trash, debris, piping of any material, wooden boards, logs, branches or chips, broken concrete or asphalt, metal pieces of any kind,</p>

TABLE 1: State Agency Concerns and Possible Ordinance Revisions

CONCERN	DESCRIPTION OF ISSUE	POSSIBLE SOLUTION
	<p>that: (a) no material classifiable as a hazardous waste is imported; (b) any materials placed at the surface are compliant with the polychlorinated biphenyls (PCBs) Total Maximum Daily Load (TMDL) (Water Board 2017); and (c) the fill material is not placed in or adjacent to any sensitive environments (e.g., wetlands; riparian corridors of any ephemeral, intermittent or perennial streams, or the stream channels; or endangered species habitats).</p> <p>In rural and agricultural areas, contaminants in fill soil may pose a significant risk to animals, including listed species. Some agricultural lands in Alameda County include designated critical habitat for species listed under the Federal Endangered Species Act. Levels of contaminants in soil that pose negligible risk to humans may be toxic to CTS and/or CRLF or inhibit the successful breeding of these species.</p> <p>The Ordinance currently does not include provisions to protect biology and habitat from adverse effects of soil fill import. Ideally, at any site at which imported fill may be washed by precipitation into creeks, ponds, or wetlands, the cleanliness of imported soil should be additionally screened using ecological screening levels that are protective of aquatic species, including special status species. This would add a level of complexity to the Ordinance that could be difficult to comprehend by Staff or the Public.</p>	<p>plastic, glass, or other human-made materials"; or "human-made or artificial chemicals, substances or contaminants at measured levels greater than those determined through required testing processes to be safe for human contact, adequate for protection of watercourses or ponds and the water contained therein, groundwater located or flowing beneath the surface, and protection of biological habitat and native species found on or known to use the parcel site and surrounding parcels. Soil specifically does not include Organic Mulch."</p> <p>In order to satisfy this concern, language would need to be added that would protect wetlands, stream channels, bodies of water and endangered species habitats. An example of this could read as follows:</p> <p>"Testing of Soil for Ecological Screening.</p> <p>A. For all soil import subject to an ACLUP or CLUP as described in 17.66.050 and 17.66.060, all soils shall be tested for Ecological Risk Factors and compatibility with onsite water quality, watercourse and streambed preservation and habitat / special status and aquatic species protection according to protocols and standards recognized by the State of California Water Resources Control Board San Francisco Bay Region and the State of California Department of Fish and Wildlife.</p>

TABLE 1: State Agency Concerns and Possible Ordinance Revisions

NOTE: Issues 1 – 10 are from San Francisco Bay Region, State Water Quality Control Board, letter of April 8, 2019. Issues 11 – 17 are from California Department of Fish and Wildlife, letter of February 7, 2019.

CONCERN	DESCRIPTION OF ISSUE	POSSIBLE SOLUTION
		<p>B. Acceptable protocols may include, but not be limited to, thorough testing and screening of potential soil for import for all potential applicable contaminants, substances or naturally-occurring hazardous elements and compounds under the supervision of a professional(s) with experience in toxicology, analytical chemistry and statistics; sampling and screening of onsite soils of the receiving parcel(s) for compatibility with soil to be imported; characterization of the receiving parcel(s) for biological habitat, watercourse protection and special status / aquatic species; and when necessary, a Habitat Conservation Plan or other mitigation for adverse effects on watercourses, habitat or biology approved by the State of California Department of Fish and Wildlife."</p>
<p>5. Environmental Review for many smaller projects would not adequately assess impacts on biology</p>	<p>Ideally and legally, prior to receiving permission to import soil to an agricultural property, the property owner would be directed to have a biological assessment performed to identify the presence of any sensitive biological receptors, such as riparian habitats, ponds, wetlands, or special status species, including the presence of critical habitat for a special status species. If special status species are present... appropriate soil constituent screening levels should be selected to protect the listed species from constituents that may be transported in sediment or leached from sediment into habitat for those species. In addition to identifying appropriate screening levels, the biological assessment should examine the ways in which habitat may be</p>	<p>As described above, new language would be required to explicitly address the concerns of the presence of special status species or special habitats on any of the soil import receiving sites. As currently written in the draft Ordinance, the Tiering system would remove many smaller projects on agricultural lands from any such oversight and evaluation.</p> <p>This concern is difficult to address without either:</p> <p>(1) Eliminating the Tiering system proposed in draft Ordinance, which allows smaller</p>

TABLE 1: State Agency Concerns and Possible Ordinance Revisions

NOTE: Issues 1-10 are from San Francisco Bay Region, State Water Quality Control Board, letter of April 8, 2019. Issues 11-17 are from California Department of Fish and Wildlife, letter of February 7, 2019.

CONCERN	DESCRIPTION OF ISSUE	POSSIBLE SOLUTION
	<p>compromised by the import of fill. Where habitat used by special status species may be negatively impacted, the property owner should be directed to consult with CDFW and the U.S. Fish and Wildlife Service.</p> <p>Currently, no such specific requirement is included in the draft Ordinance. For all soil fill import action on properties where no Conditional Use Permit is required – up to 15,000 cubic yards per year in many cases – no environmental review would be required. This may mean that no vehicle for soil characterization prior to receipt would be available to the lead agency. The potential for receipt of uncharacterized contaminated soil or placement of soil that would pose a risk to biology and ecology could be substantial.</p>	<p>projects to proceed without proactive oversight by the County; or</p> <p>(2) Revising the text to apply biological and toxicological evaluation requirements as shown above to all tiered projects or a much larger subset of them, with evaluation of both the receiving lands and the imported soils, including smaller ones.</p>
<p>6. Ordinance does not include detailed protocol to develop a sampling plan capable of establishing that imported soil is sufficiently clean ("acceptable") for placement in agricultural lands.</p>	<p>The Ordinance does not explicitly provide guidance for assessing the cleanliness of soil proposed for importation to agricultural lands. In assessing contaminant levels in soils, it is standard practice to specify the minimum sampling density necessary to establish that the soils have been sufficiently characterized [...]. The Ordinance leaves out details [to assess cleanliness of soils], which include the following standard procedures in the evaluation of soils:</p> <ul style="list-style-type: none"> • Required minimum sampling density; • A protocol for determining that sufficient samples have been collected • List of analytes that must be tested for in the soil; • Analytical methods considered acceptable to assessing concentrations of contaminants in soils; • Required reporting levels for analytical methods; • Protocols for assessing data when method reporting limits are higher than appropriate screening levels; 	<p>Amend the draft Ordinance to include language as follows, to either augment or replace existing language as appropriate:</p> <p><i>"Screening Requirements (Appropriate List of Analytes for Testing / Screening).</i></p> <p><i>Soil shall be screened in accordance with Sections 17.66.050 and 17.66.060 above and the following requirements:</i></p> <ol style="list-style-type: none"> 1. Tier 1 ESI 2. Other Screening Levels as described in this Section, 3. The soil shall be tested in accordance with the standards established by the (San Francisco Bay Regional Water Quality Control Board in its "Beneficial Use of Dredged

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NOTE: Issues 1 – 10 are from San Francisco Bay Region, State Water Quality Control Board, letter of April 8, 2019. Issues 11 – 17 are from California Department of Fish and Wildlife, letter of February 7, 2019.

CONCERN	DESCRIPTION OF ISSUE	POSSIBLE SOLUTION
	<ul style="list-style-type: none"> • Acceptable calculations for establishing the likely range of contaminant concentrations in soils; • Acceptable quality assurance/quality control procedures to ensure that data are of sufficient quality to be used in screening prospective soil fill. • Specification of the level of certainty required for concluding that soil has met the appropriate screening guidelines (e.g., whether an 80 percent upper confidence interval or a 90 percent upper confidence level would be an acceptable metric for comparison with appropriate screening levels). <p>Water Board staff have suggested two protocols that may be of use in the Ordinance: (a) the Alameda County Department of Environmental Health -- Local Oversight Program's August 1, 2018, Fill Material Characterization Guidance (the underlying documents for which are referenced in the Ordinance text); and (b) the Hawaii Department of Health's October 2017 Guidance for Soil Stockpile Characterization and Evaluation of Imported and Exported Fill Material.</p>	<p><i>Materials: Sediment Screening and Testing Guidelines, Draft staff report" (2000), as amended, or other source recommended by the State of California Water Resources Control Board San Francisco Bay Region.</i></p> <p><i>Testing of Soil for Human Safety According to Established Protocols.</i></p> <p><i>For all soil import subject to an ACUP or CUP as described in 17.66.050 and 17.66.060, all soils shall be tested for compliance with Tier 1 ESI according to protocols and standards recognized by the State of California Water Resources Control Board San Francisco Bay Region, and the Alameda County Department of Environmental Health.</i></p> <p><i>Acceptable protocol may include those set forth in the County Department of Environmental Health document, "Fill Material Characterization Guidance" (August 1, 2018 or later versions), or similar protocol as approved by the State of California Water Resources Control Board San Francisco Bay Region."</i></p>

TABLE 1: State Agency Concerns and Possible Ordinance Revisions

NOTE: Issues 1 – 10 are from San Francisco Bay Region, State Water Quality Control Board, letter of April 8, 2019. Issues 11 – 17 are from California Department of Fish and Wildlife, letter of February 7, 2019.

CONCERN	DESCRIPTION OF ISSUE	POSSIBLE SOLUTION
<p>7. This Ordinance does not yet include a protocol for selecting the constituents that must be analyzed for in soil to ensure that imported soil is sufficiently clean for placement in agricultural lands.</p>	<p>The Ordinance does not describe how to determine which elements and chemicals must be included in the list of analytes to be measured in soil proposed for import to agricultural lands. The text does describe required analytes in soil imported from agricultural lands or imported from areas adjacent to roadways, but the rationale used in each of those discussions is incomplete.</p> <p>The Ordinance requires that soils derived from a source that has been in agricultural production in the last 50 years must be analyzed for agricultural chemicals (fertilizers, herbicides, and pesticides). Residential areas with lawns and commercial properties with landscaping are also likely to have residues of fertilizers, herbicides, and pesticides in soils. Water Board staff have observed that the upper two to three feet of soils used in agricultural production usually have pesticide levels that are not compatible with placement in or adjacent to aquatic habitat.</p> <p>The Ordinance requires that soils adjacent to a freeway, state route, or major arterial roadway be analyzed for asbestos and lead contamination. This list could be expanded to include copper, which is present in many brake shoe formulations and is highly toxic to aquatic life. Soils adjacent to roadways should also be tested for petroleum hydrocarbons and combustion byproducts (e.g., PAHs). Also, since electric power lines often parallel roadways, soils adjacent to roadways should be tested for PCBs, which were a constituent of transformer fluids for many years. Finally, since maintenance crews often use herbicides to control road side vegetation, these soils should be analyzed for herbicides.</p>	<p>Amend the draft Ordinance to include language as follows, to either augment or replace existing language as appropriate:</p> <p><i>"Screening Requirements (Appropriate List of Analytes for Testing / Screening):</i></p> <p>Soil shall be screened in accordance with Sections 17.66.050 and 17.66.060 above and the following requirements:</p> <ol style="list-style-type: none"> 1. Tier 1 ESI 2. Other Screening Levels as described in this Section, 3. The soil shall be tested in accordance with the standards established by the (San Francisco Bay Regional Water Quality Control Board in its "Beneficial Use of Dredged Materials: Sediment Screening and Testing Guidelines, Draft staff report" (2000), as amended, or other source recommended by the State of California Water Resources Control Board San Francisco Bay Region. <p>Amend Paragraph 17.66.050(E)(2) to include recommended testing for copper, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), and common roadside herbicides.</p> <p>In all cases, a qualified professional (defined in the Ordinance as a licensed geologist or other professional who, by education, training and</p>

TABLE 1: State Agency Concerns and Possible Ordinance Revisions

NOTE: Issues 1 – 10 are from San Francisco Bay Region, State Water Quality Control Board, letter of April 6, 2019. Issues 11 – 17 are from California Department of Fish and Wildlife, letter of February 7, 2019.

