



Board Report

File #: 23-332, Version: 1

Agricultural Berm Repair Temporary Emergency Regulations

Consider confirmation of temporary emergency regulations that waive the requirement to obtain a grading permit pursuant to Title 18 of the Monterey County Code for the repair and restoration of berms that were damaged or destroyed as a result of flooding that occurred during the atmospheric river event of March 9 through March 14, 2023.

Location: Farmlands within the unincorporated areas of the County of Monterey

Proposed CEQA action: Find the temporary regulations exempt pursuant to California Code of Regulations, sections 15269 (emergency projects), 15302 (restoration and reconstruction), and 15304 (minor alternations of land).

RECOMMENDATION:

Staff recommends that the Board of Supervisors confirm the adoption of temporary emergency regulations that waive the requirement to obtain a grading permit pursuant to Title 18: Buildings and Construction of the Monterey County Code for the repair and restoration of berms that were damaged or destroyed as a result of flooding that occurred during the atmospheric rivers of March 9 through March 14, 2023.

SUMMARY:

A series of atmospheric river weather events hit the County between January and March 2023. Rain and wind associated with the weather events caused widespread damage in the County, with the most recent storm leading to the proclamation of a local emergency on March 9, 2023, with ratification by the Board on March 14, 2023.

When an emergency has been declared, the County Administrative Officer (CAO), acting as the ex-officio Director of Emergency Services, has the authority to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency (Section 2.68.060(A) of the Monterey County Code). Such rules and regulations must be confirmed at the earliest possible practicable time by the Board of Supervisors.

Many farms along the Salinas River flooded during the atmospheric weather events due to the high flows and breaches in agricultural berms. Many farmers desire to repair and restore berms and remove non-native *Arundo* that may be located within the breach areas. Normally, activities involving alternations to drainage or moving of more the 100 cubic yards of dirt require grading permits. In light of the time necessary to review an application and issue a permit for a grading permit, and the urgency to take the restorative action due to the potential for additional damaging storms this winter and to protect the integrity of agricultural operations, the CAO issued temporary regulations that exempt farmers from grading permits for the repair and replacement of agricultural berms (**Attachment A**).

The regulations require that each farmer:

1. Notify the County's Housing & Community Development Department (HCD) in writing in advance of performing work indicating when and where work will be performed; and
2. Prepare an "after action" report and submit the report to HCD for review no more than seven days after the completion.

HCD has created a dedicated email address for the submittal of notifications and “after action” reports. The email address for reporting is: bermrepair@co.monterey.ca.us <<mailto:bermrepair@co.monterey.ca.us>>

The temporary emergency regulation applies only to the requirement for permits issued by the County and do not waive any requirement to obtain necessary permits from the Regional Water Quality Control Board, Army Corps of Engineers, National Oceanic Atmospheric Administration Fisheries, or other state or federal agencies. Additionally, the temporary emergency regulations apply only to repair of legally established berms on agricultural lands and require that such repairs be contained on the landward side of such berm. New berms or changes to the height or location of berms are not exempt under these regulations and such activities will trigger after-the-fact permitting through HCD.

Provided the Board confirms adoption of the temporary emergency regulations, the attached regulations will apply until termination of the local emergency declared on March 9, 2023.

CEQA:

This temporary emergency regulation is exempt from the California Environmental Quality Act (“CEQA”) pursuant to California Code of Regulations (CEQA Guidelines) sections 15269 (emergency projects), 15302 (restoration or reconstruction), and 15304 (minor alterations of land). The regulations apply only during the declared emergency and activities covered by these regulations are limited to grading and weed removal for the repair and reconstruction of berms breached during flood events.

OTHER AGENCY INVOLVEMENT:

The following Departments or Agencies have been involved:

- County Administrative Office
- Housing & Community Development
- County Counsel’s Office
- Water Resources Agency
- Agricultural Commissioner

FINANCING:

Funding for staff time associated with development of temporary emergency regulations are included in the FY 2022-23 Adopted Budget for each of the involved Departments/Agencies. Enforcement and implementation of the temporary emergency regulations by HCD will be accomplished with existing staff which may cause minor delays in HCD permit services. Costs will be absorbed within the HCD Budget as fees for review of “after-action” reports have been waived.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

These temporary emergency regulations promote public safety and protect the agricultural economy.

Check the related Board of Supervisors Strategic Initiatives:

- Economic Development
- Administration
 - Health & Human Services
- Infrastructure
- Public Safety

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Reviewed and approved by: Sonia M. De La Rosa, Chief Administrative Officer

cc: Front Counter Copy; County Counsel; Agricultural Commissioner; CAO's Budget Office; CAO's office;
Craig Spencer Water Resources Agency

The following attachments are on file with the Clerk of the Board:

Attachment A - Temporary Emergency Regulations

Attachment B - Memorandum from CAO