

ORDINANCE NO. ____

AN INTERIM ZONING/URGENCY ORDINANCE OF THE COUNTY OF SAN LUIS OBISPO
PROHIBITING NEW AGRICULTURAL PONDS AND RESERVOIRS IN THE INLAND AREA OF
THE UNINCORPORATED COUNTY (DOES NOT INCLUDE THE COASTAL ZONE) EXCEPT
FOR PROJECTS COMPLYING WITH CERTAIN PERMITTING PROCEDURES AND
DEVELOPMENT RESTRICTIONS

The Board of Supervisors of the County of San Luis Obispo do ordain as follows:

Section 1. Findings and Declarations.

The Board of Supervisors makes the following findings in support of the enactment of this urgency ordinance in the inland area of the unincorporated county:

- A. This Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §2100, et seq.) (“CEQA”) because:
1. Per CEQA Guidelines §15061(b)(3) – The interim zoning/urgency ordinance is not subject to CEQA due to the general rule that an action is not subject to CEQA where it can be seen with certainty that there is no possibility that it will have a significant effect on the environment. The ordinance provides for regulations to protect environmental resources, including groundwater supplies, and thus will not have a significant adverse effect on the environment.
 2. Per CEQA Guidelines §15307 (Class 7) – The interim zoning/urgency ordinance consists of regulations and restrictions on activities to assure the maintenance, restoration, or enhancement of county water supplies, a natural resource.
 3. Per CEQA Guidelines §15308 (Class 8) – The interim zoning/urgency ordinance consists of regulations and restrictions on activities to assure the maintenance, restoration, or enhancement of the environment, including the county’s groundwater supplies and all of the people, species, and environs that rely on that resource.
- B. Agricultural ponds and reservoirs allow landowners to pump and store large quantities of groundwater. This practice has the potential to reduce groundwater supplies for other rural residential and agricultural parcels in the region, interfere with existing wells on neighboring properties, and result in the loss of groundwater due to evaporation.
- C. Recent drought conditions have exacerbated declining groundwater levels in the county and have raised public awareness and concern about wasteful and inefficient water use. According to the U.S. Drought Monitor, as of the adoption date of this Ordinance, the County of San Luis Obispo is experiencing a D4 (Exceptional Drought), the most severe level. Groundwater levels throughout the county have been in decline for over a decade, and the current “exceptional drought” has exacerbated this decline.
- D. The Board of Supervisors has declared three groundwater basins, Nipomo Mesa (part of Santa Maria Groundwater Basin), the Los Osos Groundwater Basin, and the Paso

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Robles Groundwater Basin, at Level of Severity (LOS) III, which indicates that groundwater demand has met or exceeded the dependable supply.

- E. Currently, the County's Land Use Ordinance (Title 22 of the County Code) allows for agricultural ponds and reservoirs to be constructed with grading permit approval. Agricultural ponds and reservoirs with a water storage capacity greater than one acre foot are subject to environmental review under CEQA and are approved administratively without a public hearing or notification to adjacent landowners. Based on the recent rates of decline of water levels in the county and the reported increase in incidences of well failures within the county, continuing to allow the construction of agricultural ponds and reservoirs under the existing Land Use Ordinance requirements poses a current and immediate threat to the people, species, and environs within the county, and to the public, health, and welfare as a whole.
- F. In order to address water supply and other environmental impacts of agricultural ponds and reservoirs, the County is contemplating amendments to its General Plan and/or zoning ordinance and intends to study those potential amendments within a reasonable time. In the meantime, the approval of agricultural ponds and reservoirs in the unincorporated county would threaten the public health, safety, and welfare by exacerbating declining groundwater levels and contributing to the failure of additional residential and agricultural wells. This urgency and interim zoning ordinance will allow County staff time to complete necessary studies and reports for the contemplated amendments to its General Plan and/or zoning ordinance while preserving groundwater resources.
- G. This Ordinance is adopted as an urgency ordinance pursuant to the provisions of Government Code sections 25123 and 25131 and as an interim zoning ordinance pursuant to the provisions of Government Code section 65658 and shall be effective for a period of 45 days from its passage. Based on the findings set forth above in this section of the Ordinance, the Board of Supervisors finds and determines that the adoption of this Ordinance as an urgency ordinance is necessary for the immediate preservation of the public peace, health, safety, and welfare pursuant to the requirements of Government Code sections 25123, 25131, and 65858, and is necessary to provide additional time to prepare the studies and reports required to consider a comprehensive ordinance and/or General Plan amendment addressing the water supply impacts of agricultural ponds and reservoirs.
- H. This interim zoning/urgency ordinance does not apply to areas within the Coastal Zone of the county.

