



Legislation Text

File #: 2022-0974, **Version:** 1

To: Sonoma County Board of Supervisors
Department or Agency Name(s): Permit Sonoma
Staff Name and Phone Number: Nathan Quarles, (707) 565-1146
Vote Requirement: Majority
Supervisorial District(s): Countywide

Title:

10:00 AM -Amendment to Sonoma County Code Chapter 25B (Well Ordinance) to Add Provisions for Evaluation of Impacts to Public Trust Resources and Well Metering, and to Make Related and Technical Changes, and Set a Fee for Discretionary Well Permit Applications; as well as Consideration of a Temporary Moratorium on Water Well Permitting.

Recommended Action:

- A) Adopt a resolution, (1) reading the title of, (2) waiving further reading of, (3) introducing for adoption an ordinance to amend Chapter 25B of the Sonoma County Code to address evaluation of impacts to public trust resources for proposed new water 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, (4) determining that the ordinance amendment is exempt from the California Environmental Quality Act, and (5) direct Permit Sonoma to return with plan for program development, comprehensive studies, and staffing.
- B) Consider adoption of an urgency ordinance creating a temporary moratorium on the processing and approval of water supply well permits until November 17, 2022, which is 30 days from adoption of the ordinance amending Chapter 25B, if the ordinance is adopted October 18, 2022; and determination of exemption of the urgency ordinance from the California Environmental Quality Act.

Executive Summary:

On August 9, 2022, the Board of Supervisors considered proposed amendments to Chapter 25B and directed staff to (1) conduct additional public outreach, (2) return to the Board in the short-term (end of September or early October) with a revised limited scope for addressing public trust, and (3) report on plan for scoping a longer-term effort on remaining related issues.

The currently proposed ordinance, in consideration of the public trust doctrine, public comment received to date, and direction from the Board 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. The proposed ordinance specifically limits the scope of public trust review by (a) expanding the universe of wells that are exempt from public trust review, where certain exemptions require compliance with certain monitoring and conservation best management practices, and (b) limiting public trust review to wells located within a specified mapped area of the County - the "Public Trust Review Area".

Additionally, staff proposes a separate urgency ordinance for your Board's consideration that if adopted would **temporarily** impose a moratorium on the County's processing and approval of water supply well permit applications until November 17, 2022.

The revised ordinance refines the area of the County where additional review of impacts to public trust resources would be required. This area is termed the Public Trust Review Area, and includes areas where available information indicates potential for groundwater extraction to impact surface waters that are within the contributing watershed of a navigable water. Well permits for proposed wells that are located outside the Public Trust Review Area would be exempt from public trust review. This reduces the area where public trust review may be required by roughly half compared with the ordinance presented at the August 9, 2022 Board hearing. To view the Public Trust Review Area, please visit and explore using the [Well Ordinance GIS Viewer <https://sonomacounty.maps.arcgis.com/apps/webappviewer/index.html?id=8baedfd50be640b0b11548537f89fee2>](https://sonomacounty.maps.arcgis.com/apps/webappviewer/index.html?id=8baedfd50be640b0b11548537f89fee2).

The ordinance presented at the August 9, 2022 Board hearing exempted replacement water wells for domestic uses from the public trust review. The revised ordinance expands the types of wells that are exempt to also include: (1) public water wells subject to CEQA, (2) wells on parcels with net groundwater use less than 2.0-acre feet per year, and (3) wells that will serve existing uses where there is no increase in groundwater use on the parcel. The revised ordinance requires water conservation measures be implemented for exempt permit types (2) and (3) listed above. Water conservation requirements include conformance with water efficient landscape regulations, installation of water efficient toilets and showerheads, limits on groundwater use for vineyard and orchard irrigation, and other measures.

Generally consistent with the ordinance presented on August 9, 2022, the revised ordinance requires well metering of all newly permitted water wells, except for water wells that serve a parcel that is solely used for domestic purposes with a cumulative groundwater use on the parcel of 2.0-acre feet or less of water per year. The revised ordinance also requires the well owner to maintain and calibrate well meters and allows for well metering requirements to be waived if the site is subject to equivalent metering requirements by another regulating agency.

