

From: Amber Wilson/BOS/COSLO
To: BOS_Legislative Assistants@co.slo.ca.us
Cc: cr_board_clerk Clerk Recorder/ClerkRec/COSLO@Wings

Date: Friday, September 21, 2012 02:14PM
Subject: Fw: Please distribute to Supervisors

Amber Wilson
Secretary/Board of Supervisors
San Luis Obispo County
805.781.4335
abwilson@co.slo.ca.us

----- Forwarded by Amber Wilson/BOS/COSLO on 09/21/2012 02:14 PM -----

From: mustang4della@aol.com
To: abwilson@co.slo.ca.us
Cc: jcaruso@co.slo.ca.us
Date: 09/21/2012 10:07 AM
Subject: Please distribute to Supervisors

Amber,

I won't be able to attend the hearing on September 25, so will you please distribute my attached comments to Supervisors.

Thank you.
Della Barrett (*See attached file: Lot splits to BOS.doc*)

Attachments:

Lot splits to BOS.doc

Item # 23 Meeting Date: September 25, 2012
Presented By: Della Barrett
Received: Prior to Meeting
Posted to Web: September 21, 2012
Page 1 of 2

Date: September 20, 2012

To: SLO County Supervisors

Re: Groundwater Basin Land Use Ordinance Amendment

Subdividing rural property in SLO County has long been done for profit and occasionally for providing separate lots for family members. Even though it's done only at the discretion of the Planning Department and the Board of Supervisors, subdividing has been done so easily and for so long that people look on it as a right.

Actually, the right to subdivide is a gift to the existing landowner who will make a profit by selling the lots. The gift is conferred by the Supervisors, but payment for the gift is borne by the rest of us: the additional lots (and the homes with wells that will be built on them) will use additional ground water.

When there was plenty of everything, the gift was given without thought. There was plenty more space, plenty more water – no problem.

But now within the Paso Robles Groundwater Basin there is a problem. Actually, the falling groundwater level is not a problem, it's a slowly evolving crisis.

It should be noted that there are already at least 1,500 undeveloped lots overlying the basin, each of which is entitled to a well that would not be affected by the proposed ordinance.

While prohibiting new lot splits means potential lost profit for developers, there is no cost to taxpayers or current water users. Our water must be reserved for people who already depend on it and those who have an existing right to it.

A home where the well brings up nothing but silt and sand is worth nothing at all. (For some wells that are already into the rock of the basin "floor", digging a deeper well will not bring reliable water. If there is water, the \$30,000 to \$50,000 cost of digging a new well may be unaffordable to the owner.) No one wants a countryside scattered with worthless homes abandoned because water isn't available.

It is regrettable but necessary that in a groundwater basin that's near or in overdraft, we can no longer afford to give the gift of lot splits. I urge you to adopt the ordinance.

Respectfully,

Della Barrett
South Atascadero

From: Amber Wilson/BOS/COSLO
To: BOS_Legislative Assistants@co.slo.ca.us
Cc: cr_board_clerk Clerk Recorder/ClerkRec/COSLO@Wings

Date: Friday, September 21, 2012 04:37PM
Subject: Fw: San Luis Obispo County

Amber Wilson
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----- Forwarded by Amber Wilson/BOS/COSLO on 09/21/2012 04:37 PM -----

From: "Christopher G. Foster" <CFoster@mpplaw.com>
To: "Amber Wilson (abwilson@co.slo.ca.us)" <abwilson@co.slo.ca.us>
Cc: "Christopher G. Foster" <CFoster@mpplaw.com>, "Steven L. Hoch" <SHoch@mpplaw.com>
Date: 09/21/2012 03:16 PM
Subject: San Luis Obispo County
Sent by: "Mineeh P. Lapid" <MLapid@mpplaw.com>

Please see attached letter for distribution to the Board of Supervisors:

1st District Supervisor Frank Mecham
2nd District Supervisor Bruce Gibson
3rd District Supervisor Adam Hill
4th District Supervisor Paul Teixeira
5th District Supervisor James Patterson

Thank you.

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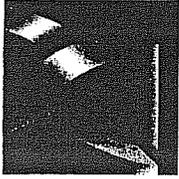
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(See attached file: SLO - Ltr to SLO County BOS re 9-25-12 hearing (L0386215).PDF)

Attachments:

SLO - Ltr to SLO County BOS re 9-25-12 hearing (L0386215).PDF

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**Morris
Polich &
Purdy**_{LLP}

ATTORNEYS AT LAW

www.mpplaw.com

September 21, 2012

Via E-Mail and U.S. Mail

Honorable Board of Supervisors
Of San Luis Obispo County
County Government Center
San Luis Obispo, CA 93408

Re: BOS Hearing of September 25, 2012 to Amend Article 9 of the Land Use Ordinance, Title 22 of the County Code

Dear Chairman Patterson:

Morris Polich & Purdy LLP have been retained on behalf of multiple concerned property owners in the Paso Robles Groundwater Basin ("PRGWB") to address your Board of Supervisors on the appropriateness of the California Environmental Quality Act ("CEQA") determination for amendments to Article 9 of the Land Use Ordinance, Title 22 of the County Code. Of paramount concern is the amendment prohibiting the approval of new land divisions until the PRGWB is certified at a Level of Severity I or better pursuant to the Resource Management System (Chapter 3 of the Framework for Planning, Part I of the Land Use Element of the General Plan).

