

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

(1) DEPARTMENT Planning and Building	(2) MEETING DATE 10/1/2013	(3) CONTACT/PHONE Kami Griffin, Acting Director / 781-5708	
(4) SUBJECT (1) Discussion of options for implementation of the Urgency Ordinance relative to the development of an Approved County Water Conservation Program; (2) Consideration of a resolution providing direction to staff regarding vested rights determinations described in Ordinance No. 3246; (3) Consider directing staff to explore possible amendments to the General Plan, Title 22 of the County Code, and Title 8 of the County Code to address water demand within the Paso Robles Groundwater Basin; and (4) Hearing to consider the extension of urgency Ordinance No. 3246 pursuant to Sections 25123, 25131 and 65858 of the California Government Code for a period of up to 22 months and 15 days. Districts 1 and 5.			
(5) RECOMMENDED ACTION That your Board: 1. Provide direction regarding the development of an Approved County Water Conservation Program. (majority vote) 2. Adopt a resolution providing direction for staff regarding a vested right to complete site preparation, planting, or sale of product under Ordinance No. 3246. (majority vote) 3. Direct staff for the Department of Planning and Building and for the Health Agency, Office of Environmental Health, to explore possible amendments to the General Plan, the Land Use Ordinance (Title 22 of the County Code), and Title 8 of the County Code to address water demand within the Paso Robles Groundwater Basin and return to the Board within six months with a request to initiate processing of said amendments. (majority vote) 4. Hold a hearing to consider the extension of Urgency Ordinance No. 3246 for a period of 22 months and 15 days from the expiration date (October 11, 2013) through and until August 26, 2015. (four-fifths vote)			
(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. <u>360 min</u>) { } Board Business (Time Est. <u> </u>)			
(11) EXECUTED DOCUMENTS {X} 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 N/A	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY { } N/A Date: <u>8-6-13 / 8-27-13</u>	
(17) ADMINISTRATIVE OFFICE REVIEW <i>Nikki J. Schmidt</i>			
(18) SUPERVISOR DISTRICT(S) District 1 - District 5 -			

County of San Luis Obispo



TO: Board of Supervisors

FROM: Planning and Building / Kami Griffin, Acting Director

DATE: 10/1/2013

SUBJECT: (1) Discussion of options for implementation of the Urgency Ordinance relative to the development of an Approved County Water Conservation Program; (2) Consideration of a resolution providing direction to staff regarding vested rights determinations described in Ordinance No. 3246; (3) Consider directing staff to explore possible amendments to the General Plan, Title 22 of the County Code, and Title 8 of the County Code to address water demand within the Paso Robles Groundwater Basin; and (4) Hearing to consider the extension of urgency Ordinance No. 3246 pursuant to Sections 25123, 25131 and 65858 of the California Government Code for a period of up to 22 months and 15 days. Districts 1 and 5.

RECOMMENDATION

That your Board:

1. Provide direction regarding the development of an Approved County Water Conservation Program. (*majority vote*)
2. Adopt a Resolution providing direction for staff regarding a vested right to complete site preparation, planting, or sale of product under Ordinance No. 3246. (*majority vote*)
3. Direct staff for the Department of Planning and Building and for the Health Agency, Office of Environmental Health, to explore possible amendments to the General Plan, the Land Use Ordinance (Title 22 of the County Code), and Title 8 of the County Code to address water demand within the Paso Robles Groundwater Basin and return to the Board within six months with a request to initiate processing of said amendments. (*majority vote*)
4. Hold a hearing to consider the extension of urgency Ordinance No. 3246 for a period of 22 months and 15 days from the expiration date (October 11, 2013) through and until August 26, 2015. (*4/5th's vote*)

DISCUSSION

Background – Items 1-4

On August 27, 2013, your Board adopted an Urgency Ordinance to establish a moratorium on new or expanded irrigated crop production, conversion of dry farm or grazing land to new or expanded irrigated crop production, and new development dependent upon a well in the Paso Robles Groundwater Basin unless such uses offset their total projected water use by a ratio of 1:1. The ordinance also requires the installation of meters on new wells associated with the above uses. The ordinance specifies uses that are not subject to the ordinance and includes exemptions including replacement wells for any of the prohibited uses. The ordinance applies to all properties located within the unincorporated areas of San Luis Obispo County that overlie the Paso Robles Groundwater Basin except those properties that overlie the Atascadero Sub-Basin, and properties served by County Service Area 16 or the San Miguel Community Services District.