Consistent with the ordinance presented on August 9, 2022, the proposed ordinance requires that as part of the issuance process, issuance with conditions, or denial of any water well subject to the discretionary public trust review, the Permit and Resource Management Department (Department) shall consider available information and make written findings as to whether the issuance of the permit will or will not cause or exacerbate a substantial adverse impact on public trust resources in navigable waters after the imposition of feasible mitigation measures.

Any interested person may appeal to the Board of Supervisors the determination of the Department concerning whether the proposed well would or would not cause or exacerbate a substantial adverse impact. 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.

Consistent with the ordinance presented on August 9, 2022, the revised ordinance also provides 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.

Discussion:

Public Trust Doctrine and Legal Background

The Public Trust Doctrine is a legal doctrine, reflected in Article X, section 4 of the California Constitution, that provides that the government holds certain natural resources 'in trust' for the benefit of current and future generations. Resources held in trust by the State, for public trust purposes, include tidelands, submerged land and land underlying inland navigable waters. Public trust purposes or uses include commerce, recreation, fishing, wildlife habitat and preservation of trust lands in their natural state. The obligation to consider and protect the public trust uses extends to counties and other subdivisions of the State.

In 1983, the California Supreme Court in *National Audubon Society v. Superior Court* held that the Public Trust Doctrine "protects navigable waters from harm caused by diversion of nonnavigable tributaries." In 2018, *Environmental Law Foundation (ELF) v. State Water Resources Control Bd.*, to the California Court of Appeals considered well permitting in the Scott River watershed in Siskiyou County and found that the Public Trust Doctrine applies to permitting of groundwater wells if extraction of groundwater adversely impacts a navigable waterway. Note, groundwater is not a public trust resource. However, extraction of groundwater that is interconnected with a stream or river may result in reduced streamflow and impact public trust resources of a navigable waterway. Under the *ELF* decision, impacts to public trust resources must be considered and mitigated, if feasible, when a county issues permits for wells that may reduce flows and adversely impact public trust resources of navigable waters.

Lawsuit

California Coastkeeper Alliance filed a lawsuit against the County of Sonoma on July 13, 2021, seeking the County's compliance with the public trust doctrine when issuing well permits. The litigation has not concluded.

Navigable Waters

Within Sonoma County, the main stem of the Russian River from Jenner to the Sonoma/Mendocino County line and waterways identified as navigable by the U.S. Army Corp of Engineers survey Navigable Waterways as of 2 August 1971 are considered navigable and subject to review under the Public Trust Doctrine. This list of waterways is not exhaustive, and additional waterways may be determined to be navigable by California or federal agencies, or the courts.

Current Well Ordinance

The current well ordinance, adopted on July 28, 2015 (Ordinance No. 6121), covers well permitting procedures, construction standards and setbacks, destruction, and water treatment, but does not explicitly require consideration of impacts to public trust resources. Currently all well permit applications are ministerial, meaning they are subject to objective codified standards, which if met, result in permit issuance, and cannot be conditioned.

Proposed Amendments to Well Ordinance

Well Ordinance Presented to the Board on August 9, 2022

The proposed well ordinance presented to the Board previously on August 9, 2022 includes a new section 25B-4(d) titled “Public Trust Resource Limitation” that details a public trust review process and requires consideration of and written findings regarding impacts to public trust resources prior to issuance of a permit for a new water supply well located within the contributing watershed of a navigable water. Replacement wells for domestic uses were exempt from the public trust review.

As part of the issuance process, issuance with conditions, or denial of any water well permit subject to the public trust review, the Department shall consider best available information and make written findings as to whether issuance of the permit will or will not cause or exacerbate a substantial adverse impact on public trust resources in navigable waters after the imposition of feasible mitigation measures.

The August 9, 2022 proposed ordinance also specified that any interested person may appeal to the Board of Supervisors the determination of the Department. 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.