Section 2. Definitions.

For the purposes of this Ordinance, the following terms have the definitions set forth below:

- A. “Alternative Review Program” is a process that allows an applicant to obtain technical assistance, inspection, and sign-off by either the Natural Resource Conservation Service (NRCS) or the Resource Conservation District (RCD), pursuant to Section 22.52.080 of the County Code.
- B. “Applicant Acceptance” means the date when the Director of Planning and Building determines an application includes all of the information that is required for processing.
- C. “Director of Planning and Building” means the Director of the Department of Planning and Building of San Luis Obispo County as established by Chapter 2.22 of Title 2 of the County Code, or his or her designee.
- D. “Discretionary Permit” means any action, permit, or approval which requires the County, including any Board, Commission or Department of the County and any official or employee of the County, to exercise judgment or deliberation, and which contemplates the imposition of conditions by the County, including any Board, Commission or Department of the County and any official or employee of the County, in the process of approving or disapproving any such application.
- E. “LOS III Groundwater Basin” means a groundwater basin for which the County Board of Supervisors has certified a Level of Severity (LOS) III. This includes the Paso Robles Groundwater Basin as defined in this section and the Nipomo Mesa Conservation Area (part of Santa Maria Groundwater Basin) and the Los Osos Groundwater Basin as defined in Title 19.
- F. “Paso Robles Groundwater Basin” means the groundwater basin defined in Figure 6-1 of County Ordinance Number 3308. This area excludes the Atascadero Sub-basin.
- G. “Pipeline Project” means an agricultural reservoir, pond, or basin with a grading or land use permit application that was accepted for processing prior to the effective date of this Ordinance.
- H. “Site” means any lot or parcel of land or contiguous combination thereof, under the same ownership, or with the contiguous owner’s written consent.

Section 3. Applicability.

This Ordinance applies to all properties within the unincorporated areas of San Luis Obispo County, except for the Coastal Zone.

Section 4. Prohibitions

The development of any new agricultural pond, reservoir, or basin is prohibited, except as otherwise provided in this Ordinance.

Section 5. Exemptions

- A. All agricultural reservoirs, ponds, and basins are subject to the standards of this Ordinance and may be processed in accordance with the County's plans, policies and regulations, except as follows:
 - 1. Any Pipeline Project as defined in Section 2 of this Ordinance.
 - 2. Small reservoirs (less than one acre-foot capacity) as provided in Section 22.52.070.C.2.b of the County Code.
 - 3. A proposed reservoir, pond, or basin for a public use or facility.
 - 4. A project where the Board of Supervisors has determined there is an overriding public or emergency need for the proposed development.
 - 5. Maintenance of an existing agricultural reservoir, pond, or basin.

Section 6. Permitting

Notwithstanding Section 4 above, new agricultural ponds, reservoirs, or basins may be allowed pursuant to the following

- A. Permits. All agricultural reservoirs, ponds, and basins, except for those that qualify for an exemption as listed in Section 5, shall be subject to discretionary land use permit approval as follows:
 - 1. Projects with a storage capacity of 5 acre feet or less shall require Minor Use Permit approval. Minor Use Permits shall be processed according to the requirements set forth in Title 22 of the County Code.
 - 2. Projects with a storage capacity greater than 5 acre feet shall require Conditional Use Permit approval. Conditional Use Permits shall be processed according to the requirements set forth in Title 22 of the County Code.
- B. Fees. Fees for discretionary permits pursuant to this section shall be the same standard as set forth in the adopted County Fee Schedule for Minor Use Permits or Conditional Use Permits.

