



COUNTY OF SAN MATEO
Inter-Departmental Correspondence

County Counsel

DATE: October 23, 2002

BOARD MEETING DATE: November 5, 2002

TO: Honorable Board of Supervisors

FROM: County Counsel

SUBJECT: Introduction of Ordinance Amending Chapter 4.68 (Wells) of the San Mateo County Ordinance Code to Add a New Section Relating to Wells in the Westside Basin Aquifer

Recommendation

1. Certify the Negative Declaration by making the following findings that:
 - a. The Negative Declaration is complete, correct and adequate and prepared in accordance with the California Environmental Quality Act and applicable State and County guidelines.
 - b. On the basis of the Initial Study, comments received hereto, and testimony presented and considered at the public hearing, there is no substantial evidence that the proposed changes to the Well Ordinance will have a significant effect on the environment.
 - c. The Negative Declaration reflects the independent judgment of the Board of Supervisors.
2. Introduce an Ordinance Amending Chapter 4.68 (Wells) of the San Mateo County Ordinance Code to add a new section relating to wells in the Westside Basin Aquifer, and waive the reading of the ordinance in its entirety.

Background

In January 2002, the Committee to Save Lake Merced ("Committee") filed the third of three lawsuits against the County concerning the issuance of well permits in the Westside Basin Aquifer. This Aquifer extends south from San Francisco to the Burlingame/San Mateo City border and east of the San Andreas Fault. The Aquifer is a water source for many water agencies serving North County residents and businesses.

In its first lawsuit filed in 2001, the Committee contended that the County's well permitting was discretionary and subject to environmental review under the California Environmental Quality Act ("CEQA"). Chapter 4.68 of the San Mateo County Ordinance Code sets forth the regulations by which the County Environmental Health Division issues permits for wells in the unincorporated areas of the County. The County has historically considered this well permitting process to be "ministerial" and not subject to CEQA review. In this first lawsuit, the San Mateo Superior Court ruled that the language in the County's well regulations provided discretionary authority and permits issued under the regulations were subject to CEQA. In response, the County amended its well regulations in July 2002 to reflect the ministerial nature of the County's process. Language which the Court found to create discretionary authority was deleted. However, all of the prescribed ministerial standards for water quantity, potability and setbacks were retained. The amendments also retained provisions for variances which are discretionary and subject to CEQA review.

In its second lawsuit against the County, the Committee objected to the County's issuance of a replacement well permit to the Olympic Club which was based upon a categorical exemption under CEQA. The Superior Court ruled in the County's favor. The case was settled while on appeal.

The Committee's third lawsuit contends that the amendments to the County ordinance adopted in July 2002 required CEQA review. The County denies that CEQA review was required, and the matter was originally set for hearing in October 2002.

Independent of this litigation, a number of public and private agencies have been involved in proceedings before the State Water Resources Control Board ("SWRCB") and mediated settlement discussions over issues related to maintaining Lake Merced and the Westside Basin Aquifer. The parties reached a settlement last spring, which in part included a conjunctive use agreement. The parties are now in a second phase of mediated settlement discussions in the hopes of extending the settlement and addressing additional issues concerning the Aquifer.

Discussion

In light of these developments, the County and the Committee have entered into a settlement which will hopefully resolve the third lawsuit against the County and address the County's role in the mediated settlement discussions. Under the settlement, the Committee has agreed to dismiss its third lawsuit if the County considers and adopts certain amendments to the County Well regulations. The proposed amendments would add a new section to the regulations. The intent of the new section is to retain discretionary authority for the issuance of permits for "large wells" in the Westside Basin Aquifer. The proposed amendment provides guidelines for the County Health Officer to condition or deny an application for a large well in the Westside Basin Aquifer beyond the normal ministerial standards in the current County Well Regulations. As a result, the County would need to comply with CEQA

when issuing a permit for a large well in that area. A "large well" has been defined as any individual well that pumps an amount equal to or greater than 50 gallons per minute or 1,000 gallons per day or multiple wells on the same land use parcel that cumulatively pump that amount. Large wells will typically include wells for public parks, cemeteries and golf courses. It excludes wells for residential use, temporary construction, cathodic protection, geophysical exploration/monitoring wells and wells required in an emergency for drinking water purposes.

The amendments would not change the County Well Regulations as amended in July 2002 for "small" wells in the Westside Basin Aquifer and any wells outside the Westside Basin Aquifer. "Small wells" typically include residential wells. This means that residential wells in the Westside Basin Aquifer and all wells outside the Aquifer will still be subject to the ministerial standards adopted in July 2002. Permits for these wells will not be subject to CEQA review in accordance with the County's historical practice.

Independent of the lawsuit and settlement, the proposed changes to the County Well Ordinance make good policy sense. The amendments will provide a greater level of flexibility for the County and the County Health Officer to respond to or address the continuing concerns over the Westside Basin Aquifer. As part of the settlement, the County has agreed to participate, upon request, in the mediated settlement discussions. The County has also agreed to consider further amendments to the County Well Regulations that may be required based upon the results of a SWRCB decision or the mediated settlement discussions involving the Westside Basin Aquifer.

Environmental Review

An initial study and Proposed Negative Declaration were prepared and circulated for public comment from October 1 to October 31, 2002. No comments were received as of the date this memo was prepared. Any comments received after that date will be raised at the hearing.

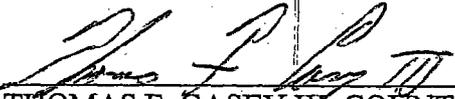
Vision Alignment

This project keeps the commitment to preserve and provide people access to our natural environment and goal number 14 - Important natural resources are preserved and enhanced through environmental stewardship.

Honorable Board of Supervisors
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Fiscal Impact

There is no net County cost with the adoption of the amendments.


THOMAS F. CASEY III, COUNTY COUNSEL

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cc: John L. Maltbie, County Manager
Margaret Taylor, Director of Health Services
Marcia Raines, Director of Environmental Services
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