

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.
- M. Special Status Species means designated (rare, threatened, or endangered) and candidate species for listing by the California Department of Fish & Wildlife (CDFW); and designated (threatened or endangered) and candidate species for listing by the US Fish & Wildlife Service (USFW); and species considered to be rare or endangered under the conditions of Section 15380 of the California Environmental Quality Act Guidelines, such as those identified on lists 1A, 1B, and 2 in the 2001 *Inventory of Rare and Endangered Plants of California* by the California Native Plant Society (CNPS); and possibly other species which are considered sensitive or of special concern due to limited distribution or lack of adequate information to permit listing or rejection for state or federal status, such as those included on list 3 in the CNPS Inventory or identified as animal "California Special Concern" (CSC) species by the CDFW. Species designated as CSC have no legal protective status under the California Endangered Species Act but are of concern to the CDFW.

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 have a qualified biologist 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 (CNDDDB); and/or by the Qualified Biologist. For the purposes of this paragraph, documented occurrences means points on the CNDDDB and/or EACCS maps that identify where species have been recorded. In all cases, the most recent edition of the CNDDDB 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 maintenance of all applicable water runoff quality standards as prescribed by State law including consultation with Regional Water Quality Control Board staff as necessary, 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 \$1.29 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