The following items all relate to Urgency Ordinance No. 3246 adopted by your Board on August 27, 2013:

1. Discussion of options for implementation of the Urgency Ordinance relative to the development of an Approved County Water Conservation Program.
2. Consideration of a resolution providing direction to staff regarding vested rights determinations described in Ordinance No. 3246.
3. Consider directing staff to explore possible amendments to the General Plan, the Land Use Ordinance (Title 22 of the County Code), and Title 8 of the County Code to address water demand within the Paso Robles Groundwater Basin.
4. Hearing to consider the extension of urgency Ordinance No. 3246 pursuant to Sections 25123, 25131 and 65858 of the California Government Code for a period of up to 22 months and 15 days.

Item 1 - Discussion of options for implementation of the Urgency Ordinance relative to the development of an Approved County Water Conservation Program

Background

On August 27, 2013, your Board adopted an Urgency Ordinance to establish a moratorium on new or expanded irrigated crop production, conversion of dry farm or grazing land to new or expanded irrigated crop production, and new development dependent upon a well in the Paso Robles Groundwater Basin unless such uses offset their total projected water use by a ratio of 1:1.

This “no net increase” requirement will necessitate implementation of water conservation programs for rural residential development and irrigated agriculture. The alternative to the design, adoption and implementation of a basin wide water efficiency and conservation program is to let individuals identify and create offsets themselves on a project by project basis. While it is possible to accomplish this, having an approved program will make it easier and provide certainty to homeowners and agriculturalists subject to the requirement.

Until your Board approves offset programs, staff will be working with individual applicants to determine the appropriate offset for the proposed project. Where a discretionary permit is required, current planning area standards, as well as the Urgency Ordinance, will be applied.

Residential Offset Program

A rural residential retrofit/offset program for the basin’s rural area will have to consider the following difficulties:

- The basin covers an area of approximately 790 square miles.
- There are over 8,000 extraction points in the basin.
- There is no centralized administration for outreach, education and monitoring.
- There is no ability to use water rates to manage demand.
- Lack of water rates results in a lack of funding for efficiency/conservation measures and subsidies.

Although there are some hurdles to development of a residential program, staff believes that our experience with other residential offset programs in the County, and the wealth of information available about residential water use and retrofit programs, make it possible for staff to develop a Paso Robles Groundwater Basin Residential County Water Conservation Program for the Board to review and approve by resolution.

New development using water from the basin needs to be designed to be as water efficient as possible and then determine what the offset would be. Builders who design water efficiencies into the residence will have to offset less new water demand.

Outdoor water demand can be similarly calculated and offset. Offset requirements will lead to minimal landscaping, use of xeriscape, greywater systems and other outdoor water efficiency designs that will be guaranteed by covenants that run with the land.

In addition, in order to jumpstart the program and provide a "bank" that homeowners can use to purchase retrofit credits, the County could create a retrofit program that could focus on the antiquated subdivision lots and other targeted areas with residences constructed prior to 1994. The County would contract with licensed professionals who would complete the retrofitting work on the properties of participating owners and report the savings from the efficiency measures. The County would then determine the water savings achieved and create a bank. The bank could then provide builders with credits (that would be correlated with the achieved water savings) upon payment of a fee. The fee can cover all County costs associated with the retrofitting activities. These activities could include such items as:

- Toilet replacement
- Showerhead replacement
- Removal of turf
- Front loading washing machines
- Water efficient dishwashers
- Hot water recirculation systems
- Greywater systems

In this way, individual landowners would not need to find residences in need of retrofit on their own, and hire professionals to complete the retrofits and report the water savings to the County. The County Public Works Department could administer this program and the funding could come from the Flood Control District. As the costs will be recouped, the funds will be replenished.

Agricultural Offset Program

Just as new residential uses need to offset their proposed new water use, irrigated agriculture is also required to offset its new water use at a ratio of 1:1. Developing a program for agriculture is complex, and unlike residential retrofit programs, County staff has little information at this time about development and implementation of an agricultural program.

Staff has determined that in order to develop an agricultural offset program which may include a similar banking effort, professional assistance is necessary. In addition, the County will need to partner with appropriate experts in the field. At the August 27, 2013 hearing, representatives from both the Resource Conservation District (RCD) and the Vineyard Team indicated that they were willing to assist in basin conservation efforts. In addition, representatives of the producers of various types of irrigated agriculture

that overlies the basin should be involved in the development of a program. Staff would propose that a consultant be hired to assist with this effort.

