

TO: BOARD OF DIRECTORS
FROM: BRUCE BUEL *B8B*
DATE: OCT. 9, 2009

AGENDA ITEM
E-4
OCT. 14, 2009

ADOPT ALLOCATION AMENDMENTS ORDINANCE

ITEM

Adopt Ordinance amending allocation program and Intent-To-Serve Process [ADOPT AND PUBLISH]

BACKGROUND

Your Honorable Board, on September 30, 2009, introduced and edited the attached ordinance and set this hearing to consider adoption.

FISCAL IMPACT

Development of this draft did use previously budgeted staff time and legal consulting cost. Adoption of the Allocation Ordinance is expected to be revenue neutral in regards to future development.

RECOMMENDATION

Staff recommends that the Board review the proposed final ordinance, move to read by title, and then move to adopt with directions to staff to publish.

ATTACHMENTS

- Final Ordinance

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**NIPOMO COMMUNITY SERVICES DISTRICT
ORDINANCE NO. 2009- 114**

**AN ORDINANCE OF THE NIPOMO COMMUNITY SERVICES DISTRICT
AMENDING CHAPTER 3.05 OF THE DISTRICT CODE
WATER SERVICE LIMITATIONS**

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, the District's current water supply is groundwater extracted primarily from the Nipomo Mesa Management Area (NMMA), (also referred to as the Nipomo Water Conservation Area by the County of San Luis Obispo), of the Santa Maria Groundwater Basin. A small proportion of NCSD's water is pumped from groundwater in the Nipomo Valley; and

WHEREAS, the District is a party to a groundwater adjudication, Santa Maria Valley Water Conservation District v. City of Santa Maria, etc. et al., Case No. CV 770214 ("Groundwater Litigation"); and

WHEREAS, pursuant to Section VI D(1) of the June 2005 Stipulation as incorporated into the January 25, 2008, Final Judgment in the Groundwater Litigation the Nipomo Mesa Management Area Technical Group has declared that a potentially severe water shortage condition exists within the Nipomo Mesa Management Area; and

WHEREAS, the San Luis Obispo County Department of Planning and Building's 2004 Resource Capacity Study for the Water Supply in the Nipomo Mesa Area recommends a Level of Severity III (existing demand equals or exceeds dependable supply) be certified for the Nipomo Mesa Area and that measures be implemented to lessen adverse impacts of future development (said Study and referenced documents are incorporated herein by reference); and

WHEREAS, on June 26, 2007, the San Luis Obispo County Board of Supervisors certified the waters underlying the NMMA at a Severity Level III; and

WHEREAS, the resource protection goals of the San Luis Obispo County South County Area Plan include the following:

- Balance the capacity for growth allowed by the Land Use Element with the sustained availability of resources.
- Avoid the use of public resources, services and facilities beyond their renewable capacities, and monitor new development to ensure that its resource demands will not exceed existing and planned capacities or service levels; and

WHEREAS, the County of San Luis Obispo has adopted a "Growth Management Ordinance" (Title 26 of the County Code) that imposes a 1.8 percent growth limitation for non-exempt projects for the Nipomo Mesa area (said Title 26 and implementing Ordinance and supporting studies, including the supporting CEQA analysis are incorporated herein by this reference). The stated purpose of Title 26 is to establish regulations to protect and promote the public health, safety and welfare including:

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1. To establish an annual rate of growth that is consistent with the ability of community's resources to support the growth, as established by the Resource Management System (RMS) of the County General Plan;
2. To establish a system for allocating the number of residential construction permits to be allowed each year by the annual growth rate set by the County Board of Supervisors; and
3. To minimize adverse effects on the public resulting from a rate of growth which will adversely affect the resources necessary to support existing and proposed new development as envisioned by the County General Plan; and

WHEREAS, it is essential for conservation purposes, and for the protection of groundwater resources, that the District adopt rules, regulations and procedures for allocating new water service; and

WHEREAS, the District Board of Directors, at a public meeting, on September 9, 2009, reviewed and edited the proposed revisions to various sections of Charter 3.05 of the District Code; and

WHEREAS, on September 30, 2009, the District Board of Directors, at a public meeting, took the following actions in considering the proposed amendments to Chapter 3.05:

- A. Considered the facts and analysis as presented in the Staff Report prepared for the adoption of this Ordinance;
- B. Conducted a public hearing to obtain public testimony on the proposed Ordinance; and

