

TO: CONSERVATION, DEVELOPMENT AND PLANNING COMMISSION

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SUBJECT: GENERAL PLAN AMENDMENT #GPA98-04: County-initiated text amendment to the Land Use Element of the County General Plan to require groundwater findings prior to certain specified redesignations of land.

NAPA COUNTY CODE AMENDMENT #98279-ORD: County-initiated text amendment to Titles 13, 15 and 18 of the Napa County Code to establish findings and permit requirements for the extraction and use of pumped groundwater as a water source on affected properties.

DATE: APRIL 7, 1999

BACKGROUND

Article XI, section 7 of the California Constitution provides counties with the power to make and enforce within their limits all local police, sanitary and other ordinances not in conflict with the general laws. Article X, section 2 of the California Constitution provides an additional constitutional basis for counties to enact ordinances prohibiting the extraction and use of groundwater resources for wasteful, unreasonable or non-beneficial purposes. This self-executing constitutional provision requires that water use be reasonable and that waters be conserved for as many uses as possible. In short, that local management of groundwater resources is a valid exercise of the police power has been a well established principle of California law since the 1930's. In recent years, this principle has been applied to promote conservation and protect and enhance environmental quality.

Various studies conducted or reviewed by the County demonstrate the need for the zoning ordinance proposed. The most important of these studies are attached hereto in full for your review. The remainder are on file with the Department of Public Works.

1991 Study (full copy enclosed for Commission, Executive Summary for others).

The 1991 study provides a detailed review of the relationship between water needs and supply in the short and long term for urban, rural and agricultural users in Napa County, including groundwater needs and supplies. Drawing upon the 1973 and 1977 USGS reports and dividing the county into several discrete subareas, the study calculates the estimated safe yield for each of the four areas in the county with a potential for groundwater extraction. The estimated annual safe yield figures for these regions include 22,500 acre feet for the North Napa Valley Basin, less

than 5,400 acre feet for the Milliken-Sarco-Tulucay Groundwater Basins, less than 300 acre feet for Carneros, and less than 400 acre feet for the Lake Berryessa Basin.

The 1991 study also develops short and long-term projections of water needs among users and regions in Napa County using these figures to balance water needs and supplies for the period 1990 through 2020. The results of this balance reveal substantial long-term inadequacies in supply throughout the county's subareas, although admittedly at present some areas have a short-term surplus. From this study it is reasonable to conclude that as the county's water needs increase in the future, increases in agricultural and rural uses are likely to eliminate any existing groundwater surplus. This change from surplus to deficit is likely to be far more pronounced and occur sooner rather than later if increased municipal and industrial demands are also satisfied by using groundwater. Staff notes that in recent years various proposals have surfaced involving the City of Napa and the City of St. Helena proposing to augment their water supplies through increased use of groundwater. Thus, the possibility of municipal and industrial increased water demands being satisfied from groundwater supplies is far from a theoretical concept in Napa County. In 1991, the surplus presently existing for agricultural groundwater users was projected to turn into a deficiency in ten years.

The study concluded in part that the County in issuing use permits should ensure that the applicant demonstrates the adequacy of water supply and retain drainage on site to encourage groundwater recharge.

1993 Report of the Water Advisory Committee (copy enclosed)

The 1993 Report confirmed the 1991 Study's results and projected a growing deficiency in overall county water supply. The Report identified shortfalls of 10,900 acre feet by the year 2000 which would increase to 18,600 acre feet by 2020 and 23,000 acre feet by 2030.

May 1992 Napa River Diversion Feasibility Study

The Napa River Diversion Feasibility Study suggests pursuing further investigation of a groundwater recharge/conjunctive use project that would use surface water from the Milliken Reservoir to recharge the Milliken-Sarco-Tulocay groundwater basin in the southeast portion of the county. This was to be expected, since the Milliken-Sarco-Tulocay groundwater basin is presently, and has been for some time, in a deficit situation. The 1992 Study also recommended that this recommended groundwater recharge project should be coordinated with a County-wide groundwater basin management plan strategy that protects groundwater resources. This proposed ordinance and general plan amendment begin the implementation of an overall groundwater basin management plan.

