

TO: BOARD OF DIRECTORS
FROM: BRUCE BUEL *BB*
DATE: NOV. 21, 2008

**AGENDA ITEM
E-4
NOVEMBER 26, 2008**

INTRODUCE LANDSCAPE REVIEW ORDINANCE

ITEM

Introduce ordinance adding landscape and irrigation review procedures to Intent-to-Serve process and set second reading for December 10, 2008 [SET SECOND READING].

BACKGROUND

The Water Conservation Committee on October 20, 2008 unanimously recommended that the Board amend Section 3.05 of the District Code to enable District review and approval of landscape plans and irrigation systems for new non-residential development. This recommendation results from recent construction with heavy water use landscapes. Your Honorable Board previewed a rough draft of the text at you November 12, 2008 Board Meeting, edited the rough draft and set this hearing for introduction.

It should also be noted that the County has revised standards for new development and adoption of a draft ordinance would allow for NCSD to ensure that the new construction actually implements the new Title 19 and 22 requirements.

Attached is a draft ordinance providing for the re-write of Section 3.05 including the revisions ordered by the Board. Also attached is a red-line version of the text illustrating the context.

FISCAL IMPACT

Introduction of the ordinance involves the use of pre-funded staff time. Adoption of the Ordinance at a subsequent hearing would obligate the District to publish the text of the ordinance in a newspaper of general circulation and to implement the prescribed review functions.

RECOMMENDATION

Staff believes that the ordinance adds desirable processes to ensure that the initial landscaping and irrigation systems at new commercial development are water efficient and supports adoption. Staff recommends that the Board receive public feedback on the draft ordinance, order any appropriate edits, adopt a motion to read by title (or designate a director to read the entire text), and then adopt a motion to set the second reading for December 10, 2008.

ATTACHMENTS

- Draft Ordinance (Section 3.05 Re-Write)
- Redlined version of the Text

ORDINANCE NO. 2008- ____

**AN ORDINANCE OF THE NIPOMO COMMUNITY SERVICES DISTRICT
AMENDING THE RULES AND REGULATIONS
FOR ALLOCATION OF INTENT-TO-SERVE LETTERS
CHAPTER 3.05 OF THE DISTRICT CODE**

WHEREAS, it is essential for the protection of the health, welfare, and safety of the residents of the Nipomo Community Services District ("District"), and the public benefit of the State of California ("State"), that the groundwater resources of the Nipomo Mesa be conserved; and

WHEREAS, on June 13, 2007, the District adopted Ordinance 2007-106 that amended and restated Chapter 3.05 of the District Code; and

WHEREAS, based on the Staff Report, Staff presentation, and public comment, the District Board of Directors finds:

- A. That the purpose and intent in further amending Chapter 3.05 is to minimize water demand for non residential commercial projects approved by the District Board of Directors.
- B. Adopting these revisions to Section 3.05 of the District Code will provide greater assurances that there will be adequate groundwater to meet the present and future needs of District Residents consistent with the resource protection goals of the San Luis Obispo County South County Area Plan;
- C. That adopting the amendments to Chapter 3.05 will further conserve the water supply for the greater public benefit, with particular regards to domestic use, sanitation and fire protection.

NOW, THEREFORE BE IT ORDAINED, by the Board of Directors of the District as follows:

Section 1.

Section 3.05.035 is added to the District Code as follows:

3.05.035 Non-Residential/Commercial Limitations on Water Use

Total water demand for non-residential/commercial projects will be established on a case-by case basis by the District Board of Directors with consideration of the applicant's request and best management practices for project low water use.

Section 2.

Section 3.05.050 (A)(1) of the District Code is amended to read as follows:

1. Low water use landscape and irrigation systems will be installed to irrigate landscaping; and

Section 3.

Sections 3.05.050(B)(1) and (2) of the District Code are amended to read as follows:

1. Low water use landscape irrigation systems will be installed to irrigate landscaping; and
2. The design maximum total water demand, including landscaping, does not exceed the limitations on water use established in Section 3.05.030, above.

Section 4.

Section 3.05.050(B)(3) is added to the District Code as follows:

3. For non-residential/commercial projects, Intent-to-Serve applications shall include the following: an irrigation plan, a plant material layout plan, a plant material list (if not included in the plant material layout plan), and a hardscape plan shall be submitted if there are any water features (such as fountains and swimming pools) included in the project design.

