



**BOARD OF SUPERVISORS
AGENDA LETTER**

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning &
Development
Department No.: 053
For Agenda Of: 7/18/17
Placement: Departmental
Estimated Time: 30 minutes
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Glenn Russell, Planning and Development, 568-2085
Director(s) Carrie Topliffe, Public Health, 681-5105
Contact Info: Jeff Wilson, 568-2518

SUBJECT: Water and Sewer Service Commitments for Development and Subdivisions

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence: N/A

As to form:

Recommended Actions:

That the Board of Supervisors:

- a) Receive and file this report;
- b) Provide staff direction regarding implementation of the County's water and sewer services and resources policies, as follows:
 - i. Rely on intent to serve letters (or similar letter based on each district's process) based on current availability to satisfy the requirements of Land Use Development Policy 4 and Coastal Land Use Plan Policy 2-6 at the time of initial land use approval for development projects;
 - ii. Rely on intent to serve letters (or similar letter based on each district's process) based on current availability to satisfy the requirements of Land Use Development Policy 4 and Coastal Land Use Plan Policy 2-6 at the time of subdivision approval and map recordation, and require a "buyer beware" notice recorded with the map to advise future property owners of the lack of an irrevocable service commitment; and,
- c) Find the action is exempt from CEQA pursuant to State CEQA Guidelines Section 15378(b)(5) as it is an administrative action that will not result in direct or indirect changes to the environment.

Summary Text:

The purpose of this Board item is to report on a current issue that the County is encountering with respect to water and sewer service commitments from water and sanitary districts and how it affects the County's development approval process and recordation of subdivision maps. As discussed in more detail below, County policies require a demonstration of adequate services, including water and sewer, in order to approve development projects and subdivisions. Districts are increasingly providing temporary, conditional service letters that indicate current availability at the time of approval but do not provide a guarantee of service. The current approach taken by districts creates a potential policy conflict, which has prompted Planning & Development (P&D) and Environmental Health Services (EHS) to bring this issue to the Board for policy consideration. While the emphasis of this Board Letter is water service, similar issues are being faced with respect to public sanitary districts as well. Any policy direction provided by your Board regarding how to interpret adequacy and what proof of service is sufficient for the purpose of approving projects would be applied to water service and sewer service, as applicable.

Increasingly, as noted above, most of the water districts in the County are less willing to provide a firm, long-term commitment that they are able to serve a project or land division at the time of project approval. In part, this is a reflection of their fiscal needs, as there is typically a delay, sometimes significant, between when the first commitment to serve a project is provided and when actual connections to the water district supply are established. Water districts are reluctant to commit to providing water service for a connection that could occur several years after the original commitment due to the desire to provide water to customers when they need it rather than reserving water for future customers. The reluctance for the water districts also appears to be a result of lack of certainty regarding water supplies, especially in the face of the current extended drought experience in the County.

A district's level of commitment or guarantee typically increases during the course of processing and approving a development project. When an application for a development project or subdivision is submitted and before it is approved, the applicant typically obtains a letter (commonly referred to as an "Intent to Serve" letter, though each district uses different terminology to describe these letters) from the water district within which the project is located indicating that water is currently available to serve the project based on existing supplies, with the caveat that the letter does not equate to any guarantee of service. Water districts are starting to provide limited term commitments that are only valid for the time period determined by the water district (e.g. one year) and are clarifying that service is only guaranteed upon issuance of a connection permit. As discussed in the Background section below, the County requires that adequate water service be demonstrated in order to approve a project and has been relying on these letters to grant land use approval. Once a project has been approved and is ready to build, assuming water remains available, a more formal "can and will serve" letter is typically required and obtained before building permits are issued. If a can and will serve letter cannot be provided by the water district for a development once a project is ready to build, building permits will not be issued.

