



Agenda Date: 7/31/2007
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NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Lederer, Steven - Director
Environmental Management
REPORT BY: Christine M. Secheli, Assistant Director, 253-4471
SUBJECT: Ordinance Amending Groundwater Permitting Procedures and Adoption of a Resolution
Establishing and Increasing Fees

RECOMMENDATION

Director of Environmental Management requests the following:

1. First reading and intention to adopt an ordinance making administrative and procedural amendments to portions of Chapter 13.15 (Groundwater Conservation) of the Napa County Code.
ENVIRONMENTAL DETERMINATION: General Rule. It can be seen with certainty that there is no possibility the proposed action may have a significant effect on the environment and therefore CEQA is not applicable [See Guidelines For the Implementation of the California Environmental Quality Act, 14 CCR 15061(b)(3)].
2. Adoption of a resolution establishing and increasing fees for services provided by the Department of Environmental Management relating to groundwater permits.
ENVIRONMENTAL DETERMINATION: The proposed action is exempt from the California Environmental Quality Act pursuant to Title 14, California Code of Regulations, section 15273(a)(1) (Rates, Tolls, Fares, and Charges).

EXECUTIVE SUMMARY

Ordinance: The proposed ordinance would amend several key definitions, clarify when a groundwater permit is required, modify requirements for ministerial permits and establish a process to modify or cancel an existing groundwater permit. Additionally, new language has been added to further discourage wasteful water use practices by potential groundwater permit applicants when establishing their existing water use levels.

Resolution: The proposed resolution establishes and increases fees for services provided by the Department of Environmental Management related to processing ministerial groundwater permits and modifications to and cancellation of existing groundwater permits.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Costs related to groundwater permits are included in the Environmental Management Recommended 07-08 budget.
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	<u>Ordinance</u> : Allows a process whereby a property owner can change or cancel an existing permit. <u>Resolution</u> : If the proposed resolution is not adopted, the General Fund will subsidize services provided to applicants.
Is the general fund affected?	Yes
Future fiscal impact:	<u>Ordinance</u> : Minimal based on the small number of applications actually received. <u>Resolution</u> : The services allowed for in the ordinance will be subsidized by the General Fund if the resolution is not adopted.
Consequences if not approved:	<u>Ordinance</u> : Owners will not be able to amend or modify a permit, they will have to apply for a whole new permit through the existing application process. <u>Resolution</u> : If the proposed resolution is not approved, no additional revenues would be received.
Additional Information:	

ENVIRONMENTAL IMPACTOrdinance:

ENVIRONMENTAL DETERMINATION: General Rule. It can be seen with certainty that there is no possibility the proposed action may have a significant effect on the environment and therefore CEQA is not applicable [See Guidelines For the Implementation of the California Environmental Quality Act, 14 CCR 15061(b)(3)].

Resolution:

ENVIRONMENTAL DETERMINATION: The proposed action is exempt from the California Environmental Quality Act pursuant to Title 14, California Code of Regulations, section 15273(a)(1) (Rates, Tolls, Fares, and Charges).

BACKGROUND AND DISCUSSIONOrdinance:

Periodically, the County Code must be amended to update, delete, correct or streamline various administrative and procedural provisions to improve efficiency and avoid obsolescence.

This is a two-reading ordinance. The recommended actions on the current agenda are, first, that the title be read and reading of the balance of the ordinance be waived and, second, that the Board move and approve an intention

to adopt the proposed ordinance at the second reading to occur on a date to be determined by the Clerk of the Board.

This ordinance was previously introduced on June 26, 2007 but was pulled at the second reading to allow for a change relating to the proposed language to limit the size of the pump on a replacement well. The proposed language continues to restrict the diameter of the replacement well to the same or smaller diameter as the existing well but no longer restricts the pump size.

The proposed ordinance would amend several key definitions, clarify when a groundwater permit is required, modify requirements for ministerial permits and establish a process to modify or cancel an existing groundwater permit. Additionally, new language has been added to further discourage wasteful water use practices by potential groundwater permit applicants when establishing their existing water use levels.

The definition of "convenience improvement" in Section 13.15.010.C has been amended to include the replacement of a site's existing well and includes a provision that if a replacement well is permitted, the existing well must be destroyed and that the new well must be drilled to the same diameter or smaller as the existing well. This change is made because under the existing ordinance an exemption from the groundwater permitting process (emergency exemption) can only be granted for two reasons: (1) The applicant's water source is no longer capable of supplying the amount of water needed to serve the existing legal uses and/or the water source has lost its water supply and (2) the water source is a threat to public health or groundwater contamination and cannot reasonably be treated or corrected. With respect to reason 1 above, we have found over the years that waiting for total well failure puts an extreme burden on property owners both in terms of expense and convenience. Currently, when a well's supply is diminishing but has not yet reached a point where it is out of water, a property owner is forced to spend a considerable amount of money to install storage tanks and/or change pumps or connect to a neighbor's supply if needed. Generally these expenses result in only a temporary fix as the well eventually goes dry anyway. Rather than give the owners the choice of applying for a groundwater permit (since they don't qualify for an exemption yet) or waiting it out and doing what they can until the well is dry (in which case they will then qualify for an exemption), this change would allow a replacement of a well to serve those existing legal uses without forcing a property owner to such extremes, but without increasing the property's use of water.