The application of a Categorical Exemption from CEQA under Section 15308 of the CEQA Guidelines (Class 8 Exemption) has been inappropriately applied for the following reasons:

- "The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind." *Bozung v. Local Agency Formation Commission*, 13 Cal.3d 263, 283 (1975). CEQA's statutory framework, and its implementing regulations, 14 CCR § 15000, *et seq.* (the "Guidelines"), set forth a series of analytical steps intended to promote the fundamental goals and purposes of environmental review – information, participation, mitigation and accountability.

"The first tier is jurisdictional, requiring that an agency conduct a preliminary review in order to determine whether CEQA applies to a proposed activity. . . . Activities which are not 'projects' as defined by section 15378 are not subject to CEQA review. . . . In addition, the Guidelines set forth a list of exempt categories or classes of projects which have been determined by the Resources Agency not to have a significant effect on the environment.

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* * *

“If the agency finds the project is exempt from CEQA under any of the stated exemptions, no further environmental review is necessary. The agency may prepare and file a notice of exemption, citing the relevant section of the Guidelines and including a brief ‘statement of reasons to support the finding.’ [Citations omitted.] If, however, the project does not fall within any exemption, the agency must proceed with the second tier and conduct an initial study. [Citation omitted.] If the initial study reveals that the project will not have a significant environmental effect, the agency must prepare a negative declaration, briefly describing the reasons supporting that determination. [Citations omitted.] Otherwise, the third step in the process is to prepare a full environmental impact report (EIR) on the proposed project.”

Davidon Homes v. City of San Jose, 54 Cal.App 4th 105, 112-113 (1997).

Here, the Planning Commission acknowledged that the proposed amendment to the Land Use Ordinance constituted a project under CEQA and further concluded that the project qualified for an exemption pursuant to Guidelines § 15308: “Actions by Regulatory Agencies for Protection of the Environment.”¹ Section 15308 states:

“Class 8 consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environmental degradation are not included in this exemption.”

Typically, a Class 8 exemption is applied to a wholly beneficial and obviously protective action. See e.g. *Magan v. County of Kings*, 105 Cal.App 4th 468 (2002); County ordinance prohibiting the application of hazardous sewage sludge to agricultural land properly exempt from CEQA analysis pursuant to Class 8. Here, the absolute paucity of analysis and evidence in support of the exemption and the fair argument of negative impacts submitted by the public render the use of a categorical exemption improper. For example, conclusory, unsupported statements like that of Staff at the July 26, 2012 Hearing that “Our stand is that

¹ However, during the July 26, 2012 Planning Commission Hearing at which the recommended ordinance was approved, Staff admitted that it had “started” an Initial Study and then, inexplicably, discontinued that effort.

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this ordinance is not shifting anything” fall far short of the required level of substantial evidence.

- In their analysis of the use of categorical exemptions to avoid otherwise necessary CEQA review, the courts in California have uniformly and repeatedly held that categorical exemptions are to be strictly construed, shall not be unreasonably expanded beyond their terms and may not be used where there is substantial evidence that there are circumstances, including future activities, resulting in, or which might reasonably result in, significant impacts that threaten the environment. *McQueen v. Board of Directors*, 202 Cal.App.3d 1136, 1147-49 (1988). (District’s acquisition of surplus federal property contaminated with PCB not a categorically exempt project.)

For example, in *International Longshoremen’s & Warehousemen’s Union v. Board of Supervisors*, 116 Cal.App.3d 265 (1981), the San Bernardino County Board of Supervisors adopted a rule raising the allowable NO_x emissions from certain facilities in the county. The Board contended the action was categorically exempt pursuant to Class 8. The court of appeal rejected that argument, stating:

“We find nothing in the record to show that the board determined, either on the basis of the 1975 supplemental EIR or on any other study, that the proposed relaxation of the NO_x emission standards would not have a significant effect on the environment.”

Id. at 275. In its holding, the court reiterated the earlier ruling of the California Supreme Court in *Wildlife Alive v. Chickering*, 18 Cal.3d 190, 206 (1976) that “Where there is a reasonable possibility that a project or activity may have a significant effect on the environment, an exemption is improper.” *Id.* at 276.