Time-limited water service commitment provided by water districts is problematic at the point of project approval and at the point of recordation of the map. In terms of its implication for approving projects, the limited commitment to service puts the County in a position of acting on projects based on an assumption of adequate water service under current conditions. However, it is possible that when those applicants seek connection permits from the respective water district, water service may not be

available. For development projects, this simply means that the developer would be unable to obtain final zoning and building permits to construct the project. For subdivisions, if the County accepts time-limited intent to serve letters for recordation of maps, then new lots would be created without assurance that water will be available when development of the lots is sought. This is problematic because new lots created through a residential subdivision are generally assumed to be developable (unless stated otherwise on the map), and if the subdivision were for lot sales, future buyers of the lots could be unaware based on the map of the potential for a lack of available water service. If the district later decides that it is unable to serve the project due to a lack of available supply, this could result in a significant delay in the ability for landowners or the developer to build on the lots. If public water and/or sewer service is not available and the developer did not want to wait for it to become available at some point in the future, one option would be to re-process the subdivision map to evaluate the use of private water and/or sewer service (e.g. water wells and septic systems), which may or may not be successful depending on lot sizes and site conditions. Further, as discussed in the accompanying Board Agenda Letter regarding water wells, reliance on water wells (or private septic systems) within a water/sewer district's boundary is generally in conflict with adopted County policies.

Policy Options/Recommendations

Development Projects

For development projects, the options moving forward are:

- a) Relying on valid intent to serve letters (or similar letter based on each district's process) based on current availability that do not offer any assurance or guarantee of service to satisfy the requirements of Land Use Development Policy 4 and Coastal Land Use Plan Policy 2-6 at the time of initial land use approval or approval of a time extension request.
- b) Requiring applicants to obtain water service guarantees in the form of more formal can and will serve letters that do not expire prior to land use approval.

Option a) appears adequate, as building permits would not be issued for a project until a can and will serve letter is obtained. As such, safeguards are in place to ensure that adequate services would be obtained before there is an irreversible entitlement granted to the project. Option b) would likely require applicants to develop more engineered plans and go through significant expense (e.g. paying connection fees) which would be a deterrent to many in advance of land use approval. In some cases, applicants may be unable to obtain water service guarantees earlier in the process, since some water districts will not allow developers to pay connection fees prior to their review of building permit plans to ensure ongoing payments from customers in addition to connection fees. Given this analysis, staff recommends Option a).

Subdivisions

For residential subdivisions, including Tract Maps and Parcel Maps, the options include:

- a) Relying on valid intent to serve letters (or similar letter based on each district's process) based on current availability that do not offer any assurance or guarantee of service to satisfy the

requirements of Land Use Development Policy 4 and Coastal Land Use Plan Policy 2-6 at the time of subdivision approval and map recordation. This would be combined with a “buyer beware” notice recorded with the map to advise future property owners of the lack of an irrevocable water service commitment. Staff would continue to condition these maps to require service by the respective district.

- b) Requiring formal can and will serve letters (or similar letter based on each district’s process) constituting an irrevocable commitment to serve be obtained before an approved subdivision map is recorded and new lots are created.
- c) Requiring County staff to independently investigate availability of water resources for projects, rather than relying on non-committal water service letters.

Given what is required to obtain an irrevocable commitment from water districts and their reluctance to provide such commitment for the reasons discussed above, option b) would likely result in few subdivisions being able to record, especially subdivisions that are not accompanied by a development plan for the lots. This would be unlikely to change in the future until the County’s water picture significantly improves and water districts are less wary of making long-term commitments.

Option c) raises issues as well and could prove challenging for County staff, since it is difficult to predict what water districts will do in the short term and long term to augment their supplies in reaction to changing conditions and it is likely to be a constantly shifting target. Not to mention the additional staff time and cost passed to the applicant to conduct this research. Further, staff’s determination regarding water availability would not substitute for the requisite service commitments from the respective districts in order to obtain service.

Given this analysis, staff recommends option a).

Background:

In approving subdivisions and development projects, the County requires applicants to demonstrate that adequate services are available to serve the project or the new lots, including water supply, consistent with Land Use Development Policy 4 of the County’s Comprehensive Plan Land Use Element and Policies 2-1 and 2-6 of the County’s Coastal Land Use Plan. Specifically, Land Use Development Policy 4 of the County Land Use Element and Coastal Land Use Plan Policy 2-6, which mirror each other, state:

Prior to issuance of a development permit, the County shall make the finding, based on information provided by environmental documents, staff analysis, and the applicant, that adequate public or private services and resources (i.e., water, sewer, roads, etc.) are available to serve the proposed development. The applicant shall assume full responsibility for costs incurred in service extensions or improvements that are required as a result of the proposed project. Lack of available public or private services or resources shall be grounds for denial of the project or reduction in the density otherwise indicated in the land use plan. Affordable housing projects proposed pursuant to the Affordable Housing Overlay regulations, special needs housing projects or other affordable housing projects which include at least 50% of the total number of units for affordable housing or 30% of the total number of units affordable at the

very low income level shall be presumed to be consistent with this policy if the project has, or is conditioned to obtain all necessary can and will serve letters at the time of final map recordation, or if no map, prior to issuance of land use permits.