CONCERN	DESCRIPTION OF ISSUE	POSSIBLE SOLUTION
	<p>The Ordinance's language regarding asbestos could be updated...Information regarding the regulation of airborne asbestos is available from the Air Resources Board.</p> <p>Information regarding managing asbestos hazardous waste is available from the Department of Toxic Substances Control.</p> <p>Beyond listing potential agricultural and transportation-related contaminants, the Ordinance does not yet provide guidance on the appropriate list of analytes to be selected for screening soils. Unless specific documentation exists for a given source of soil that rules out some classes of contaminants, Water Board staff suggests that soils should be screened for a full suite of metals, volatile organic compounds, semi-volatile organic compounds, polycyclic aromatic hydrocarbons, PCBs, pesticides, herbicides, and fertilizers. The full list of analytes presented in the Beneficial Reuse of Dredged Materials: Sediment Screening and Testing Guidelines. Draft staff report (Regional Water Quality Control Board, 2000) should be used in testing soils, unless sufficient documentation is available to exclude the likely presence of a class of contaminants in a soil source. Such documentation may include Phase 1 and Phase 2 Environmental Site Assessments of the proposed source site.</p>	<p>experience possesses the expertise in testing and analyzing soils necessary to accurately evaluate the chemical properties of the soil, including but not limited to, the ability to determine appropriate screening levels for toxicity for various applications and land uses) would need to be in charge of soil screening and analysis for these issues.</p>
<p>8. Ordinance does not include protocol for screening imported soil for materials other than elements and chemicals that may negatively impact habitat quality at the receiving site.</p>	<p>In addition to screening soils for harmful levels of elements and chemicals, the Ordinance should set requirements for trash and invasive plant species seedstocks. To prevent imported soil from functioning as a landfill, the Ordinance should specify screening protocols to ensure that the imported soil does not contain significant trash or debris. Also, invasive plant species are dominant in many developed areas of the County. Depositing fill soil in agricultural areas may introduce new seed stocks from</p>	<p>The draft Ordinance already includes language that explicitly excludes any trash or debris as fitting the definition of soil. Any soil not pre-screened for this material is not permitted to be imported.</p> <p>Staff has not yet been able to determine whether an adequate method of screening large masses of soil for nonnative and weedy seeds, or whether this problem can be surmounted. It may be possible to</p>

TABLE 1: State Agency Concerns and Possible Ordinance Revisions

CONCERN	DESCRIPTION OF ISSUE	POSSIBLE SOLUTION
	<p>Invasive species into habitat at the fill site and compromise populations of native plant species. The Ordinance should include protocols that minimize and avoid the spread of invasive plant seed stock.</p>	<p>achieve this task after seed germination at the receiving site using a method called soil solarization, but this requires intensive work and a large amount of land across which to spread the soil, and may be impractical for all but very small volumes of soil. Moreover, most land in Alameda County is already adversely affected by invasive nonnative species which have become common.</p>
<p>9. Ordinance exempts soils from analysis if obtained within the same zoning designation of Agriculture or PD or if imported from a Licensed and Permitted Retailer or Wholesaler.</p>	<p>The Ordinance does not require soil to be tested if it is imported from the same zoning designation or if soil is imported from a Licensed and Permitted Retailer or Wholesaler. Technical bases for these exemptions are not provided.</p> <p>Because of the combination of alluvial and tectonic processes in the shaping of landforms in the Bay Area, the chemical compositions of soils can vary significantly over relatively small distances. In addition, some Bay Area soils have elevated levels of metals that are toxic to wildlife at relatively low concentrations, including arsenic, cadmium, mercury, nickel, selenium, and thallium. In subregions in which elevated levels of these metals occur in soils, the local flora and fauna have often adapted to these metals over many generations. Moving soils from such a source area to an area that does not contain elevated levels of some of these metals is likely to have a negative impact on flora and fauna at the fill location. This is not addressed in the Ordinance.</p>	<p>For soils to be moved within the same zoning designation, from one agricultural parcel to another, language similar to that described above would provide adequate testing of the soils, but Paragraph 17.66.060(c) would need to be amended to eliminate the exemption allowed under the language: "exemption for imports from a source parcel within the Agricultural (A) district in the unincorporated areas of the County of Alameda or equivalent districts in other jurisdictions shall be exempt from the tiered requirements above."</p>
		<p>Licensed and permitted retailers or wholesalers include surface mining operations and home and garden supply businesses who sell landscaping materials, either in bulk or in small quantities. Water Board staff assert that these businesses do not always screen soils for potential toxicity to special status species, and also assert that unless retailers and wholesalers have data available that demonstrates that constituents in the soils do not exceed acceptable concentrations for safe exposure of special status species, soil from these sources should be tested to verify that it is safe to use in potential listed species habitat. CDA staff acknowledges that this may be the case, but this</p>

TABLE 1: State Agency Concerns and Possible Ordinance Revisions

NOTE: Issues 1 – 10 are from San Francisco Bay Region, State Water Quality Control Board, letter of April 8, 2019. Issues 11 – 17 are from California Department of Fish and Wildlife, letter of February 7, 2019.

CONCERN	DESCRIPTION OF ISSUE	POSSIBLE SOLUTION
<p>10. The Ordinance has not been reviewed under the California Environmental Quality Act (CEQA).</p>	<p>The County proposes to satisfy the requirements for review under CEQA by referencing the Categorical Exemptions from review under Sections 15307 and 15308 of the CEQA Guidelines.</p> <p>15307. Actions by Regulatory Agencies for Protection of Natural Resources</p> <p>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.</p> <p>15308. Actions by Regulatory Agencies for Protection of the Environment</p> <p>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.</p> <p>Water Board Staff have expressed concern that the regulation proposed are not sufficiently protective of wildlife, including special status wildlife and associated</p>	<p>would go far beyond any kind of regulation ever envisioned by the County, would affect materials that have not been involved in the problems this Ordinance is designed to correct, and would go beyond the intention of the Ordinance.</p> <p>CDA Staff has prepared this regulation on the premise that the activity in question – soil import and placement for any agricultural reason and at any level – is already permitted and unregulated under existing County ordinance, and that any stricter regulation on that activity, such as the draft Ordinance, satisfies the concept that natural resources and the environment will receive greater protection than previously as a result.</p> <p>It is acknowledged that conducting a CEQA review on this proposal would provide maximum transparency of potential impacts of the soil import activity being regulated, and the most solid legal foundation for approval of this Ordinance.</p>

TABLE 1: State Agency Concerns and Possible Ordinance Revisions.

NOTE: Issues 1 – 10 are from San Francisco Bay Region, State Water Quality Control Board, letter of April 8, 2019. Issues 11 – 17 are from California Department of Fish and Wildlife, letter of February 7, 2019.

CONCERN	DESCRIPTION OF ISSUE	POSSIBLE SOLUTION
<p>11. California Endangered Species Act and Native Plant Protection Act</p>	<p>critical habitat, to satisfy the requirements of these exemptions and justify use of the proposed categorical exemptions.</p> <p>CEFW has discretionary authority over activities that could result in the "take" of any species listed as candidate, threatened, endangered pursuant to California Endangered Species Act (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.</p>	<p>The Draft Ordinance already contains Section 17.66.040, Compliance with Existing Laws and Regulations, which specifies compliance with the requirements of these numerous other agencies, including CDFW. That language does not explicitly specify jurisdictional authority over the "take" of any species listed as candidate, threatened, or endangered pursuant to CESA or rare plant species under the Native Plant Protection Act (NPPA), or that a CESA permit must be obtained.</p> <p>Technically, this is already a legal requirement in order to avoid violations of state and federal law, and for those proposals that require CEQA analysis, these obligations would be fulfilled. However, there is the risk of missed obligations for consultation with the relevant State agencies for projects that fall under Tiers in which no County permit would be required and no CEQA analysis would be performed.</p> <p>There are multiple ways to address this issue. The following directive could be added to ensure that the obligation is known and fulfilled for all properties receiving imported soil:</p> <p><i>"Owners of property receiving imported soil shall consult with CDFW and if required, obtain a CESA permit if the project has the potential to result in</i></p>

TABLE 1: State Agency Concerns and Possible Ordinance Revisions

CONCERN	DESCRIPTION OF ISSUE	POSSIBLE SOLUTION
		<p><i>"take" of plants or animals listed under CESA, either during construction or over the life of the soil import 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."</i></p> <p>Or, as in No. 5 above, this level of consultation could be explicitly required for all or most Tiers of soil import; or finally, the Tiering system could be discarded in favor of full permitting, environmental analysis and soil screening for all import projects large and small.</p> <p>In all of these scenarios, however, the obligation of lead agency status for any CEQA analysis required to fulfill this obligation would fall to the County.</p> <p>As in No. 11, The Draft Ordinance already contains Section 17.66.040, Compliance with Existing Laws and Regulations, which specifies compliance with the requirements of numerous other agencies, including CDFW.</p> <p>Also, as for No. 11, a directive could be added to ensure that the obligation is known and fulfilled for all properties receiving imported soil:</p> <p><i>"Owners of property receiving imported soil shall consult with CDFW and if necessary, prepare an LSA</i></p>
12. Lake and Streambed Alteration	<p>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</p>	

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NOTE: Issues 1 – 10 are from San Francisco Bay Region, State Water Quality Control Board, letter of April 8, 2019. Issues 11 – 17 are from California Department of Fish and Wildlife, letter of February 7, 2019.

CONCERN	DESCRIPTION OF ISSUE	POSSIBLE SOLUTION
	<p>Agreement (or Incidental Take Permit) until it has complied with CEQA as a Responsible Agency.</p>	<p>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. Issuance of a LSA Agreement is subject to consideration of a CEQA document for the Project."</p> <p>Or, as in Nos. 5 and 11' above, this level of consultation could be explicitly required for all or most Tiers of soil import; or finally, the Tiers system could be discarded in favor of full permitting, environmental analysis and soil screening for all import projects large and small.</p> <p>In all of these scenarios, however, the obligation of lead agency status for any CEQA analysis required to fulfill this obligation would fall to the County.</p>
<p>13. Ordinance will result in significant biological impacts; substantial CEQA analysis should be required.</p>	<p>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 for numerous federally and state threatened species.</p>	<p>CDA Staff has prepared this regulation on the premise that the activity in question -- soil import and placement for any agricultural reason and at any level -- is already permitted and unregulated under existing County ordinance, and that any stricter regulation on that activity, such as the draft Ordinance, satisfies the CEQA Guidelines concept that natural resources and the environment will receive greater protection than previously as a</p>

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NOTE: Issues 1 – 10 are from San Francisco Bay Region, State Water Quality Control Board, letter of April 8, 2019. Issues 11 – 17 are from California Department of Fish and Wildlife, letter of February 7, 2019.

CONCERN	DESCRIPTION OF ISSUE	POSSIBLE SOLUTION
	<p>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.</p> <p>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. Therefore, CDFW advises a Negative Declaration is not appropriate for this Project.</p>	<p>result.</p> <p>It is acknowledged that conducting a CEQA review on this proposal would provide maximum transparency of potential impacts of the soil import activity being regulated, and the most solid legal foundation for approval of this Ordinance.</p>
<p>14. Fully Protected Species and Birds</p>	<p>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.)</p> <p>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</p>	<p>The Draft Ordinance already contains Section 17.66.040, Compliance with Existing Laws and Regulations, which specifies compliance with the requirements of numerous other agencies, including CDFW.</p> <p>As in Nos. 5, 11 and 12 above, a directive could be added to encourage initial communication between all project proponents and CDFW, or CEQA review could be required for all Tiers of projects to ensure that these concerns are addressed.</p>

TABLE 1: State Agency Concerns and Possible Ordinance Revisions

NOTE: Issues 1 – 10 are from San Francisco Bay Region, State Water Quality Control Board, letter of April 8, 2019. Issues 11 – 17 are from California Department of Fish and Wildlife, letter of February 7, 2019.

