

County of San Luis Obispo

Agricultural Liaison Advisory Board

2156 Sierra Way, Suite A, San Luis Obispo, CA 93401



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VICE CHAIR: Lisen Bonnier

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Mark Battany

Agricultural Liaison Advisory Board (ALAB)

DATE: November 23, 2021

TO: San Luis Obispo County Department of Planning and Building and the San Luis Obispo County Board of Supervisors

SUBJECT: ALAB Comments on the Public Review Draft of the Paso Basin Land Use Planting Ordinance

To Kylie Hensley, Department of Planning and Building, and Honorable Supervisors,

At a special meeting on November 15, 2021, the San Luis Obispo County Agricultural Liaison Advisory Board (ALAB) voted unanimously to submit the following comments on the Public Review Draft of the Paso Basin Land Use Planting Ordinance (Planting Ordinance).

We understand this ordinance is attempting to provide relief for property owners and some farmers who face restrictions under the current Agricultural Offset program in San Luis Obispo County Code Title 8 and Title 22, however ALAB has serious concerns about the entirety of this ordinance and its implications. This process is also duplicative of a simultaneous process going on at the statewide level, the Sustainable Groundwater Management Act (SGMA) and local development of the Paso Robles Subbasin Groundwater Sustainability Plan (GSP), which takes precedence over the County's efforts.

We hope County leaders will consider the collective input that ALAB members have compiled here from the agricultural community and organizations we represent. We know our farmers and ranchers will play a critically important role in getting the Paso Robles Subbasin into balance, and ALAB will continue to offer input to help guide your policy decisions. We implore you to recognize the current and long-term need for this county to pursue new water sources, and to work more closely with state and federal leaders in developing critical water infrastructure.

1. Implications of the Planting Ordinance's expanded timeline to the year 2045.

Certainly, the current Agricultural Offset program has created challenges for property owners in the Paso Robles Subbasin since it was first adopted in 2013. These restrictions have consistently been described by SLO County Supervisors as a temporary, stop-gap measure that would sunset with approval of the GSP. Given that this Planting Ordinance has an expiration of 2045, we are concerned about this significant and precedential expansion of the

County's land use authority to incentivize or disincentivize certain types of agricultural production.

The significantly expanded timeline and policy changes proposed here requires agricultural stakeholders to consider the countywide, long-term effects of this Planting Ordinance, rather than just comparing it to the current Agricultural Offset program intended for Paso Robles. While it may provide relief to some property owners in the near-term, this Planting Ordinance is also a 23-year ban on new or expanded irrigated crop production.

2. SGMA is the more appropriate regulatory vehicle to balance the Paso Robles Groundwater Subbasin.

San Luis Obispo County has multiple groundwater basins with varying needs and conditions. We are concerned that this new long-term land use ordinance sets a bad precedent for the County to regulate other basins through its land use authority rather than through the state mandated GSP process under the Sustainable Groundwater Management Act.

If this Planting Ordinance moves forward, farmers in the Paso Robles Subbasin will unnecessarily be subjected to two separate regulatory structures. That means two separate basin boundary maps, two separate agencies governing their activities, and two sets of rules governing their farming operations in the Paso Robles Subbasin or Paso Basin Land Use Management Area.

The expansion of irrigation the Planting Ordinance will now allow may subsequently be disallowed in coming years by the GSP. Conversely, the GSP is designed to be adaptive and could potentially allow for new agricultural planting in parts of the Paso Robles Subbasin where appropriate, but the Planting Ordinance would take away that flexibility.

The Planting Ordinance itself states this same point in section K. Limitation of Permit:

“Any issued permit or exemption shall not exempt, supersede or replace any requirements of federal, state, and local laws and regulations, including but not limited to California Water Code Section 10720 et seq. And any groundwater regulation adopted pursuant thereto (e.g., any regulation adopted pursuant to California Water Code Section 10726.4), California Water Code Section 1200 et seq. and Chapter 8.40 of the County Code of Ordinances.”

Regulating groundwater resources is more efficient for agriculturalists and other stakeholders within the basin affected by this ordinance when handled through the GSP process. The Planting Ordinance will create additional administrative challenges and costs for the County for the next 23 years, all while making basin management more complicated, not less so.

Additional short-term extensions of the current Agricultural Offset program is preferable to the creation this new Planting Ordinance that has long-term implications for all of San Luis Obispo County agriculture.

3. Terms used in section C. Definitions are unclear and subject to interpretation and set dangerous countywide precedent.

The term “commercial crop” used to define “New or expanded crop production” (and also subsequently used throughout the Planting Ordinance) is unclear. If a farmer does not harvest and sell their crop in a given time period, are they exempt from the Planting Ordinance?

The Planting Ordinance defines “Site” as “any legal lot or parcel of land or contiguous combination thereof having the same owner, the same lessee, or the same controlling entity in existence on the effective date of this section.” The creation, interpretation, and enforcement of this definition is of concern to agriculturalists countywide and is crucial to the overall impact of the Planting Ordinance.

This definition seems to be arbitrary and based on preexisting ownership structures and will likely have many unintended consequences. If the intent of the ordinance is to ensure a more equitable distribution of water, each parcel should stand on its own merits. We are further concerned with the presumptions and expansion of County land use authority involved in the creation and application of this definition.

