



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

(1) DEPARTMENT Planning and Building		(2) MEETING DATE 3/21/2017		(3) CONTACT/PHONE Airlin M. Singewald, Senior Planner / (805) 781-5198	
(4) SUBJECT A request by the County of San Luis Obispo (LRP2016-00011) to amend the County Land Use Ordinance, Title 22 of the County Code, to modify permitting procedures, application content requirements, and development standards related to groundwater filled agricultural ponds, reservoirs, and basins. The proposed amendments would apply to the inland areas of the unincorporated portions of the County outside the Coastal Zone. Exempt from CEQA. All Districts.					
(5) RECOMMENDED ACTION It is recommended that the Board adopt the Agricultural Ponds Ordinance (Attachment 2), which consists of amendments to Section 22.52.080 (Alternative Review Program) and Section 22.52.150 (Grading Standards) of the County Land Use Ordinance, Title 22 of the County Code.					
(6) FUNDING SOURCE(S) Department Funds		(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>.80 mins</u> ) <input type="checkbox"/> Board Business (Time Est. _____)					
(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"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP N/A		(15) BUSINESS IMPACT STATEMENT? Yes		(16) AGENDA ITEM HISTORY <input type="checkbox"/> N/A Date <u>6/21/16 (Board direction), 7/15/16 (Urgency Ord. adoption), 8/16/16 (Urgency Ord. extension), 1/24/17 (Status update)</u>	
(17) ADMINISTRATIVE OFFICE REVIEW Lisa M. Howe					
(18) SUPERVISOR DISTRICT(S) All Districts					



## COUNTY OF SAN LUIS OBISPO

TO: Board of Supervisors

FROM: Planning and Building / Airlin M. Singewald, Senior Planner

VIA: Bill Robeson, Deputy Director

DATE: 3/21/2017

SUBJECT: A request by the County of San Luis Obispo (LRP2016-00011) to amend the County Land Use Ordinance, Title 22 of the County Code, to modify permitting procedures, application content requirements, and development standards related to groundwater filled agricultural ponds, reservoirs, and basins. The proposed amendments would apply to the inland areas of the unincorporated portions of the County outside the Coastal Zone. Exempt from CEQA. All Districts.

### **RECOMMENDATION**

It is recommended that the Board adopt the Agricultural Ponds Ordinance (Attachment 2), which consists of amendments to Section 22.52.080 (Alternative Review Program) and Section 22.52.150 (Grading Standards) of the County Land Use Ordinance, Title 22 of the County Code.

### **DISCUSSION**

#### **Background**

On June 9, 2016, the County issued a stop work order on a property in the Adelaida area related to the large scale clear-cutting of oak and other native trees on a privately owned property in order to establish an agricultural pond and vineyards. The agricultural pond component of the work was permitted by the Upper Salinas-Las Tablas Resource Conservation District (US-LT RCD) through the Alternative Review Program (ARP).

On June 21, 2016, the County Board of Supervisors heard approximately 90 minutes of testimony during public comment related to the clear-cutting. While the testimony was mainly focused on the clear-cutting, landowners in the Adelaida area also questioned how a 20 acre-foot (AF) agricultural pond was permitted and constructed without neighborhood notification or detailed analysis on how pumping to fill the pond would affect groundwater supplies and neighboring well levels. After public comment, the Board gave staff direction to schedule a special meeting and

return on July 15, 2016 with two separate urgency ordinances, one to address the clear-cutting of oak woodlands and the other for agricultural ponds.

On July 15, 2016, the Board adopted Interim Zoning/Urgency Ordinance No. 3326 in accordance with the requirements of Government Code section 65858, to modify permitting procedures and requirements for groundwater-filled agricultural ponds. The ordinance allows for agricultural ponds subject to modified permitting procedures and requirements for agricultural ponds. The main features of Urgency Ordinance No. 3326 are as follows:

1. Eliminates the ARP option for groundwater-filled agricultural ponds. This means agricultural ponds require a County grading permit. Agricultural ponds with a capacity of 1 AF or less remain exempt from permitting requirements.
2. Requires hydrogeologic studies for agricultural ponds. The study would look at impacts to groundwater supplies and well interference and drawdown associated with groundwater pumping to fill agricultural ponds.
3. Requires agricultural ponds to incorporate design measures and management strategies to minimize evaporation.
4. Requires agricultural ponds overlying an LOS III groundwater basin to offset evaporative water loss on a 1:1 basis.

On August 16, 2016, prior to the expiration of Urgency Ordinance No. 3326 and in accordance with the requirements of Government Code section 65858, the Board adopted Ordinance No. 3328 to extend Urgency Ordinance No. 3326 for ten months, until and through May 14, 2017. The Board also directed staff to conduct public outreach, draft a permanent Agricultural Ponds Ordinance, and return to the Board with an update prior to forwarding a Public Hearing Draft of the ordinance to the Planning Commission for consideration.

Per Board direction, County staff held several public outreach and stakeholder meetings between November 2016 and January 2017. Extensive public comment was received and is summarized further below.

