

**COUNTY OF SAN DIEGO
BOARD OF SUPERVISORS - LAND USE
WEDNESDAY, MAY 19, 2021**

MINUTE ORDER NO. 6

SUBJECT: RECEIVE AND PROVIDE DIRECTION ON AMENDING THE GRADING, CLEARING, AND WATERCOURSES ORDINANCE TO STREAMLINE THE AGRICULTURAL CLEARING PERMIT PROCESS (DISTRICTS: ALL)

OVERVIEW

On October 10, 2018 (2), the Board of Supervisors (Board) heard the Report on Options to Improve Housing Affordability in the Unincorporated County and directed staff to update the Grading, Clearing, and Watercourses Ordinance (Ordinance). The direction included a phased approach to streamline the process for agricultural clearing permits (Agricultural Clearing Permits) first, followed by addressing grading for residential housing projects. Agricultural Clearing Permits are required for legal vegetation/brush clearing of land to establish agricultural operations. Although agricultural clearing is not a housing affordability item, it became linked to a larger effort to update the Ordinance for housing-related grading.

The Ordinance contains regulations for development involving grading, clearing, and watercourses. It is comprised of eight chapters containing information related to thresholds for permit requirements, permit fees, regulations, and design standards for applicable development and contains related definitions. During the October 10, 2018 (2) Board hearing, agricultural stakeholders commented that streamlining the process for Agricultural Clearing Permits is needed, resulting in the Board's direction to focus on agricultural clearing first. Agricultural stakeholders expressed that the current Ordinance is confusing because definitions are unclear, and agricultural clearing regulations are dispersed throughout four chapters of the Ordinance. Furthermore, stakeholders noted that Agricultural Clearing Permits are costly and can take up to two years to receive due to California Environmental Quality Act (CEQA) compliance and mitigation requirements. Other members of the public and regional, State, and federal agency staff commented that potential impacts to sensitive resources and stormwater best management practices could result from efforts to ease agricultural clearing requirements.

In response to Board direction, staff reviewed other jurisdictions' practices, legal requirements, stakeholder comments, and fiscal implications of various approaches to streamline the Agricultural Clearing process. Staff recommends a three-part approach to streamline the process for Agricultural Clearing Permits and address stakeholder comments. This approach, referred to as the Ordinance Update for Agricultural Clearing, includes (Part I) consolidating the agricultural regulations into a single chapter within the Ordinance, (Part II) clarifying language and adding missing definitions, and (Part III) exploring agricultural permit streamlining in conjunction with the draft North County Multiple Species Conservation Plan (North County Plan) currently underway and the future draft East County Multiple Species Conservation Plan (East County Plan), which is expected to resume after the North County Plan is completed. This will allow staff to explore allowing agricultural clearing exemptions within the Plan areas, and to be modeled after the South County Plan, which allows for 3,000 total acres of exemptions for agricultural clearing. As with the South County Plan, this approach would still maintain the discretionary permit requirement. However, the associated costs and time may be reduced.

This three-part approach will assist applicants by providing greater clarity and understanding of the Ordinance when complying with requirements for Agricultural Clearing Permits and will provide an

opportunity for the County to further consider and incorporate stakeholder comments received into current and future projects. If directed by the Board, staff will prepare draft amendments, complete environmental review, and return to the Board for consideration within the next 9-16 months depending upon the level of CEQA review required and the time it would take to complete.

To further address stakeholder input received as part of the project to streamline Agricultural Clearing Permits, alternative approaches for agricultural clearing were explored but ultimately were not included in staff's three-part recommendation. A Zoning Verification Permit process to allow limited agricultural clearing through self-certification with a ministerial permit and a No Permit alternative to exempt limited agricultural clearing from requiring a permit were explored. A major drawback of both the Zoning Verification and No Permit approaches is that they would increase the potential for non-compliance with State and federal laws, specifically for stormwater and water quality, and may increase overall State and federal agency scrutiny of County permitting due to increased code compliance cases. A Program Environmental Impact Report would also need to be prepared for both approaches, which would be costly and largely duplicative of efforts to allow agricultural clearing exemptions that will be considered as part of the North County Plan and future East County Plan.

During the public outreach process, feedback was received from agricultural stakeholders that agricultural grading permit streamlining is also needed in addition to a streamlined permit process for agricultural clearing. Stakeholders commented that the current agricultural grading permit threshold of 200 cubic yards is too low, agricultural grading requirements should be consolidated into a separate chapter, definitions are unclear, and site restoration should be allowed without permits. For reference, 200 cubic yards of soil would fill approximately 15 construction dump trucks. Environmental stakeholders also provided comments supporting maintaining existing regulations and not easing processes that protect stormwater or water quality. Consolidating agricultural grading regulations and revising unclear agricultural grading definitions will be captured in the first part of staff's recommended Ordinance Update for Agricultural Clearing. However, streamlining agricultural grading regulations is beyond the scope of the current Board direction to streamline the Agricultural Clearing Permit Process. If directed by the Board, a comprehensive update of the Ordinance could be initiated. Initiation of a comprehensive update would include reviewing best practices, evaluation of the benefits and risks of changing the agricultural grading requirements, and analysis of environmental impacts under CEQA.

