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December 3, 2022

San Luis Obispo County Board of Supervisors
1055 Monterey Street Suite D430

San Luis Obispo, CA 93408

By email to: Boardofsups@co.slo.ca.us

Re: December 6, 2022 Agenda Item 47: Paso Basin Planting Ordinance

Supervisors,

On behalf of our 700 San Luis Obispo County Farm Bureau member families and businesses, we urge you to not move forward with the Paso Basin Land Use Management Area Planting Ordinance. We fully appreciate the positive intent behind the Planting Ordinance, but please recognize what every agriculture organization in San Luis Obispo County is trying to tell you: the negative, albeit unintended, consequences of the Planting Ordinance far outweigh the benefits it might provide. Like it or not, passing the Planting Ordinance is an endorsement of the five terrible “Mitigation Measures” (regulations) on farmers and ranchers that fundamentally change the relationship between SLO County government and agriculture.

We challenge proponents of the Planting Ordinance to identify small farmers, who after reading through all the costly and burdensome bureaucratic red-tape created by the Planting Ordinance, actually intend on using this new 25 acre-feet per year (AFY) allowance. To say the Planting Ordinance “at least gives these farmers a chance” ignores the very real impediments it creates.

The Planting Ordinance limits these farmers to 25 AFY for the next 22 years. The Paso Robles Groundwater Sustainability Plan (GSP) is more flexible, it is required to undergo periodic updates, and it can allow for more than 25 AFY of irrigation on sites in the Paso Basin if groundwater conditions allow. Farm Bureau did not support the current Agricultural Offset Ordinance when it was put into place in 2013. We agree that the current ordinance is unfair to some property owners, but this Planting Ordinance creates more problems than it solves. We urge you to continue short-term extensions of the current Agricultural Offset Ordinance until the GSP is implemented.

Given the structure of the Planting Ordinance (the allowance of 25 AFY of water for an unlimited number of sites if they are not contiguous), the most likely beneficiaries will be people with larger financial resources who will take advantage of this new system and plant new crops on multiple sites. As not all leases include a recorded Memorandum of Lease, the County will not be able to prevent a single vineyard company from leasing an unlimited number of sites each with 25 AFY of new water.

WHO WILL BE SUBJECT TO THE PLANTING ORDINANCE?

- Any farmer or rancher in the Paso Basin who rotates to a different irrigated crop type (e.g. planting vegetables one year and planting a hay crop the next year) will be subject to the Ordinance.
- Replanting the same crop type and acreage that has been in production within 6 years preceding March 1, 2023 will be exempted. However, the County has not been able to clarify if this exemption goes away if the replanting is happening in an area on the site that has not been cultivated within the previous 10 years.
- Anyone in the Paso Basin seeking to use the new 25 AFY allowance will be subject to the Ordinance.

NEGATIVE IMPACTS TO SMALL FARMERS

The Ordinance will create several unintended negative consequences. Impacts to smaller scale farmers include:

- Limiting smaller scale farmers to only 25 AFY of irrigation water until 2045, even though the forthcoming GSP process allows for more flexibility for these farmers;
- A new and unprecedented Greenhouse Gas and Carbon Sequestration mandate to plant crops; and
- A costly new County requirement to hire a geologist to perform a hydrology report before planting crops.

The Planting Ordinance does not expire until 2045, meaning all farmers and ranchers in the Paso Basin will be prevented from expanded plantings for 22 years even if groundwater conditions improve based on GSP actions many years before then. This Ordinance impedes the GSP.

Mitigation Measure GHG-1 - Carbon Sequestration

San Luis Obispo County is about to be the first government entity in the United States (local, state or federal) to mandate Greenhouse Gas and Carbon Sequestration for planting crops. We are greatly concerned about the potential for this new regulation to creep into other routine agricultural activities in the County. From Section 22.30.205.F.4.a. of the Planting Ordinance:

“Carbon Sequestration [Mitigation Measure GHG-1]. A description of conservation practices (e.g., cover cropping, composting) to sequester carbon and/or reduce GHG emissions by at least 0.15 MT CO₂e per acre of planting area (1:1 offset) as estimated by COMET-Planner according to the California Department of Food and Agriculture (CDFA) Healthy Soils Program guidelines, to be implemented prior to final planting. Include in site plan if applicable.”