Discretionary Project Offset Program

Discretionary projects are currently covered by adopted Planning Area Standards that require limited landscape and an offset of 2:1. Discretionary projects also are required to meet the requirements of the Urgency Ordinance for metering and at least a 1:1 offset. Staff believes that the processes that currently in place are adequate to address demand in the basin associated with discretionary projects. However, all efforts to develop residential and agricultural offset programs will help inform recommendations and decisions on discretionary projects.

Recommendation – Item 1

Staff is asking for direction from the Board regarding development of both Residential and Agricultural offset programs. If directed by your Board, staff will move forward with the design of a residential conservation and banking program, as well as engaging a consultant to develop an agricultural offset program.

Based on your direction today, staff would return to your Board with a resolution that would create an Approved County Conservation Program designed for residential offsets for Urgency Ordinance No. 3246 before the end of the calendar year and an Approved County Conservation Program designed for agricultural offsets for Urgency Ordinance No. 3246 by early next calendar year.

Until your Board approves offset programs, staff will be working with individual applicants to determine the appropriate offset for the proposed project.

Item 2 - A resolution providing direction for staff defining a vested right to complete site preparation, planting, or sale of product under Ordinance No. 3246

Background

On August 27, 2013, your Board adopted Urgency Ordinance No. 3246. The Urgency Ordinance included a provision for an exemption to the ordinance that read:

Where satisfactory evidence can be provided that, prior to the effective date of this Ordinance, an applicant has secured a vested right to complete site preparation, planting, or sale of product.

A determination on whether an applicant has a vested right to proceed is made by the Department of Planning and Building. In order to provide direction to staff in making these decisions, a resolution outlining the procedure to be used when presented with a request for an Ordinance 3246 vested right determination has been prepared and is presented for your Board's consideration today.

Vested Right Determination

In adopting the Urgency Ordinance, it was recognized that agriculturalists may have begun substantial site work and incurred substantial liabilities prior to adoption of the ordinance in reliance upon the previous lack of any needed approvals from the County. In order to plant a crop, only a well permit and any permits necessary to allow grading that triggers the requirements for permitting or Alternative Review, would have been required. As no pre-approval was necessary (unlike a use that requires the approval of a land use permit before it can be established) agriculturalists may have prepared the site for planting and entered into contractual obligations for plant materials prior to the adoption of the Urgency Ordinance. The exemption allows for recognition of this scenario.

In considering what types of situations might fall under this "vested right" exemption, staff looked for analogies to a structural use, where the Land Use Ordinance provides that a permit is vested once substantial site work has been completed. Substantial site work is defined in Title 22 as work that has progressed beyond grading and structural foundations and construction is occurring above ground. This is called having "sticks in the air" as work above ground typically involves the start of framing. Title 22 does not require that a certain amount of framing be complete, only that framing of the structure has

begun. To get to this point in construction requires plans be completed, checked and approved, including any engineering; building permits be issued, the site be prepared including surveying, grading and staking the limits of construction, utilities be on site and finally the foundation must be complete, including required inspections.

Using this background, staff conferred with several County departments, including the Agricultural Commissioner's Office and County Counsel, to help describe an equivalent for an agriculturalist who intends to plant new crops. The resulting resolution which is proposed for adoption explains that a vested right to complete site preparation, planting, or sale of product exists where the area intended to be planted was fully capable of being planted with its intended crop when the Ordinance was enacted. Evidence that the area intended to be planted was capable of being planted would include the following:

- a. 100 percent of the area intended to be planted was prepared for planting prior to August 27, 2013, including all of the following: (1) evidence that the area that is intended to be planted has been disked or tilled, (2) if the crops are intended to grow in rows, the rows have been surveyed and staked or clearly identified, and (3) fencing required to maintain the crop has been installed; and
- b. All wells and at least 50 percent of the irrigation infrastructure required to supply water to the area intended to be planted (such as tank, pumps, underground piping) were installed as of August 27, 2013; and
- c. As of August 27, 2013, either (1) the plants intended to be planted (i.e. rootstock) were delivered to the applicant, or (2) the applicant was contractually obligated to accept future delivery of the plants intended to be planted and all contractual conditions precedent to accepting future delivery of said plants were satisfied.

The evidence would need to be provided to the Department of Planning and Building. The evidence will be reviewed with other County Departments as necessary and a written decision will be rendered. This decision would be appealable directly to the Board of Supervisors.

