



# ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

## MEMORANDUM

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**TO:** Board of Supervisors' Transportation and Planning Committee

**FROM:** Chris Bazar, Director, Community Development Agency  
Albert Lopez, Planning Director

**DATE:** June 4, 2018

**SUBJECT:** Adoption of an Urgency Interim Ordinance Adopting a Moratorium on Dirt Importing Within the Agricultural District and Combining Agricultural Use District of the Unincorporated Area of the County of Alameda.

### **BACKGROUND:**

There has been a recent increase in and awareness of soil importing activity in unincorporated County areas including, rural agricultural land in Fairview, the Castro Valley canyon lands, and East County areas such as Sunol and unincorporated areas near Livermore and Pleasanton. Some properties have imported dirt, soil, construction debris, plant material, or road material, or a combination of these, with many land owners claiming the material will be used for minor grading or agricultural purposes and therefore exempted from any County ordinance. Although these claims are difficult to substantiate, the importing of material has reached such amounts (e.g., up to a million cubic yards proposed on one 600-acre property) that dirt importing has become a separate activity on its own and Staff believes some regulation of this activity is needed.

The effects of this activity on rural lands include potential impacts to groundwater, natural habitat, topographic features and drainage, dust and air pollution, and traffic; if left unregulated, these could result in long term detrimental impacts to county resources. Also, since there is no jurisdictional verification of the quality of the imported dirt and other materials, there are concerns related to soil quality and stability impacts. Dirt importing needs to be immediately curtailed to allow for additional County analysis and review to minimize potential impacts to traffic and the environment.

### **DISCUSSION:**

The County of Alameda regulates land uses in the unincorporated areas of the County through various regulations including the General Plan, Specific Plans and Zoning Ordinance. The County's land use regulations govern the types of land uses that are permitted by right or are conditionally permitted. The Zoning Ordinance is a "permissive" zoning ordinance, listing those uses that are permitted by right or conditionally permitted; those uses that are neither permitted nor conditionally permitted are not allowed. Uses permitted by right in the agriculture district include traditionally agricultural uses such as growing crops and the keeping of animals. Conditionally permitted uses are generally more intensive uses such as landfills, composting facilities, and packing house for fruits or vegetables. Some amount of soil amendment or grading may be required for these uses, but traditionally this has been done from dirt existing on-site, with small amounts of soil imported as amendment.

The County's Grading Ordinance (Chapter 15.36) includes 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. However, exemption from the Grading Ordinance does not make an activity a permitted use under the Zoning Ordinance.

Dirt importing includes activities such as large-scale dirt importing, stockpiling, or accepting high volumes of deliveries or disposal of dirt and/or fill, and is the subject of this urgency ordinance; the use is not permitted or conditionally permitted and is therefore not permissible in the County's agricultural lands.

#### Health and Safety Concerns:

A number of dirt importing sites have commenced unpermitted operations within the unincorporated County. The County's Planning Department and Grading Department have begun inspecting these sites and proceeding with code enforcement actions where violations have been found. To date there are nineteen sites for which Code Enforcement has received complaints and that are being investigated for violations. Of these, six are verified violations with resolution being pursued.

Staff believes there is a current and immediate threat to the health and safety of County residents and the natural environment if dirt importing is not immediately curtailed to allow for additional analysis and review for a potential ordinance. It is envisioned the County may require an administrative permit to review the quantity and quality of dirt, the stability of the mounds of imported dirt, and impacts to natural resources and traffic. The County does not intend to impede existing or planned agricultural activities and other businesses compatible with agriculture, as the draft urgency ordinance contains exemptions to allow the small-scale importing of material for agricultural purposes.

Given that the County has a compelling interest in protecting the public health, safety, and welfare of its residents, visitors and businesses and, preserving the long-term economic viability of rural land within the unincorporated areas of the County, an urgency ordinance is advisable to preserve public health and safety while developing administrative zoning regulations that balance economic activity with the protection of County residents and the natural environment.

#### CEQA Impacts:

This Ordinance is Categorical Exempt from the California Environmental Quality Act, because there is no possibility that it will have a significant effect on the environment (CEQA Guidelines §15061(b)(3)).