Many of our farmers use the **voluntary** Healthy Soils Program managed by the California Department of Food and Agriculture. We believe County Planning and Building Department staff are not equipped to implement Mitigation Measure GHG-1 in a scientifically sound and consistent manner across the Paso Basin that actually mitigates Impact GHG-1 to any significant degree. **Even if they are, the COMET-Planner tool used by the state is not capable of being used to mitigate site-specific conditions.** As stated at the top of CDFA’s COMET-Planner website (available at <http://comet-planner-cdfahsp.com>):

“Recommended use of COMET-Planner CDFA HSP: This evaluation tool is designed to provide estimates of the net greenhouse gas reductions for specific agricultural management conservation practices included in the California Department of Food and

Agriculture (CDFA) Healthy Soils Program (HSP). This tool also helps estimate payments associated with implementing the practices under the HSP. Please note that a comprehensive assessment of site specific conditions may not be accounted with this tool.” [Emphasis added]

A practice like composting, for example, may not even be a legal option for growers of fruits and vegetables regulated under the federal Food Safety Modernization Act’s Produce Safety Rule due to the food safety risks it can create. Furthermore, asking the County Planning and Building Department to be the final decision-maker about what specific practices are sufficient to comply with this mitigation measure is unfair to staff, creates a bad precedent for all SLO County agriculture, and shows that the Ordinance will require discretionary decisions by staff, in contradiction of the stated goal for the Ordinance to issue ministerial permits.

Mitigation Measure UTIL-2 – Hydrology Report

Making small farmers bear the cost of hiring a licensed geologist to prepare a Hydrology Report is a dangerous precedent for how the County regulates planting crops. From Section 22.30.205.F.4.b. of the Planting Ordinance:

Hydrology Report [Mitigation Measure UTIL-2]. A hydrology report prepared by a licensed geologist that verifies the proposed water use on site will not result in more than two feet of drawdown over five years in off-site wells within 750 feet of on-site groundwater wells that will be used to irrigate new plantings allowed by the exemption.

The County has already chosen to take a hard line on not allowing new irrigation wells in parts of the Basin managed by the County Groundwater Sustainability Agency. Ranchers are being denied permits for a new well to water their cattle. The Planting Ordinance adds more red-tape.

NEGATIVE IMPACTS TO ALL FARMERS

Farmers and ranchers of any scale that are subject to the Ordinance will be burdened with:

- A new 50-foot setback from riparian and wetland areas (includes intermittent blue-line streams);
- Mandatory reporting of monthly irrigation water usage to the County (records may be public); and
- A new dust control regulation with things like paving farm roads and installing speed bumps along fields.

To say the Planting Ordinance does not affect existing farms and ranches is false. The moment a farmer rotates to a new crop type (e.g. planting alfalfa for a year in a field that previously had vegetables) they will be subject to three of the five Mitigation Measures created by the Planting Ordinance. Rotating between crop types is a routine agriculture practice and is often needed for improving soil health or managing crop diseases. The Planting Ordinance discourages farmers from using this important practice because rotating between crops makes them subject to the 50-foot riparian setback, the dust control regulation, and a new irrigation reporting mandate.

Mitigation Measure BIO-1 Riparian and Wetland Habitat Setback

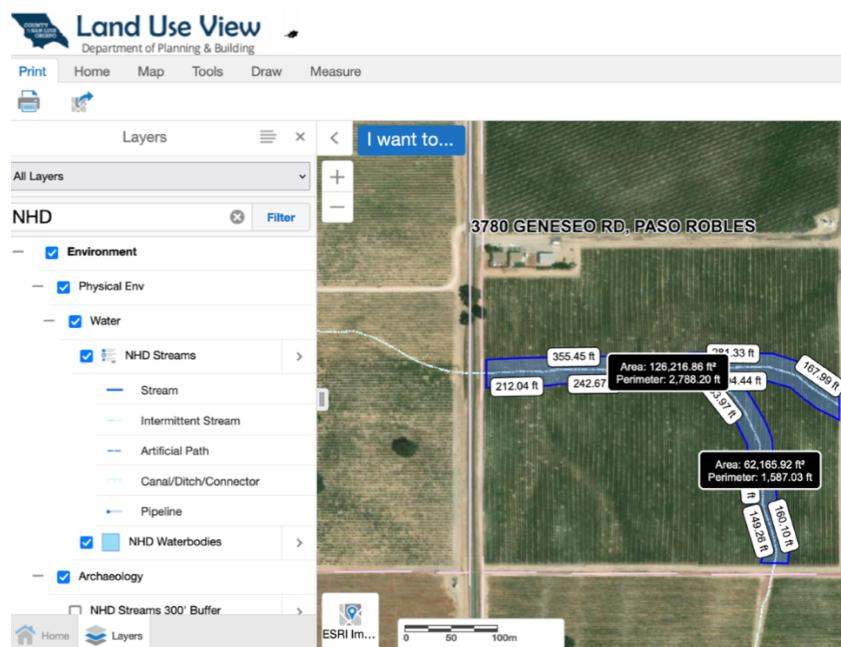
The Planting Ordinance will establish SLO County’s first-ever riparian setback for agriculture. From Section 22.30.205.F.1.b. of the Planting Ordinance:

Riparian and Wetland Habitat Setback [Mitigation Measure BIO-1]. A setback shown on the planting plan of at least 50 feet from the proposed planting areas to the edge of riparian vegetation and wetland areas unless the applicant can verify that the proposed planting area within the setback was in irrigated crop production on January 31/March 1, 2023."