Section 5.

Section 3.05.050(C) is added to the District Code as follows:

- C. Will-Serve Letters will not be issued to non residential/commercial projects until General Manager verifies that the landscape irrigation and plant material layout plans and/or hardscape plan comply with the total project water demand established by Section 3.05.035.

Section 6. Incorporation of Recitals

The recitals to this Ordinance are true and correct, support the implementation of conservation measures and procedures adopted by this Ordinance and are incorporated herein by this reference.

Section 7. Severability

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, ineffective or in any manner in conflict with the laws of the United States, or the State of California, such decision shall not affect the validity of the remaining portions of this Ordinance. The Governing Board of the District hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsection, sentence, clause or phrase be declared unconstitutional, ineffective, or in any manner in conflict with the laws of the United States or the State of California.

Section 8. Effect of headings in Ordinance

Title, division, part, chapter, article, and section headings contained herein do not in any manner affect the scope, meaning, or intent of the provisions of this Ordinance.

Section 9. Inconsistency

To the extent that the terms of provision of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior District Ordinance(s), Motions, Resolutions, Rules, or Regulations adopted by the District, governing the same subject matter thereof, then such inconsistent and conflicting provisions of prior Ordinances, Motions, Resolutions, Rules, and Regulations are hereby repealed.

Section 10. CEQA

The District performed an environmental assessment in adopting Chapter 3.05. Said CEQA checklist confirmed that the adoption of the rules and regulations allocating Intent-to-Serve Letters could not have a significant effect on the environment. Said environmental checklist and negative declaration are incorporated herein by reference. Further, based on the prior CEQA review the Board of Directors finds that the adoption of the rules and regulations established by this Ordinance fall within the activities described in Section 15061 (b)(3) of the CEQA Guidelines which are deemed not to be projects for the purposes of CEQA because they can be seen with certainty that there is no possibility that the rules and regulations in question may have a significant effect on the environment. The District General Manager is directed to prepare and file an appropriate notice of exemption.

Section 11. Effective Date

This Ordinance shall take effect and be in full force and effect thirty (30) days after its passage. Before the expiration of fifteen (15) days after passage it shall be posted in three (3) public places with the names of the members voting for

and against the Ordinance and shall remain posted thereafter for at least one (1) week. The Ordinance shall be published once with the names of the members of the Board of Directors voting for and against the Ordinance in the Santa Maria Times.

Introduced on the 26th day of November, 2008 and adopted by the Board of Directors of the Nipomo Community Services District _____, 2008, by the following roll call vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAINING:

MICHAEL WINN,
President of the Board of Directors
Nipomo Community Services District

ATTEST:

APPROVED AS TO FORM:

DONNA K. JOHNSON
Secretary to the Board

JON S. SEITZ
District Legal Counsel

NIPOMO COMMUNITY SERVICES DISTRICT

Administrative Draft Referencing Revisions

CHAPTER 3.05 OF THE DISTRICT CODE

WATER SERVICE LIMITATIONS

3.05.010 Purpose.

The purposes of this chapter include the following:

- A. To promote public health and safety and to avoid water shortage emergencies by establishing a maximum annual water allocation for residential water service within the district boundaries;
- B. To promote conservation by establishing goals for the maximum beneficial use of water by residential category;
- C. To allocate water service by categories to avoid a particular category from being excluded from participation and receiving water service;
- D. To establish a maximum allocation for any one project during an allocation year, so as to allow greater opportunity for all projects in a category to participate and to receive water service;
- E. To avoid speculation by requiring applicants to diligently process their projects consistent with the rules and regulations of the county of San Luis Obispo;
- F. To grant a priority for the provision of available resources to proposed housing developments which help meet the county of San Luis Obispo's share of regional housing need for lower income households as identified in the housing element adopted by the San Luis Obispo County board of supervisors;
- G. To provide flexibility by allowing the board to consider redistributing allocations at the end of the second (2nd) quarter and in the middle of the fourth (4th) quarter of each allocation year.

3.05.020 Definitions.

- A. **AFY** - means acre feet per year.