The definition of "minor improvement" has changed as well to include replacement dwellings when an existing legal dwelling had previously existed on the property. Additionally, although additions of bedrooms have always been included in this definition we have added language to clarify that this includes all bedrooms whether or not attached to the single family home (this would allow addition of a guest unit, but not a second dwelling). The logic behind this change is based on how water use estimates are conducted. In estimating water use for new construction, standard water use rates (0.5-0.75 acre ft/year for a main dwelling, and 0.2-0.3 acre-ft/year for second dwelling unit) are used independent of the size of the house. Since initial construction can occur with any number of bedrooms, it is illogical to require an additional permit later to add on what could have been built in the first place. Since a guest unit is nothing but an additional bedroom, it too should fall under the same allowance. Similarly, replacement of an existing legal unit with a new unit falls under the same scenario. This analysis has been supported by our legal counsel.

Section 13.15.020 has been amended to improve the wording of various sections, and to include a new section F that will not allow a property owner to process a lot line adjustment that will create a situation wherein a current configuration of two homes on two properties results in a configuration with two homes on one property and none on the other. Currently this loophole allows an applicant to obtain a second dwelling on a property and essentially allows for the construction of a new single family home on the newly vacant lot. A new section G has also been added to provide a process whereby a property owner may properly avoid the groundwater permit process by creating a new use on the property which does not require groundwater (e.g. using trucked in water for agriculture or connecting to city water for certain uses where available), while ensuring the use of a non-groundwater source is properly documented.

Section 13.15.030 A (4) has been deleted (site specific emergency exemptions) since the definition of replacement well has been included in the amended definition of a convenience improvement. Section 13.15.030 C regarding ministerial permits has been amended for those parcels less than or equal to 2.0 acres in size to require metering of water use, but reporting only if and when requested by the public works department. Additionally this allowance for reduced reporting will equally apply to ministerial permits for agricultural land redevelopment of 2.0 acres or less. If a parcel is greater than 2.0 acres or if the agricultural land redevelopment is greater than 2.0 acres all the current ministerial permit requirements apply, as dictated in the existing code. This change eliminates unnecessary County paperwork and property owner reporting on smaller, less water intensive parcels, while retaining the right to obtain the data as needed.

A new Section 13.15.030 D has been added that outlines the process by which a property owner can modify or cancel an existing groundwater permit.

Section 13.15.060 was amended to discourage wasteful water use practices. In order to qualify for a groundwater permit at this time the applicant must either apply for a ministerial or discretionary groundwater permit. To obtain a discretionary groundwater permit an applicant must show that the project they are requesting will not result in any more water use than what they are currently using. This has caused some property owners to wastefully irrigate or otherwise use water just to try to make their base year water use look higher. The amendment of this section will allow us to only consider legitimate water using activities such as residential structures, other legal uses (wineries, etc.), vineyards or other viable agricultural crop or animal operation and specifically will not recognize random irrigation practices that serve no beneficial use.

Resolution:

Staff recommends adoption of a resolution establishing a fixed fee for ministerial permits and a new fee for minor modifications to an existing groundwater permit and for applications to cancel an existing groundwater permit. Since a fixed fee for the ministerial permit was not previously identified in the fee schedule, the Department has to date charged a fee based on hourly rate as required by Section 110.026 of the fee schedule. Data from processing previous applications indicates a fixed fee of \$184.00 (approximately 1.75 hours of staff time at the hourly rate of \$105.00) is the appropriate cost for such a permit which is the fee being proposed in this fee schedule. Applications for a minor modification of an existing groundwater permit will similarly be charged \$184.00 as processing time will be similar to that of a ministerial permit. The last fee of \$28.00 is being proposed for an application to cancel an existing groundwater permit which is the same fee currently charged for a groundwater determination on building permits. This fee represents the amount of time (approximately 1/4 hour at \$105/hour) required to process these applications and prepare the required correspondence acknowledging such cancellation.

In May of 2006, the Board considered and approved a program of phased fee increases for development applications based on the findings and recommendations of the Maximus report and recommendations of the County Executive Officer. The adopted resolution provided policy direction such that rates for the department's fee schedules be updated on an annual basis based upon changes to County costs. The fees proposed in the resolution reflect our actual costs and include the equivalent fee increases to be effective July 1, 2008 as directed by the adopted 2006 resolution.

SUPPORTING DOCUMENTS

A . Ordinance (tracked)

B . Ordinance (clean)

C . Resolution

CEO Recommendation: Approve

Reviewed By: Helene Franchi