

COLAB SAN LUIS OBISPO COUNTY

WEEK OF NOVEMBER 18-24, 2012

ALERT

SAVE TUESDAY DECEMBER 4, 2012
AGRICULTURAL CLUSTER PROPERTY CONFISCATION
ORDINANCE CONSIDERATION CONTINUES
COME BACK-BRING FIVE FRIENDS-SAVE YOUR PROPERTY
TIME NOT CERTAIN YET
1055 MONTEREY ST. SAN LUIS OBISPO

**GENERAL FEE INCREASE HEARING
NOVEMBER 20, 2012**

APCD DUNES DUST BAN IMPLEMENTATION SNAGS

COUNTY LEGAL COSTS JUMP UP

DIABLO NUCLEAR PLANT DOOMED?

**PASO WATER BASIN OWNERS SUE COUNTY
(SEE ATTACHED MEDIA RELEASE)**

Board of Supervisors Meeting of Tuesday, November 13, 2012 (Completed)

Revised Agricultural Cluster Subdivision Rules. The Board heard three hours of testimony on the Revised Agricultural Cluster Subdivision Rules, which will eliminate the

possibility for many rural landowners to attempt to apply for a permit for a cluster subdivision on their property. Approximately 31 speakers were opposed while 3 speakers supported the ordinance. Among the 3 supporters were a representative of North County Watch and Michael Winn of the County's Water Resource Advisory Commission. Opposing organizations included the San Luis Obispo County Farm Bureau, Home Builders Association of the Central Coast, and COLAB. Numerous other speakers including attorneys, land use experts, farmers, ranchers, property rights advocates, Constitutional advocates, and caring citizens took many hours of their day to prepare and file a speakers slip, and then to wait for the Board to give out employee service awards, and retirement recognitions and to present resolutions recognizing "important" public services such as Geographic Information Systems (GIS) Day in San Luis Obispo County. Note that this is the same Board of Supervisors who are so proud of their GIS but can't figure out how to notify the property owners impacted by the Ag Cluster Subdivision Ordinance. They can sure figure out a way to send them a property tax bill.

Key objections included:

Inadequate noticing of the affected property owners. The Speakers were very strong on this point. Planning staff, County Counsel, and Supervisor Patterson arrogantly rejected this complaint. Patterson suggested that the neighborhood advisory councils had the responsibility to notify people of what is going on.

Inadequate and poorly crafted self-serving EIR.

Failure to conduct an adequate economic impact study.

Rendering almost 1 million acres ineligible (and its effect as a value and property taking).

Constitutional objections.

Ag Cluster as yet another tool to impose so called "smart growth" at the expense of rural property owners.

Hearing Continued to December 4, 2012: After an acrimonious and angry debate about whether or not to continue the meeting past 5 PM, it was determined to continue the hearing to December 4, 2012. Some of the issues firing the debate are instructive and included:

An expressed belief by Supervisor Gibson that the Board Rules of Procedure require the meeting (if not extended past 5 PM), to resume at 9AM the next morning.

Before County Council could correct the belief (the Board can set the continued meeting for any date) and since Supervisor Mecham voted against going past 5 PM, Gibson flirted verbally with the notion that Mecham was attempting to forestall his (Gibson's) attendance at a California Coastal Commission (CCC) meeting on the next day in Santa Monica. Gibson had scheduled himself to represent the County at a CCC hearing on the County's opposition to the Diablo Nuclear Plan relicensing seismic studies and Gibson flashed anger.

It should be noted that some Board members were already irritated, if not infuriated, by the speakers opposed to the Ag Ordinance proposed revisions. At one point Gibson muttered something to the effect, “we’ll see who shows up next time”, obviously raising the specter that the December 4th hearing will be packed by the usual coterie of enviro-left automatons.

Along these lines, Gibson wanted to make sure that individuals who had spoken at the November 13th hearing were prohibited from speaking again at the December 4th hearing. After checking with legal counsel, the Board agreed to the condition forbidding prior speakers from speaking again on the 4th. At this point, just about all of the people who had filed a speaker slip, but who had not spoken, requested that their slip be carried over to the 4th.

