

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Planning and Building	(2) MEETING DATE 7/15/2016	(3) CONTACT/PHONE Airlin M. Singewald, Senior Planner / (805) 781-5198	
(4) SUBJECT Hearing to consider an interim zoning/urgency ordinance prohibiting new agricultural ponds and reservoirs in the inland area (does not include the coastal zone) of the unincorporated portions of San Luis Obispo County, except for projects complying with certain permitting procedures and development restrictions; exempt from CEQA. All Districts.			
(5) RECOMMENDED ACTION It is recommended that the Board: <ol style="list-style-type: none"> 1. Consider and adopt 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 (Attachment 1) by 4/5 vote. 2. Direct staff to provide notice of a hearing on August 16, 2016 to consider extending the Agricultural Ponds and Reservoirs Interim Zoning/Urgency Ordinance pursuant to Government Code Section 65858. The additional hearing would be held before the ordinance expires and will allow the Board to extend the ordinance beyond 45 days and up to a total of two years, if it chooses to do so at that time. 			
(6) FUNDING SOURCE(S) Department budget	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Presentation <input checked="" type="checkbox"/> Hearing (Time Est. <u>120 min.</u>) <input type="checkbox"/> Board Business (Time Est. <u> </u>)			
(11) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input checked="" type="checkbox"/> Ordinances <input type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: <input type="checkbox"/> 4/5 Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP N/A	(15) BUSINESS IMPACT STATEMENT? N/A	(16) AGENDA ITEM HISTORY <input type="checkbox"/> N/A Date: <u>June 21, 2016</u> (Board direction)	
(17) ADMINISTRATIVE OFFICE REVIEW Lisa M. Howe			
(18) SUPERVISOR DISTRICT(S) All Districts			

County of San Luis Obispo



TO: Board of Supervisors

FROM: Airlin M. Singewald, Senior Planner / (805) 781-5198

VIA: Bill Robeson, Deputy Director / Planning and Building

DATE: 7/15/2016

SUBJECT: Hearing to consider an interim zoning/urgency ordinance prohibiting new agricultural ponds and reservoirs in the inland area (does not include the coastal zone) of the unincorporated portions of San Luis Obispo County, except for projects complying with certain permitting procedures and development restrictions; exempt from CEQA. All Districts.

RECOMMENDATION

It is recommended that the Board:

1. Consider and adopt 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 (Attachment 1) by 4/5 vote.
2. Direct staff to provide notice of a hearing on August 16, 2016 to consider extending the Agricultural Ponds and Reservoirs Interim Zoning/Urgency Ordinance pursuant to Government Code Section 65858. The additional hearing would be held before the ordinance expires and will allow the Board to extend the ordinance beyond 45 days and up to a total of two years, if it chooses to do so at that time.

DISCUSSION

Background

On June 21, 2016, after considerable public testimony regarding a recent incident involving the construction of a new agricultural reservoir and the removal of an oak woodland to plant a new vineyard, your Board provided general direction to staff to prepare an Urgency Ordinance addressing the impacts of agricultural reservoirs (for the purpose of this staff report the term "agricultural reservoir" includes agricultural reservoirs, ponds, and basins) on groundwater supplies within the unincorporated areas of the county. Attachment 1 is the recommended interim zoning/urgency ordinance which prohibits agricultural reservoirs, except for projects complying with certain permitting procedures and development restrictions.

Since the start of the drought in 2012, the County has seen an increase in the size and number of agricultural reservoirs constructed in the county. As your Board heard during public testimony on June 21, 2016, neighboring landowners are concerned that these reservoirs will be used to pump and store large quantities of groundwater, depleting available supplies for other residential and agricultural uses in the area. This is particularly a concern in areas overlying fractured bedrock where groundwater storage is less reliable, more limited, and difficult to estimate. Agricultural reservoirs not only enable more groundwater pumping, but they also result in the loss of groundwater due to water surface evaporation.

Permitting History

Prior to adoption of the Grading and Drainage Ordinance in 2010, agricultural reservoirs were exempt from County permitting. From 2010 to 2013, most new agricultural reservoirs were authorized by a local Resource Conservation District (RCD) through the Alternative Review Program. In 2013, when the drought was underway and agricultural reservoirs started generating controversy, the RCD stopped processing them and sent applicants to the County for major grading permits. Recently, the RCD started reviewing some agricultural reservoirs again.

Since 2013, the County has received 10 major grading permit applications to construct 12 agricultural reservoirs. These reservoirs, which have mostly been located in areas overlying the Paso Robles Groundwater Basin, have ranged in size from about 4 to 49 acre-feet in storage capacity.