Staff believes that this combination of factors represents that a property owner made a significant commitment toward establishment of an irrigated crop prior to the Ordinance going into effect. Site preparation, establishment of irrigation infrastructure and ordering of plant materials is typically done far in advance the actual planting. As discussions by your Board about the potential to adopt an urgency ordinance did not begin until July of this year, it is very possible for an agriculturalist to have already proceeded through these phases of development before those discussions began.

Recommendation - Item 2

Staff is requesting that your Board adopt the attached resolution that would provide direction to staff regarding the procedures and considerations involved with making a vested right determination for the Urgency Ordinance.

Item 3 - Consider directing staff to explore possible amendments to address water demand within the Paso Robles Groundwater Basin

Background

On August 27, 2013, your Board adopted Urgency Ordinance No. 3246. In adopting an Urgency Ordinance, the Board made a finding that time was needed in order to allow County staff to complete necessary studies and reports for amendments to its general plan and/or zoning ordinance while preserving the resources of the Basin.

Recommendation – Item 3

Staff is requesting that the Board direct staff to explore possible amendments to the General Plan, the Land Use Ordinance (Title 22 of the County Code), and Title 8 of the County Code that would provide for permanent approaches to address water demand in the Basin.

Staff would return within six months with options for amendments for your Board to consider authorizing. Once authorized, amendments to the General Plan and Ordinances will be reviewed under the California Environmental Quality Act (CEQA), and be heard by both the Planning Commission and your Board.

Item 4 - Hearing to consider the extension of Urgency Ordinance No. 3246

Background

On August 27, 2013, your Board adopted Urgency Ordinance No. 3246. The hearing today is to extend the ordinance for a period of 22 months and 15 days from the date of expiration (October 11, 2013). Attached please find an ordinance that would extend the previously adopted urgency ordinance.

Recommendation – Item 4

Your Board will need to hold a public hearing and consider whether to adopt the attached ordinance extension. Any extension requires a four-fifths vote for adoption.

OTHER AGENCY INVOLVEMENT/IMPACT

Staff from County Counsel, Public Works, Environmental Health, Agricultural Commissioner's Office and County Administration have participated in meetings regarding the Paso Robles Groundwater Basin and implementation of the adopted Urgency Ordinance. The proposed resolution and ordinance were prepared in consultation with County Counsel and were approved as to form and legal effect.

FINANCIAL CONSIDERATIONS

Development of a residential offset program and the work program for consultant assistance can be completed under the current Department budget. However, certain work efforts on the Department's priority list will need to be postponed in order to make staff available. The cost of hiring a consultant to assist with development of an agricultural offset program is unknown at this time. If your Board directs this effort to occur, staff would need to bring back a budget adjustment for approval.

Implementation costs for either program are unknown at this time. Based on the Board's direction, the Planning and Building and Public Works Departments will need to return to the Board with additional information and adjustments to budget and staffing that may be necessary.

The resolution was prepared under the current Department budget. Implementation of the resolution will be completed under the current Department budget as no fee has been established to make these vested rights determination. It is unknown the impact this may have on both the Department's budget and staffing resources as it is unknown how many determinations will be requested.

Any amendments to the General Plan and/or County Ordinances will be covered by the Department's budget as a county-initiated amendment.

The Urgency Ordinance was prepared under the Department's current budget. Implementation of the ordinance may have budget and staffing impacts that will need to be determined.

RESULTS

Providing direction on the development and implementation for offset programs will allow staff to begin work on development of a residential program and a work program for an agricultural program. Having established programs will create certainty for applicants constructing residential structures or establishing new irrigated agriculture.

Approval of the resolution will provide direction to staff in making vested rights determination as allowed under Urgency Ordinance No. 3246.

Direction from the Board for staff to explore options for amendments will allow staff time to generate various options for the Board to consider authorizing for processing at future date.

Adoption of the amendment to the Urgency Ordinance will extend the Urgency Ordinance for 22 months and 15 days, through and until August 26, 2015.

ATTACHMENTS

- Attachment 1 – Proposed Resolution Regarding Vested Rights
- Attachment 2 – Proposed Urgency Ordinance Extension Ordinance
- Attachment 3 – Adopted Urgency Ordinance No 3246
- Attachment 4 – Frequently Asked Questions
- Attachment 5 – Simplified Flow Chart –Irrigated Crop Production