The 50-foot riparian setback will take prime farmland out of production. As documented in SLO County Farm Bureau's July 6, 2022 comment letter on the Draft Environmental Impact Report for the Planting Ordinance, Farm Bureau asked County staff, "What map will the County use to determine where exactly 'the edge of riparian vegetation and wetland areas' is located?" The response was: "It is the applicant's responsibility to include streams, riparian vegetation, and wetland areas in their submitted planting plans. Planning staff will reference the NHD Streams and USFWS layers (available in LandUseView for reference) to evaluate proposed planting plans. If proposed planting may be within the 50' buffer, staff may request the applicant hire a biologist to delineate the boundary."

We cannot predict exactly how many current farmers and ranchers will need to rotate crop types over the next 22 years and become subject to the Planting Ordinance, but we do know there are a significant number of intermittent or "blue-line" streams across the Paso Basin.

Consider the scenario of a vineyard that needs to remove grapes and plant a different crop type. When they go to plant the new crop, the 50-foot riparian setback kicks in, and now they cannot plant in an area they were previously able to plant. To illustrate this point, we looked at just National Hydrography Dataset (NHD) Streams (classified as "StreamRiver Intermittent" on this particular property) located on a 30.8 acre block of irrigated wine grapes located at 3780 Geneseo Road in Paso Robles. The Mitigation Measure's requirement for a 50-foot setback from this stream removes approximately 188,381 square feet, or 4.3 acres of prime farmland from production. The image below shows the loss of farmland resulting from the new riparian setback in blue.



When this farmer decides to change back to wine grapes, the Planting Ordinance will have removed 4.3 acres of production from the vineyard. To quantify what the annual economic impact of this loss to a grower would be, we used the 2021 Crop Report statistics from the SLO County Department of Agriculture/Weights and Measures. Looking at the most common varietal of wine grapes, Cabernet Sauvignon, the average value per ton is \$1,624 with an average yield of 4.205 tons per acre, meaning a single acre of wine grapes has a gross value of \$6,828.92 per acre. Multiplied by the 4.3 acres removed from production by the 50-foot riparian setback Mitigation Measure, the impact to this 30.8 acre block of wine grapes is an annual loss of \$29,364.

Mitigation Measure - UTIL-1 Well Metering and Reporting

For the first time in our County's history, the County Government is going to require farmers to report their monthly water usage. This Mitigation Measure "UTIL-1 Well Metering and Reporting" applies to both 25 AFY "Exempted" plantings and Planting Permits. While the current Agricultural Offset Program does require growers to install a well meter as part of their water-neutral replanting permit, never before has the County mandated this reporting. While on its face this may not seem like a significant burden, this will add to the dozens of other reports that local, regional, state and federal government agencies now require of our farmers, which will exacerbate the trend we see of farm consolidation and the decline of small family farms. As a farm may use multiple wells per site, the cost for farmers to comply with this new requirement is not insignificant, and is a new burden on the already limited staffing resources of growers, especially on smaller farms.

Mitigation Measure - AQ-1 Construction Emissions Reduction

Dust Control Mitigation Measure AQ-1 is an extremely onerous burden to smaller farming operations. From Section 22.30.205.E.6 of the Planting Ordinance:

"Dust Control [Mitigation Measure AQ-1]. On individual planting sites that have been uncultivated for 10 years or more preceding the date of application, the planting permit applicant and/or property owner shall maintain unpaved roads, driveways, and/or parking areas with a dust suppressant (consistent with the "Approved Dust Suppressant" section of the San Luis Obispo Air Pollution Control District's [SLOAPCD] CEQA Handbook) such that fugitive dust emissions do not exceed SLOAPCD's 20 percent opacity limit for greater than 3 minutes within any 60-minute period (SLOAPCD Rule 401) or prompt nuisance violations (SLOAPCD Rule 402). To improve the dust suppressant's long-term efficacy, the planting permit applicant and/or property owner utilizing the planting ordinance shall also implement and maintain design standards to ensure vehicles that use unpaved roads are physically limited (e.g., speed bumps) to a posted speed limit of 15 miles per hour (mph or less). Department staff may verify compliance with this section during annual site inspections."

The cost to run a water truck to apply dust suppressant (employee time, all the costs associated with a purchasing and operating a truck, and the water wasted in the process) is burdensome to small farmers. The cost to "implement and maintain design standards to ensure vehicles that use unpaved roads are physically limited (e.g., speed bumps) to a posted speed limit of 15 miles per hour (mph or less)" is burdensome to small farmers.