In addition, Policy 2-1 of the Coastal Land Use Plan states: *In order to obtain approval for a division of land, the applicant shall demonstrate that adequate water is available to serve the newly created parcels except for parcels designated as “Not a Building Site” on the recorded final or parcel map.*

These policies have been in place since adoption of the County Comprehensive Plan Land Use Element in 1980 and adoption of the Coastal Land Use Plan in 1982. Prior to the introduction of water deliveries to the region from the State Water Project in 1997, planning staff would fully investigate the availability of water for projects and subdivisions rather than simply relying on service letters provided by water districts. However, subsequent to the initiation of water deliveries from the State Water Project, which brought with it more reliable water supplies and less reliance on groundwater, the County has relied on confirmation from the appropriate water districts that they have adequate water supply to serve the development proposal or land division. Such confirmation has taken the form of “Can and Will Serve Letters,” “Intent to Serve Letters,” “Water Service Commitment Letters,” or other similar service letters.

To illustrate the steps involved with obtaining water service for a development proposal or subdivision, and the varying degrees of guarantee or commitment that comes with each stage, the following is a description of the process currently in place for obtaining service within the Goleta Water District boundaries. While each district is different, this nevertheless offers a representative glimpse into the process.

Step 1

The **Preliminary Water Service Determination (PWSD)** is typically the first step with the District. The District requires a complete project description (and plans if available) and a water demand estimate from the applicant’s engineer, though the District can also provide the water demand estimate for property owners for smaller projects. Once the District reviews the water history/credit against the proposed project, the District is able to provide the PWSD to the applicant. The PWSD’s purpose is to provide confirmation as to whether adequate water is currently available for the proposed project, though no guarantee is provided. The PWSD also lets the property owner know whether a full application for water service is required (usually if changes to the physical water infrastructure, such as a new water meter, are required). The PWSD letter is typically what the County relies on for a demonstration of adequate water availability for land use approval or to approve a subdivision; however, it is based on current supplies and does not guarantee future water availability.

Step 2

If a District application is required given the scope of the project, the District will review the application and provide the applicant with a **Preliminary Conditions Letter (PCL)**. This PCL provides conditions required to receive Conditional and Final Can and Will Serve Letters as well as design requirements for any required public water system improvements. This PCL does not typically fit in with the County Planning or Building review process in terms of following any planning milestone, as it could occur concurrent with or subsequent to land use approval.

Step 3

Once PCL conditions are satisfied adequately, the District may issue a **Conditional Can and Will Serve Letter (CCWSL)**. This CCWSL is typically required for the issuance of a County Building permit. Since final public water system improvement plans are typically required prior to issuance of the CCWSL, applicants most often process the District plan check concurrent with the County Building permit plan check. Due to the level of detailed plans required to obtain the CCWSL, it is unlikely that this would be obtained at the time of land use approval since project plans are not typically completed to that level of detail at that point in the County's process. For the Goleta Water District, issuance of the CCWSL signifies the first point at which water service is guaranteed.

Step 4

Following construction of public water system improvements and satisfactorily completing all District requirements, including paying all fees and costs incurred, the District may issue a **Final Can and Will Serve Letter (FCWSL)**. The applicant must provide the District with a copy of their Land Use Permit and Building Permit prior to FCWSL. The building permit project description is once again confirmed against the original District PWSD and PCL approvals. The FCWSL is obtained prior to building occupancy.

As can be seen from this example, a guarantee of service is typically not secured until a project is ready to be built, which necessarily comes after approval of a permit has been obtained.

Fiscal and Facilities Impacts:

There is no fiscal impact associated with acceptance of this report. The cost for preparation of this Board Agenda Letter is budgeted in Planning and Development's Permitting Program, as shown on page D-289 of the adopted 2017-2018 FY budget.

Fiscal Analysis:

N/A

Staffing Impacts:

N/A

Special Instructions:

Please email the Minute Order to David Villalobos at dvillalo@co.santa-barbara.ca.us.

Attachments:

N/A

Authored by:

Alex Tuttle, Planning & Development