

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

(1) DEPARTMENT Planning and Building	(2) MEETING DATE 9/25/2012	(3) CONTACT/PHONE James Caruso, Senior Planner / 805-781-5702	
(4) SUBJECT Hearing to consider a request by the County of San Luis Obispo to amend Article 9 of the Land Use Ordinance, Title 22 of the County Code, to add water conservation requirements for discretionary land use permit applications, land divisions and general plan amendments within: 1) the rural portions of the Paso Robles Groundwater Basin (PRGWB), outside of the Atascadero Sub-basin, 2) the Whitley Gardens and Creston Village Reserve Lines, and 3) the unincorporated Paso Robles Urban Reserve Line. Supervisorial Districts 1 and 5			
(5) RECOMMENDED ACTION That the Board of Supervisors: 1. Hold the public hearing on the amendments recommended for approval by the Planning Commission as set forth in the attached Exhibits and staff reports. 2. Take final action on the amendments heard today by adopting and instructing the Chairperson to sign the attached ordinance in Exhibit LRP2010-00014:B based on the findings in Exhibit LRP2010-00014:A.			
(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 { } Consent { } Presentation {X} Hearing (Time Est. _120 min_) { } Board Business (Time Est._____)			
(11) EXECUTED DOCUMENTS { } Resolutions { } Contracts {X} Ordinances { } N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: { } 4/5th's Vote Required {X} N/A	
(14) LOCATION MAP Attached	(15) BUSINESS IMPACT STATEMENT? Yes	(16) AGENDA ITEM HISTORY { } N/A Date __2/1/2011_____	
(17) ADMINISTRATIVE OFFICE REVIEW			
(18) SUPERVISOR DISTRICT(S) District 1 - District 5 -			

County of San Luis Obispo



TO: Board of Supervisors

FROM: Planning and Building / James Caruso, Senior Planner

VIA: Kami Griffin, Assistant Director, Department of Planning and Building

DATE: 9/25/2012

SUBJECT: Hearing to consider a request by the County of San Luis Obispo to amend Article 9 of the Land Use Ordinance, Title 22 of the County Code, to add water conservation requirements for discretionary land use permit applications, land divisions and general plan amendments within: 1) the rural portions of the Paso Robles Groundwater Basin (PRGWB), outside of the Atascadero Sub-basin, 2) the Whitley Gardens and Creston Village Reserve Lines, and 3) the unincorporated Paso Robles Urban Reserve Line. Supervisorial Districts 1 and 5

RECOMMENDATION

That the Board of Supervisors:

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DISCUSSION

Background

At today's meeting, your Board will hold a public hearing on an amendment to the County Land Use Ordinance (Title 22 of the County Code) adding Planning Area standards to address rural water use in the Paso Robles Groundwater Basin. The proposed ordinance has been recommended for approval by the Planning Commission. In February 2011, the Board of Supervisors certified a Level of Severity (LOS) III for water supply in the main Paso Robles Groundwater Basin, where water demand was determined to be approaching the basin's safe (or perennial) yield. The Board also adopted the Paso Robles Groundwater Basin Resource Capacity Study (RCS), which includes several recommended actions in response to the certified LOS III.

The five-year RCS lists many actions to be undertaken in response to the continual and long-term lowering of groundwater basin water levels over the past 20 years or more. The RCS actions include stepped-up groundwater monitoring, additional groundwater basin study (a contract for an updated model and water balance was approved by your Board on August 28, 2012) and new ordinances to address water use where County authority to do so is clear.

The RCS determined that the County's authority over groundwater is highly limited. The California Constitution allows overlying property owners the unlimited use of water as long the water is put to a "beneficial use." It was pointed out that California has no regulatory or permitting system in place to regulate extractions of groundwater. The County does have land use authority in the unincorporated jurisdiction and often must use that authority to address water supply and demand and other issues. The County General Plan, through the policies and procedures laid out in the Conservation and Open Space Element, the Resource Management System of the Land Use Element and the Agriculture Element, support County action to address water supply problems.