Well permit applications subject to public trust review will be required to submit additional supporting information. Additional information required will be dependent on the location, existing and proposed use of the well, and existing available information. Supporting information may include a water supply and use assessment, hydrogeologic report, detailed description of mitigating measures, and other information. The Department is authorized to develop administrative procedures to guide the processing and evaluation of applications. The Department also expects to publish materials to assist applicants preparing to seek new well water well permits.

The August 9, 2022 proposed ordinance also specified well metering requirements for all wells permitted after January 1, 2023, except for water wells that serve a parcel that are solely used for domestic purposes with groundwater use of 2.0-acre feet or less per year.

Proposed Amendments to the Well Ordinance

The proposed revised ordinance is largely consistent with the proposed well ordinance presented to the Board on August 9, 2022. Changes are summarized below:

The revised ordinance refines the area of the County where well permits are subject to the public trust review to an area specified as the Public Trust Review Area. The Public Trust Review Area is the area where the underlying aquifer is likely to be interconnected with a navigable water or interconnected with a tributary stream that flows to a navigable water. Previously, the area requiring public trust review included all areas within the contributing watershed to a navigable water, regardless of the potential interconnection of the underlying aquifer to a stream or river. The proposed Public Trust Review Area was developed using available information, including areas mapped as “Potential Stream Depletion Areas” by Stetson Engineers Inc. (2008). To view the Public Trust Review Area, please visit and explore using the [Well Ordinance GIS Viewer](#)

<https://sonomacounty.maps.arcgis.com/apps/webappviewer/index.html?id=8baedfd50be640b0b11548537f89fee2>.

The revised ordinance expands exemptions from the discretionary public trust review to additional classes of wells, including:

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 (consistent with the August 9th, 2022 proposal).
2. A public water well for which environmental review under the California Environmental Quality Act is complete.
3. Water wells, for any land use, where total groundwater use of the parcel is limited to 2.0-acre feet per year, and where the applicant implements groundwater monitoring and 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 groundwater monitoring and conservation requirements.

Water conservation requirements required of exempt classes (3) and (4) above include:

1. Limits on groundwater use to 2-acre feet per year or the historic groundwater use of the parcel.
2. Individual well meters for all separate service connections served by a shared well
3. Conformance with water efficient landscape regulations.
4. Prohibition of non-functional/ornamental turf.
5. Installation of water efficient toilets and showerheads.
6. Water conservation plans for commercial, industrial, and institutional sites.
7. Limits on groundwater use for vineyard and orchard irrigation.

Generally consistent with the ordinance presented on August 9, 2022, the revised ordinance requires well metering of all water wells for which applications are submitted after October 4, 2022, except for water wells that serve a parcel that is solely used for domestic purposes with a cumulative groundwater use on the parcel of 2.0-acre feet or less per year. The revised ordinance also requires the landowner to maintain and calibrate wells meters and allows for well metering requirements to be waived by the Department if the well is subject to equivalent metering requirements by another regulating agency.

Public Outreach

Subsequent to the August 9, 2022 Board hearing, County staff revised the ordinance per direction from the Board and public comment heard or submitted in association with the Board hearing and published the revised amended ordinance with a press release for public review on September 9, 2022.

Staff presented the revised amended ordinance at public meetings for the advisory committees of Santa Rosa Plain, Sonoma Valley, and Petaluma Valley Groundwater Sustainability Agencies on September 12, 13, and 14, respectively. County staff also presented the revised amended ordinance at a townhall meeting on September 22. All presentations included a summary of the ordinance followed by a question and comment period.

In addition to the above public meetings, County staff also met or discussed with stakeholders individually or in small groups.

Comments received at the public meetings were varied and indicate both support and opposition to the proposed amendment.