WHEREAS, in amending Chapter 3.05, the District does not intend to limit other authorized means of managing, protecting and conserving the groundwater basin, and intends to work cooperatively with the NMMA Technical Group and other agencies to implement joint groundwater management practices; 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 consistent with the purposes found in Section 3.05.010 of Chapter 3.05, the Judgment and Stipulation in the Ground Water Litigation imposing a physical solution to assure longterm sustainability of the groundwater basin and the San Luis Obispo County's certification of a Severity Level III for the waters underlying the Nipomo Mesa Management Area;
- B. Allocating Intent-to-Serve Letters for water service will provide greater assurance that there will be adequate groundwater to meet present and future needs of District residents consistent with the resource protection goals of the San Luis Obispo County South County Area Plan;

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- 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.
- D. The District's authority to adopt the Amendments referenced herein include, but are not limited to, Government Code Sections 61040(a), 61045 and 61060 (a, b, and n).

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

Section 1. Amendments to Certain Sections of Chapter 3.05 of the District Code

The District Board of Directors hereby adopts and approves the Amendments and Restatements of Sections 3.05.030, 3.05.040, 3.05.050, 3.05.060, 3.05.070, 3.05.100 and 3.05.110 of Chapter 3.05 of the District Code as provided in Exhibit A attached hereto and incorporated herein by this reference.

The District Board of Directors hereby adopts and approves new sub-section D to Section 3.05.020 of Chapter 3.05 of the District Code as provided in Exhibit A attached hereto and incorporated herein by this reference.

Section 2. Incorporation of Recitals

The recitals to this Ordinance are true and correct, are incorporated herein by this reference, including the referenced documents, and constitute further findings for the implementation of the Water Service Limitations adopted by this Ordinance.

Section 3. 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 4. 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 5. 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

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matter thereof, then such inconsistent and conflicting provisions of prior Ordinances, Motions, Resolutions, Rules, and Regulations are hereby repealed.

Section 6. 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. 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 7. Effective Date

This Ordinance shall take effect and be in full force and effect thirty (30) days after its passage. Before the expiration of the fifteenth (15th) day after passage Exhibit A shall be published once with the names of the members of the Board of Directors voting for or against the Ordinance in a newspaper of general circulation within the District.

Introduced on the 30th day of September, 2009, and adopted by the Board of Directors of the Nipomo Community Services District on _____, 2009, by the following roll call vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAINING:

JAMES HARRISON,
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

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Exhibit "A"

BE IT ORDAINED by the Board of Directors of the Nipomo Community Services District as follows:

Section 1. Amendments to Chapter 3.05 of the District Code

A. The Nipomo Community Services District Board of Directors, hereby adopts and approves the Amendment of Section 3.05.020 of Chapter 3.05 of the District Code to include the definition of Observed Demand as follows:

3.05.020 Definitions.

D. "Observed Demand" means the water demand as calculated/averaged (applying irrigation demand), using the analysis in the draft Engineers Report for the water line inter-tie project for the following categories:

- A. 0.33 AFY per multi-family dwelling unit or duplex units;
- B. 0.48 AFY per single-family dwelling unit located on a parcel of twelve thousand seven hundred sixty-eight square feet or less;
- C. 0.80 AFY per single-family dwelling unit located on a parcel size between twelve thousand seven hundred sixty-nine and twenty-five thousand five hundred thirty-six square feet;
- D. 0.96 AFY per single-family dwelling unit located on a parcel size of twenty-five thousand five hundred thirty-seven square feet or greater;

B. The Nipomo Community Services District Board of Directors hereby adopts and approves the Amendments and Restatement of Sections 3.05.030, 3.05.040, 3.05.050, 3.05.060, 3.05.070, 3.05.100 and 3.05.110 of Chapter 3.05 of the District Code as follows:

3.05.030 Limitations on water use.

Total demand certifications, including landscaping, are established, to achieve a 15% reduction in observed demand for the following uses:

- A. 0.28 AFY per multi-family dwelling unit and duplex unit;
- B. 0.40 AFY per single-family dwelling unit located on a parcel of twelve thousand seven hundred sixty-eight square feet or less;
- C. 0.68 AFY per single-family dwelling unit located on a parcel size between twelve thousand seven hundred sixty-nine and twenty-five thousand five hundred thirty-six square feet;
- D. 0.82 AFY per single-family dwelling unit located on a parcel size of twenty-five thousand five hundred thirty-six square feet or greater;

