



NOTICE OF CATEGORICAL EXEMPTION

Sonoma County Permit and Resource Management Department

2550 Ventura Avenue, Santa Rosa, CA 95403
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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):

Project Title: Amendment to the Sonoma
County Well Ordinance

Public Agency: Sonoma County

Project Applicant: County

Applicant Address: 2550 Ventura Ave.,
Santa Rosa CA 95403

Project Location: County wide

Date of Approval: October 4, 2022

To:

County Clerk- Recorder Office Office of Planning and
County of Sonoma Research

585 Fiscal Drive, Room 103
Santa Rosa, CA 95403

P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

DESCRIPTION OF NATURE, PURPOSE AND BENEFICIARIES OF THE PROJECT:

Amendment to Sonoma County Code Chapter 25B (Well Ordinance) to Add Provision for 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 Well Metering Requirements, to Make Other Miscellaneous, and to Make Related and Technical Changes; and Set a 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. It also provides for a metering requirement for certain new wells, 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)* 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.

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, 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. The Public Trust Review Area includes areas where the underlying aquifer is likely to be interconnected with a navigable waters, or interconnected with a tributary stream that flows to a navigable water. This Public Trust Review Area was developed using published information indicating potential for groundwater extraction to impact surface waters.

The proposed Public Trust Review Area includes areas that are (1) within the contributing watershed of a navigable water as determined by a state or federal agency, and (2) within any of the following:

- (1) Areas mapped as Subterranean Streams or Potential Stream Depletion Areas by Stetson Engineers Inc. (2008), in support of the Policy for Maintaining Instream Flows in Northern California Coastal Streams completed and adopted by the CA State Water Resources Control Board in 2010, Resolution No. 2010-0021.
- (2) Critical watershed areas defined through the CA State Water Resources Control Board’s 2015 Drought Emergency Regulations, including upper portions of Mark West Creek, Green Valley Creek, Mill Creek, and Dutch Bill Creek.
- (3) Priority basins, groundwater basins determined to be medium or high priority by the California Department of Water Resources for the purposes of sustainable groundwater management.

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. Replacement water wells that are limited to 2.0 acre feet or less per year and that serve a parcel that is solely used for domestic purposes and for injection wells.
2. A public water well for which environmental review under the California Environmental Quality Act is complete.

3. Water wells (collectively limited to 2.0 acre feet per year of groundwater use for the parcel), for any land use, where the applicant implements water conservation requirements.
4. Water wells, for any land use, 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, and where the applicant implements water conservation requirements.

Proposed water conservation requirements of permits exempted from discretionary review per (3) or (4) above include:

1. Individual totalizing water meters shall be installed on all separate service connections served by a shared well.
2. The design and operation of all existing and future landscaped areas shall meet or exceed standards of chapter 7D3, Sonoma County Water Efficient Landscape Regulations.
3. Non-functional turf that is solely ornamental and not regularly used for human recreational purposes or for civic or community events is prohibited.
4. All showerheads and toilets within all existing and future habitable spaces on the project parcel shall meet current water efficiency standards defined in the 2019 CA Green Code or most current version.
5. All commercial, industrial, and institutional sites shall submit a water conservation plan that details best management practices to reduce potable water use to the maximum extent feasible.
6. Vineyards and orchard irrigation.
 - a. Vineyards and orchards within critical watershed areas shall limit average year groundwater use for irrigation to 0.4 acre-feet per acre per year or less.
 - b. Vineyards and orchards within priority basins shall limit average year groundwater use for irrigation to 0.6 acre-feet per acre per year or less, and implement water conservation measures as specified in a groundwater sustainability plan or other regulations adopted by a groundwater sustainability agency, applicable to the project site.
 - c. In all other areas, vineyards and orchards shall limit groundwater use for irrigation to the existing groundwater use prior to October 4th, 2022, supported by metered data or a site-specific irrigation demand analysis; if no data or analysis is provided then a limit of 0.6 acre-feet per acre per year or less shall apply. When calculating the amount of irrigation groundwater use, an average over the three-to-five-year period immediately prior shall be used.

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 to approve 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.

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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