- B. **Allocation Year** - means October 1st through September 30th of each calendar year.
- C. **Lower-Income Housing** - means lower income housing as identified in the housing element of the San Luis Obispo County general plan, as amended from time to time.
- D. **Multi-family dwelling unit** - means a building or portion thereof designed and used as a residence for three or more families living independently of each other under a common roof, including apartment houses, apartment hotels and flats, but not including automobile courts, or boardinghouses.
- E. **Two-family dwelling unit (duplex)** - means a building with a common roof containing not more than two kitchens, designed and/or used to house not more than two families living independently of each other.
- F. **Single-family dwelling unit** - means a building designed for or used to house not more than one family.
- G. **Secondary dwelling units** - means an attached or detached secondary residential dwelling unit on the same parcel as an existing single-family (primary) dwelling. A secondary unit provides for complete independent living facilities for one or more persons.

3.05.030 Limitations on Water Use.

The following total demand certifications, including landscaping, are established for the following uses:

- A. 0.33 AFY per Multi-Family Dwelling Unit;
- B. 0.24 AFY per Dwelling Unit for duplexes and Secondary dwellings;
- C. 0.29 AFY per Single-Family Dwelling Unit located on a parcel size of four thousand five hundred (4,500) square feet or less;
- D. 0.39 AFY per Single-Family Dwelling Unit located on a parcel size between four thousand Five hundred (4,500) and ten thousand (10,000) square feet;
- E. 0.69 AFY per Single-Family Dwelling Unit located on a parcel size that exceeds ten thousand (10,000) square feet.

3.05.035 Non Residential/Commercial Limitations on Water Use

Total water demand for non residential/commercial projects will be established on a case-by case basis by the District Board of Directors with consideration of the applicant's request and best management practices for project low water use.

3.05.040 Water Allocation per Allocation Year.

A total of 34.3 acre feet (total allocation) per allocation year is allocated to projects on a first come, first served basis as follows:

- A. 34.3 for residential projects as follows:
 - 1. Category 1: A total of 21.86 AFY, including landscaping, is reserved for:
 - a. Single-family dwelling units; and
 - b. Two-family dwelling units (duplexes).
 - 2. Category 2: A total of 6.86 AFY, including landscaping, is reserved for multifamily dwelling units.
 - 3. Category 3: A total of 3.36 AFY is reserved for secondary dwelling units and local agency maintained landscaping projects.
- B. During the end of the second (2nd) quarter and in the middle of the fourth (4th) quarter of each allocation year, the unused allotments for Categories referenced in Section A, above, may be re-allocated by the Board of Directors to other Categories referenced in Section A, above.
- C. Notwithstanding subparagraph B, above, the District shall reserve 2.22 AFY for proposed housing developments which help meet the county of San Luis Obispo's share of regional housing needs for lower income housing as identified in the Housing Element adopted by the San Luis Obispo County board of Supervisors. Said reservation shall be applied only to Category 1 and Category 2 projects referenced in Subparagraph A, above. Further, said reservation may only be reallocated during the fourth (4th) quarter of each allocation year.

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3.05.050 Water Demand Certifications Required.

- A. Will-Serve Letters: All applications for Will-Serve Letters referenced in 3.05.040 require an engineer's or architect's certification that:
 - 1. Low water use landscape and irrigation systems will be installed to irrigate landscaping; and
 - 2. The Maximum total water demand, including landscaping does not:
 - a. Exceed the limitations established in Section 3.05.030, above; and

- b. For Family Dwelling Units with Secondary Dwelling Units - exceed a total water demand of 0.8 AFY, combined, for both the secondary and the primary dwelling unit.

B. Intent-to-Serve Letters. All applications for Intent-to-Serve Letters require a registered engineer's or architect's certification that:

- 1. ~~Low water~~ use landscape irrigation systems will be installed to irrigate landscaping; and
- 2. ~~The design maximum total water demand, including landscaping, does not exceed the limitations on water use established in Section 3.05.030, above.~~

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3. For non residential/commercial projects, Intent-to-Serve applications shall include the following: an irrigation plan, a plant material layout plan, a plant material list (if not included in the plant material layout plan), and a hardscape plan shall be submitted if there are any water features (such as fountains and swimming pools) included in the project design.

C. Will-Serve Letters will not be issued to non residential/commercial projects until General Manager verifies that the landscape irrigation and plant material layout plans and/or hardscape plan comply with the total project water demand established by Section 3.05.035.

