

December 15, 2009

Board of Supervisors
County of Ventura
800 South Victoria Avenue
Ventura, California 93009-1600

Watershed Protection District
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Transportation Department
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Water & Sanitation Department
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Central Services Department
Janice E. Turner, Director

Subject: **Approval of Concept for the New Grading Ordinance and
Direction to Staff on the Drafting of the New Grading Ordinance and
Grading Standards**

Recommendations:

1. Direct staff and County Counsel to draft the new grading ordinance in accordance with concepts set forth below in this letter.

Fiscal/Mandates Impact:

The fiscal impact is expected to be to the extent of staff time involved on the project and at no additional expense to the current budget.

Background:

In November 2007 the Board approved the existing grading ordinance (Appendix J to the Building Code) and asked that the following revisions be made to the ordinance:

1. Make the County responsible for all grading permit issuance and enforcement, including grading under the Hillside Erosion Control Ordinance (HECO).
2. Revise and incorporate the HECO provisions into the grading ordinance.
3. Ensure the protection of waterways and wetlands from adjacent grading activities.
4. Improve grading enforcement to include Civil Administrative Penalties and an appeal process.

Upon review of the existing grading ordinance it became clear that the current ordinance needs improvement in three respects that necessitate a complete rewrite in order to meet the Board's objectives: 1) exemptions and the ministerial permitting process can be strengthened by limiting the degree of subjectivity; 2) loopholes allow substantial grading activities to occur without any regulation; and (3) several existing regulations are unnecessary.



Discussion:

Summary of Existing Ordinances

The Existing Grading Ordinance

The existing grading ordinance is located in the Appendix J of the Ventura County Building Code, but the provisions are administered and enforced by the Director of Public Works.

The existing ordinance begins by stating that "no grading shall be performed without first having obtained a grading permit" (§J103.1), but it then goes on to establish 11 exemptions to the permitting requirement (§J103.2). Some of these exemptions require discretion to determine if they apply, and some allow substantial grading to occur with absolutely no regulatory oversight, which could be harmful to the public and other property owners. If an exemption does not apply, then a ministerial permit is required unless the grading activity is discretionary. Section J103.3 establishes six cases where a grading permit is discretionary and then provides for three exceptions where the permit reverts back to being ministerial. Figure 1 in Exhibit 1 graphically summarizes how the existing grading ordinance functions.

The Hillside Erosion Control Ordinance (HECO)

In an effort to reduce erosion and improve water quality from runoff caused by new agriculture in critical erosion areas, the County in 1981 adopted Ordinance No. 3539, known as the Hillside Erosion Control Ordinance or HECO. The HECO Ordinance was later amended in 1984 by Ordinance No. 3683. Both ordinances are stand-alone, uncodified ordinances administered by the Resource Conservation District (RCD) and enforced by the Public Works Agency. In general, HECO requires grading for new agriculture or change in agricultural uses located in specific areas designated on the County's Erosion Hazard Maps, to obtain and comply with an approved HECO Plan from the RCD. A HECO Plan is essentially a grading permit issued by the RCD. Enforcement of the HECO Plan, however, is a County responsibility. This separation of functions creates unnecessary complexity and confusion in the permitting process.

Goals and Intent of the New Grading Ordinance

Our first step in developing the concept for the new ordinance was to define its goals and intent as well as the unintended outcomes to be avoided. The stated goals of the new ordinance are:

1. Move the grading ordinance out from the Building Code into a single codified ordinance.
2. Incorporate HECO provisions into the grading ordinance. The HECO Ordinance would be repealed concurrent with the adoption of the new grading ordinance.

3. Establish and apply standards to all grading activities but not necessarily require a permit for all activities. This would effectively close the loopholes in the current ordinance that allow grading activities to occur without any parameters.
4. Eliminate permit requirements where oversight and inspection is not necessary.
5. Target regulatory provisions to meet the goals and intent of the ordinance.
6. Improve enforcement to include Civil Administrative Penalties and an Appeal process.

The intent of the new ordinance is to protect property owners, the public and the environment from unsafe and damaging grading practices while at the same time avoid burdening property owners with unnecessary permitting requirements. (See Table 1 in Exhibit 2).

New Grading Ordinance Overview

The concept for the new Grading Ordinance begins by requiring all grading activities to comply with established grading standards. These standards will be methodologies tailored to specific grading activities and must be followed unless deviations have been approved through a discretionary process. The standards will be developed to provide the intended protections listed in Table 1 and will address grading activities that could be potentially harmful if the standards are not followed, such as agricultural, development, hillside, oil field, etc. The standards will be based on common practices with input from established sources and stakeholders and will be aligned with other existing County policies. The standards will be approved by the Board, incorporated into the ordinance by reference, and will be readily available on the County web site. Table 2 in Exhibit 2 shows some of the sources and stakeholders that will be consulted for input during the development of the grading standards. Table 3 in Exhibit 2 provides a sample list of grading activities that will have standards. Figure 2 in Exhibit 1 graphically summarizes how the proposed grading ordinance would function.

Agricultural Grading Standards

The agricultural industry is very important to the economic vitality of Ventura County. Grading for both new and existing agricultural operations is essential to the effective use of land involved in agricultural production. Accordingly, special attention must be given to agricultural grading in order to achieve the protections intended without overburdening farmers. In order to achieve this balance, agricultural standards will be developed with input from the agricultural community and will be based in part on the Natural Resources Conservation Service's *Conservation Practice Standards*. Standards will apply to flatland and hillside grading but permits will not always be required. The threshold of when a ministerial grading permit is required (if at all) will be determined in coordination with key stakeholders such as those shown in Table 2 in Exhibit 2.