Staff recommends proceeding with an Ordinance Update for Agricultural Clearing to address stakeholder requests to reorganize the agricultural clearing and grading regulations into one chapter, to clarify definitions, and to preserve existing environmental protections. Part I and Part II of staff's recommendation will consolidate agricultural clearing and grading regulations into a new chapter within the Ordinance, will clarify and add definitions, and Part III of the recommendation will explore additional agricultural clearing streamlining as part of the North County Plan and future East County Plan development.

RECOMMENDATION(S)

CHIEF ADMINISTRATIVE OFFICER

1. Find in accordance with Section 15061(b)(3) of the California Environmental Quality Act Guidelines that this action is exempt because it has no potential to result in either a direct physical change to the environment or a reasonably foreseeable indirect physical change to the environment.

2. Direct staff update the Grading, Clearing, and Watercourses Ordinance to consolidate the agricultural regulations into a single chapter within the Ordinance while maintaining existing requirements and to clarify language and add missing definitions.
3. Direct staff to analyze agricultural clearing exemptions as part of the previously directed North County Multiple Species Conservation Plan (North County Plan) and the North County Plan's accompanying Programmatic Environmental Impact Report.

FISCAL IMPACT

Funds for amending the Grading, Clearing, and Watercourses Ordinance (Ordinance) are included in the Fiscal Year 2020-21 Operational Plan in Planning & Development Services. If approved, this request will result in costs of \$100,000, and the funding source is prior year available General Fund fund balance. Approximately \$135,000 of budgeted funds were allocated for project management, meetings, stakeholder engagement and outreach, research, and analysis; the remainder of budgeted funds, \$100,000, remains unspent for Ordinance amendments. The staff recommendation for the Ordinance Update for Agricultural Clearing could be prepared using this existing budget. The total cost of the Ordinance is \$235,000. There will be no change in net General Fund costs and no additional staff years.

BUSINESS IMPACT STATEMENT

The approach to amending the Grading, Clearing, and Watercourse Ordinance supports the local economy by working with the public, the agricultural industry, and environmental stakeholders to clarify and improve permit processing and regulations.

ACTION:

ON MOTION of Supervisor Fletcher, seconded by Supervisor Anderson, the Board of Supervisors took the following actions:

1. Found in accordance with Section 15061(b)(3) of the California Environmental Quality Act Guidelines that this action is exempt because it has no potential to result in either a direct physical change to the environment or a reasonably foreseeable indirect physical change to the environment.
2. Directed staff update the Grading, Clearing, and Watercourses Ordinance to consolidate the agricultural regulations into a single chapter within the Ordinance while maintaining existing requirements and to clarify language and add missing definitions.
3. Directed staff to analyze agricultural clearing exemptions as part of the previously directed North County Multiple Species Conservation Plan (North County Plan) and the North County Plan's accompanying Programmatic Environmental Impact Report.
4. Directed staff to amend the Agricultural Clearing Permit Process pursuant to Board of Supervisors (Board) Direction on October 10, 2018, selecting Option 1A - Direct staff to pursue a two part agricultural clearing ordinance update:
 - Consolidate the agricultural regulations into a separate chapter within the Ordinance while maintaining existing requirements and add clarifications and definitions.
 - o Cost: No additional costs as \$100,000 available from using the existing budget allocation
 - o Timeframe: Up to 16 months
 - o Additional Staff: None
 - Separately, explore comprehensive agricultural clearing allowances under the North County Plan currently in development and the future East County Plan modeled after the South County Plan.

5. Directed staff to amend the Agricultural Clearing and Grading Permit Process to pursue an ordinance update to address agricultural and residential clearing and grading requirements, thresholds, and permit process (agricultural operations and residential development).
- Cost: Refer to budget \$985,000 in FY 2021-22
 - *Timeframe: 3 - 4 years, work could begin in FY 21/22: The timeframe will include extensive outreach to the public and stakeholders, drafting amended Ordinance language, CEQA review, preparation of a Programmatic Environmental Impact Report, and returning to the Board for updates and approval.
 - Additional Staff: 1 FTE

AYES: Vargas, Anderson, Lawson-Remer, Fletcher, Desmond

State of California)
County of San Diego) §

I hereby certify that the foregoing is a full, true and correct copy of the Original entered in the Minutes of the Board of Supervisors.

ANDREW POTTER
Clerk of the Board of Supervisors



Signed
by Andrew Potter