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Exhibit "A"

3.05.040 Water allocation per allocation year.

A. 34.3 acre feet is the initial reservation for residential projects. The initial reservation is reduced by 5% or to 32.5 AFY to account for commercial growth in water demand resulting from residential development. The 32.5 AFY (total per allocation year) is allocated to projects as follows:

1. Category 1: A total of 20.8 AFY, including landscaping, is reserved for:
 - a. For Single-family dwelling units; and
 - b. Two-family dwelling units (duplexes).
2. Category 2: A total of 6.5 AFY, including landscaping, is reserved for multi-family dwelling units.
3. Category 3: A total of 3.2 AFY is reserved for secondary dwelling units and local agency maintained landscaping projects.

B. During the end of the second quarter and in the middle of the fourth 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 2.00 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 re-allocated during the fourth quarter of each allocation year.

3.05.050 Water demand certifications required.

A. Will-Serve letters: All applications for Will-Serve letters for residential projects referenced in Section 3.05.040 require a registered 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:

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- a. Exceed the limitations established in Section 3.05.030, above;
 - b. For family dwelling units with secondary dwelling units--Exceed a total water demand referenced in 3.05.100.
- B. Intent-to-Serve letters: All applications for Intent-to-Serve letters shall 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.
 3. For nonresidential/commercial/industrial projects, Intent-to-Serve applications shall include the following: an irrigation plan, a plant material layout plan, and 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 nonresidential/commercial/industrial projects until the 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 Project Water Demand Allocation.

Projects shall be assigned water, and the allocations established in Section 3.05.040 reduced, or accounted for, by the Observed Demand as follows:

- A. 0.33 AFY per multi-family dwelling unit or duplex unit;
- B. 0.48 AFY per single-family dwelling unit located on a parcel of twelve thousand seven hundred sixty-eight square feet or less;
- C. 0.80 AFY per single-family dwelling unit located on a parcel size between twelve thousand seven hundred sixty-nine and twenty-five thousand five hundred thirty-six square feet;
- D. 0.96 AFY per single-family dwelling unit located on a parcel size of twenty-five thousand five hundred thirty-six square feet or greater;

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

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apply to all applications for Intent-to-Serve letters and Will-Serve letters approved by the District:

Exhibit "A"

A. Applications: Application for Intent-to-Serve letters shall be made on the District's form. In order to be considered for an Intent-to-Serve letter the application shall contain a verification that applicant has submitted the proposed project for initial review to the County Planning and Building Department.

B. Termination: Intent-to-Serve letters shall automatically terminate as follows:

1. Failure of the applicant to provide District with written verification, within two hundred forty calendar days from the date the Intent-to-Serve letter is issued, that the County has deemed the project application to be complete.
2. The failure of the applicant to receive both the acceptance of the project improvements and a final Will-Serve letter within three years from the date the Intent-to-Serve letter is issued.
3. An applicant shall be entitled to a one-year extension of the three year limitation upon the following conditions:
 - (a). Applicant makes written application for the extension prior to the expiration of the Intent-to-Serve letter.
 - (b). Proof of reasonable due diligence in processing the project.
 - (c). Applicant agrees to revisions of the conditions contained in the Intent-to-Serve letter consistent with then existing District policies.

C. Extensions: All Intent-to-Serve letters that have not expired on or before the second reading of the ordinance adopting this section shall be extended for an additional twelve months.

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 a registered engineer's or architect's certification that the total water demand for the secondary unit and the primary dwelling unit will not exceed 110% of the limitations established for the primary unit identified in Section 3.05.030.

3.05.110 Limitations on allocations.

A. Only one request for an Intent-to-Serve letter will be considered for anyone project or parcel. The District will not allocate more than twenty percent

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of the allocations referenced in Section 3.05.040 (A)(1)(2) or (3) to a project during any one allocation year.

Exhibit "A"

B. A maximum of fifty percent of the annual water allocation for each successive allocation year may be reserved for projects requiring phasing of water commitments.

C. Water not allocated during a water year shall not be transferred to the succeeding water year.

D. Commencing with allocation year 2009/2010, the District may, during the 4th quarter, adjust the 20% limitation referenced subparagraph A upon a finding that there is an unused allocation in a designated category. The priorities for distributing the adjusted allotment are as follows:

1. Projects on the waiting list,
2. Projects with existing phased Intent-to-Serve letters,
3. New Projects.