Existing Permitting Procedure

Under the County's current procedure, agricultural reservoirs require major grading permit approval. Major grading permits are subject to environmental review under the California Environmental Quality Act (CEQA), but do not require a public hearing or notification to adjacent landowners. The Department publishes a legal notice of CEQA determination on major grading permits in the newspaper and places a courtesy notice on the Board of Supervisor's weekly agenda. These notices explain how the public can review and comment on the Department's CEQA determinations. However, direct mailing of notices is not required and nearby landowners may not know about the project until construction started, at which point it would be too late for them to comment on the environmental document or participate in the process.

The current procedure also lets applicants elect to submit their plans to the RCD for processing under the Alternative Review Program in lieu of going through the major grading permit process. Under this procedure, RCD conducts the CEQA determination. As with the major grading permit process, there is no public hearing or direct mail notice to adjacent landowners.

Proposed Permitting Procedure

The proposed urgency ordinance would change the current permitting procedure by requiring all agricultural reservoirs to obtain discretionary land use permits from the County. Proposed reservoirs with capacities of 5 acre-feet or less would require Minor Use Permit approval and larger ones would be subject to Conditional Use Permit approval. Both Minor Use Permits and Conditional Use Permits involve notification to landowners within 300 feet of the project site. For Minor Use Permits, neighbors will have an opportunity to request a public hearing before a Planning Department Hearing Officer. All Conditional Use Permits are heard by the Planning Commission.

The interim zoning/urgency ordinance would also eliminate the Alternative Review Program option for agricultural reservoirs.

Exemptions

The following types of projects would be exempt from the interim zoning/urgency ordinance:

1. Any Pipeline Project, defined as 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."
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.

Water Analysis

To complete CEQA review on proposed agricultural reservoirs in the Paso Robles Groundwater Basin, the Department typically requires applicants to submit a water study including a well interference and draw-down analysis and estimates of how much water would be lost to evaporation. Evaporation rates vary based on a number of factors, including the location of the reservoir, how it's managed and operated, and the surface area and depth of the reservoir. One water study determined that two approximately 45 acre-foot capacity agricultural reservoirs in the North County would result in a combined evaporative water loss of 24 acre-feet per year. This is equivalent to the water use of approximately 50 new rural residences.

Through the environmental review process, the Department requires applicants for agricultural reservoirs to implement measures that would offset the project's estimated evaporative water loss. Offsets are typically achieved by removing or fallowing irrigated agriculture and recording a covenant and agreement prohibiting irrigation of the identified area. This is essentially the same procedure as the Agricultural Water Offset Program for the Paso Robles Groundwater Basin.

Similar to the current environmental review process, the proposed urgency ordinance would require all discretionary permit applications for agricultural reservoirs to include a detailed water impact analysis and to offset the project's estimated evaporative water loss. Projects overlying an LOS III groundwater basin (Paso Robles, Nipomo Mesa, or Los Osos) would be required to offset at a 1:1 ratio, which is consistent with the Title 19 requirement adopted as part of the Countywide Water Conservation Program. The offset requirements for all other projects would be determined on a case-by-case basis as recommended in the water analysis.

Interim Zoning and Urgency Ordinance Process

Section 65858 of the California Government Code sets forth the circumstances under which a County may adopt an interim zoning ordinance as an urgency measure. This section states in part:

Without following the procedures otherwise required prior to the adoption of a zoning ordinance, the legislative body of a county, city, including a charter city, or city and county, to protect the public safety, health, and welfare, may adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time. That urgency measure shall require a four-fifths vote of the legislative body for adoption.

An ordinance adopted pursuant to Section 65858 is effective for a period of 45 days from the date of adoption. If notice is published in accordance with California Government Code section 65090 prior to the initial adoption of the interim zoning ordinance, as was done prior to this hearing on July 15, 2016, the Board may, by four-fifths vote, extend the interim ordinance for 22 months and 15 days after notice is similarly provided prior to the hearing at which the extension is enacted. An interim zoning ordinance must contain legislative findings "that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare."

If the interim zoning/urgency ordinance is adopted and extended, staff will begin work on a permanent agricultural reservoir ordinance with the intent of getting the permanent ordinance enacted and effective prior to the expiration of the urgency ordinance.

OTHER AGENCY INVOLVEMENT/IMPACT

Staff from County Counsel's office, Agricultural Commissioner's Office, and Planning and Building has participated in meetings about the development of the urgency ordinance.

FINANCIAL CONSIDERATIONS

This staff report was prepared under the Department's current budget. If the Board directs staff to prepare a permanent

ordinance, associated budget and staff will be determined.

RESULTS

Adoption of the interim zoning/urgency ordinance will establish an Agricultural Pond and Reservoir Interim Zoning/Urgency Ordinance for a period of 45 days prohibiting new agricultural reservoirs in the inland area (does not include the Coastal Zone) of the unincorporated portions of San Luis Obispo County, except for projects complying with certain permitting procedures and development restrictions. This is consistent with providing a safe, healthy and livable community.

ATTACHMENTS

1. Attachment 1 – Draft Agricultural Pond and Reservoir Urgency Ordinance
2. Attachment 2 – Environmental Determination