Project Description

This proposed ordinance is one of three that your Board directed to be prepared; the other two will address landscape irrigation countywide and urban water use in San Miguel through the community plan update. The proposed ordinance carries out the recommendations of the RCS by:

1. Requiring new discretionary development to offset its net new water demand for non-agricultural purposes.
2. Requiring that offsets conserve water used or potentially used for non-agricultural purposes.
3. Exempting agricultural processing uses from the offset requirements.
4. Prohibiting general plan amendments that would result in a net increase in the use of water for non-agricultural purposes until a Level of Severity I is certified by the Board of Supervisors.
5. Prohibiting the approval of new land divisions until a Level of Severity (LOS) I is certified by the Board of Supervisors.
6. Including conservation measures for outdoor water use by discretionary development.

The groundwater basin stretches over seven planning areas. The proposed ordinance language needs to be added in the appropriate section of each planning area such as the area wide, rural or communitywide planning area standards for these seven planning areas and one village.

Planning Commission Hearing, Issues

The Planning Commission held a public hearing on July 26, 2012 (see LRP2010-00014:D for Planning Commission minutes). Many issues were raised during the testimony and Commission discussions. Lowering groundwater well levels, dried-up wells and the need to re-drill wells were recurring themes in the testimony. The following is a summary of other issues raised at the Planning Commission hearing.

Land Divisions

The proposed ordinance will prohibit the creation of new parcels. The Planning Commission staff report details the subdivision activity that has taken place in the basin in the period 1990-2010. Approximately 200 parcels were created in that time. The Commission heard testimony that the amount of water to be saved by this prohibition on new parcels would be very small (i.e. less than 350 acre-feet over the next 20 years). It was also pointed out, however, that in spite of the relatively small amount of water to be saved, there are other important reasons to enact the prohibition.

The 350 acre-feet that could ultimately be saved over the next 20 years is more than any other proposal to date. The path to keep basin demand under its safe yield will be made up of many small savings. This is just one of many actions that will be taken in the future. Also, it would not be prudent to add to the supply of developable parcels that will be affected by lowering groundwater levels in the basin, where there are already at least 1,500 vacant parcels.

Offsetting New Water Demand

The Planning Commission staff report included a substantial discussion regarding offsets for new water demand. The proposed ordinance requires net new water demand (as defined in the ordinance) to be offset at a ratio of 2:1. The staff report explained that the offset programs envisioned in the proposed ordinance represent both 1) “wet” water programs that result in actual water savings or the provision of additional water supply and 2) alternatives to supplemental water that do not fully account for water savings. Your Board has adopted both types of offsets in the past. In the Los Osos water conservation suite of programs, an actual accounting of water is required. New construction must show how it will save twice the amount of water it will use. However, in the Nipomo water conservation ordinance, funding of water conservation programs (through a fee of \$750 per new toilet) is the method used to compensate for increased water demand by new development.

This proposed ordinance allows for both types of programs with these general requirements:

- Retiring the development potential of lots in the Paso Robles groundwater basin through an agreement with the County or qualified land trust.
- Retrofitting plumbing fixtures in the basin.
- Purchasing supplemental water for a water supplier that uses groundwater from the main basin.
- Participating in an approved water conservation program in the basin that results in water savings.
- Reducing water demand in the basin through other means approved by the Planning Director.

As was stated in the Planning Commission staff report, due to the lack of supplemental water sources, both types of programs will be needed in the basin if new groundwater demand is to be offset.

Environmental Review

The proposed ordinance has been determined to be categorically exempt from the provisions of the California Environmental Quality Act (CEQA). The CEQA Guidelines describes these types of exemptions:

“...the following classes of projects listed in this article do not have a significant effect on the environment, and they are declared to be categorically exempt from the requirement for the preparation of environmental documents.”

In the case of the proposed ordinance, a Class 8 exemption has been determined to be the proper categorical exemption. A Class 8 exemption is used specifically for “projects” that protect the environment:

“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.