Conclusions

The studies referenced above demonstrate the presence of an emerging long-term shortfall in water resources, and particularly in groundwater resources heretofore serving agriculture, throughout Napa County's subareas. The emerging shortfall appears to be particularly acute in certain areas surrounding the groundwater basins which have been designated as open space in the county's general plan, but does not appear to be exclusively confined to these areas.

As a result of these studies, the Board during 1996-1997 adopted a series of urgency ordinances

restricting the extraction of groundwater to varying degrees (See Napa County Ordinance Nos. 1117, 1118, 1119, 1122 and 1130). The purpose of these ordinances was to maintain the *status quo* to the maximum extent possible while the comprehensive groundwater ordinance and general plan amendment you are considering today were developed.

It is staff's view that when these studies, as well as other reports on file with the Department of Public Works (i.e. August 1997 USGS report "Groundwater Hydrology of the Lower Milliken-Sarco-Tuluca Creek Area" and the November 1973 USGS report "Groundwater Hydrology of Northern Napa Valley") are taken into account, it becomes clear that if the water supplies of the County are to be protected, additional regulations are needed to ensure that further development, be it agricultural or urban, will be required to demonstrate that its development will not adversely impact the groundwater basins located in Napa County.

ENVIRONMENTAL

Staff has prepared an Initial Study on the proposed General Plan amendment and Zoning Ordinance text amendment (attached). No potential significant adverse environmental effects have been identified. The proposed amendments will have an overall beneficial impact on the environment by establishing General Plan findings and additional regulations to avoid overdrafts and maximize the long-term beneficial use of groundwater resources, thus serving to protect the public health, safety and welfare of the citizens of Napa County. As such, no adverse environmental effects have been identified as resulting from the adoption of these amendments. A Negative Declaration has been prepared, and the attached Planning Commission Resolution includes a recommendation to the Board of Supervisors to adopt the Negative Declaration.

STAFF ANALYSIS

Amendment of the General Plan:

The proposed groundwater ordinance, like all other zoning ordinances, must be consistent with the Napa County General Plan. Although the county general plan does not expressly call for the adoption of a groundwater ordinance, the general plan contains sufficient language to enable the Commission to make a finding that the proposed ordinance is consistent with the Napa County General Plan (see section 2 of the proposed ordinance).

The purpose of the proposed general plan amendment is to make clear that the Board of Supervisors considers groundwater usage and impacts in the redesignation of lands currently designated "Agriculture, Watershed and Open Space" or "Agricultural Resource". Specifically, the proposed general plan amendment would add a seventh mandatory finding to subsection 3.f.9.d of the Land Use Element that the Board must make prior to any Board-adopted redesignation of land now designated on the land use map as "Agriculture, Watershed or Open Space" or "Agricultural Resource" to a designation other than "Agriculture, Watershed or Open Space" or "Agricultural Resource". This additional finding would state that, "The applicant for redesignation and its successors will not extract groundwater from the affected property or use pumped groundwater as a water source on the affected property except pursuant to a valid groundwater permit or use permit meeting the requirements of the Napa County Groundwater Conservation Ordinance, unless a final determination of exemption or waiver is made under that ordinance."

The proposed amendments do not change the following provisions of the Land Use Element of the Napa County General Plan: Sections 3.F.7.a, 3.F.7.c, 3.F.7.d, 3.F.8.a, 3.F.8.c, 3.F.8.d of the Land Use Element. Nor do the amendments propose changing the Land Use Map. Therefore, the proposed general plan amendments contained in this resolution do not require a vote of the people pursuant to Measure J.

State law allows the County to amend its General Plan up to four times within a calendar year. No amendments have yet been adopted for calendar year 1999.