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- C. **Alternative Review.** Applications for reservoirs, ponds, and basins are not eligible for processing under the Alternative Review Program.
- D. **Application Content.** Land use permit applications for agricultural reservoirs, ponds, and basins shall include, at a minimum, the following information:
 - i. A description of the agricultural use to be supported by the proposed reservoir, pond, or basin. If the proposed reservoir, pond, or basin is in support of a future agricultural use, then the application shall include a planting plan showing the location of the future crops.
 - ii. Information regarding the property's historic use of water and proposed use of water after construction of the proposed reservoir, pond, or basin.
 - iii. Estimated evaporative water loss from the surface of the reservoir, pond, or basin, based on site specific conditions.
 - iv. A well interference and draw-down analysis, which evaluates how increased pumping (to compensate for evaporative water loss) would affect neighboring wells. This analysis shall take into consideration site specific variables such as the number and spacing of wells on-site, pumping rates, properties of the aquifer, and the duration over which pumping has and will occur.
- E. **Appeals.** Appeals of either Minor Use or Conditional Use Permits shall be forwarded to the Board of Supervisors for a final decision.
- F. **Peer Review.** The water supply impact study required in this section shall be subject to peer review, at the applicant's expense, by a qualified hydrogeologist.
- G. **Design Standards.** Agricultural reservoirs, ponds, and basins shall incorporate all feasible design measures to minimize evaporative water loss. This could include using a smaller surface area and/or an evaporation barrier.
- H. **Off-site Transfer of Water Prohibited.** Agricultural reservoirs, ponds, and basins shall be used for on-site frost protection or irrigation only. Off-site transfer of reservoir water and/or other uses of the reservoir are prohibited.
- I. **Management Strategies.** Agricultural reservoirs, ponds, and basins shall incorporate management strategies to minimize evaporative water loss. Strategies may include only maintaining reservoirs at full capacity during the frost protection season (March 1st through May 31st); maintaining reservoirs at less than 50 percent capacity during the summer and fall months; and emptying reservoirs of well supplied water between the end of fall and the start of the frost protection season.
- J. **Water Offsets - Projects in an LOS III Groundwater Basin.** New agricultural reservoirs, ponds, and basins that would be filled using wells overlying an LOS III Groundwater Basin shall propose measures to offset the estimated evaporative water loss at a ratio of

at least 1:1. Compliance with this standard may be achieved through removal or fallowing of onsite irrigated agriculture in existence at the time of Application Acceptance or through other means proposed by the applicant and approved by the Director of Planning and Building. If offsets are proposed through the removal or fallowing of crops, the applicant shall record a covenant and agreement prohibiting irrigation of the identified areas. The covenant shall remain in effect until the LOS for the groundwater basin is adjusted by the County Board of Supervisors to an LOS of II or lower. Projects in the Paso Robles Groundwater Basin may achieve compliance with this standard by obtaining an Offset Clearance pursuant to the Agricultural Water Offset Program for that basin.

- K. Water Offsets – Other Projects. Projects not overlying an LOS III Groundwater Basin may be required to implement water offsets as determined through the permitting process and based on the results of the well interference and drawdown analysis.

Section 7. Enforcement.

A violation of this Ordinance is deemed to be a violation of Title 22. In the event of a violation of this Ordinance or any requirement imposed pursuant to this Ordinance, the County may, in its discretion and in addition to all other remedies, take such enforcement action as is authorized under Title 22 of the County Code and any other action authorized by law.

Section 8. Severability.

If any section, subsection, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of the remaining portion of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and each section, subsection, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

Section 9. Effective Date.

In light of the recitals in this Ordinance, the Board of Supervisors declares that this Ordinance is necessary as an urgency measure for preserving the public health, safety and welfare. This Ordinance shall take effect immediately upon its passage and shall expire 45 days thereafter unless extended pursuant to law.

PASSED AND ADOPTED by the Board of Supervisors of the County of San Luis Obispo, State of California, on the fifteenth day of July 2016, by the following roll call vote, to wit:

Attachment 1

AYES:

NOES:

ABSENT:

ABSTAINING:

Chairman of the Board of Supervisors,
County of San Luis Obispo,
State of California

ATTEST:

County Clerk and Ex-Officio Clerk
of the Board of Supervisors
County of San Luis Obispo, State of California

[SEAL]

ORDINANCE APPROVED AS TO FORM AND EFFECT:

RITA L. NEAL
County Counsel

By: 
Deputy County Counsel

Dated: July 5, 2016