CONCERN	DESCRIPTION OF ISSUE	POSSIBLE SOLUTION
15. Water Pollution	<p>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.</p> <p>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) <i>Coccidius indicus</i>, (6) substance or material deleterious to fish, plant life, mammals, or bird life. (Fish and Game Code, § 5650).... "Waters of the state" means any surface water or groundwater, including saline waters, within the boundaries of the state.</p>	<p>Please refer to Nos. 2 -- 9 above. In these, Staff has attempted to develop possible methods to address concerns about effects to Waters of the State. The current draft ordinance does not currently include language to this effect for all Tiers of soil import.</p>

TABLE 1: State Agency Concerns and Possible Ordinance Revisions

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CONCERN	DESCRIPTION OF ISSUE	POSSIBLE SOLUTION
16. Scope and content of Environmental Review	The commenting agency, CDFW, provides an extensive template for analyzing and assessing the level of environmental impacts that could arise from adoption of the Ordinance and the types of soil import / agricultural projects that could be allowed or permitted under it. The comment focuses exclusively on the preferred CEQA process, an EIR, that the agency encourages, whether for the Ordinance in a cumulative way or for individual projects that may result.	<p>CDA Staff has prepared this regulation on the premise that the activity in question – soil import and placement for any agricultural reason and at any level – is already permitted and unregulated under existing County ordinance, and that any stricter regulation on that activity, such as the draft Ordinance, satisfies the CEQA Guidelines concept that natural resources and the environment will receive greater protection than previously as a result.</p> <p>It is acknowledged that conducting a CEQA review on this proposal would provide maximum transparency of potential impacts of the soil import activity being regulated, and the most solid legal foundation for approval of this Ordinance.</p> <p>If the process for this Ordinance should shift toward a CEQA analysis, staff recommends consideration of the environmental review template provided by CDFW. This recommendation also applies to individual projects pursuant to the Ordinance so far as permitting authority by County will allow.</p>
17. Filing Fees	CDFW anticipates that the Ordinance will have an impact to fish and/or wildlife habitat, and assessment of filing fees is necessary. (Pub. Resources Code, § 21 089; Fish and Game Code, § 711.4). Fees are payable upon filing of the Notice of Determination.	<p>If the process for adoption of this Ordinance should shift toward a CEQA analysis, the County would pay the appropriate filing fee as required by law. However, each implementation project under this Ordinance that requires a CEQA analysis will likewise be required to pay the filing fee.</p>

TABLE 1: State Agency Comments and Possible Ordinance Revisions

NOTE: Issues 1 – 10 are from San Francisco Bay Region, State Water Quality Control Board, letter of April 8, 2019. Issues 11 – 17 are from California Department of Fish and Wildlife, letter of February 7, 2019.

CONCERN	DESCRIPTION OF ISSUE	POSSIBLE SOLUTION
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ORDINANCE NO. 2019-_____

**AN ORDINANCE REGULATING SOIL IMPORTING WITHIN THE
UNINCORPORATED AREA OF THE COUNTY OF ALAMEDA**

SECTION I

In enacting this ordinance, the Board of Supervisors of the County of Alameda makes the following findings:

1. The County of Alameda ("County") regulates land uses in the unincorporated area of the County through various regulations including the General Plan, Specific Plans, and Zoning Ordinance (Title 17 of the Alameda County Ordinance Code); and
2. The County's land use regulations govern the types of land uses that are permitted by right or conditionally permitted; and
3. Chapter 17.06 of the Zoning Ordinance specifies the uses that are permitted and conditionally permitted in the Agricultural ("A") District. Uses permitted by right include various traditionally agricultural uses, such as a crop, vine, tree farm, truck garden, plant nursery, greenhouse, or horticulture and grazing, breeding or training of horses or cattle. Conditionally permitted uses include, for example, a sanitary landfill, composting facility, and packing house for fruits or vegetables; and
4. Chapter 17.08 of the Zoning Ordinance specifies the uses that are permitted and conditionally permitted in the Single-family residence ("R-1") District. Uses permitted by right include a one-family dwelling and a field crop, orchard or garden. Conditionally permitted uses include a plant nursery or greenhouse; and
5. Chapter 17.26 of the Zoning Ordinance specifies the uses that are permitted and conditionally permitted in the Combining Agricultural Use ("L") District, which allows limited agricultural uses. Uses permitted by right include various traditionally agricultural uses, such as keeping a limited number of livestock or fowl and grazing. Conditionally permitted uses include keeping additional livestock or fowl, kennel, boarding stable and riding academies, or sales of any product derived from a permitted use; and
6. Other chapters of the Zoning Ordinance establish permitted and conditionally permitted uses in those zoning districts, including, for example, higher-density residential and commercial zoning districts; and
7. The Board of Supervisors acknowledges that some amount of soil amendment or grading may be required for activities that are permitted or conditionally permitted in a particular zoning district; and that, accordingly, some amount of soil importing is permitted by the Zoning Ordinance to facilitate those permitted uses; and
8. The County has identified properties that have been importing large volumes of soil for commercial purposes, particularly in the A District, in a manner that does not appear to be for traditional agricultural uses or pursuant to a conditional use permit for any conditionally permitted use, and it appears that a number of properties are importing soil while claiming the activity will someday yield a use that is permitted in accordance with the Zoning Ordinance; and

9. Accepting high volumes of deliveries or disposal of soil is distinct from the limited scope of soil importing required to facilitate permitted land uses like traditional farming (e.g., crops, orchard) or building a house; and
10. Importing soil raises land use concerns regarding traffic and road safety, noise, and potential environmental issues such as truck emissions, dust and contaminated soil or fill material; and
11. Importing soil can introduce impacts to groundwater, natural environments, topographic aesthetics, transportation and traffic to such a degree that if left unregulated, could result in long term detrimental impacts to county resources; and
12. The County has a compelling interest in protecting the public health, safety, and welfare of its residents, visitors and businesses, and in preserving the peace and quiet of the neighborhoods within the unincorporated areas of the County by regulating soil importing as a land use; and
13. Section 15.36.050 of the County's Grading Ordinance (Chapter 15.36 of the Alameda County Ordinance Code) includes an agricultural exemption, allowing certain grading activities on property zoned as agricultural without a grading permit. In order to qualify for such exemption, the activity must "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 must be "performed in accordance with all applicable laws, regulations, and ordinances of the county;" and
14. Exemption from the Grading Ordinance does not make an activity a permitted land use under the Zoning Ordinance; and
15. Correspondingly, any exemptions provided in this ordinance do not exempt any activity from compliance with any other applicable provision of law, including, but not limited to, the Grading Ordinance. For example, activities that are exempt from this ordinance must nevertheless comply with permit requirements of the Grading Ordinance where the activities would "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" or where such activity was not "performed in accordance with all applicable laws, regulations, and ordinances of the county;" and
16. In light of the concerns noted herein, including but not limited to the potential harms to the safety, health, and welfare of the County residents and the environment due to unregulated soil importing, it is in the interest of immediately preserving the public safety, health and welfare to adopt this ordinance; and
17. This ordinance is categorically exempt from the California Environmental Quality Act, because there is no possibility that it will have a significant effect on the environment; is an action by a regulatory agency for the protection of natural resources; and is an action by a regulatory agency for the protection of the environment (CEQA Guidelines sections 15061(b)(3)); 15307; 15308).
18. The Board of Supervisors considers it necessary to adopt this ordinance to explicitly prohibit certain types of soil importing while implementing a process for ensuring the protection of natural resources and the environment when soil is imported.

NOW, THEREFORE, the Board of Supervisors of the County of Alameda ordains as follows:

SECTION II

The Alameda County Ordinance Code is hereby amended as follows:

Add Soil Importing as a Conditional Use in Specified Districts

Paragraph S is added to Section 17.06.040 (regarding conditional uses in the A district) and reads as follows:

"Soil Importing in accordance with Chapter 17.66."

Paragraph I of is added to Section 17.08.040 (regarding conditional uses in the R-1 district) and reads as follows:

"Soil Importing in accordance with Chapter 17.66."

Paragraph E is added to Section 17.26.040 (regarding conditional uses in the L combining district) and reads as follows:

"Soil Importing in accordance with Chapter 17.66."

Paragraph h is added to the Little Valley Specific Plan, Chapter IV, Section B.2. (regarding conditional uses) and reads as follows:

"Soil Importing in accordance with Chapter 17.66."

The following text is added to the Little Valley Specific Plan, Chapter IV, Section B.3. (regarding accessory uses):

"Soil Importing may be permitted as an accessory use in accordance with Chapter 17.66."

Add New Chapter Establishing Regulations for Soil Importing

Chapter 17.66 is hereby added to the Ordinance Code and reads as follows:

Chapter 17.66

17.66.010 - Purpose

This ordinance regulates the importing of soil or other fill material to ensure that such importing is related to appropriate land uses in the zoning district, to promote soil stability, to reduce negative environmental impacts, and to reduce the traffic impacts from delivery vehicles.

17.66.020 - Definitions

As used in this chapter, the following terms are defined as follows:

- A. Agricultural Use means the science or practice of farming or ranching, including cultivation of the Soil for the growing of crops or the rearing of animals to provide food, wool, fabric, or other products. This definition includes, for example, crops, orchards, and animal grazing.

- B. Import means the bringing of a material onto a parcel from an exterior location, for any purpose.
- C. Organic Mulch means decomposed or partially decomposed material comprised of leaves, wood, plant materials, discarded food and food scraps, paper or wood products, animal manure, peat and / or other biological carbon-based materials; organic mulch is not earth material of any origin that has been excavated from the ground.
- D. Qualified Professional means a licensed geologist or other professional who, by education, training and experience possesses the expertise in testing and analyzing Soils necessary to accurately evaluate the chemical properties of the Soil, including but not limited to, the ability to determine appropriate screening levels for toxicity for various applications and land uses.
- E. Screening Documentation means a written report, analysis or opinion evaluating the chemical properties of Soil.
- F. Soil means all earth material of any origin that overlies bedrock and may include the decomposed zone of bedrock that can be excavated readily by mechanical equipment. Soil specifically does not include trash, debris, piping of any material, wooden boards, logs, branches or chips, broken concrete or asphalt, metal pieces of any kind, plastic, glass, or other human-made materials. Soil specifically does not include any human-made or artificial chemicals, substances or contaminants at measured levels greater than those determined through required testing processes to be safe for human contact, adequate for protection of watercourses or ponds and the water contained therein, groundwater located or flowing beneath the surface, and protection of biological habitat and native species found on or known to use the parcel site and surrounding parcels. Soil specifically does not include Organic Mulch.
- G. Tier 1 ESL means an environmental screening level for a range of contaminants and analytes found in Soils that could adversely affect human health and safety. Environmental Screening Levels (ESLs) provide conservative screening levels for over 100 chemicals found at sites with contaminated soil and groundwater. ESLs address a range of media (Soil, groundwater, Soil gas, and indoor air) and a range of concerns (e.g., impacts to drinking water, vapor intrusion, and impacts to aquatic habitat). The applicable Tier 1 ESL is based on documentation prepared the San Francisco Bay Regional Water Quality Board (Water Board).

17.66.030 - General Provisions.

- A. Soil Importing is prohibited in the unincorporated areas of the County except as provided in this chapter.
- B. All Soil Imported in accordance with this chapter must not contain chemicals that exceed Tier 1 ESL, which shall be verified by a Qualified Professional.
 - 1. Screening Documentation prepared or reviewed by a Qualified Professional in accordance with this chapter shall be stored for at least 5 years and shall be available for periodic review and audit by the County at any time, up to four times per year.
 - 2. If the review or audit demonstrates potential soil contamination beyond the Tier 1 ESL, then the County Code Enforcement Division may refer the matter to other County, State, and Federal agencies.
- C. This ordinance does not regulate or prohibit importing the following:
 - 1. Soil purchased from an established retail or wholesale outlet, including hardware stores, soil and stone retailers and wholesalers, landscape centers, and similar commercial soil enterprises. Transports of Soil between properties, such as brokered transports from construction sites, are not considered Soil purchased pursuant to this subsection.
 - 2. Organic Mulch

3. Asphalt grinding or road base (excluding concrete debris), provided that it is used for farm road repair only; Importing for other purposes, including for fill, and Importing concrete debris, are prohibited.
 4. Movement of Soil from an adjacent parcel or a parcel separated by no more than a road or utility easement, provided the source parcel and destination parcel are owned by the same person.
- D. Prohibited Operations.
1. Importing the following materials, or fill material containing the following materials, is not permitted pursuant to this ordinance: trash, debris, piping of any material, wooden boards, logs, branches or chips, broken concrete or asphalt, metal pieces of any kind, plastic, glass, or other human-made materials. This ordinance does not regulate sanitary landfills, which require a Conditional Use Permit (Alameda County General Ordinance Code 17.06.035(A)) and compliance with other applicable federal, state, and local laws.
 2. Importing earthen materials that contain or include any of the following is prohibited: any human-made or artificial chemicals, substances or contaminants at measured levels greater than those determined through required testing processes to be safe for human contact.

17.66.040 - Compliance with Existing Laws and Regulations.