Comments and themes included:

1. Support for consistency with groundwater sustainability plans and coordination with groundwater sustainability agencies.
2. Support for monitoring, and comments in support of expanded monitoring and metering beyond what is proposed.
3. Support for a medium to long term comprehensive groundwater policy development process.
4. Questions and concern that the proposed public trust review would not adequately evaluate cumulative impacts.
5. Concern that the proposed public trust review does not require consideration of impacts to non-navigable high habitat value tributary streams.
6. Questions and concern that the public trust review will add significant uncertainty, expense, and time to the well permitting process.
7. Questions and concern regarding the scope of required studies to evaluate impacts to public trust resources, and thresholds for a substantial adverse impact.
8. Questions about the CEQA review process in association with the discretionary public trust review.

Relatively limited opposition or support for the proposed exemptions from public trust review, proposed water conservation requirements, or proposed public trust review area were expressed during the public meetings. Note, written comments are not summarized and continue to be submitted as of the date of this summary report.

More specifically, the proposed amendments would do the following:

Section 25B-3: Adds definitions for “critical watershed area,” “domestic use”, “navigable waters”, “new water supply well”, “public trust resources”, “priority basin”, and “special flood hazard area”. Revises definition of “replacement well”. Deletes definition for “area of special flood hazard”.

Section 25B-4: Defines the Public Trust Review Area as areas that are (1) within the contributing watershed of a navigable water, 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 defined by the California Department of Water Resources for the purposes of sustainable groundwater management as medium or high priority, including Santa Rosa Plain, Petaluma Valley, and Sonoma Valley.

Adds a public trust limitation to permitting for water wells within the Public Trust Review Area. This section requires that the Department consider and make findings as to whether the issuance of the water well permit will cause or exacerbate a substantial adverse impact on public trust resources in navigable waters after the imposition of feasible mitigation measures before approving a permit or conditionally approving a permit for water supply well.

Creates an appeal process and process for the Department to seek an overriding considerations determination from the Board of Supervisors due to health, safety and welfare needs of the community.

This section also exempts certain classes of well permits from the discretionary public trust review. In other words, the permits classes described below will continue to be process as ministerial:

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, for any land use, where total groundwater use of the parcel is limited to 2.0-acre feet per year, and where the applicant implements groundwater monitoring and 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 groundwater monitoring and conservation requirements.

Groundwater monitoring and conservation requirements are specified in Sections 25B-12 and 25B-13

Section 25B-5: Makes minor technical corrections to remove the expiration date of applications subject to the public trust limitation determination and to provide for an at-cost fee model for such applications. This section is modified to eliminate the provision for emergency well drilling without review and approval by the County before drilling occurs, while adding a provision for requesting expedited review where well drilling is necessary due to emergency circumstances to protect human life, health, safety, and property. Clarifies the difference between, and standards applicable to, discretionary and ministerial well permits. Well permits for geotechnical borings and well types that are not for water supply, and certain limited replacement wells, will not require public trust review and will continue to be processed in a ministerial fashion. Finally, this section revises requirements for notifying Permit Sonoma of the date and time for seal placements to facilitate and align with inspection workflow.

Section 25B-6: Adds a requirement that water wells, for which a permit application was submitted after October 4, 2022, be installed with a totalizing water meter, except for water wells that serve a parcel that is solely used for domestic purposes and uses 2.0-acre feet or less of water per year. This section also adds a 90-day timeline for well destruction when a replacement well has been completed and makes technical correction to code references. In response to past recommendations from the Regional Water Quality Control Board, and to better align with current practices, this section is modified to address the circumstances when an exception to minimum setbacks from known contaminated sites is permitted.

Section 25B-9: Makes a technical correction, clarifying that well completion reports must be submitted to in compliance with California Water Code Section 13751.

Section 25B-12: Specifies well metering and reporting requirements. Collection of meter readings on a monthly interval is proposed with an annual reporting requirement. Wells that extract 2.0-acre feet or less per year that serve a parcel that is solely used for domestic purposes are exempt from metering and reporting requirements.

Section 25B-13: Limits cumulative groundwater extraction from certain classes of wells that were exempt from public trust review and specifies water conservation requirements of certain well permits that are exempt from the discretionary public trust review. Proposed water conservation requirements 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.