The Future Role of the Resource Conservation District (RCD)

Under the new ordinance, the County will have the lead on developing all standards, issuing all permits, and all enforcement actions. The RCD will serve as a consultant to the County on flatland and hillside grading, as needed, in the following areas:

- Development of Standards. Assist in the creation of standards that apply to all agricultural grading and conduct studies with cooperative property owners to validate and improve effectiveness of standards.
- Permitting. Assist in reviewing grading plans and inspections during grading.
- Enforcement. Refer violations of the standards to the Public Works Agency or RMA's Enforcement Division for enforcement.

Ministerial Grading Permits

A ministerial permit will be required when oversight of the grading activities is necessary to ensure compliance with the grading standards. That oversight will take the form of review of the grading plans before work begins and conducting inspections during the project to ensure compliance with the plan and standards. . Table 4 in Exhibit 2 summarizes when a ministerial permit would be required.

Discretionary Grading Permits

A discretionary permit would be required under two circumstances: 1) when the grading standards cannot be met, or 2) when the project is already discretionary by another process. Examples include: grading within a wetland or waterway when a Fish and Game Streambed Alteration Agreement is required or grading associated with a subdivision or conditional use permit.

Protections to Waterways and Wetlands

The new ordinance will incorporate comprehensive erosion control standards that will apply to all grading projects (not just those requiring a permit). These standards will put strict limits on erosion in order to meet the NPDES permit requirements. These strict limits will serve to protect wetlands and waterways from grading activities.

Additionally, the Department of Fish and Game will be notified of all projects near a red or blue line channel to determine if a discretionary Streambed Alteration Agreement will be required. If one is not required by Fish and Game, the County will nonetheless require a ministerial grading permit for all grading within a wetland or waterway to ensure compliance with the strict erosion standards.

Furthermore, all ministerial permits, not just those near known waterways, will require the applicant to sign a wetland acknowledgment statement. By signing, the applicant agrees and acknowledges that: (1) all grading must comply with the standards that protect waterways and wetlands; (2) if the applicant is not sure whether a wetland

exists, the applicant should hire a biologist to determine the presence of a wetland and take the appropriate actions to protect the wetland should one be identified; and (3) immediately advise the County and Fish and Game if a wetland is identified. The statement will also warn the applicant that any violations will be strictly enforced and penalties may be imposed. Furthermore, if the County identifies a wetland during inspection of a ministerial permit then the project will be stopped until a determination can be made as to whether a violation of the standards or permit exists. It's important to restate that any violation of the standards (with or without a permit) would trigger an enforcement action.

Staff believes that these changes provide the best protections available to wetlands and waterways within the new grading ordinance given the limits of current land use policy, the lack of available wetland location data, and the desire to not overly regulate property owners. A complete discussion on this topic along with other options considered is included in Exhibit 3 – Options for the Protection of Wetlands and Waterways.

Enforcement and Appeals

Any violation of a grading standard is subject to enforcement regardless of whether or not a permit was required or issued. The County will become aware of suspected violators either through regular inspections or citizen complaints. Enforcement will be handled through the Resource Management Agency's (RMA) Code Enforcement Division with support from Public Works. The new ordinance will also contain an appeal process for permit decisions and enforcement actions. Civil Administrative Penalties will be added by amendment after RMA's Code Enforcement Division has a civil penalty program in place. The code enforcement process is shown in Figure 3 in Exhibit 1.

Permitting Exceptions for Public Entities

Some public entities will be excepted from having to obtain a ministerial permit but they will still be required to follow all grading standards. These entities are:

- Public Works Agency performing maintenance on County property
- Public Utilities installing, repairing, or maintaining underground piping (facilities)
- Cities and CALTRANS working within their own rights of way

Public Outreach

Obtaining input from all stakeholders is very important as we develop the ordinance and grading standards. Staff from Public Works and County Counsel met with the Resource Conservation District Board of Directors on 10/20/09 to discuss the new concept for the ordinance. Although the RCD Board took no exceptions to the proposed concept for the ordinance, they expressed a strong desire to be involved in the development of the grading standards. Assuming your Board approves this new

grading ordinance concept, staff intends to meet with internal and external stakeholders including those identified in Table 2 in Exhibit 2.

Next Steps

Shown below are the next steps and milestone dates for drafting the new grading ordinance and standards. Staff intends to bring the draft ordinance and standards along with stakeholder input to the Board for approval in late spring 2010.

Receive comments and direction from the Board.....	12/15/09
Receive Input from Internal and External Stakeholders	Feb-Mar 2010
Finish draft ordinance and grading standards	Late Spring 2010
Present final ordinance and standards to the Board for adoption.....	Late Spring 2010

The County Executive Office, Auditor-Controller's Office, and County Counsel have reviewed this letter and concur with the recommended action.

If you have any questions concerning this item, please contact:

Phil Nelson	654-2096	Grading
Ray Gutierrez	654-2059	Grading
Linda Ash	654-2198	County Counsel

Respectfully,



Phillip L. Nelson
Director - Engineering Services Department

Exhibit 1 – Figures
Exhibit 2 – Tables
Exhibit 3 – Options for the Protection of Wetlands and Waterways
Exhibit 4 – PowerPoint Presentation to the Board