- A. Compliance with the regulations and requirements of state and federal regulatory agencies is required, including but not limited to the following:
1. Bay Area Air Quality Management District
 2. California Department of Fish and Wildlife
 3. State of California Water Resources Control Board San Francisco Bay Region
 4. California Department of Toxic Substances Control
 5. United States Fish and Wildlife Service
 6. U.S. Army Corps of Engineers
- B. Issuance of a permit or other authorization to Import Soil pursuant to this ordinance shall not constitute an exemption from other applicable laws or regulations, including but not limited to:
1. Alameda County Grading Ordinance
 2. Alameda County Watercourse Protection Ordinance
 3. Alameda County Health and Safety ordinances
 4. Alameda County Business License Tax ordinance
 5. Alameda County Surface Mining Ordinance
 6. California Endangered Species Act
 7. California Surface Mining and Reclamation Act
 8. U.S. Endangered Species Act
 9. U.S. Migratory Bird Treaty Act
- C. Any proposals to Import Soil, or actions to Import Soil, will be subject to notification by the County of Alameda Planning Department to the aforementioned State and Federal Agencies.
- D. Soil Importing must be compliant with any applicable Williamson Act Contract.

17.66.050 - Soil Importing on Large Parcels in the R-1 District

- A. Soil Importing is permissible on parcels at least one acre in size and not more than five acres in size in the R-1 (or equivalent) district in accordance with this chapter.
- B. Any and all Soil Import must be for an Agricultural Use.

- C. Soil Imported shall not exceed three feet above existing grade unless it is Imported in accordance with one of following:
 - 1. An existing building permit,
 - 2. An existing grading permit, or
 - 3. An existing Conditional Use Permit.
- D. Soil Importing is regulated in accordance with the following tiered screening and review levels:
 - 1. Up to 1 cubic yard per acre per year is permitted as a reasonable accessory use to existing permitted uses.
 - 2. Over 1 and up to 10 cubic yards per acre per year, up to a maximum of 30 cubic yards per property per year, may be Imported provided the property owner:
 - a. Submits Screening Documentation from a Qualified Professional of screening to Tier 1 ESL.
 - 3. Over 10 and up to 20 cubic yards per acre per year, up to a maximum of 50 cubic yards per property per year, provided the property owner:
 - a. Submits Screening Documentation from a Qualified Professional of screening to Tier 1 ESL; and
 - b. Submits to the County a statement of the purpose of the Soil Import; and
 - c. Obtains an Administrative Conditional Use Permit.
 - 4. Over 20 and up to 50 cubic yards per acre per year, up to a maximum of 80 cubic yards per property per year, provided the property owner:
 - a. Submits Screening Documentation from a Qualified Professional of screening to Tier 1 ESL;
 - b. Submits to the County a statement of the purpose of the Soil Import; and
 - c. Obtains an Administrative Conditional Use Permit; and
 - d. The County Planning Department provides notification to neighbors in accordance with Alameda County Zoning Ordinance Section 17.54.830.D.
 - 5. Over 50 cubic yards per acre per year or more than 80 cubic yards per property:
 - a. Submits Screening Documentation from a Qualified Professional of screening to Tier 1 ESL.
 - b. Obtains Conditional Use Permit.

17.66.060 - Soil Importing on Parcels in the A District

- A. Soil Importing is permissible on parcels in the A (or equivalent) district in accordance with this chapter.
- B. Any and all Soil Import must be for an Agricultural Use.
- C. Soil Imported shall not exceed three feet above existing grade unless it is Imported in accordance with one of following:
 - 1. An existing building permit,
 - 2. An existing grading permit, or
 - 3. An existing Conditional Use Permit.
- D. Soil Importing is regulated in accordance with the following tiered screening and review levels:
 - 1. Up to 10 cubic yards per acre per year, up to a maximum of 5,000 cubic yards per property per year and less than five feet vertically above any existing grade is permitted, subject to Section 17.66.030:
 - a. Property owner shall ensure the Soil is not contaminated, based on Tier 1 ESL. Subject to audit to require manifest and documentation of the source property (address of source parcel) only.

2. Over 10 and up to 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:
 - a. Property owner must obtain an Administrative Conditional Use Permit.
 3. Over 20 cubic yards per acre per year or more than 15,000 cubic yards per property per year, whichever is lowest:
 - a. Property owner must obtain a Conditional Use Permit.
- E. Imports from a source parcel within the Agricultural (A) district in the unincorporated areas of the County of Alameda or equivalent districts in other jurisdictions shall be exempt from the tiered requirements above, and the following except:**
1. **Active agriculture.** When the source parcel has been under row crop, vineyard, orchard or other agricultural cultivation or in concentrated animal agriculture (barns, feedlots, chemical treatment facilities, etc.) at any time in the previous 50 years, or if at any point long-lasting chemical compounds were used (including dichlorodiphenyltrichloroethane (DDT) or other comparably long-lasting chemicals as determined by the Qualified Professional), standard tests for agricultural chemical residue contaminants (e.g. pesticides, herbicides, fertilizers); as determined by the Qualified professional, shall be conducted to Tier 1 ESL. If Soil is found to be noncompliant with this standard, then it shall not be Imported to the proposed destination parcel and should instead be properly disposed of (e.g., transported to a licensed, permitted Class II or Class I landfill in accordance with State law) or remediated to Tier 1 ESL standards.
 2. **Roadway adjacent.** When the source parcel is located adjacent to or within 200 feet of a freeway, state route or arterial roadway, or source Soil is located within 50 feet of an electrical transmission line easement, in which case the standard tiering requirements described in this Chapter shall apply standard tests for lead and asbestos contamination shall be conducted to Tier 1 ESL. If the Soil is found to be noncompliant with this standard, then it shall not be Imported to the proposed destination parcel and should instead be properly disposed of (e.g., transported to a licensed, permitted Class II or Class I landfill in accordance with State law) or remediated to Tier 1 ESL standards for the tested contaminants.

17.66.070 - Administrative Conditional Use Permit for Soil Importing

- A. An Administrative Conditional Use Permit may be issued in accordance with this chapter as set forth in this section (in lieu of Sections 17.52.480, et seq.).
- B. In the districts specified in this title, an Administrative Conditional Use Permit may issue for Soil Importing provided the proposed project is does not require the preparation of a new environmental impact report pursuant to the California Environmental Quality Act (CEQA).
- C. If the proposed project requires a new environmental impact report, it may not be approved via an Administrative Conditional Use Permit, but the project proponent may apply for a Conditional Use Permit in accordance with Section 17.54.130 and this chapter.

17.66.080 - Specific Findings for Administrative Conditional Use Permit and Conditional Use Permit

An Administrative Conditional Use Permit or Conditional Use Permit may be issued for Soil Importing only if the proposed use meets the requirements of Section 17.66.070 (Administrative

Conditional Use Permit for Soil Importing) or Section 17.54.130 (Conditional uses), as applicable, and the following additional 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 on the property in accordance with Section 17.06.040, Section 17.08.040 or Chapter 17.26 of this title.
- 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, or adversely affect the existence of, or habitat for, special status species under the State or Federal Endangered Species Acts.
- 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. The Soil proposed for Import has been tested / screened as required and conforms to the Tier 1 ESL for all analytes and the site as determined by a qualified professional.
- H. Permittee has submitted a truck traffic plan that adequately mitigates impacts from truck traffic generated by the proposed Soil Import.

17.66.090 - Standard Conditions for Administrative Conditional Use Permit and Conditional Use Permit

- A. Soil Importing shall be permitted only to the extent necessary to establish or maintain an Agricultural Use presently permitted on the property in accordance with Section 17.06.040, Section 17.08.040 or Chapter 17.26 of this title.
- B. The permittee shall obtain and make available to the County Screening Documentation from a Qualified Professional certifying the Soil composition. The Screening Documentation must be either:
 - 1. Provided to the permittee from a Qualified Professional retained by the permittee.
 - 2. Provided to the permittee from a Qualified Professional retained by someone other than the permittee (e.g., the source property, the shipper or a third party), that has been independently reviewed by a Qualified Professional retained by the permittee.
- C. The Screening Documentation must include certification from the Qualified Professional that the Soil does not exceed Tier 1 ESL.
- D. Screening Documentation shall be stored for at least 5 years and shall be available for periodic review and audit by the County at any time, up to four times per year. If the review or audit demonstrates potential Soil contamination beyond the Tier 1 ESL, then the County Code Enforcement Division may initiate enforcement and abatement proceedings and may refer the matter to other County, State, and Federal agencies.
- E. Impacts from truck traffic shall be mitigated in accordance with permittee's truck traffic plan.
- F. Permittee shall obtain a grading permit, if applicable.

17.66.100 - Environmental Review.

- A. All projects shall comply with the California Environmental Quality Act.**
- B. The Planning Department shall be the lead agency for any project requiring environmental review pursuant to the California Environmental Quality Act.**

SECTION III

This ordinance shall take effect and be in force thirty (30) days from and after the date of passage and before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on the ____ day of _____, 2019, by the following called vote:

AYES:

NOES:

EXCUSED:

RICHARD VALLE
President of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors,

By: _____
Deputy Clerk

APPROVED AS TO FORM:
DONNA R. ZIEGLER, COUNTY COUNSEL

By: _____
Heather Littlejohn
Deputy County Counsel

DRAFT RESOLUTION NO. 19-XX - AT MEETING HELD MAY 06, 2019

**RESOLUTION OF THE PLANNING COMMISSION OF THE COUNTY OF ALAMEDA
REGARDING
AN ORDINANCE REGULATING SOIL IMPORTING WITHIN THE
UNINCORPORATED AREA OF THE COUNTY OF ALAMEDA**

**Introduced by Commissioner
Seconded by Commissioner**

WHEREAS the County of Alameda ("County") regulates land uses in the unincorporated area of the County through various regulations including the General Plan, Specific Plans, and Zoning Ordinance (Title 17 of the Alameda County Ordinance Code); and

WHEREAS the County's land use regulations govern the types of land uses that are permitted by right or conditionally permitted; and

WHEREAS Chapter 17.06 of the Zoning Ordinance specifies the uses that are permitted and conditionally permitted in the Agricultural ("A") District. Uses permitted by right include various traditionally agricultural uses, such as a crop, vine, tree farm, truck garden, plant nursery, greenhouse, or horticulture and grazing, breeding or training of horses or cattle. Conditionally permitted uses include, for example, a sanitary landfill, composting facility, and packing house for fruits or vegetables; and

WHEREAS Chapter 17.08 of the Zoning Ordinance specifies the uses that are permitted and conditionally permitted in the Single-family residence ("R-1") District. Uses permitted by right include a one-family dwelling and a field crop, orchard or garden. Conditionally permitted uses include a plant nursery or greenhouse; and

WHEREAS Chapter 17.26 of the Zoning Ordinance specifies the uses that are permitted and conditionally permitted in the Combining Agricultural Use ("L") District, which allows limited agricultural uses. Uses permitted by right include various traditionally agricultural uses, such as keeping a limited number of livestock or fowl and grazing. Conditionally permitted uses include keeping additional livestock or fowl, kennel, boarding stable and riding academies, or sales of any product derived from a permitted use; and

WHEREAS other chapters of the Zoning Ordinance establish permitted and conditionally permitted uses in those zoning districts, including, for example, higher-density residential and commercial zoning districts; and

WHEREAS the Planning Commission acknowledges that some amount of soil amendment or grading may be required for activities that are permitted or conditionally permitted in a particular zoning district; and that, accordingly, some amount of soil importing is permitted by the Zoning Ordinance to facilitate those permitted uses; and

WHEREAS the County has identified properties that have been importing large volumes of soil for commercial purposes, particularly in the A District, in a manner that does not appear to be for traditional agricultural uses or pursuant to a conditional use permit for any conditionally permitted use, and it appears that a number of properties are importing soil while claiming the activity will someday yield a use that is permitted in accordance with the Zoning Ordinance; and

WHEREAS accepting high volumes of deliveries or disposal of soil is distinct from the limited scope of soil importing required to facilitate permitted land uses like traditional farming (e.g., crops, orchard) or building a house; and

WHEREAS importing soil raises land use concerns regarding traffic and road safety, noise, and potential environmental issues such as truck emissions, dust and contaminated soil or fill material; and

WHEREAS importing soil can introduce impacts to groundwater, natural environments, topographic aesthetics, transportation and traffic to such a degree that if left unregulated, could result in long term detrimental impacts to county resources; and

WHEREAS the County has a compelling interest in protecting the public health, safety, and welfare of its residents, visitors and businesses, and in preserving the peace and quiet of the neighborhoods within the unincorporated areas of the County by regulating soil importing as a land use; and