Fees

Permit Sonoma's current fee schedule provides for flat fees for plan review of ministerial well permits in the amount of \$625 for Class I water wells, \$750 for Class II water wells, and \$375 for well reconstruction. The cost of staff time to process discretionary well permits under an amended Well Ordinance is anticipated to exceed the amount of the existing fee, due to the complexity of the public trust analysis which is in addition to work in determining compliance with all other well requirements, including construction standards. Therefore, since Department staff does not yet have data supporting a flat fee for discretionary well permits, it recommends the Board establish an at-cost fee, based on existing hourly rates, to discretionary well permits as part of its adoption of this proposed ordinance. The Department proposes that the deposit for the public trust review

fee would be equivalent to 8 hours of staff time of an Engineer or Professional Geologist in the amount of \$1,392.

The current fees for ministerial well permits, will continue to apply to all wells which are subject to ministerial approval. However, additional staff time will be required to screen well permit applications to determine if applications are ministerial or discretionary, subject to monitoring requirements, and/or subject to water conservation requirements.

In conjunction with the additional permit application screening and proposed monitoring and conservation requirements, the Department expects to return to the Board in early 2023 to request that it adjust fees for ministerial permits and establish fees in connection with staff review and processing of submitted well meter reports.

CEQA

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 § 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 protect 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. 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.

Temporary Moratorium

Staff propose a separate urgency ordinance for your Board's consideration that if adopted would temporarily impose a 30-day moratorium on the County's processing and approval of water supply well permits applications submitted on or after October 4, 2022, pending the amendments to Chapter 25B becoming effective after passage, which would be November 17, if the ordinance is adopted on October 18, the next regularly scheduled Board meeting following October 4, 2022. The purpose of the temporary moratorium is to protect public trust resources by preventing an undue rush on well permitting by applicants seeking to avoid potential public trust review under the amended ordinance during recognized multi-year drought conditions. The urgency ordinance is exempt from CEQA pursuant to CEQA Guidelines § 15308 and § 15061(b)(3), as an action protective of the environment and where it can be seen with certainty that there is no possibility the action will have a substantial effect on the environment.

Recommendation

Staff recommends the Board adopt the ordinance amendments to Chapter 25B and approve an at-cost fee applicable to processing discretionary well permits to facilitate compliance with the County's public trust responsibility; and provide direction to staff regarding returning with a fee in connection with staff review and

processing of well meter reports, plan for program development, comprehensive studies, and staffing. Staff further recommends adoption of the urgency ordinance creating a temporary moratorium until the amendments to Chapter 25B become effective.

Prior Board Actions:

08/09/2022: The Board considered proposed Ordinance amendment

04/05/2022: The Board adopted Ordinance No. 6372

07/28/2015: The Board adopted Ordinance No. 6121

02/28/1978: The Board adopted Ordinance No. 2326

FISCAL SUMMARY

Expenditures	FY 22-23 Adopted	FY 23-24 Projected	FY 24-25 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures	0	0	0
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources	0	0	0

Narrative Explanation of Fiscal Impacts:

Staff will review the need for additional staffing and overall new permit review program costs. If data supports adjustments to ministerial fees, as well as establishment of a well monitoring fee and a fee replacing the proposed at-cost fee included in the proposed ordinance and will be presented a later date for the Board’s consideration.

Narrative Explanation of Staffing Impacts (If Required):

See Fiscal Impacts above.

Attachments:

Attachment A - Board Resolution

Attachment B - Proposed Changes to Ch. 25B (Stricken)

Attachment C - Draft Ordinance with Ex. A Changes to Ch. 25 B (Clean)

Attachment D - Draft CEQA Exemption

Attachment E - Draft Moratorium (Urgency Ordinance)

Attachment F - Staff PowerPoint

Attachment H - Outreach Response Well Ordinance Revisions Amendment

Related Items “On File” with the Clerk of the Board:

Not Applicable