Groundwater Ordinance:

General Rule. With certain exceptions to be discussed below, the installation of a new water system or the improvement of an existing water system that may use groundwater as a water source requires a groundwater permit or the equivalent. As one would expect, this requirement applies to use permits, variances, subdivisions and the like. In addition, the ordinance requires development that heretofore has not been required to obtain permits as a condition of commencing a use (other than a building permit if construction is involved) will be required to obtain a groundwater permit or the equivalent. Thus, for example, agriculture in Napa County is not typically required to secure a use permit prior to commencing operations. If this ordinance is enacted as proposed, an agricultural operation that will utilize a new water system or require the improvement of an existing water system that may utilize groundwater as a water source will be required to obtain a groundwater permit prior to commencing operations unless it is exempt.

Exemptions From the General Rule. There are three exemptions from this general requirement that development must secure a groundwater permit or the equivalent. The first exemption applies to development that does not require the issuance of a use permit prior to commencing the use (i.e. the construction of a single family residence). Applications to install or improve a water system for development that will serve the parcel on which the water system is located or a single contiguous parcel are exempt from the groundwater permit requirement. The second exemption applies to agricultural operations. Applications to install or improve a water system for development involving agricultural operations are exempt even if the water system will serve multiple contiguous parcels. In the case of this exemption, contiguity is defined in a manner that should allow for a series of parcels that are part of a single agricultural operation to draw water from a single source without being required to secure a groundwater permit or the equivalent (see subparagraph (A) of section 13.15.040 of the attached ordinance). The third exemption applies to emergencies. The Director of Environmental Management is authorized to declare a site specific emergency if an individual has lost his/her water source and needs to immediately improve the on-site water system to restore his/her water supply.

Exceptions to the Exemption. There are two exceptions to the first two exemptions identified above. First, neither of these exemptions apply if the parcel on which the water system is located within a groundwater deficient area. At present, only the Milliken-Sarco-Tuolcay (hereafter "Milliken") groundwater basin is classified as a groundwater deficient area. However, as the attached studies indicate, it is possible that other groundwater basins in the ensuing years will join Milliken on the list of groundwater deficient areas in Napa County. Second, parcels of less than one acre where the water system would serve only that parcel and public water is available cannot qualify for first exemption described above.

Groundwater Permit Equivalent. The ordinance provides that in the case of uses requiring the issuance of a use permit a separate groundwater permit shall not be required. In those circumstances the required groundwater review will occur as a part of the use permit approval process.

Procedures - Applications For Exemptions. Any applicant is entitled to apply for an exemption from the provisions of the ordinance. Any such application is first reviewed by the Public Works Department to determine whether an exemption is appropriate and by the Conservation, Development and Planning Department for the purpose of environmental review of the application. In the case of environmental review, the ordinance provides that determinations of exemption involving development serving not more than one contiguous parcel (see the first exemption discussed above) are ministerial and therefore exempt from CEQA. In all other cases, a determination of the appropriate level of environmental review will need to be conducted by the Conservation, Development and Planning Department prior to the time that the Director of Environmental Management considers whether the application for an exemption should be approved or denied. No notice of determinations of exemption are required to be provided to anyone other than the applicant. An individual wishing to be provided notice of such determinations should file a request with the Director of Environmental Management that he or she be provided with notice.

Procedures - Applications For A Groundwater Permit

If an exemption is not sought, or an application for an exemption is denied, the following procedure is followed. The applicant is required to file a Groundwater Declaration on a form that will be developed by the Director of Environmental Management (The content of this declaration is described in section 13.15.060 of the attached ordinance). The Director of Environmental Management is also required to notify the applicant that a Phase I, II and III water availability study must be performed. As a part of the staff presentation before the Commission, the Director of Public Works or his designee will describe the function of these water availability studies and how it is determined which study is required to be performed.