WHEREAS Section 15.36.050 of the County's Grading Ordinance (Chapter 15.36 of the Alameda County Ordinance Code) includes an agricultural exemption, allowing certain grading activities on property zoned as agricultural without a grading permit. In order to qualify for such exemption, the activity must "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 must be "performed in accordance with all applicable laws, regulations, and ordinances of the county;" and

exemption from the Grading Ordinance does not make an activity a permitted land use under the Zoning Ordinance; and

WHEREAS correspondingly, any exemptions provided in this ordinance do not exempt any activity from compliance with any other applicable provision of law, including, but not limited to, the Grading Ordinance. For example, activities that are exempt from this ordinance must nevertheless comply with permit requirements of the Grading Ordinance where the activities would "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" or where such activity was not "performed in accordance with all applicable laws, regulations, and ordinances of the county;" and

WHEREAS in light of the concerns noted herein, including but not limited to the potential harms to the safety, health, and welfare of the County residents and the environment due to unregulated soil importing, it is in the interest of immediately preserving the public safety, health and welfare to adopt this ordinance; and

WHEREAS this ordinance is Categorically Exempt from the California Environmental Quality Act, because there is no possibility that it will have a significant effect on the environment; is an action by a regulatory agency for the protection of natural resources; and is an action by a regulatory agency for the protection of the environment (CEQA Guidelines sections 15061(b)(3)); 15307; 15308); and

WHEREAS the Planning Commission considers it necessary to adopt this ordinance to explicitly prohibit certain types of soil importing while implementing a process for ensuring the protection of natural resources and the environment when soil is imported; and

WHEREAS notice of the public hearing at the Planning Commission, was given as required by law; and

WHEREAS the public hearing at the Planning Commission was held on Monday, May 06, 2019, at the hour of 6:00 pm, at the Alameda County Community Development Agency Public Hearing Room, located at 224 West Winton Avenue, Room 160, Hayward, California; and

WHEREAS public testimony was received in writing and verbally, and entered into the public record, prior to the deliberation and decision by the Planning Commission; and

WHEREAS it is the finding of this Commission that the proposed Soil Importing ordinance herein described is in the public interest because it is consistent with County plans and policies for agricultural, rural residential, and limited agricultural uses, and is consistent with the interests of the health, safety and welfare of the citizens of Alameda County.

NOW, THEREFORE:

BE IT RESOLVED that this Commission does hereby recommends to the Alameda County Board of Supervisors that the Board adopt the Common Sense Exemption and Categorical Exemptions from the requirements of the California Environmental Quality Act, per CEQA Guidelines sections 15061(b)(3)); 15307; 15308, and does hereby recommend adoption of the Common Sense Exemption and Categorical Exemptions by the Board of Supervisors.

BE IT FURTHER RESOLVED that this Commission does hereby recommend to the Board of Supervisors that the Alameda County Zoning Ordinance be modified with the adoption of the Soil Importing Ordinance as per the attached Draft Ordinance.

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOE:

EXCUSED:

ABSENT:

ABSTAINED:

Chris Bazar, Community Development Director, and
Albert Lopez, Secretary to the County Planning Commission of Alameda County

Allowed amounts of soil import without Grading Permit		Cleanliness Review	
Allow soil importing	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
San Jose County	yes	routine agricultural work for slopes less than 20% (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); 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

Allowed amounts of soil import without Grading Permit		Permit(s) Required	Cleanliness Review
Allowed soil Importing	Unlimited	Grading Permit	Soils Investigation Report: include data regarding the nature, distribution and strength of existing soils, conclusions and recommendations for grading procedures and design criteria
Maricopa County	yes	no Grading Permit needed	Geological Report: include adequate description of the geology of the site and conclusions and recommendations regarding the effect of geologic conditions of the proposed work and adjacent areas
	yes	no Grading Permit needed	Cleanliness Review: only Ag parcels require soil Import to be tested; needs to submit a soil testing report
Solano County	Unlimited	Grading Plan Review	Fill: 1) less than 50 cubic yards total 2) less than 5,000 s.f. area disturbed 3) less than 3 feet in depth

Allow soil importing	Allowed amounts of soil import without Grading Permit	Permit(s) Required	Cleanliness Review
	<p>4) placed on existing surfaces with slopes 7:1</p> <p>5) do not create slopes steeper than 2:1</p> <p>6) do not change existing off-site drainage patterns</p> <p>7) are not used for structural support</p>		
<p>Somerset County</p>	<p>Limited</p> <p>Regular Construction Grading</p> <p>Volume (cut or fill): does not exceed 5,000 cubic yards</p> <p>Fill: no greater than 3 feet in depth</p> <p>Fill inside flood-prone hazard areas: does not exceed 50 cubic yards</p>	<p>Engineered Constructing Construction Grading Permit</p> <p>exceeds 5,000 cubic yards greater than 3 feet in depth exceeds 50 cubic yards</p>	
<p>yes</p>	<p>Cemeteries: excavations and fills for grave</p> <p>Excavations and fills for buildings or structure may be greater than 1 foot in depth only</p> <p>Excavations and fills for wells or sewage disposal</p> <p>Minor fill outside flood-prone urban area, not exceeding 50 cubic yards and is: a) not greater than 1 foot in depth, no slope greater than 15%; b) not greater than 3 feet in depth</p> <p>Minor fill inside flood-prone urban area or special flood hazard area that does not exceed 50 cubic yards and is no greater than 1 foot in depth; must be shown on approved plans- not applied to engineered construction grading</p>		

Allowed amounts of soil import without Grading Permit		Permit(s) Required	Cleanliness Review
Allow soil Importing			
San Mateo County	yes	fill less than 2 feet in depth, on terrain with a slope flatter than five horizontal to one vertical, no intended to support structures and which does not exceed 150 cubic yards on any one parcel	
Contra Costa	Limited	<p>fill to support any structure, deeper than 3 feet or more than 200 cubic yards (for Lafayette, Moraga, & Orinda)</p> <p>all grading permits involving 1,000 cubic yards or more, nearby neighbors will be notified prior to permit issuance</p>	Grading Permit
	yes	<p>fill which meets all of the following requirements:</p> <p>1) is not intended to support structures</p> <p>2) does not obstruct a drainage course</p> <p>3) is placed on natural grade that has a slope not steeper than one vertical to five horizontal</p> <p>4) is less than 3 feet (.914 meters) in depth at its deepest point, measured vertically upward from natural grade to the surface of the fills</p> <p>5) does not exceed 200 cubic yards (152.92 cubic meters)</p>	

received
4/10/19
5:40 pm



Ohlone Audubon Society

A Chapter of the National Audubon Society
Serving Southern Alameda County

Alameda County Planning Department
Rodrigo Orduna
Assistant Planning Director
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Hayward, CA 94544
rodrigo.orduna@acgov.org

The Ohlone Audubon Society agrees with staff that an ordinance regulating the practice of soil importing in Alameda County should be adopted. The practice of transporting fill has historically been uncontrolled and has likely exposed the environment to harm to wildlife, wildlife habitat and to the waters of the State of California. We thank you for your efforts to remedy this problem.

However, we are not in agreement with the Staff conclusion that the proposed ordinance is exempt from CEQA. In a letter from the California Department of Fish and Wildlife, Alameda County Staff was informed that there is high potential for significant impacts to endangered and other Special Status Species. CDFW estimates that a minimum of 11 federally and state listed wildlife species, and at least 5 federally and state listed native plant species could be affected. A full CEQA assessment is therefore required by law. In addition, we are concerned about the following:

- Specific guidelines for the transport of fill including the inspection of fill, who is authorized to inspect and certify each load, where the load will be placed, who will approve the project and who will enforce the guidelines should also be outlined in the EIR document.
- We feel that property owners who allow the transport of fill on to their land should be required to have a regulated inspection and analysis of the fill to be transported each time transport is proposed. Each project should be subject to soil and location analysis.
- The intent of the Ordinance is clearly outlined on page one of the Draft but we feel that the Ordinance as written does not adequately describe how this intent will be met. The regulatory component should be strict, clear and enforceable. As written it is loose and ambiguous.

- The staff report was vague on what should be done with past transported fill that has not been regulated. We feel that historical transports should be included in each evaluation process. The standards for receiving an Administrative CUP should also clearly outlined.

Thank you for this opportunity to comment.

A handwritten signature in black ink that reads "Terry Preston". The signature is written in a cursive, flowing style.

Terry Preston

Ohlone Audubon Society
Conservation Committee
Mtmpraston@comcast.net



San Francisco Bay Regional Water Quality Control Board

Sent via electronic mail: No hard copy to follow

April 8, 2019

**Alameda County Community Development Agency
Attn.: Chris Bazar, Agency Director (chris.bazar@acgov.org)
224 West Winton Avenue, Room 110
Hayward, CA 94544**

Subject: Comments on the Proposed Alameda County Fill Import Ordinance

Dear Mr. Bazar:

San Francisco Bay Regional Water Quality Control Board (Water Board) staff appreciates the opportunity to review the March 21, 2019, draft of the proposed *Fill Import Ordinance for Properties in Unincorporated Areas of the County of Alameda* (Ordinance).

Summary.

As is discussed below, we are concerned that the Ordinance's current text is not yet sufficiently protective of waters of the State and may result in significant impacts to beneficial uses of those waters, including for wildlife habitat and habitat for rare, threatened, or endangered species that depend on aquatic habitat in unincorporated areas of Alameda County. To prevent potentially significant impacts to State waters and their associated beneficial uses, we request that the following revisions be made to the proposed Ordinance.

- **Provide clear guidance on the need to identify jurisdictional waters in consultation with the U.S. Army Corps of Engineers (Corps), California Department of Fish and Wildlife (CDFW), and the Water Board, and should provide appropriate contact information for those agencies. The potential penalties for filling jurisdictional waters without required federal and State authorization should be acknowledged.**
- **Augment the proposed use of the Tier 1 Soil ESLs as screening levels for imported fill soil with ecological screening levels to protect the listed species common to agricultural lands in Alameda County.**
- **Include appropriate protocols for sampling proposed fill soils and assessing the sample results, to ensure that imported soils do not exceed acceptable levels of constituents.**
- **Address the potential negative impacts of fill soil placement on special status species and their habitat.**

Dr. Terry F. Young, Chair | Michael Montgomery, Executive Officer

1616 Clay St., Suite 1400, Oakland, CA 94612 | www.waterboards.ca.gov/sanfranciscobay

- Complete appropriate CEQA review that addresses potential impacts to listed species and receiving water quality.

Comment 1. The intent of the Ordinance should be expanded.

The initial paragraph of the Ordinance presents the Ordinance's 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

Additional reasons for the Ordinance should include: (a) to ensure that potential human and ecological risks are not transferred between properties due to the import of polluted fill materials; and (b) to ensure that hazardous wastes are not imported to properties accepting fill.

Comment 2. The Ordinance's text should, but does not yet, use the words "fill" and "soil" consistently, and certain definitions should be added.

The Ordinance's initial paragraphs refer to the importing of "fill," but later paragraphs refer to the import of "soil fill." To clarify the material(s) covered by the Ordinance, please add definitions of "fill" and "soil." The Ordinance should also include a definition of "agricultural activities" and describe how those activities would be enhanced by the importation of fill soil. The Ordinance uses several acronyms that are not defined in the text of the Ordinance. Please define all acronyms used in the Ordinance.

Comment 3. The Ordinance's text does not yet provide sufficient guidance to the regulated community with respect to the legal status intermittent and ephemeral creek channels.

The Ordinance's text states:

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.

While the text acknowledges the need to comply with rules, such as those implemented by the Water Board and other state and federal agencies, it does not yet provide guidance on the restrictions on soil importing that may be imposed by those agencies. In particular, we are concerned that the Ordinance does not caution the regulated community against the placement of imported soil in jurisdictional waters of the State and waters of the U.S., such as creeks and wetlands.

The potential for confusion on the part of the regulated community is increased by the way in which smaller creeks are regulated in the *Alameda County Water Course Protection Ordinance*.

**Alameda County General Ordinances, Chapter 13.12 Water Course Protection
Section 13.12.030 Definitions.**

"Watercourse" means any conduit or appurtenant structure or any natural or man-made channel through which water flows continuously or intermittently in a definite direction and course or which is used for the holding, delay or storage of water.