It was found during the analysis of the proposed ordinance that no negative environmental effects will occur due to the ordinance. However, staff considered whether the prohibition on the creation of new parcels as envisioned by the proposed ordinance could have unintended environmental impacts. One unintended consequence could be to divert development to other areas of the county that might not be able to accommodate it. In order to test this hypothesis, it was assumed that the creation of each new lot would lead to eventual development of that lot. Without this assumption, a subdivision of land would clearly have no environmental impact if diverted to another area. The data show that approximately 200 lots were created in the groundwater basin area in the period 1990-2010. Assuming that this number of lots--perhaps fewer--are to be created in the next approximately 20 years, development associated with some or all of those lots could be diverted to other areas.

The analysis of this issue in the Planning Commission staff report determined that the potential for diverted subdivision and development activity is speculative at best. Furthermore, if some potential subdivisions and resulting development were actually diverted to other areas, the number of new lots would be very small and not significant when compared to the populations of those areas. All other environmental impacts of the proposed ordinance are beneficial to the environment.

Regulation of Agriculture

The Commission heard substantial amount of testimony regarding the perceived need to regulate agriculture. The agriculture sector uses approximately 67% of the groundwater in the basin. The perception of many of the people offering testimony was that the proliferation of vineyards has driven the problem to its current proportions. Staff offered the reasons that agricultural production is not regulated by the County:

- Provisions of the California Constitution make it difficult if not impossible for local governments to regulate extractions of groundwater.
- The County's General Plan establishes agriculture as a priority for groundwater use (Agriculture Element Policy 11).

The County's response to the water issues in the basin needs to be drawn from its land use authority. This conclusion was reached in the RCS. It is important to remember that the County's actions can only be effective if they are based on proper authority and come from the policies of the General Plan.

General Plan Consistency

The provisions of the proposed ordinance are founded on goals and policies in the Conservation and Open Space (COSE), Agriculture and Land Use Elements of the General Plan. For example, COSE policies support the provisions of the ordinance prohibiting creation of new parcels, offsetting new groundwater demand and prohibiting approval of general plan amendments that increase the demand for groundwater, as follows:

Policy WR 1.14 Avoid net increase in water use

Avoid a net increase in non-agricultural water use in groundwater basins that are recommended or certified as Level of Severity II or III for water supply. Place limitations on further land divisions in these areas until plans are in place and funded to ensure that the safe yield will not be exceeded.

Policy WR 1.11 Reduce RMS alert levels

The County will work with local agencies to reduce Resource Management System alert levels for water supply and water systems from recommended or certified Levels of Severity II or III to Level of Severity I or better by 2020

Policy WR 1.7 Agricultural operations

Groundwater management strategies will give priority to agricultural operations. Protect agricultural water supplies from competition by incompatible development through land use controls.

Policy WR 1.13 Density increases in rural areas

Do not approve General Plan amendments or land divisions that increase the density or intensity of non-agricultural uses in rural areas that have a recommended or certified Level of Severity II or III for water supply until a Level of Severity I or better is reached, unless there is an overriding public need.

See the attached Planning Commission staff report dated July 26, 2012 (LRP2010-00014:E) for a discussion of general plan policies.

Water Resources Advisory Committee

The Water Resources Advisory Committee (WRAC) formed a subcommittee to review the proposed ordinance. In general, the WRAC supported the proposed ordinance. The subcommittee's recommendations were adopted by the WRAC and forwarded to the Department. Most of the WRAC recommendations were incorporated into the proposed ordinance. Please see the attached Planning Commission staff report and Exhibit C of that report for a full discussion of the WRAC recommendations and their letter.

Clarifications

Two clarifications should be made to the proposed ordinance. The first addresses general plan amendments that are part of a comprehensive community plan update (the recommended clarification is **underline and bold**):

General plan amendments. General Plan amendment applications that would result in a net increase in the amount of water used for non-agricultural purposes shall not be approved until a Level of Severity I is certified for the Basin by the Board of Supervisors after adoption of a Resource Capacity Study. **This requirement does not apply in the case of general plan amendments that are included as part of a comprehensive community plan update.**

This clarification will allow the proposed San Miguel Community Plan update to propose bringing rural lands into the urban area.