On January 24, 2017, staff presented an update to the Board on the draft permanent agricultural ponds ordinance. The update included a summary of activities related to the Urgency Ordinance and public outreach, as well as a draft permanent ordinance.

Refer to the Detailed Information section of the Planning Commission staff report (Attachment 1) for more information about agricultural ponds, including permitting history, a summary of how they affect groundwater resources, and an overview of the ARP process.

### **Draft Permanent Ordinance**

The Draft Agricultural Ponds Ordinance consists of amendments to Chapter 22.52 (Grading and Drainage) of the County Land Use Ordinance. In particular, the proposed amendments would modify Section 22.52.080 (Alternative Review Program) and Section 22.52.150.F (Pond, reservoir, and dam standards). These amendments, which are

provided in Attachment 2, include the same provisions as those included in Urgency Ordinance No. 3326, with the following changes:

1. ARP would remain an option for agricultural ponds of 5 acre-feet or less in capacity.
2. For agricultural ponds requiring a County grading permit, the environmental notice (notice of intent to adopt negative or mitigated negative declaration) would be sent to all landowners within 1,000 feet of the subject property.

During public and stakeholder outreach on the ordinance, some members of the agricultural community (primarily vineyard owners and operators) emphasized the importance of agricultural ponds for managing irrigation and frost control. In response to this concern, staff is proposing that the permanent ordinance preserve the ARP option for smaller (5 AF or less capacity) agricultural ponds. Ponds in this size range have not generated much controversy and have minimal evaporation.

A major theme of public comment on the ordinance is the need to notify neighbors of agricultural pond permits. Whether a pond is processed by the County (as a grading permit) or RCD (under ARP), there is no requirement for a public hearing or direct notification to adjacent landowners. The Department publishes a legal notice of CEQA determinations on 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, since direct mailing of notices is not required, nearby landowners may not know about the project until construction starts, at which point it would be too late for them to comment on the environmental document or participate in the process. Therefore, staff is proposing that the permanent ordinance require direct notice to landowners within 1,000 feet of the subject property for agricultural ponds requiring a County grading permit.

### **Planning Commission Hearing**

The San Luis Obispo County Planning Commission held a public hearing on the draft ordinance on February 23, 2017 and voted (4 in favor and 1 opposed) to recommend that your Board adopt staff's recommended draft, with one minor technical change to use consistent language when referring to the required hydrogeologic analysis.

While the Planning Commission did not vote on any other changes to the draft ordinance, the Commission's deliberation also focused on the following topics:

- Whether the ARP should be retained for agricultural ponds with capacities greater than 5 acre-feet.
- Whether there should be a limitation on the number of exempt (1 acre-foot or less capacity) and ARP eligible (5 acre-feet or less capacity) ponds allowed per parcel or acreage (for example, one for every 40 acres of land).
- Whether the ordinance should be countywide or focused on areas with limited groundwater supplies.

## General Plan Consistency

### *Conservation and Open Space Element*

The Conservation and Open Space Element (COSE) of the County General Plan recognizes the vital importance of water resources and states that clean, reliable, and safe drinking water is essential to public health and the economic well-being of the region. To protect water resources, the COSE includes the following goals and policies:

*Water Resources Goal WR1.2 The County will have a reliable and secure regional water supply.*

#### *Policy WR1.1 Protect water supplies*

*Continue to coordinate with water suppliers and managers to identify water management strategies to protect existing and secure new water supplies.*

COSE Consistency: While agricultural ponds can help farmers manage water supplies, they can also facilitate increased groundwater pumping and result in the loss of groundwater resources to evaporation. The effect of agricultural ponds on existing water supplies for rural homes and other agricultural operations will vary depending on a variety of factors that include but are not limited to: the size and design (depth and surface area) of each pond; the intended use of the pond (frost control, irrigation, blending, existing or proposed agriculture); geologic formations (groundwater basin or fractured rock); safe yield of groundwater storage; location and depth of nearby wells; local climatic conditions (average temperatures and evaporation rates); and management strategies (e.g. when and how the pond is filled and emptied). The proposed ordinance would require individual projects to include a hydrogeologic analysis to evaluate and mitigate water supply impacts.

### *Land Use Element*

*The Land Use Element (LUE) contains 11 principles that help guide how and where future growth is most appropriate. LUE Principle 1: "Preserve and protect important water resources, watersheds, and riparian habitats."*

LUE Consistency: The proposed ordinance is consistent with this policy because it would require future applications for agricultural ponds to evaluate and mitigate water supply impacts.