Natural channels shall generally be limited to those designated by a solid line or dash

and three dots as shown in blue on the most recent U.S. Geological Survey 7.5-minute series of topographic maps. At the discretion of the director of public works, *the definition of natural channel may be limited to those channels having a watershed area of fifty (50) acres or more* [emphasis added], and this definition will be commonly used in the administration of this chapter except for those cases in which the director of public works determines that the definition must be extended to a natural channel with a watershed area smaller than fifty (50) acres in order to prevent a condition which is a menace to life and limb, endangers property, is a hazard to public safety, adversely affects the safety, use or serviceability of adjacent property, public way or drainage channel, or could adversely affect the water quality of any water body or watercourse were the definition not extended to a particular natural channel with a watershed area below fifty (50) acres (Prior gen. code § 7-200.2).

The Alameda County Water Course Ordinance does not regulate most creeks with a watershed of less than 50 acres. The Corps, CDFW, and the Water Board have jurisdiction over ephemeral and intermittent creek channels, regardless of the size of their watershed. Therefore, creek channels that would be exempt from regulation under the Water Course Protection Ordinance are, or may be, subject to state and federal jurisdiction. To prevent members of the regulated community from inadvertently placing fill in such waters, the Ordinance's text should be expanded to clarify that the placement of soil in any channels with defined bed and banks, any ponds, and any wetland areas is likely to require state and/or federal authorization, and that failure to obtain appropriate authorization prior to placing fill in those waters may result in state and/or federal enforcement action. To prevent inadvertent violations of state and federal law, the Ordinance should require that property owners have a jurisdictional delineation of waters of the state and of the U.S. performed at sites at which the placement of imported fill is proposed.

Comment 4. The proposed use of the Water Board's Tier 1 Soil Environmental Screening Levels (ESLs) alone to screen imported soils should be augmented, where appropriate, with ecological screening levels, because Tier 1 Soil ESLs are not protective of aquatic habitats and special status species.

The Ordinance proposes to establish fill soil cleanliness by screening soil constituents against the Water Board's Tier 1 ESLs. However, the ESLs should not be used to define "clean" fill without additional metrics. The ESLs are intended for evaluating polluted properties, and the concentration levels represent thresholds in soil and groundwater that present insignificant risk or concerns (e.g., odors) to humans, upland terrestrial receptors, and aquatic water column receptors. The ESLs do not address the potential erosion of soil/fill material, dissolved transport in stormwater, or the potential pollution of wetland/stream sediment.

The Ordinance should be revised to include a definition of acceptable fill. The ESLs may be used to determine "acceptable" fill for placement in upland areas provided that: (a) no material classifiable as a hazardous waste is imported; (b) any materials placed at the surface are compliant with the polychlorinated biphenyls (PCBs) Total Maximum Daily Load (TMDL) (Water Board 2017); and (c) the fill material is not placed in or adjacent to any sensitive environments (e.g., wetlands; riparian corridors of any ephemeral, intermittent or perennial streams, or the stream channels; or endangered species habitats).

In rural and agricultural areas, contaminants in fill soil may pose a significant risk to animals, including listed species. Special status species, such as the California tiger salamander (CTS) and the California red-legged frog (CRLF) commonly breed in natural ponds or stock ponds on agricultural property and forage in creek channels. Some agricultural lands in Alameda County include designated critical habitat for species listed under the Federal Endangered Species Act. Levels of contaminants in soil that pose negligible risk to humans may be toxic to CTS and/or CRLF or inhibit the successful breeding of these species. Therefore, at any site at which imported fill may be washed by precipitation into creeks, ponds, or wetlands, the cleanliness of imported soil should be additionally screened using ecological screening levels that are protective of aquatic species, including special status species.

Prior to receiving permission to import soil to an agricultural property, the property owner should be directed to have a biological assessment performed to identify the presence of any sensitive biological receptors, such as riparian habitats, ponds, wetlands, or special status species, including the presence of critical habitat for a special status species. If special status species are present on or adjacent to the proposed fill import site, appropriate soil constituent screening levels should be selected to protect the listed species from constituents that may be transported in sediment or leached from sediment into habitat for those species. In addition to identifying appropriate screening levels, the biological assessment should examine the ways in which habitat may be compromised by the import of fill (e.g., placing fill over burrows that are occupied by CRS, CRLF, Alameda whipsnake, or burrowing owls). Where habitat used by special status species may be negatively impacted, the property owner should be directed to consult with CDFW and the U.S. Fish and Wildlife Service.

We are also concerned by text in the Ordinance that refers to "Tier 1 ESL levels or as modified by the DTSC or the RWQCB." This text is ambiguous and does not reflect the procedures used to develop ESLs. The Department of Toxic Substances Control (DTSC) is not involved in the development of the ESLs, which have been developed by the Water Board. Water Board staff revises the ESLs periodically to reflect the most recent scientific understanding of substance toxicity and the fate and transport of potentially toxic substances. We are not aware of any other means by which ESLs would be modified.

Text in the Ordinance also refers to soil that is "remediated to Tier 1 ESL standards." Soil remediation is conducted under the oversight of DTSC and/or the Water Board. Remediation of soils is outside of the scope of the Ordinance and references to remediation should be removed from the Ordinance.

Comment 5. The guidance for the importation of asphalt grindings in the proposed Ordinance is not sufficiently protective of human health and the environment.

The Ordinance does not restrict the importation of asphalt grindings to agricultural properties. Water Board staff requests that the Ordinance be revised to restrict import and placement of recycled materials, such as asphalt grindings, to situations in which the material is placed in a manner that does not create a risk to human health, the environment, or water quality. Asphaltic oil contains high concentrations of polycyclic aromatic hydrocarbons (PAHs) that typically exceed the Tier 1 (lowest) ESLs. The grinding process renders the PAHs more bioavailable to human and ecological receptors.

Comment 6. The Ordinance should include, but does not yet include, a protocol for developing a sampling plan capable of establishing beyond a reasonable doubt that imported soil is sufficiently clean ("acceptable") for placement in agricultural lands.

The Ordinance does not yet provide guidance for assessing the cleanliness of soil proposed for importation to agricultural lands. In assessing contaminant levels in soils, it is standard practice to specify the minimum sampling density necessary to establish that the soils have been sufficiently characterized. The Ordinance does not address the following, which are standard procedures in the evaluation of soils:

- Required minimum sampling density;
- A protocol for determining that sufficient samples have been collected to adequately characterize constituent levels in the soil;
- The list of analytes that must be tested for in the soil;
- The analytical methods that are considered acceptable for assessing the concentrations of contaminants in soils;
- Required reporting levels for analytical methods;
- Protocols to use in assessing data when method reporting limits are higher than appropriate screening levels;
- Acceptable calculations for establishing the likely range of contaminant concentrations in soils (e.g., upper confidence levels, mean values, median values, etc.);
- Acceptable quality assurance/quality control procedures to ensure that the data are of sufficient quality to be used in screening soil for use as imported fill.
- Specification of the level of certainty required for concluding that soil has met the appropriate screening guidelines (e.g., whether an 80 percent upper confidence interval or a 90 percent upper confidence level would be an acceptable metric for comparison with appropriate screening levels).

Water Board staff are familiar with two protocols that may be of use in improving screening protocols in the Ordinance: (a) the Alameda County Department of Environmental Health – Local Overnight Program's August 1, 2018, *Fill Material Characterization Guidance*; and (b) the Hawai'i Department of Health's October 2017 *Guidance for Soil Stockpile Characterization and Evaluation of Imported and Exported Fill Material*.

Comment 7. The Ordinance should include, but does not yet include, a protocol for selecting the constituents that must be analyzed for in soil to ensure that imported soil is sufficiently clean for placement in agricultural lands.

The Ordinance should, but does not yet, describe how to determine which elements and chemicals must be included in the list of analytes to be measured in soil proposed for import to agricultural lands. The text does describe required analytes in soil imported from agricultural lands or imported from areas adjacent to roadways, but the rationale used in each of those discussions is incomplete.

The Ordinance requires that soils that are derived from a source that has been in agricultural production in the last 50 years must be analyzed for agricultural chemicals (fertilizers, herbicides, and pesticides). We would like to note that residential areas with lawns and commercial properties with landscaping are also likely to have residues of fertilizers, herbicides, and pesticides in soils. Also, in the course of reviewing fill soil for use in levee maintenance in

the Don Edwards National Wildlife Refuge, we have observed that the upper two to three feet of soils used in agricultural production usually have pesticide levels that are not compatible with placement in or adjacent to aquatic habitat.

The Ordinance requires that soils adjacent to a freeway, state route, or major arterial roadway be analyzed for asbestos and lead contamination. This list should be expanded to include copper, which is present in many brake shoe formulations and is highly toxic to aquatic life. Soils adjacent to roadways should also be tested for petroleum hydrocarbons and combustion byproducts (e.g., PAHs). Also, since electric power lines often parallel roadways, soils adjacent to roadways should be tested for PCBs, which were a constituent of transformer fluids for many years. Finally, since maintenance crews often use herbicides to control road side vegetation, these soils should be analyzed for herbicides.

The Ordinance's language regarding asbestos could be updated. Ordinance page 3 of 5, in the discussion of soils near roadways, suggests that there is an ESL for asbestos. However, the hazards posed by airborne asbestos fibers differ from those of typical chemicals addressed in the ESLs, so asbestos is not included in the ESLs. Information regarding the regulation of airborne asbestos is available from the Air Resources Board. Information regarding managing asbestos hazardous waste is available from the Department of Toxic Substances Control.

Beyond listing potential agricultural- and transportation-related contaminants, the Ordinance does not yet provide guidance on the appropriate list of analytes to be selected for screening soils. Unless specific documentation exists for a given source of soil that rules out some classes of contaminants, soils should be screened for a full suite of metals, volatile organic compounds, semi-volatile organic compounds, polyaromatic hydrocarbons, PCBs, pesticides, herbicides, and fertilizers. The full list of analytes presented in the *Beneficial Reuse of Dredged Materials: Sediment Screening and Testing Guidelines, Draft staff report* (Regional Water Quality Control Board, 2000) should be used in testing soils, unless sufficient documentation is available to exclude the likely presence of a class of contaminants in a soil source. Such documentation may include Phase 1 and Phase 2 Environmental Site Assessments of the proposed source site.

Comment 8. The Ordinance should include, but does not yet include, a protocol for screening imported soil for materials other than elements and chemicals that may negatively impact habitat quality at the receiving site.

In addition to screening soils for harmful levels of elements and chemicals, the Ordinance should set requirements for trash and invasive plant species seedstocks. To prevent imported soil from functioning as a landfill, the Ordinance should specify screening protocols to ensure that the imported soil does not contain significant trash or debris. Also, invasive plant species are dominant in many developed areas of the County. Soil exported from these areas may contain a seed bank of these invasive plant species. Depositing fill soil in agricultural areas may introduce new seed stocks from invasive species into habitat at the fill site and compromise populations of native plant species. The Ordinance should include protocols that minimize and avoid the spread of invasive plant seed stock.

Comment 9. The Ordinance improperly exempts soils from analysis if they are obtained within the same zoning designation of Agriculture or PD or if soil is imported from a Licensed and Permitted Retailer or Wholesaler.

The Ordinance does not require soil to be tested if it is imported from the same zoning designation or if soil is imported from a Licensed and Permitted Retailer or Wholesaler. However, technical bases for these exemptions are not provided.

Because of the combination of alluvial and tectonic processes in the shaping of landforms in the Bay Area, the chemical compositions of soils can vary significantly over relatively small distances. In addition, some Bay Area soils have elevated levels of metals that are toxic to wildlife at relatively low concentrations, including arsenic, cadmium, mercury, nickel, selenium, and thallium. In subregions in which elevated levels of these metals occur in soils, the local flora and fauna have often adapted to these metals over many generations. Moving soils from such a source area to an area that does not contain elevated levels of some of these metals is likely to have a negative impact on flora and fauna at the fill location. Therefore, soils that are moved to a non-adjacent property should be tested, at a minimum, for the full suite metals that are commonly elevated in some Bay Area locations.

Licensed and permitted retailers or wholesalers of soil do not always screen soils for potential toxicity to special status species. Unless retailers and wholesalers have data available that demonstrates that constituents in the soils do not exceed acceptable concentrations for safe exposure of special status species, soil from these sources should be tested to verify that it is safe to use in potential listed species habitat.