The Declaration and Study is then forwarded to the Public Works Department and the Conservation, Development and Planning Department for review. The Public Works review will determine whether approving the application would adversely affect static water level of neighboring wells, assess any drawdown of the impacted groundwater table, assess the degradation of water quality, evaluate the adverse effects on reasonable and beneficial uses of groundwater and determine whether the application, if approved, would interfere with surface water flows or result in other adverse changes to the physical environment. The Conservation, Development and Planning review is for the purpose of conducting the required environmental review.

After reviewing the various documents described above, including the reports/comments from the Public Works and Conservation, Development and Planning Departments, the Director of Environmental Management is required to approve or deny the requested groundwater permit. Approval may occur only after making any required environmental determination (i.e. determining the application is categorically exempt, adoption of a Negative Declaration, certification of Final EIR) and finding that the water system would not significantly affect the impacted groundwater basin. This decision is referred to as the Director's *tentative* decision.

Factors that will be considered in making the decision include, but are not limited to: drawdown of the impacted groundwater table; degradation of water quality; adverse effects on the reasonable and beneficial uses of groundwater; interference with surface water flows; or other adverse changes in the environment. As in the case of a use permit, the Director of Environmental Management may impose reasonable conditions as needed to satisfy the requirements of this Chapter and protect the public health, safety and welfare.

Within seven days of the date the Director of Environmental Management makes his tentative decision, notice of the tentative decision must be given to the applicant, affected public agencies, and to all persons owning real property within 300 feet of the site of the proposed extraction. For this purpose, the site of the proposed extraction is considered the outer perimeter of the properties the water system will serve. Written requests for notices of such decisions may also be filed by any interested person with the Director of Environmental Management, regardless of where such interested persons live in relation to the proposed water system. The Notice will identify the date by which a hearing must be requested if the individual receiving the notice objects to the tentative decision of the Director of Environmental Management. Noticed individuals must be given at least ten calendar days following the mailing of the notice to request a hearing.

If a hearing is not requested in a timely manner the tentative decision becomes final. In such a case, an appeal to the Board of Supervisors is not permitted.

If a hearing is requested in a timely manner, the Director of Environmental Management will establish a hearing date and notify all persons who have been previously notified of the tentative decision of the hearing date. The notification will be mailed at least ten days prior to the hearing date. The hearing is expected to be handled in the same procedural manner as a hearing before the Commission. Not later than five days after the close of the hearing the Director of Environmental Management will render his final decision. Notice of the final decision will be given to all persons who both appeared *and* presented testimony at the hearing. Written requests for notices of final decisions may also be filed by any interested person with the Director of Environmental Management. Appeals of the Director's decision to the Board of Supervisors occur in the usual manner.

Technical changes to the Zoning Code are made by Sections 5 through 10 of the proposed Ordinance to ensure internal consistency. The changes to these existing Code sections are clearly indicated in the attached ordinance by underlining.

AMENDMENT PROCEDURES

The provisions for amendment of the General Plan are set forth by State law and by resolution of the Board of Supervisors. The provisions for the amendment of the County Code are set forth by State law, resolution of the Board of Supervisors, and Chapter 18.136 of Title 18 of the County Code. These provisions require a public hearing before the Planning Commission. Consideration of the proposed general plan amendment and Code amendment was duly noticed by a one-eighth page display ad in both the Napa Valley Register and the St. Helena Star. At the conclusion of the public hearing, the Commission must render its written recommendation to the Board of Supervisors.

If the Commission acts to recommend the adoption of the proposed general plan amendment and the Code amendment to the Board of Supervisors, they would do so by adoption of the attached resolutions. The resolutions include a finding of general plan consistency and a finding that the amendments will not have a significant effect on the environment.

RECOMMENDATION

ADOPT RESOLUTION NO. 99-04 recommending that the Board of Supervisors approve General Plan Amendment #GPA98-04, as described in Exhibit A; and

ADOPT RESOLUTION NO. 99-05 recommending that the Board of Supervisors amend the Napa County Code by approving Code Amendment #98279-ORD, as described in Exhibit B.

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