Not So Fast: Clearly, everyone who spoke should come back and request that they get to speak again anyhow because the staff may present new information and the Board will have had 3 weeks to talk to staff, acquire new information, and/or receive private input that is not presented in the hearing. If the hearing were continued to the next day, the speaker prohibition might be valid, but given a 3-week hiatus (including a major holiday interval), the information will have become stale and the Board has an obligation to receive a “refresh”, and not just hear from Gibson’s skills. Many County Counsels and City Attorneys would be very nervous about a speaker ban after a 3-week hiatus. The wine ages (or turns to vinegar), so to speak.

Bring Friends and Associates: When you come back, try to bring some friends and associates. The speakers did a great job in exercising their civic leadership and political courage. A little further effort could make all the difference, and after all – we can expect some counter push.

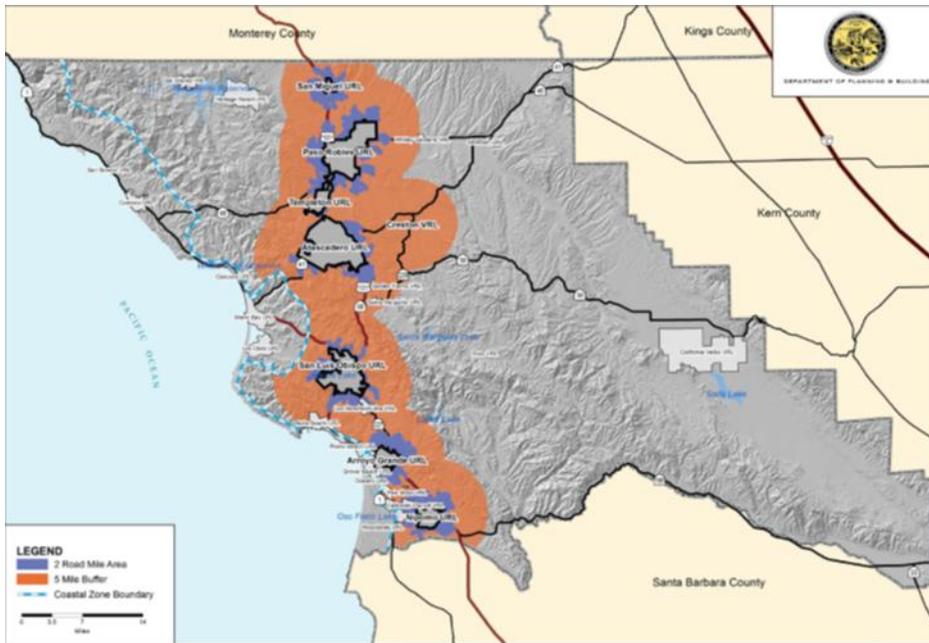
The link to the video of the relevant part of the debate is:
<http://www.youtube.com/watch?v=rMf2Qh9JSbc&feature=youtu.be>

Background: The proposed ordinance will eliminate 998,674 acres from having any possibility of their respective owners making an application for an Ag Cluster subdivision. The orange areas on the map on page 4 indicate the areas from which the new ordinance would eliminate the current ability to apply for an Ag Cluster subdivision in areas zoned agriculture. Presumably, most of the areas to the east of the orange areas are zoned rural lands in which the Ag cluster provisions are also entirely eliminated.

See last week’s COLAB Weekly Update for all the details at:

<http://www.colabslo.org/dnn/> and scroll to the top of the list of Weekly Updates.

Please see the map on the next page.



Property owners in the area in orange no longer will be permitted to apply for an Ag Cluster under the proposed ordinance amendments (almost 1million acres).

Housing in Lieu Fees. Housing Related Fee (Tax) and Exaction Increases. The Board lowered certain taxes, disguised as “fees “(which are levied on home builders), and raised certain exactions (housing impact fees), which are levied on the developers of commercial property.

COLAB recommended that the entire ordinance and tax scheme be scrapped and noted that in 2011 they had reported that the program supported 3.5 units. This week’s version contains a table indicating that the County contributed a total of \$34,755 to help support 56 affordable housing units, a whopping \$620 per unit. It is likely that preparing this agenda item, doing the nexus studies, and otherwise administering the program cost far more than the \$34,755. What a waste of money just to hassle the homebuilders!!!

Background: The bottom line is that over the decades, the process of developing residential and commercial property has become so overregulated and expensive that developers cannot afford to produce affordable housing and prefer to develop larger, more expensive units. In turn, the State Legislature made things worse by enabling cities and counties to require that developers include a stipulated number of affordable units in their projects or pay an “in lieu fee,” which is really a tax on development. The dollars generated from the “in lieu fee” are accumulated and then given to non-profit housing developers to help finance their affordable projects. This is really a government blackmail program to force homebuilders to charge more for their market units to bail out the politicians’ failed public policy.