Comment 10. The Ordinance does not yet include, but should include, a technical rationale for the expertise considered appropriate for establishing that imported soil is sufficiently clean.

The Ordinance requires "documentation by a licensed Geologist or qualified professional of fill cleanliness." However, the text does not yet provide guidance for how to identify qualified professionals with expertise in soil screening for use in special status species habitat. Proper screening should be conducted by professionals with experience in toxicology, analytical chemistry, and statistics.

Comment 11. The Ordinance must be appropriately reviewed in conformance with the California Environmental Quality Act (CEQA).

The County is proposing to satisfy the requirements for review under CEQA by referencing the Categorical Exemptions from review under Sections 15307 and 15308 of the CEQA Guidelines.

15307. Actions by Regulatory Agencies for 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.

15308. Actions by Regulatory Agencies for 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.

As we noted above, the proposed screening levels and exemptions from analysis are not sufficiently protective of wildlife, including special status wildlife and associated critical habitat, to justify use of the proposed categorical exemptions.

In addition, the placement of fill material to depths of 3 feet is likely to result in the take of listed species. CTS, Alameda whipsnake (AWS), and CRLF spend large portions of their life in ground squirrel burrows. The placement of fill over burrows will entomb any species present in those burrows. Fill is likely to have a similar negative impact on burrowing owls, which are a California species of special concern, in ground squirrel burrows. If imported soils are not appropriately screened, constituents may discharge into aquatic habitat at concentrations that are harmful to special status species.

Categorical exemptions are not applicable when where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances (Section 15300.2(c)). The potentially significant impacts to special status species are a significant effect on the environment that makes the draft Ordinance ineligible for a categorical exemption from CEQA review.

We recommend that the Ordinance be revised as described in the preceding comments and that it receive appropriate review under CEQA.

Close

Please contact Brian Wines of my staff at (510) 622-5680 or brian.wines@waterboards.ca.gov if you have any questions or would like to discuss this matter further.

Sincerely,



Keith H. Lichten, Chief
Watershed Management Division

Digitally signed by
Keith H. Lichten,
Division Chief
Date: 2019.04.08
18:03:20 -07'00'

Date: April 8, 2019
To: CVMAC and Planner Rodrigo Orduna
From: Bruce King, 3127 Terry Court, Castro Valley CA
Subject: Comments on the Proposed Fill Importing Ordinance

The proposed Fill Importing Ordinance does not adequately address the environmental problems caused by soil dumping and the needed controls. The ordinance as proposed could easily result in lasting damage to creeks, riparian areas, native wildlife, and special status species.

Environmental Review. The County needs to conduct an environmental review of the proposed Soil Importing Ordinance under the California Environmental Quality Act (CEQA) to ensure that biological resources are protected and ensure that ordinance is consistent with requirements such as the County plans and ordinances (e.g., County of Alameda General Plan, Measure D, and WPO). Potential effects to the environment from the proposed amounts of soil to be imported need to be determined and appropriate controls need to be incorporated before a final ordinance is resolved.

Stream Identification and Protection. The ordinance needs to cover identification and appropriate protection of ephemeral, intermittent, and perennial streams and wetlands.

- **Watercourse Protection Ordinance (WPO).** Elements of and means to enforce the Alameda County WPO need to be included in the Soil Importing Ordinance including WPO requirements to establish a minimum creek setback, establish a final setback that includes riparian areas and riparian areas that may be restored, and to not "develop" within the setback including the disturbance of natural materials. The WPO has some exemptions for "agricultural operations," but does not generally have exemptions for other activities or exemptions based on the land's zoning designation.
- **Federal and State Jurisdiction.** County approval of large soil fill projects should be subject to review by state and federal wildlife agencies. The ordinance needs to cover ephemeral and intermittent creeks and must provide landowners seeking a county permit clear guidance on the need to identify state and federal jurisdictional waters in consultation with the U.S. Army Corps of Engineers, California Department of Fish and Wildlife, and the Regional Water Quality Control Board, and should provide appropriate contact information for those agencies. Landowners should be warned of the potential penalties for placing dirt fill in jurisdictional waters without federal and state permits.

Reduce Fill Quantities, Assess Impacts, Minimize Economic Incentives, and Do Inspections.

The amount of allowed fill should be greatly reduced, the need for and impact of the fill should be assessed, economic incentives to import fill solely to generate income should be minimized, and the County should have resources to do inspections.

- **Minimize Economic Incentives.** There is a strong financial incentive for rural landowners to import fill without any legitimate agricultural purpose. The current draft ordinance could allow the depth of imported fill to reach five feet at its maximum point, a whopping 8,000 cubic yards (\$160,000) per acre. The total allowed fill thickness or fill depth should be greatly reduced (e.g., should not exceed 11 inches or 1,500 cubic yards per acre). Applicants should be required to demonstrate the need for and an agricultural connection to fill.
- A Conditional Use Permit and certification of soil cleanliness must be required for amounts of fill greater than 10 cubic yards per acre per year.
- **Restrictions and Assessment Needed for Resource Management Lands.** Resource Management, RM Canyonlands, and Water Management Lands are both more sensitive (e.g., special status species) and more vulnerable (e.g., slopes are greater in much of the RM lands leading to greater erosion and stream impacts). The Soil Importing Ordinance needs to balance the legitimate needs of agricultural landowners in RM land with the increased potential for harm. Additional fill should on these lands should have greater restrictions or not allowed in some cases, assessment of the proposed need, and assessment to ensure there are no significant environmental impacts. Note that no requirements to assess or protect the habitat are included in the current proposed requirements for soil fill on "R" zoning districts.
- **Questions need to be asked** - Will the fill be used for cultivation of crops, processing or production facilities? Prior to approving the permit, the county agency should examine the existing conditions of topography, soil types, watercourses and riparian areas to ensure that the environment is not destroyed. Other areas of consideration include: the area impacted in relation to the parcel size, slope, depth of fill, percentage of and method of compaction. Is the earthen material compatible with the existing soil conditions? What is its source (a construction or industrial site, road grading or excavation)? What will be the volume of truck traffic on County maintained roads, and the Gross Vehicle Weight for each load? Does the proposed delivery route allow for vehicles of this GVW?
- **County Fee and Inspections.** The County should charge a standard fee per ton of fill to cover regulatory costs, additional code enforcement staff and inspections, and road maintenance. For example, a Solid Waste Facility Fee of \$4.34 per ton is charged countywide at commercial landfills. There should be an on-site inspection before issuance of the CUP; quarterly inspections of landfill operations to ensure that regulations are being complied with before excessive quantities of fill accumulate; unannounced inspections up to one per month; and sign-off by the county Local Enforcement Agency after completion of the fill operation.
- **Sensitive Species.** Requirements and criteria need to be included in the Soil Importing Ordinance to identify and protect sensitive species. Biological surveys are needed of dumping areas for sensitive wildlife and plant species, and no permits should be issued for soil importing that would harm or cover habitat for protected or sensitive species. Even smaller quantities of per acre fill might have significant impacts.

Turn in Copy
to MAC

CASTRO VALLEY MAC MEETING

PROPOSED SOIL IMPORTING ORDINANCE

APRIL 8, 2019

Good Evening MAC Board Thank you for your time

My name is Diana Hanna a very long time resident living on Agriculture land in Cull Canyon

10142 Cull Canyon Rd. Castro Valley

My concerns are many regarding the dumping of soil in our rural/Ag land. To list a few.

1. Legitimate Ag land importing of soil to replace top soil, repair ranch roads, filling of wash out areas, cultivation of crop is part of taking care of a ranch/farm.
2. However allowing developers to dumped soil at a cheaper rate and unchecked for toxics, debris, invasive weeds and more is UNTHINKABLE. If we want to protect our land/environment/humans & wildlife, make these developers dump at the Landfills.
3. OR the soil must be certified/tested to meet Tier 1 State Standards before a rancher/farmer/rural landowner has soil dumped on their property.
4. Developers or Firms that dispose of soil pay a tipping fee to landowners from \$20 a cu yd (\$200 per truck load) for clean soil & up to \$50 cu yd for soil NOT CERTIFIED as clean. Each foot of fill per acre (1,600 cu yd) can generate \$30,000 in tipping fees. The County draft ordinance could allow the depth of imported fill to reach FIVE feet or 8,000 cu yd (\$160,000) per acre. There is a strong financial incentive for rural landowners to import soil without any legitimate agricultural purpose.
5. Even if soil is clean dumping/spreading is damaging to Native plants, grasses, insects, riparian areas, tributaries, & wetlands & wildlife such as burrowing owls.
6. The amount of damage to our rural roads with 80,000 pound trucks driving on them is equal to 6,000 car trips.
7. I hope everyone interested in this issue has thoroughly read the 11 page letter from California Dept. of Fish and Wildlife. AND after reading the letter I do not see how the proposed County Draft could ever be approved. PLEASE DON'T ALLOW THE DUMPING OF UNTESTED SOIL OR TO ALLOW MORE THAN 12 INCHES OF SOIL PER ACRE. Thank you

Diana Hanna



Alameda Creek Alliance

P.O. Box 2626 • Niles, CA • 94536
Phone: (510) 499-9185
E-mail: alamedacreek@hotmail.com
Web: www.alamedacreek.org

April 5, 2019

Alameda County Planning Department
Rodrigo Orduna
Assistant Planning Director
224 W. Winton Avenue, Room 111
Hayward, CA 94544
rodrigo.orduna@acgov.org

Re: Alameda County Soil Importing Ordinance

The Alameda Creek Alliance supports the adoption of a soil importing ordinance to address the problem of illicit landfill and massive soil importing in unincorporated Alameda County, activities that are causing potential harm to wildlife habitat, groundwater, and creeks. We encourage the Alameda County Planning Department to strengthen the draft ordinance, which currently does not adequately protect sensitive native wildlife and streams.

The proposed ordinance is not categorically exempt from the California Environmental Quality Act, as the Planning Department claims. The California Department of Fish and Wildlife informed your agency in a February 7, 2019 letter of potentially significant impacts to endangered, threatened, and sensitive wildlife and plant species from soil importing authorized by the County under this ordinance. CDFW notified your agency of potentially significant impacts to at least 11 federally and state listed wildlife species, and at least 5 federally and state listed native plant species. Alameda County is required under CEQA to prepare a public Environmental Impact Report for the ordinance, since there is substantial evidence in the record that significant environmental effects may occur. The County's ordinance does not meet the categorical exemption standards of CEQA §15037 and §15038, since there is a reasonable possibility that the activities authorized by the ordinance may have a significant effect on the environment.

As far as the substance of the ordinance:

Agricultural lands accepting significant volumes of soil imports should be required to pay for biological surveys of dumping areas for sensitive wildlife and plant species;

No County permits should be issued for soil importing that would harm or cover habitat for protected or sensitive species without adequate mitigation approved by CDFW;

Any County approval of large soil fill projects should be subject to review by state and federal wildlife agencies to ensure there is not killing or take of federally and state protected species;

The ordinance should not exempt ephemeral and intermittent creeks, since contaminants and sediment from soil fill areas in ephemeral and intermittent creeks could migrate downstream into larger tributaries and degrade water quality;

The ordinance should not exempt placement of asphalt grindings without buffer areas to prevent petroleum pollution of creeks, and should require a finding by the Regional Water Quality Control Board on adequate buffers and measures to prevent leaching of asphalt into waterways;

The ordinance should provide landowners seeking a county soil-importing permit clear guidance on the need to identify state and federal jurisdictional waters in consultation with the U.S. Army Corps of Engineers, California Department of Fish and Wildlife, and the Regional Water Quality Control Board, and should provide appropriate contact information for those agencies. Landowners should be warned of the potential penalties for placing dirt fill in jurisdictional waters without federal and state permits.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Miller", with a stylized flourish at the end.

Jeff Miller, Director
Alameda Creek Alliance



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.nrc.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BROWN, 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 15388 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

Conserving California's Wildlife Since 1870

et seq.) or rare species under the Native Plant Protection Act (NPPA). (Fish and Game Code, § 1800 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, 15084, and 15085). 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 1800 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 (*Delinandra boottianii*) as well as San Joaquin spearscale (*Extriplex joaquiniana*) and brittle-scale (*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 (*Gentromadia 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 dislocation 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 5516. "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, § 88.1). "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.

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.ceqa-co-conservation.org/documents.htm>.