## COMMUNITY ADVISORY GROUP COMMENTS/ PUBLIC PARTICIPATION

County staff held several public outreach and stakeholder meetings following Board authorization on August 16, 2016 between November 2016 and January 2017. The following Community Advisory Group and stakeholder meetings were held:

- **Agriculture Liaison Advisory Board**  
November 7, 2016
- **Farm Bureau**  
November 17, 2016
- **Paso Robles Wine Country Alliance**  
November 29, 2016

- **Community Meeting at Atascadero Library**  
December 7, 2016
- **Templeton Area Advisory Group**  
December 15, 2016
- **Water Resources Advisory Committee**  
January 4, 2017
- **Avila Valley Advisory Council**  
January 9, 2017
- **Upper Salinas-Las Tablas RCD's Executive Director**  
January 10, 2017
- **Coastal San Luis RCD's Executive Director**  
January 13, 2017
- **Water Resources Advisory Committee Subcommittee**  
January 17, 2017
- **Creston Advisory Body**  
January 18, 2017
- **Santa Margarita Area Advisory Council**  
February 1, 2017

Staff received significant feedback in the form of comments, concerns, questions, and additional suggestions during these advisory group and community meetings. Input was provided by advisory group board members, landowners, agriculturalists, and the general public in attendance.

During the Community Meeting and the Templeton Area Advisory Group meeting, the majority of those in attendance expressed concerns about one particular project, the Coakley agricultural pond. This project, which consisted of a 10 acre-foot capacity agricultural pond in the Adelaida area, was permitted by the US-LT RCD on February 10, 2015 (prior to the urgency ordinance taking effect). Surrounding rural homeowners raised concerns similar to those that led to the adoption of the urgency ordinance, which include: a) the lack of public notification and opportunity for involvement in the permitting process; and b) the absence of any detailed information about the project's impacts on groundwater supplies or well levels at neighboring rural residential parcels. On December 19, 2016, the RCD issued a letter revoking the permit for the Coakley agricultural pond. As the basis for revocation, the letter cited "increased potential for litigation" due to changes in the scope of the permit, the granting of an informal time extension, and unforeseen impacts as a result of the ongoing drought.

### **Optional Ordinance Provisions / Alternatives**

During public and stakeholder outreach, staff received several suggestions for alternative ordinance language. In general, rural homeowners and some small farmers advocated for stricter rules, while agricultural groups (particularly vineyard owners and operators) favored less regulation. These alternatives are described in the attached Planning Commission staff report (Attachment 1).

## **ENVIRONMENTAL REVIEW/DETERMINATION**

In order to enact the proposed ordinance, discretionary approval of the County of San Luis Obispo is required. This renders the ordinance subject to the requirement of the California Environmental Quality Act (CEQA). The County of San Luis Obispo, as lead agency, determined that the proposed ordinance is exempt from the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) ("CEQA") because:

1. Per CEQA Guidelines Section 15307 (Class 7) – The ordinance consists of regulations and restrictions that require more detailed environmental review on agricultural pond projects for the preservation and protection of groundwater resources.
2. Per CEQA Guidelines Section 15308 (Class 8) – The ordinance consists of regulations and restrictions on grading permits for agricultural ponds to minimize impacts on groundwater supplies and all of the people, species, and environs that rely on that resource.
3. Individual grading permit applications for agricultural ponds will be subject to project-level environmental review.

## **OTHER AGENCY INVOLVEMENT/IMPACT**

County Counsel reviewed the draft permanent ordinance. Staff consulted with the following groups: Agriculture Liaison Advisory Board, Templeton Area Advisory Group, Creston Advisory Body, Water Resources Advisory Committee, Avila Valley Advisory Council, Farm Bureau, and the Agricultural Commissioner's Office.

## **BUSINESS IMPACT STATEMENT**

The proposed Agricultural Ponds Ordinance would require farmers to obtain a County grading permit and submit a hydrogeologic study for proposed agricultural ponds with capacities of more than 5 acre-feet. Additionally, farmers may be required to redesign proposed ponds or implement other measures to mitigate impacts on groundwater supplies and neighboring wells. These requirements could make it more expensive for property owners to permit and construct agricultural ponds.

## **FINANCIAL CONSIDERATIONS**

Staff time throughout development of the permanent ordinance has been funded by the Department budget. There are no other current or future fiscal year financial impacts. Application fees will offset the cost of processing agricultural pond projects under the permanent ordinance.

## **RESULTS**

If adopted, the proposed Agricultural Ponds Ordinance would require applications for agricultural ponds with capacities greater than 5 acre-feet to evaluate and mitigate impacts on groundwater supplies and neighboring well levels. These

requirements would ensure the protection of groundwater supplies for neighboring rural residences and agricultural operations, which is consistent with communitywide goals of encouraging a safe, healthy, livable, prosperous, and well-governed community.

The Board directed staff to bring forward a permanent ordinance for consideration before the urgency ordinance expires on May 14, 2017. If adopted, the proposed ordinance would become effective on April 20, 2017, prior to the urgency ordinance expiring.

Staff is prepared to discuss, as a separate agenda item, consideration of a second extension to Interim Ordinance No. 3326 prior to its expiration on May 14, 2017.

### **ATTACHMENTS**

1. Attachment 1 – February 23, 2017 Planning Commission Minutes, Resolution, and Staff Report
2. Attachment 2 - Legislative Amendments to Land Use Ordinance, Title 22 of the County Code
3. Attachment 3 - Notice of Exemption