3.05.060 Reduction in Total Allocation by Residential Categories

The total allocation, per allocation year, for each residential category designated in 3.05040 shall be reduced (or accounted for) by the observed actual use by category plus a multiplier of 1.05 to account for commercial growth in water demand resulting from residential development as follows:

		Observed Actual Use	Commercial Multiplier	Accounted for Reduction
A.	Multi-Family	0.47 AFY	1.05	0.50 AFY
B.	Duplex	0.34 AFY	1.05	0.36 AFY
C.	SF (<4,5000 sf lot)	0.41 AFY	1.05	0.43 AFY
D.	SF (4,500 to 10,000 sf)	0.55 AFY	1.05	0.58 AFY
E.	SF (>10,000 sf)	0.98 AFY	1.05	1.03 AFY

3.05.070 Application for Intent-to-Serve Letters, Will-Serve Letters and Termination.

The following procedures are in addition to other District Rules and Regulations relating to Intent-to-Serve Letters and Will-Serve Letters, and shall apply to all applications for Intent-to-Serve Letters and Will-Serve Letters approved by the District:

- A. Application shall be made on District's Application for Intent-to-Serve Letter or Will-Serve form. In order to be considered for an Intent-to-Serve Letter or Will-Serve Letter, applications shall contain a verification that applicant has submitted the proposed project for initial review to the County Planning and Building Department.
- B. Intent-to-Serve Letters shall automatically terminate on the first to occur:
 - 1. Failure of the applicant to provide District with written verification, within two hundred forty (240) calendar days of the date the Intent-to-Serve Letter is issued; or
 - 2. Two (2) Years. However, applicant shall be entitled to a one year extension upon proof of reasonable due diligence in processing the project.

3.05.080 Exempt projects.

The following projects are exempt from the requirements of Section 3.05.040 and 3.05.060:

- A. Commercial projects that submit a landscape plan consistent with best management practices, including that low use landscape irrigation systems will be installed;
- B. Projects with existing Intent-to-Serve Letters that have not expired;
- C. Projects with existing Will-Serve Letters;
- D. Remodels, and changes of use (i.e. commercial to residential) where the resulting water demand does not exceed the requirements of Section 3.05.030, above.

3.05.090 Mixed Use Projects.

Projects that include both commercial and dwelling units (mixed use) will only be approved if the dwelling units associated with the project meet the dwelling unit standard set forth in Section 3.05.030(A), above.

3.05.100 Limitation on Secondary Units.

In addition to the other requirements contained in this Chapter, applications for water service to secondary units will only be accepted that include an engineer's or architect's certification that the total water demand for the secondary unit and the primary dwelling unit will not exceed 0.8 AFY. Applications for secondary units will be allocated Will-Serve Letters under Section 3.05.040(A)(3), above.

3.05.110 Limitations on allocations.

- A. Only one request for an Intent-to-Serve Letter will be considered for any one project or parcel. The district will not allocate more than twenty percent (20%) of the allocations referenced in Section 3.05.040(A)(1), (2) or (3) to a project during any one allocation year.
- B. A maximum of fifty percent (50%) of the annual water allocation for each successive allocation year may be reserved for projects requiring phasing of water commitments.
- C. Water not yet allocated during a water year shall not be transferred to the succeeding water year.

3.05.120 Waiting list.

- A. The general manager shall maintain a waiting list for the issuance of Intent-to-Serve Letters.
- B. Only applicants who have submitted a completed intent-to-serve/will-serve application shall be placed on the waiting list and/or considered for approval.

3.05.130 Transfer of allocations.

Allocations provided in the district's Intent-to-Serve Letter shall run with the land and cannot be transferred to other parcels.

3.05.140 Implementing procedures.

The general manager is hereby authorized to develop and implement procedures for allocating Intent-to-Serve Letters and Will-Serve Letters consistent with this chapter and its purposes and intent.

3.05.150 Annexations

Water demand for annexations shall be charged against the total allocation referenced in Section 3.05.040 at the date the District approves the annexation agreement.

3.05.160 Annual review.

- A. During the fourth quarter of each allocation year, the district board of directors shall hold a public hearing to:
 - 1. Evaluate the water allocation formulas contained in this chapter; and
 - 2. Evaluate the water allotment for ensuing year.
- B. The board of directors reserves the right, at any time, to evaluate, amend or modify this chapter.

3.05.170 Re-evaluation.

The district board of directors will reevaluate this chapter concurrently with any final agreement that obligates the parties for the delivery of supplemental water.