

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

(1) DEPARTMENT Planning and Building	(2) MEETING DATE 11/26/2013	(3) CONTACT/PHONE Kami Griffin, Acting Director / (805) 781-5708	
(4) SUBJECT Consideration of a resolution providing direction to staff regarding vested rights determinations described in Ordinance No. 3246 that established 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. Districts 1 and 5.			
(5) RECOMMENDED ACTION  It is recommended that the Board adopt a resolution providing direction for staff defining a vested right to complete site preparation, planting, or sale of product pursuant to Ordinance No. 3246.			
(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    { } Hearing (Time Est. ____ ) <b>{X}</b> Board Business (Time Est. <u>120 minutes</u> )			
(11) EXECUTED DOCUMENTS <b>{X}</b> Resolutions    { } Contracts    { } Ordinances    { } N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: { } 4/5th's Vote Required <b>{X}</b> N/A	
(14) LOCATION MAP N/A	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY { } N/A    Date: <u>10/1/13</u>	
(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 / Kami Griffin, Acting Director

DATE: 11/26/2013

SUBJECT: Consideration of a resolution providing direction to staff regarding vested rights determinations described in Ordinance No. 3246 that established 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. Districts 1 and 5.

## **RECOMMENDATION**

It is recommended that the Board adopt a resolution providing direction for staff defining a vested right to complete site preparation, planting, or sale of product pursuant to Ordinance No. 3246.

## **DISCUSSION**

A determination on whether an applicant has a vested right to proceed with the establishment of irrigated agriculture pursuant to Urgency Ordinance 3246 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.

### **Background – Urgency Ordinance**

On August 27, 2013, your Board adopted an Urgency Ordinance to establish a moratorium on 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. The ordinance specifies uses that are not subject to the ordinance and exemptions to the ordinance. 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 and San Miguel Community Services District.

The Urgency Ordinance includes a provision for an exemption to the ordinance that reads:

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.

On October 8, 2013, your Board voted to extend this ordinance for 22 months and 15 days to August 26, 2015.

### Outreach Efforts – Vesting Rights Determination

On October 1, 2013, staff presented your Board with a resolution that outlined a procedure to use when presented with a request for a vesting rights exemption. At that meeting, your Board directed staff to conduct outreach to stakeholders and gather more input.

On October 22, 2013, an email was sent to over 75 addresses representing both individuals and groups that had expressed an interest in the issue of vested rights through emails, letter or testimony. The email (Exhibit B) asked the recipients to submit ideas on how they believed vested rights determinations should be made. 30 responses were received (Exhibit C). Most of the responses acknowledged that in order to be exempt from the ordinance by means of a vested right, a substantial investment toward the planting should have occurred before August 27, 2013. There were differences as to what was a substantial investment. Some of the comments suggested the use of a dollar amount and others focused on actual site work completed.

The comments were provided to a smaller stakeholder group made up of representatives from the following organizations:

- Resource Conservation District
- Vineyard Team
- Paso Robles Agricultural Alliance for Groundwater Solutions (PRAAGS)
- Ag Commissioner's Office
- Agricultural Liaison Advisory Board (ALAB)
- University of California Cooperative Extension
- Farm Advisor
- Paso Robles Groundwater Basin Overliers for Water Equity (PRO Water Equity)
- Paso Robles Wine Country Alliance
- Blue Ribbon Committee
- Concerned Owners of Rural and Agricultural Lands (CORAL)

On November 6, 2013, the small stakeholder group met to discuss the comments received. The group discussed using a project's dollar amount to determine vesting. However, the group decided that having each business "open their books" was not an efficient method for making this determination. The group also looked at language using contractual obligations in combination with some level of site work to establish a vested right. That language is proposed in the attached resolution (Exhibit A) for your Board to consider today. Although there was general consensus on an approach for determining whether there was a vested right, there were still individual members who believed that the language either would allow too many sites to qualify for a vested right exemption or was too onerous and would prevent sites from qualifying.

There was also a concern raised by the group that something would arise that no one had thought of, and if that situation arose, there should be a way to have the Board of Supervisors review the request and make a determination. A provision was added that acknowledged that the decisions that are made by the Planning and Building Director by applying the very specific requirements would be equivalent to a ministerial decision. However, if an instance were to be brought forward that could not have been anticipated (i.e. an unusual crop type) the Director can bring that request to your Board for a decision.

### Vested Right Determination

The proposed language requires that a site must meet three absolute requirements. These are:

- Evidence of a valid well permit applied for and issued pursuant to Chapter 8.40 of the County Code prior to August 27, 2013.

- Evidence that a well has been installed onsite pursuant to the valid well permit described above, or evidence that a contract was entered into with a licensed well driller prior to August 27, 2013 for installation of the well.
- Evidence that the applicant owned the land prior to August 27, 2013 or had entered into an irrevocable lease for the specific purpose of agriculture prior to August 27, 2013.

In addition to these three requirements, there are additional requirements based on the type of crop type. If a permanent crop type (which was defined as being vineyard, orchard, tree fruits, tree nuts) is being established, then evidence would need to be provided that at least three out of a list of six items have been met. If an annual crop type (grains, field crops, vegetables, field fruits, flower fields and seed production, ornamental crops, irrigated pasture) is being established, then evidence would need to be provided that at least two out of a different list of six items have been met. The lists contain both contractual obligations and site work. The difference between the two crop types recognizes that much more work is done in advance of establishing a permanent crop and that annual crops often don't have permanent infrastructure.

For your Board's information, letters for vested right exemption requests that have been received so far are shown in Exhibit D.

#### Recommendation

Staff is requesting that your Board adopt a resolution (attached) that would establish the policy and process for making a vested right determination for the Urgency Ordinance.

#### **OTHER AGENCY INVOLVEMENT/IMPACT**

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

#### **FINANCIAL CONSIDERATIONS**

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

#### **RESULTS**

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

#### **ATTACHMENTS**

- Exhibit A - Resolution
- Exhibit B - Email sent to interested parties on October 22, 2013
- Exhibit C - Comments Received
- Exhibit D - Vesting Right Request Letters