4. Precedent of giving County Planning and Building Department staff authority to conduct annual inspections on farms and ranches.

Section E. Procedures gives County Planning and Building Department staff authority for the next 23 years to "conduct annual site inspections for sites with an approved planting permit or exemption verification....to monitor the planting status before and after confirmation of final planting." Giving new long-term, open-ended authority for farmers and ranchers to have their property inspected annually under the County's land use authority is a new and dangerous precedent. We are concerned with this significant expansion of authority and the long-term implications of this fundamental change in approach. This expansion is not needed, as the County retains its current authority and code enforcement mechanisms to address complaints should they arise.

5. Confusing language regarding what sort of permitting will be required for well construction.

We are further concerned with the potential expansion of the County's authority regarding permitting for well construction. The Planting Ordinance implies that permitting for well construction is now subject to a discretionary permit. New language added at the end of section 8.40.030 – Acts Prohibited, permit required subsection c states:

“Without limiting the foregoing, no person shall be issued a permit to construct a groundwater well located within the Paso Basin Land Use Management Area to irrigate new or expanded plantings where said plantings do not meet the requirements of Section 22.30.205 and where the necessary planting permit or exemption has not first been approved.”

As Chapter 8.40 of the existing County Code contains rules for agricultural wells, the aforementioned new language seems to contradict the Planting Ordinance's Section K. Limitation of Permit, which states:

“Any issued permit or exemption shall not exempt, supersede or replace any requirements of federal, state, and local laws and regulations, including but not limited to California Water Code Section 10720 et seq. And any groundwater regulation adopted pursuant thereto (e.g., any regulation adopted pursuant to California Water Code Section 10726.4), California Water Code Section 1200 et seq. and Chapter 8.40 of the County Code of Ordinances.”

6. The potential increase in pumping could result in the State taking over management of the Paso Robles Groundwater Subbasin.

Under the proposed ordinance, an estimated 4,800 property owners in the Basin will be allowed to expand pumping from five acre-feet per year (AFY) to 25 AFY without a permit. This could increase the burden on the basin by 96,000 AFY; for context, the current total water use for the Basin is estimated at 68,000 AFY.

Such a large increase jeopardizes local control of the Paso Robles Subbasin and could cause the California Department of Water Resources to take over management of the GSP process. As the lead Groundwater Sustainability Agency in the Paso Robles Subbasin, the County will ultimately have to account for this significant new groundwater extraction, complicating and delaying GSP implementation. Local control is preferable to state control.

7. Confusing language regarding what sort of agricultural activity requires or does not require a permit or an “exemption verification.”

It is unclear whether or not the routine replanting of the same crop, such as replanting a vineyard after the commercial useful life of the wine vines has expired, requires farmers to receive a permit. This is important to clarify as this will be the most common activity of farmers and ranchers under the Planting Ordinance.

It is unclear what the process will be for property owners who are currently limited to zero AFY or five AFY. While the term “exemption verification” is used, this is essentially a permit to use up to 25 AFY. All of the cumbersome procedures and red tape outlined in Section E. Procedures “apply to both planting permits and exemptions.” Using the terms “exemption verification” instead of “planting permit” appears to be trying to mask the bureaucratic process farmers and ranchers will have to undergo to use 25 AFY under this Planting Ordinance and is confusing to stakeholders.

It is also unclear why the “exemption verification” does not “run with the land if the property is conveyed” as is the case for other permits. If a family member or other party purchases the land, can they not continue to irrigate the existing crops on site?

8. The process and eligibility for “planting permit applications claiming supplemental irrigation of dry cropland” is unclear.

Under “Table 2: Crop-Specific Water Duty Factors,” the criteria for assigning a water-duty factor for Supplementally Irrigated Dry Crop Land is described as follows:

“The applied water factor for supplementally irrigated dry cropland shall be based on the average annual water usage over the six-year period preceding the application date, as substantiated by applicant-provided information outlined in Section G.”

The application date cannot be any earlier than the Planting Ordinance’s effective date of August 31, 2022. If a property owner claiming a water credit for Supplementally Irrigated Dry Cropland submits an application under this Planting Ordinance, they are saying they have been irrigating a certain amount each year since 2016. This implies that irrigation being done over the past six years in violation of the existing Agricultural Offset program will now be used to establish a baseline for future irrigation. The current Agricultural Offset program allows for such pumping on a “case by case basis.” Is the intent here to remove discretion by the “joint committee of representatives from the department of planning and building, department of public works, and the department of agriculture/weights and measures, in consultation with UC Cooperative Extension” review process?

Section “B. Intent” of the Planting Ordinance states: “This section is not intended to incentivize the conversion of historic grazing and dryland farming areas to irrigated crop production. Therefore, allowed exemptions are based on site configuration as of the effective date of this section.” This new process for claiming a water credit for Supplementally Irrigated Dry Cropland seems to contradict the intent, as it

would allow conversion of these dryland crops to other crops. Additionally, ALAB is concerned with the County dictating the type and production methods of agricultural production through its land use authority.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Rodrigues".

Dan Rodrigues
ALAB Chair
dan@vinaquest.com