#### Interim Moratorium Ordinance Finding:

In light of the above concerns, including but not limited to the potential harms to the safety, health, and welfare of the County residents should dirt import facilities be permitted to operate unregulated, it is in the interest of immediately preserving the public safety, health and welfare to adopt this urgency ordinance establishing a moratorium. The moratorium will allow the County to, among other related tasks, immediately proceed with a study and public hearings to consider a revised ordinance that most effectively regulates dirt importing and minimizes the negative effects of such uses, including traffic, safety, noise, and environmental concerns.

State law allows the County to adopt an interim ordinance that prohibits otherwise allowed uses when those uses conflict with a pending land use study. Such a measure requires a 4/5 vote of the Board of Supervisors; must contain a finding that there is a current and immediate threat to the public health, safety or welfare; and may be adopted without following the notice and adoption procedures required for other ordinances. The interim moratorium has an initial duration of 45 days and may be extended as specified by Government Code 65858.

**CONCLUSION:**

Staff recommends that the Transportation and Planning Committee of the Board of Supervisors move this proposal for an Urgency Interim Moratorium on dirt importing operations to the full Board of Supervisors on their hearing of Tuesday, June 5, 2018.

A Draft Ordinance is included in the T&P package for consideration.

Attachments

**ORDINANCE NO. 2018-\_\_\_\_\_**

**AN URGENCY INTERIM ORDINANCE ADOPTING A MORATORIUM ON DIRT AND DEBRIS IMPORTING WITHIN THE AGRICULTURAL AND COMBINING AGRICULTURAL USE DISTRICTS OF 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. The Zoning Ordinance is a permissive zoning ordinance, listing those uses that are permitted by right or conditionally permitted. Those uses that are neither listed as permitted nor conditionally permitted are not allowed; and
4. 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
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. The Board of Supervisors acknowledges that some amount of soil amendment or grading may be required for agricultural activities that are allowed in the A District or in the Combining L District; and
7. 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

8. Exemption from the Grading Ordinance does not make an activity a permitted land use under Chapters 17.06 or 17.26; and
9. Correspondingly, any exemptions provided in this interim zoning 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 moratorium 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
10. Large-scale dirt importing, or, accepting high volumes of deliveries or disposal of dirt or fill (“Dirt Importing”), is distinct from permitted agricultural land uses in the A District or Combining L District and, because it is not listed as a permitted or conditionally permitted use in the A District or Combining L District, it is not a permissible land use in the A District or Combining L District; and
11. Dirt Importing raises land use concerns regarding traffic and road safety, noise, and potential environmental issues such as truck emissions, dust and contaminated soil or fill; and
12. Dirt Importing 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
13. The County has identified properties that have been importing large volumes of dirt for commercial purposes and in a manner that does not appear to be for traditionally agricultural uses or pursuant to a conditional use permit for any conditionally permitted use, and it appears that a number of properties are engaging in Dirt Importing while claiming the activity will someday yield a traditionally agricultural use; and
14. There is a current and immediate threat to the health and safety of County residents and the County’s natural environments if Dirt Importing is not immediately curtailed to allow for additional analysis and review; and
15. Rural portions of the County where Dirt Importing is occurring have a diverse natural environment which requires protection, and Dirt Importing can immediately and irreparably impact biological habitat, aquatic environments and wetland areas, if not property regulated; and
16. The County does not intend to impede agricultural activities and other business activities compatible with agricultural uses. An urgency ordinance is necessary to preserve public health and safety while developing zoning and other regulations that balance economic activity with the protection of County residents and the natural environment; and
17. 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 Dirt Importing as a land use; and

18. A number of Dirt Importing sites have commenced unpermitted operations within the unincorporated area of the County. The County's Planning Department and Grading Department have begun inspecting these sites and proceeding with code enforcement actions where violations have been found; and
19. 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 should Dirt Import facilities be permitted to operate unregulated, it is in the interest of immediately preserving the public safety, health and welfare to adopt this urgency ordinance establishing a moratorium. The moratorium will allow the County to, among other related tasks, immediately proceed with a study and public hearings to consider a revised ordinance(s) that most effectively regulates Dirt Importing and minimizes the negative effects of such uses including traffic, safety, noise, and environmental concerns; and
20. State law allows the County to adopt an interim ordinance that prohibits otherwise allowed uses when those uses conflict with a pending land use study. Such a measure requires a four-fifths (4/5ths) vote of the Board of Supervisors; must contain a finding that there is a current and immediate threat to the public health, safety or welfare; and may be adopted without following the notice and adoption procedures required for other zoning ordinances. The interim moratorium has an initial duration of forty-five (45) days and may be extended as specified by Government Code Section 65858; and
21. 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 (CEQA Guidelines §15061(b)(3)); and
22. The Board of Supervisors considers it necessary to adopt this urgency interim ordinance to explicitly prohibit Dirt Import operations while the updates to the Zoning Ordinance and other ordinances are studied and developed.