Offset requirements for discretionary permits. New development requiring discretionary land use permits shall offset the resulting net new water demand as follows, **except that discretionary permits associated with development of one dwelling unit are not subject to this requirement:**

The intent of these requirements is to exempt ministerial projects, most notably, single family and secondary dwellings and mobile homes, from the offset requirements. However, under certain conditions, discretionary permits may be required in connection with proposals to develop such dwellings, such as in the case of a Minor Use Permit for site disturbance of an acre or more, or a Variance to a setback requirement. In those cases, the water offset requirements should not be applied, as the intensity or water use of those projects is not greater, but discretionary permits are required for other reasons.

If your Board agrees with these non-substantive clarifications, your action will need to reflect this.

Future Actions

The supply and demand issues in the basin will continue to be addressed in the future. Currently, the Groundwater Management Plan's volunteer steering committee continues to meet to discuss basin issues and potential solutions. In addition, the County Flood Control and Water Conservation District has expanded the groundwater level measuring program to close the crucial gaps in the measuring system.

OTHER AGENCY INVOLVEMENT/IMPACT

The amendments were referred to all applicable responsible agencies and were reviewed and recommended for approval by the Planning Commission. The Water Resource Advisory Committee (WRAC) and the Agricultural Liaison Advisory Board (ALAB) both reviewed and commented on the proposed ordinance. Their written correspondence is attached to the Planning Commission staff report. County Counsel has reviewed the Ordinance as to form and content.

BUSINESS IMPACT STATEMENT

On balance, the proposed water conservation ordinance should have positive effects on the business clusters identified in the San Luis Obispo County Clusters of Opportunity Economic Strategy prepared by the Economic Vitality Corporation in 2010. The Ordinance's overall goal is to conserve water in a groundwater basin that is at a Level of Severity III and that has seen consistent and long-term declines in groundwater levels.

The provisions of the proposed ordinance have been developed to address issues the County can affect. It is in the best interest of all business clusters (and people in the basin) to try to arrest falling groundwater levels. In preparing the proposed ordinance, staff considered the authority that the County can and should exercise and the goal statements in the Economic Element, in particular, the following goal:

Goal EE 1: Promote a strong and viable local economy by pursuing policies that balance economic, environmental, and social needs of the county.

A strong and viable local economy is dependent upon adequate resources, especially water. It is pointed out here that the major provisions of the proposed ordinance are required through other processes, policies and programs.

The Plan may affect the business clusters as described below:

The Building Design and Construction Cluster may have to design and implement water conservation features in new discretionary uses in the basin. To the extent that subdivisions and resulting development in the basin are precluded (and are not diverted elsewhere in the county), there would be a negative effect on construction and related businesses.

The Green Energy Team cluster may be involved in water conservation in the basin due to the connection between water and energy.

The Health Services Cluster activities should not be affected by the proposed ordinance.

The Knowledge & Innovation Services Cluster could benefit from the proposed ordinance if the Building Design and Construction Cluster seeks to collaborate with businesses in this cluster to originate and deploy innovative water conservation measures.

The Specialized Manufacturing Cluster's Plan-related benefit or costs are unclear at this time.

The Uniquely SLO County Cluster may benefit from the proposed ordinance as associated uses are a part of the basin. Water conservation activities in the basin will assist all groundwater users.

FINANCIAL CONSIDERATIONS

Preparation of the proposed ordinance is included in the Planning and Building Department budget as a County-initiated amendment.

RESULTS

Approval of this ordinance will result in some water savings in the Paso Robles Groundwater Basin and will avoid making the groundwater situation worse by prohibiting the creation of additional lots. This ordinance is one of the first steps to continued water conservation activities in the basin. Additional work by other stakeholders will be added to this effort in order to manage groundwater in the basin.

ATTACHMENTS

1. Exhibit LRP2010-00014:A – Findings
2. Exhibit LRP2010-00014:B - Proposed Ordinance for Adoption
3. Exhibit LRP2010-00014:C - Planning Commission Recommended Ordinance
4. Exhibit LRP2010-00014:D - Planning Commission Minutes
5. Exhibit LRP2010-00014:E - Planning Commission Record