We have already established that farmers rotating to a new crop type are subject to the Planting Ordinance and will be forced to comply with Mitigation Measure "AQ-1 Construction Emissions

Reduction.” While the Planting Ordinance does include language limiting the applicability of this Mitigation Measure to only Sites “that have been uncultivated for 10 years or more preceding the date of application,” current farmers and ranchers could still be subject to it. For example, an existing farmer who stops irrigating for 6 years, then uses the 4.5 years allowed to finish planting, plus any additional extensions allowed because of a local drought emergency declaration, will now be in the “10+ year” category and be subject to a costly dust suppressant program or pay to have the “road” paved.

The aforementioned scenario shows how the Planting Ordinance erodes this County’s “Right to Farm Ordinance” codified in Chapter 5.16 - Agricultural Lands, Operations and the Right to Farm. The farm could have been in operation for more than three years without creating a nuisance, fallowed the ground for 10 years, and would now be subject to Dust Control Mitigation Measure AQ-1. From the Right to Farm Ordinance:

*5.16.030 - Preexisting agricultural operations not a nuisance. - (a) No agricultural activity, operation, or facility, or appurtenances thereof, conducted or maintained for commercial purposes, and in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality, shall be or become a nuisance, private or public, due to any changed condition in or about the locality, **after it has been in operation for more than three years if it was not a nuisance at the time it began.**”* [Emphasis added]

We want to thank Supervisor Arnold for working with us to add language in the draft ordinance that limits some of the negative impacts to current farmers and ranchers. We still feel the problems and costs created by the Planting Ordinance greatly outweigh the benefits, but if the Board chooses to pass the Planting Ordinance, some changes should be considered. Specifically:

1. Further clarify that replanting the same crop type and acreage on the same Site is still exempted from the Planting Ordinance even if that replanting is in an area on the Site that has not been cultivated within the previous 10 years. Without this clarification, the County may need to review all planting activity to see if Mitigation Measure AQ-1 might apply. We request you add “that are not exempted under 22.30.205.A1-2 and” in Section 22.30.205.E.6. so that it now reads:

*Section 22.30.205.E.6 Dust Control [Mitigation Measure AQ-1] On individual planting sites **THAT ARE NOT EXEMPTED FROM THE ORDINANCE UNDER 22.30.205.A1-2 AND** that have been uncultivated for 10 years or more....*

2. Similar to the previous comment on the applicability Mitigation Measure AQ-1, further clarification is needed in Section 22.30.205.F.1.b. Riparian and Wetland Habitat Setback [Mitigation Measure BIO-1] to make it clear there is no scenario where replanting the same crop type and acreage will make someone subject to the Planting Ordinance. For example, if the replanting is happening on a portion of the Site that was not in irrigated crop production on March 1, 2023 and it contains a riparian or wetland area, is that planting now subject to Mitigation Measure BIO-1? Also, it is not clear if the phrase “...in irrigated crop production on March 1, 2023” includes crops that may not physically be in the ground on that date. Some annual crops are grown only certain times of the year, and this language seems to penalize a farmer for having irrigated crops in the ground in April, but not in March. The section should be amended to read:

Section 22.30.205.F.1.b. Riparian and Wetland Habitat Setback [Mitigation Measure BIO-1] A setback shown on the planting plan of at least 50 feet from the proposed planting areas to the edge of riparian vegetation and wetland areas unless the applicant can verify that the proposed planting area within the setback OR ANY PORTION OF THE SITE was in irrigated crop production AT ANY TIME WITHIN SIX YEARS PRECEDING on March 1, 2023.

3. Consider shortening the length of the Planting Ordinance to 5 years (2028) instead of the current proposed expiration of 2045. This allows for the 25 AFY minimum for everyone, it keeps the water-neutral 1:1 offset in place, and it prevents small farmers from being stuck with a 25 AFY cap until 2045 when the GSP might allow for planting flexibility in some or all parts of the Basin. Amend section 22.30.205.J. Termination to read: “*The provisions of this section shall expire on January 31, 2028.*

We remain willing to work with you on ways to achieve our shared goals of protecting agriculture and achieving groundwater sustainability in the Paso Robles Basin and other basins in the County. An additional short-term extension of the existing Agricultural Offset Ordinance would be a better approach than the Planting Ordinance. **Our local agriculture community is united in opposition to the Planting Ordinance.** Please listen to what SLO County Farm Bureau, SLO County Cattlemen’s Association, Grower-Shippers Association of Santa Barbara and SLO Counties, Paso Robles Wine Country Alliance, SLO County Agricultural Liaison Advisory Board, and the SLO County Planning Commission is telling you – do not move forward with the Paso Basin Planting Ordinance.

Sincerely,



Brent Burchett, Executive Director
San Luis Obispo County Farm Bureau