



# NOTICE OF CATEGORICAL EXEMPTION

Sonoma County Permit and Resource Management Department

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Sonoma County proposes to carry out the following project. Pursuant to Section 23A of the Sonoma County Code, it has been determined that this project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA):

<b>Project Title:</b> Amendment to the Sonoma County Well Ordinance	To:	County Clerk- Recorder Office	Office of Planning and Research
<b>Public Agency:</b> Sonoma County		County of Sonoma	
<b>Project Applicant:</b> County		585 Fiscal Drive, Room 103	P.O. Box 3044, Room 113
<b>Applicant Address:</b> 2550 Ventura Ave., Santa Rosa CA 95403		Santa Rosa, CA 95403	Sacramento, CA 95812-3044
<b>Project Location:</b> County wide			
<b>Date of Approval:</b> April 4, 2023			

## DESCRIPTION OF NATURE, PURPOSE AND BENEFICIARIES OF THE PROJECT:

Ordinance Amending Chapter 25B Of The Sonoma County Code To Address Evaluation Of Impacts To Public Trust Resources For Proposed New Water Supply Wells, To Specify Public Trust Review Area And Exemptions, To Add, Delete, Or Modify Definitions, To Add A Well Metering Requirement, To Make Other Miscellaneous And Technical Correction, And To Set An At-Cost Fee For Discretionary Well Permit Applications

The proposed ordinance provides a framework to guide the County's consideration of impacts to public trust resources when permitting new water supply wells that could harm a navigable waterway, including specification of a public trust review area and exemptions from discretionary public trust review. It adds, deletes, or modifies certain definitions, and makes other related and technical changes.

"Public trust resources" are waterways the government is obligated to hold in trust pursuant to the public trust doctrine for the benefit of the public for purposes of commerce, navigation, recreation, fishing, and preservation of wildlife habitat and natural resources. The "public trust doctrine" is a common law legal doctrine, reflected in Article X, section 4 of the California Constitution, that continues to develop and evolve through published judicial decisions. The 2018 decision by the California Court of Appeals for the Third Circuit in *Environmental Law Foundation vs. State Water Resources Control Board (ELF)* (26 Cal. App. 5th 844) found that public trust responsibility of the state and counties extends to consideration of impacts to public trust resources when making groundwater decisions that could harm a navigable waterway.

In response to such case law, staff has developed proposed ordinance amendments to guide the County's exercise of its public trust responsibility to consider impacts to public trust resources when issuing groundwater well permits that could cause harm to public trust resources in interconnected navigable surface waters. The proposed ordinance was informed by recommendations from technical and policy working groups convened by the Director of the Permit and Resource Management Department.

Sonoma County's current well ordinance adopted on July 28, 2015 (Ordinance No. 6121), and codified at Chapter 25B of the County Code, regulates well construction, destruction, water treatment, and setbacks, but does not explicitly address consideration of impacts to public trust resources. The proposed amendments to the well ordinance include a new section 25B-4(d) titled "Public Trust Resource Limitation" to guide the County's consideration of impacts to public trust resources prior to issuance of a permit for a new water supply well.

As proposed, certain permits would be ministerial, and others would be discretionary. Well permit applications within an area specified as the Public Trust Review Area will be required to include additional supporting information and studies (e.g., water use estimates, construction details, hydrogeologic reports, etc.) considered necessary to complete the evaluation of impacts to public trust resources.

A scaled approach was developed to define the Public Trust Review Area. This approach considers the relative strength or weakness of two primary factors: the sensitivity of public trust resources, including aquatic habitat, to streamflow depletion, and the best available estimates of existing streamflow depletion. Generally, the Public Trust Review Area includes the portions of the County where aquatic habitat sensitivity and/or estimated streamflow depletion are relatively high, thus risk to public trust resources is considered moderate or high. Methods for delineating the Public Trust Review Area were developed and reviewed by a well ordinance technical working group that included experts in hydrogeology, streamflow depletion, and National Marine Fisheries Service and California Department of Fish and Wildlife staff.

Where a permit application requires a public trust determination, that determination is discretionary. Permit applications not requiring a public trust determination will remain subject to ministerial standards.

The proposed ordinance ensures that the issuance of a new water well permit will not substantially impair a public trust resources after the imposition of feasible mitigation measures. Any interested person may appeal to the Board of Supervisors the determination of the Permit and Resource Management Department, which is the "enforcing agency," under the ordinance for new water supply wells, concerning whether the proposed well would or would not substantially impair a public trust resource. Additionally, regardless of an interested party appeal, or concurrently with an appeal, the Department may elevate a permit application to the Board of Supervisors where the health, safety and welfare needs of the community, including the need for drinking water, may warrant approval of the permit in accordance with overriding considerations on balance with public trust considerations.