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.cdfw.ca.gov/wildlife/nongame/spec>)
- 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 conservation 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 elighted 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

Mr. Rodrigo Orduña
February 7, 2019
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necessary to protect resources. If you have any questions, please contact Ms. Marcia Greferud, Environmental Scientist, at (707) 844-2812; or Ms. Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 844-5541.

Sincerely,



Gregg Erickson
Regional Manager
Bay Delta Region

cc: Ryan Olesh, ryan.olesh@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@acrod.org
Alameda County Resource Conservation District



CITIZENS COMMITTEE TO COMPLETE THE REFUGE

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Sent via electronic mail only

Mr. Rodrigo Orduna

Assistant Planning Director

Alameda County Planning Department

Community Development Agency

224 West Winton Avenue, Suite 111

Hayward, CA 94544

rodrigo.orduna@acgov.org

Re: Proposed Soil Importing Ordinance

Dear Mr. Orduna,

These comments are submitted by the Citizens Committee to Complete the Refuge (CCCR). CCCR is a San Francisco Bay Area environmental group. Our founding members worked to establish the nation's first national wildlife refuge in an urban setting, the Don Edwards San Francisco Bay National Wildlife Refuge (Refuge), and then to expand the Refuge boundaries. Our work focuses on protecting the biological diversity of the San Francisco Bay area, the Refuge, wetlands and endangered species habitat. We regularly comment on local, state and federal policies regarding wetlands and endangered species.

We are writing to express our concerns regarding the potential adverse impacts of the proposed Soil Importing Ordinance. While we appreciate the Alameda County Planning Department Community Development Agency's (County) intent to prevent the occurrence of illicit landfills, we do not concur that the proposed ordinance as currently written would have "no significant impacts to the environment. To the contrary, the ordinance as written has the potential to result in significant adverse impacts to waters of the U.S., waters of the state and rare and listed species. CCCR strongly reiterates the concerns outlined in the California Department of Fish and Wildlife dated February 7, 2019 that was included with the comments received to date.

Potential adverse impacts resulting from the proposed ordinance include, but are not limited to the following:

- Potential conflicts with federal Section 404 Clean Water Act regulations – has the County consulted with the U.S. Army Corps of Engineers Regulatory Division regarding the proposed ordinance. Also has the San Francisco Bay Regional Water Quality Control Board (RWQCB) been consulted regarding the proposed language? The Ordinance is silent regarding potential need for Section 404 CWA authorization and RWQCB Porter-Cologne authorization for placement of fill in waters of the U.S. and waters of the state. Contrary to the County's Watercourse Protection Ordinance and Grading ordinance, regulated waterbodies under the Clean Water Act and Porter-Cologne include intermittent and ephemeral creeks. The staff report only states on page 2 that a Grading Permit is not required if "...the grading does not endanger any structure or any public or shared access roadway, or cause an impact to any watercourse." [emphasis added] Does this include ephemeral and intermittent drainages? If not, the

ordinance will result in conflicts between the requirements of Section 404 of the Clean Water Act and Porter-Cologne.

- The proposed ordinance does not provide explicit language regarding the avoidance of impacts to wetland habitats or the potential need for federal and state permits for the filling of wetlands.
- The proposed ordinance is silent regarding the potential adverse impacts to rare and federal and state listed species. Has the U.S. Fish and Wildlife Service been consulted regarding the proposed ordinance? Numerous rare and state and federal listed species are known to occur in Alameda County and critical habitat has been identified by the U.S. Fish and Wildlife Service for listed species such as the Alameda whipsnake, the California tiger salamander and the California red-legged frog to name but a few. Landowners should be informed of the need to consult with the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife before importing soil. And biological surveys performed by a qualified biologist, must be required prior to any soil importing activity in areas of potential rare or listed species. The current language of the ordinance is insufficient to prevent a "take" of state or federally listed species or critical habitat:

"...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."

"Take" according to the Endangered Species Act regulation is defined as:

"The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct."

Activities that bury or alter a listed species habitat could potentially be considered a "take."

- The RWQCB should have the final word about what is considered "clean fill" as that agency is tasked the protection of aquatic resources, beneficial uses and water quality. We are concerned "Tier 1 ESL levels" might not be protective of aquatic dependent species such as fish and amphibians.
- It is absolutely imperative that enforcement continues - the staff report states there are 33 sites that are known to have imported soil and that proper documentation of the cleanliness of those soils have not been determined. Testing of the soils from these sites is crucial, to prevent migration of contaminants, particularly as there are "suspicions" that the soils may have some levels of contaminants and unsuitable for uses outlined in the proposed ordinance.
- We ask for clarification regarding the "importing of asphalt grinding" especially for new agricultural roads, as we read the staff report, such activities are exempt from the proposed Soil Import Ordinance, would such an activity require a grading permit? What type of environmental review would occur for such an activity? What restrictions pertain to this type of activity in terms of proximity to waters or the state or U.S. and wetlands?

Due to the substantive concerns we have expressed and those already expressed by the CDFW, we strongly urge the County to extend the Soil Importing Moratorium and to prepare an environmental impact report consistent with the requirements of CEQA. We request that we added to the contact list

of interested parties and also that we are notified of future opportunities to provide comments on the proposed ordinance.

Regards,

Carin High

Carin High

SUNOL CITIZENS' ADVISORY COUNCIL

**Wednesday, March 20, 2019
6:30 p.m.**

SUNOL GLEN ELEMENTARY SCHOOL

MINUTES

- 1. CALL TO ORDER** – Council Member Johnson called the meeting to order at 6:30 p.m.

Board Members present: Connie DeGrange, Gerry Beemiller, Jordan Franco, Rosemary Chang, and Naingha Johnson

Board Members excused: None

Staff present: Bonnie Terra, Alameda County Fire Department; Chris Miley, Supervisor Valle's Office; Deputy Jon Hamm, Alameda County Sheriff's Department; Edward Labayog, Community Development Agency; Melissa Rydman, Clerk, Board of Supervisors Office; Rodrigo Orduno, Community Development Agency; Sandra Greene, County Administrator's Office

- 2. PUBLIC COMMENT/OPEN FORUM/PUBLIC ANNOUNCEMENTS**

Molly Barnes thanked Member Chang for the coordination with the Livermore Valley Opera to visit Sunol Glen School and the arrangement for 10 free tickets to be given to students to attend the opera. The School District adopted Social Emotional Learning as part of curriculum to address student's mental health. School District staff can now get trained as a Mental Health first aid responder. Bingo for Books is occurring on March 20, 2019, located in the cafeteria, around 50 families participating; and the book sale is on the same date and will be held in the library.

A community member reported on mobile citizen app for phones. The citizen had personally submitted 20 items through the app and will return to report on progress of the submissions.

A community member commented that there is a 4-H Pancake Breakfast on Sunday April 14, 2019, 8 AM - 12 PM at Sunol Glen School. On Wednesday, March 27, 2019, there is a Rural Roads Group meeting at the Martinelli Event Center from 4 PM - 6 PM.

Community member Kelly spoke about the importance of the Niles Canyon pedestrian/bicycle proposal.

Community member Jim commented on the removal of the beams from Main Street and that a long term solution for the railroad crossing is in process.

3. REPORTS/UPDATES – Informational Items:

Alameda County Fire Department – Bonnie Terra, Alameda County Fire Department, reported 21 calls for service in the area. The only damage was a car that caught fire.

Alameda County Sheriff's Office – Deputy Jon Hamm, Alameda County Sheriff's Department, reported that on March 9, deputies received a call – through investigation, found \$10,000 of stolen properties and suspect arrested for burglary and drug paraphernalia. Sheriff's Deputies were able to catch suspect thanks to owner's video surveillance.

PROGRESS REPORTS (AS NECESSARY) – Informational Items:

Sunol Septic Working Group – Member DeGrange reported that at the last meeting the eight options for the feasibility study on the treatment of wastewater were discussed. One of the proposed options is an upgrade to the leach field at the Sunol Depot Garden. The next meeting is Tuesday, April 9, 2019 (second Tuesday of each month) in the cafeteria at Sunol Glen School. All agendas and handouts are at the County website at https://www.acgov.org/acsh/landuse/sunol_septic.htm

Sunol Fire Safe Coalition – No updates.

4. COUNCIL/STAFF COMMENTS

Chris Miley, Supervisor Valle's Office, reported the Sunol Stroll and Roll is tentatively scheduled for Sunday, September 22, 2019. More information will be available in May 2019.

5. COMMUNITY DEVELOPMENT AGENCY UPDATE ON CANNABIS BUSINESS PERMIT APPLICATION PROCESS

Rodrigo Orduna, Community Development Agency (CDA), reported there are currently two applications for cultivation in East County. One is close to Sunol on Mission Road for the cultivation of young plants that will be sold as seedlings. The other location is in Livermore, where the application is to grow the plants to harvest the buds. There is a potential for a dispensary on Andrade Road, no application has been filed yet. An application has been filed for a cannabis delivery service based in Alameda County.

6. FILL IMPORTING ORDINANCE – Approval of draft regulations for the importing of fill onto properties in the unincorporated areas of Alameda County

Attachment

Members Franco and Beemiller recused themselves.

Rodrigo Orduna, CDA, reported that the Moratorium on soil importing expired on March 17, 2019. The CDA has completed a draft Ordinance for the Alameda County Board of Supervisors to consider. The Ordinance affects R-1-L (single family residential, limited agricultural) zones. The current Grading Ordinance is not affected by the Fill Importing Ordinance. The expected first reading of Ordinance before the Board of Supervisors is at the Tuesday June 11, 2019 Board Meeting, second reading on Tuesday, June 25, 2019. The Ordinance is effective 30 days following final approval by the Board of Supervisors

Community Member Debbie Ferrari expressed concerns about enforcement of the current Grading Ordinance and the proposed Fill Import Ordinance as there have been previous instances where soil was imported but not used for the stated purpose.

Bill Rose stated that an administrative conditional use permit should be required for importing soil and that the five foot fill limit should be eliminated.

Andrew Turnbull summarized results from an informal survey and stated that he would send the survey in full to the Commission Board Members.

Jim O'Laughlin stated that this is a complex issue that gets more ambiguous and that information regarding this issue has been very confusing and filled with discrepancies.

Kelly Abreu provided a transcript of the discussion of Item #1 from the October 26, 2017 Agenda for the East County Board of Zoning Adjustments. Kelly stated that Alameda County accepts a fee of \$4.34 per ton of earthen material; and there have been problems in enforcing Grading codes. Kelly proposed that the Clean Water codes should be used instead of what is proposed in the new Ordinance.

Member Beemiller stated that the quantities of allowable soil importing in the current draft of the Ordinance are too small and that the limits originally discussed were not as small. The current proposal is too costly and restrictive for his current and future winery/event center plans.

Member Chang expressed concerns about existing soil that has been dumped, that the Board of Supervisors has made no allowances to hire people to enforce the regulations, and that the involvement of Environmental Health has been removed from the Ordinance.

Member DeGrange asked for clarification regarding lot sizes and why the Ordinance was more restrictive for small properties than the larger properties. Member DeGrange expressed her concerns about the use of a bill of lading as proof of soil quality due to the lack of information on a bill of lading.

Member DeGrange recommended to remove the word "substantially" from Conditional Use Permits Item "g", that the special findings should also apply to Administrative Conditional Use permits, that there be more equivalency between small and large properties for 1-10 cubic yards of fill, that the bill of lading includes the location that the soil came from and that soil from areas zoned for dirty activities be excluded.

Recommendations and comments from the public and Council will be forwarded to the Board of Supervisors for consideration

Motioned by Member Chang, seconded by Member DeGrange - Approved 3, recused 2.

7. APPROVAL OF MINUTES –

FEBRUARY 20, 2019

Edits were given Item 2, to add read "...current balance of Sunol Business Guild maintenance money is \$17,624; and Item 5, to change PLA to Transcontinental Railroad.

Motioned by Member Franco, Seconded by Member Beemiller - Approved 4 Ayes, 1 Excused

ADJOURNED

Motioned by Member Johnson, Seconded by Member Chang - Approved 5 Ayes

Recommendations and comments from the public and council will forwarded to the Board of Supervisors.

Motioned by Member Chang, seconded by Member DeGrange - Approved 3, recused 2.



**Alameda County Board of Supervisors
Transportation and Planning Committee**

September 17, 2018

Dear Board Members,

The Alameda County Resource Conservation District's Board of Directors 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.

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 tail 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 in 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 ACRCD 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-owner's 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 ACRCD 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 ACRCD 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