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

## **SECTION II**

The uncodified Alameda County Ordinance Code is hereby amended to add the following interim zoning ordinance:

### **Temporary Prohibition of Dirt and Debris Importing**

Beginning on the effective date of this interim ordinance and continuing for the duration of this interim ordinance and any extensions thereto, the County hereby places a moratorium on Dirt and Debris Importing in the Agricultural ("A") District and the Combining Agricultural Use ("L") District of the unincorporated areas of the County of Alameda, as further specified herein.

- A. The following definitions apply for the purposes of this ordinance only:

1. "Debris" means all wastes and scrap material other than dirt, including but not limited to construction debris such as concrete, cement, asphalt, plaster, glass, metal scrap, or crockery.
  2. "Debris Importing" means accepting debris or allowing debris to be deposited on the property, including debris that is used as fill, stockpiled, or deposited at the receiving location for disposal.
  3. "Dirt" 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. Dirt includes earth, soil, rock, mulch, gravel, sand, ashes, shells, cinders, clay, and loam.
  4. "Dirt Importing" means accepting dirt or allowing dirt to be deposited on the property, including dirt that is used as fill, stockpiled, or deposited at the receiving location for disposal.
- B. Dirt Importing and Debris Importing are prohibited land uses in the A District and Combining L District, unless the property owner can demonstrate that it qualifies for one of the exemptions provided herein.
- C. The following activities are exempted from the moratorium, provided that they are performed in accordance with all applicable laws, regulations, and ordinances of the County:
1. Dirt Importing amounting to a maximum of two deliveries in any one day, up to ten deliveries in a given 30-day period (each vehicle bringing Dirt to the site, e.g. truck or trailer, constitutes a single delivery);
  2. Dirt Importing amounting to 20 cubic yards or less in any one day, up to a maximum total of 100 cubic yards in a given 30-day period;
  3. Dirt Importing required to conduct a land use permitted by right in the A District or Combining L District, which use will be commenced within three months following the commencement of the Dirt Importing; or
  4. Dirt Importing or Debris Importing performed in accordance with a specific zoning permit (e.g., Conditional Use Permit, Planned Development) issued pursuant to Title 17, a subdivision approval issued pursuant to Title 16, or a Surface Mining Permit or reclamation plan issued pursuant to Chapter 6.80 of the Alameda County Ordinance Code.
- D. The property owner is responsible for demonstrating that one of the exemptions applies by submitting to the Planning Director written documentation of the volume, rate, timing, and purpose of the planned Dirt Importing or Debris Importing. The property owner shall provide written documentation of the source of the Dirt or Debris to be imported. The documentation must be submitted at least seven (7) business days prior to commencement of the Dirt Importing or Debris Importing. The Planning Director will determine whether the Dirt Importing or Debris Importing described in the documentation meets the requirements of one or more of the exemptions and will notify the property owner in writing of the determination. The Planning Director's determination shall be final.
- E. Any Dirt Importing or Debris Importing in the A District or Combining L District that is not conducted pursuant to advance written confirmation of exemption from the Planning Director must immediately cease.

- F. In the event of a violation of this ordinance or any requirement imposed pursuant to this ordinance, the County may, in its discretion and in addition to all other remedies authorized by law, take such enforcement action as is authorized under Title 6 and/or Title 17 of the Alameda County Ordinance Code.

### SECTION III

Pursuant to Government Code Section 65858, this measure is declared to be an urgency interim ordinance, to take effect and be in force immediately upon its 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.

As an urgency interim ordinance, this ordinance shall be of no further force or effect forty-five (45) days from its date of adoption, expiring on July 20, 2018, unless otherwise extended by the Board of Supervisors pursuant to Government Code Section 65858.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on the 5th day of June, 2018, by the following called vote:

AYES:

NOES:

EXCUSED:

\_\_\_\_\_  
WILMA CHAN  
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