A strikingly similar situation to the Land Use Ordinance’s recommendation was present in *Dunn Edwards Corp. v. Bay Area Air Quality Management District*, 9 Cal.App. 4th 644 (1992). In that case a local air district adopted regulations limiting certain organic compounds in architectural coatings. The air district performed no CEQA analysis claiming a categorical exemption. However, public commenters had presented evidence of numerous unintended negative environmental consequences which the air district simply ignored. In its opinion, the court quoted the following standard of review regarding the propriety of a negative declaration:

“If a local agency is required to secure preparation of an EIR ‘whenever it can be *fairly argued* on the basis of substantial evidence that the project

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may have significant environmental impact' [citation], then an agency's adoption of a negative declaration is not be upheld merely because substantial evidence was presented that the project would not have such impact. The trial court's function is to determine whether substantial evidence supported the agency's conclusion as to whether the prescribed 'fair argument' could be made. If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be 'fairly argued' that the project might have a significant environmental impact. Stated another way, if the trial court perceives substantial evidence that the project might have such an impact, but the agency failed to secure preparation of the required EIR, the agency's action is to be set aside because the agency abused its discretion by failing to proceed 'in a manner required by law.' [Citation omitted.] It is an agency's failure to assess evidence to determine whether it could be fairly argued that a project would have an adverse impact on the environment that constitutes the abuse of discretion."

Id. at 654-55 (emphasis original).

The court then concluded that "[t]his standard is equally applicable for review of an agency's determination of CEQA's categorical exemptions. *Id.* at 655.

- The analysis contained in the Staff Report dated July 26th to the Planning Commission, at page 11, constitutes an environmental analysis that cannot be handled by a Categorical Exemption. The analysis contained therein evaluates the potential impacts to "other areas of the county where adequate resources and services are not available and existing land use regulation is not adequate to mitigate impacts." By virtue of this question alone, Staff admits that potential environmental impacts could result in other areas of the county should a prohibition of all land subdivisions be enforced. The acknowledgment of this "fair argument" for the existence of environmental impacts absolutely negates the use of a categorical exemption.
- Numerous other environmental impacts flow from the shifting land uses the ordinance is likely to create. These include impacts to aesthetics, water quality, traffic and air quality and agricultural resources. None of these potential impacts was considered.

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- Staff likewise reported to the Planning Commission that an Initial Study has been prepared to assess the potential environmental impacts to conclude a Categorical Exemption is applicable.
- CEQA guidelines are clear that a Categorical Exemption is appropriate only when there is no possibility of an environmental effect. By virtue of initiating the preparation of an Initial Study, Staff has likewise admitted to the potential for environmental consequences.
- “An accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity.” *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus*, 27 Cal.App 4th 713, 730 (1994). Substantial questions have been raised regarding the hydrologic data and assumptions used to prepare the Resource Capacity Study (“RCS”). The Fugro 2010 Water Balance Report itself explicitly noted the “degree of uncertainty” regarding components of the water balance equation and that these uncertainties and assumptions “are used, by necessity” in performing calculations of the water balance. Here, substantial evidence exists that the RCS, an inherent component of the project, lacks the accurate, stable and finite description CEQA requires.
- Throughout the process of the RCS’s preparation, the public was assured that environmental review would take place at the time any ordinance based thereon was considered.

“CEQA mandates ‘. . . that environmental considerations do not become submerged by chopping a large project into many little ones – each with a minimal potential impact on the environment – which cumulatively may have disastrous consequences’.” *Citizens Association for Sensible Development of Bishop Area v. County of Inyo*, 172 Cal.App.3d 151,165, quoting *Bozung, supra*, 13 Cal.3d at 283-284.

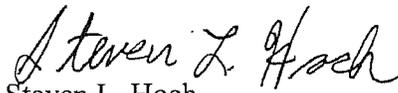
By artificially dividing a project into “insignificant” segments an agency can avoid robust and meaningful environmental review. This segmenting results in “piecemeal” environmental review which is forbidden by CEQA. *City of Carmel-by-the-Sea v. Board of Supervisors*, 183 Cal.App.3d 229, 243 (1986). Piecemealing is not permitted under CEQA because it can result in inadequate analysis of project specific impacts through the fragmented project descriptions and inadequate analysis of cumulative impacts, thereby reducing the lead agency’s ability to address significant cumulative impacts. The opinion in *Toulome County Citizens for Responsible Growth, Inc. v. City of Sonora*, 155 Cal.App. 4th 1214 (2007) is particularly instructive. In that case the court held

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that the independent existence of a commercial development and road realignment ceased for purposes of CEQA when the road realignment became “a contemplated future part of” completing the commercial development. *Id.* at 1231. Similarly here, the RCS and its suggested amendments to land use ordinances constituted a single project, which has now twice avoided CEQA scrutiny.

Respectfully submitted,

MORRIS POLICH & PURDY LLP


Steven L. Hoch

Sent via e-mail to:

Amber Wilson at: abwilson@co.slo.ca.us
for distribution to the Board of Supervisors:
1st District Supervisor Frank Mecham
2nd District Supervisor Bruce Gibson
3rd District Supervisor Adam Hill
4th District Supervisor Paul Teixeira
5th District Supervisor James Patterson

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for distribution to the Planning Commission:
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2nd District Commissioner Ken Topping
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4th District Commissioner Tim Murphy
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