The proposed ordinance provides an exemption from the discretionary public trust review for the below classes of wells:

1. Injection Well. A well that is used solely for injecting water into the underground.
2. Public Water Well. A public water well for which environmental review under the California Environmental Quality Act is complete.
3. Surface Water Diversion Well. A water well that serves as a point of surface water diversion for an appropriative water right regulated by the California State Water Resources Control Board, Division of Water Rights. Subject to Level 1 water conservation requirements.

4. Well for Low Water Use. A water well where total groundwater use of the parcel is limited to 2.0-acre feet or less per year. Subject to Level 1 water conservation requirements.
5. Well for Existing Use. A water well where total groundwater use of the parcel is limited to and does not exceed the amount of groundwater used as of the date of ordinance adoption for legally established land uses. Subject to Level 1 and 2 water conservation requirements.
6. Net Zero Groundwater Increase. Water well, where the proposed use would not result in a net increase in groundwater use from the local aquifer through implementation of water conservation measures, rainwater catchment or recycled water reuse system, water recharge project, agricultural practices that increase infiltration and soil moisture capacity, or local groundwater management project. Subject to Level 1 and 2 water conservation requirements.

The proposed well ordinance specifies basic (Level 1) water conservation requirements for all water wells throughout the County, except for Public Water Wells and Injection Wells.

Level 1 water conservation requirements include:

1. Leak and water conservation audit;
2. Water efficient faucets and showerheads;
3. New landscapes shall comply with the water efficient landscape regulations contained in Sonoma County Code section 703 Water Efficient Landscape;
4. For development after October 4, 2022, grass lawns are prohibited, unless compliant with Water Efficient Landscape Regulations;
5. For existing development prior to October 4, 2022, grass lawns shall be no greater than 2500 square feet, unless compliant with Water Efficient Landscape Regulations;
6. Disconnected downspouts; and
7. Compliance with water conservation requirements adopted by a Groundwater Sustainability Agency.

The proposed well ordinance specifies Level 1 and additional Level 2 water conservation requirements for “Well for Existing Use” and “Net Zero Groundwater Increase” class wells.

Level 2 water conservation requirements include:

1. Water efficient water closets and urinals;
2. Water conservation plans for commercial industrial, institutional sites;
3. Water conservation plan for agricultural sites;
4. Limits on vineyard and orchard irrigation to the existing use or 0.6 acre feet per acre; and
5. Frost protection plan for vineyards.

The proposed ordinance amendments also provide for requests for expedited review of well permit applications that are necessary due to emergency circumstances, while eliminating the provision for emergency well drilling without review and approval by the County before drilling occurs.

#### **EXEMPT STATUS:**

Categorical Exemptions Sections 15307 for actions by regulatory agencies for protection of natural resources, 15308 Actions by Regulatory Agencies for Protection of the Environment, and Section 15061(b)(3) common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Fee changes which are for the purpose of meeting operating expenses are similarly exempt. (Public Resources Code §21080 and 14 CCR §15273.)

#### **REASON WHY THIS PROJECT IS EXEMPT:**

Adoption of the proposed ordinance amendments to Chapter 25B and at-cost fee are exempt pursuant to the categorical exemptions provided at State CEQA Guideline §15307 for Actions by Regulatory Agencies for Protection of Natural Resources and §15308 for Actions by Regulatory Agencies for Protection of the Environment because the amendments are regulatory in nature and are designed to assure the maintenance, restoration, or enhancement or protection of natural resources and the environment and at §15061(b)(3) because the amendments and associated fee create and fund an application review process designed to public trust resources, where no exception to applicability of the exemptions under §15300.2, and because it can be seen with certainty that there is no possibility that this ordinance or application fee may have a significant effect on the environment. Similarly, CEQA does not apply to fee changes pursuant to this ordinance as such fees are for the purpose of meeting operating expenses (Public Resources Code §21080 and 14 CCR §15273).

The County's approval of the ordinance and fee will not authorize any construction activities, but instead impose requirements, consistent with existing law, to consider impacts to public trust resources via discretionary permit applications, subject to an at-cost fee, and to facilitate data collection through metering, and to make other related changes, none of which result in any direct physical change to the environment on their own, and which are designed to be protective of public trust resources and the environment. Discretionary applications for new water supply wells under the amended ordinance must comply with CEQA, unless exempt. Ministerial applications remain exempt from CEQA.

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This Notice of Exemption is filed pursuant to the provisions of Section 15062 of the State CEQA Guidelines.

**Lead Agency Contact Person:**

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