Farm Stands. The Board unanimously approved the revised ordinance, which adds a variety of restrictions and requirements for farm stands. It makes a distinction between farm stands and field stands. Bring your land use attorney.

Olive Oil Processing. The Board unanimously approved an olive oil processing ordinance that assists olive grove owners who wish to produce and sell the oil at the grove. The ordinance was supported by the growers.

Board of Supervisors Meeting of Tuesday, November 20, 2012 (Scheduled)

Fee increases. The Board will consider a variety of fee increases for 2013. The report indicates that the County has a total of 1,998 fees, of which 311 are slated to go up and 107 are to be reduced. Of the total, 891 fees are charged by the Planning and Building Department. Other departments with fees that particularly impact the private sector, individual owners, and property rights include Public Works, Public Health, Environmental Health, and the Agricultural Commissioner. They should wait until the new Board is seated in January for this one. Some samples include:

Planning and Building fee increases

Appeal to the Board of Supervisors for denial of a curb gutter and sidewalk waiver: \$383 to \$850.

Request for review of a Proposed Negative Declaration: \$170 to \$850.

Lot line adjustment with initial study: \$8,632 to \$10,089.

Lot line adjustment with categorical (CEQA) exemption: \$3,799 to \$4,122.

Development Plan/Conditional Use Permit with categorical exemption: \$7,785 to \$ 8,883.

Development Plan/Conditional Use Permit with initial Study: \$14,603 to \$17,292.

Minor Use Permit with categorical exemption: \$3,148 to \$3,397.

Minor Use Permit with initial study: \$9,175 to \$10,773.

Tree Removal Permit: \$250 to \$126.

Specific Plan with initial study: \$8,700 to \$16,500 (is just the deposit). The big cost is for the processing.

Geologic Review-Major: \$3,852 to \$4,038.

Public Works

Checking a Parcel Map through tentative approval (this is a map already approved by planning): \$1,862 to \$1,912.

Lot line adjustment (for 4 lots or less): \$588 to \$678 each.

Why Are Fees Increasing? Government fees in California are, by law, capped at the actual cost to produce the particular “service,” such as processing an application for a conditional land use permit. Jurisdictions must periodically conduct nexus studies to analyze the cost inputs to a particular fee. Components include direct costs such as employee salaries and benefits (including retirement), utilities, equipment, consultants, and charges from other departments such as the motor pool, County Counsel, personnel services, data processing charges, workers comp, liability insurance, and so forth. Indirect costs such as office space overhead (and related debt service), some fraction of the imputed supervisory costs of the County Administrator, and accounting services of the Auditor Controller (Finance) may also be included.

The question at this point is: since the County reports that it has stabilized employee and salary costs (no raises, no pension cost increases, no pay steps) through concessions from its employee unions, why are the fees going up? Additionally, they claim to have very low debt and debt service costs. They also say they have a ton of sales tax from the construction materials on the solar projects. So why is a “minor” use permit with a review to determine if it needs CEQA going from \$9,173 to \$10,775?

The entire item and the very large detail files can be seen at the link:
<http://agenda.slocounty.ca.gov/agenda/sanluisobispo/1627/SXR1bV9Eb2N1bWVudF8oUHVibGljKV8=/14/n/10078.doc>

Cold Canyon Landfill Appeals. The Board will hear two appeals of its approval of the expansion and life extension of the Cold Canyon Landfill. A private citizen is appealing. Also the applicant Corral de Piedra Land Company is appealing a number of the conditions imposed by the County.

FY 2012-13 First Quarter Financial Report. The staff will present the Board with the First Quarter Financial report, which indicates that budgeted revenues and expenditures are pretty much on schedule. Potential problems include:

County Counsel: The County Counsel is requesting \$596,000 to cover \$ 221,000 in unspecified litigation costs and \$200,000 in litigation costs related to the law suits by the Deputy County Counsels' union and the San Luis Obispo Government Attorneys' Union. These entities have not agreed to labor concessions, which have been accepted by the other employee groups, so they are suing the County for unilaterally imposing some of the provisions. The balance of the use of the \$596,000 is not made clear in the item.

Ok, their own attorneys are suing them and it's costing the taxpayers (a million?). The prior year expenditures on the cases are not provided. And Hill chastised COLAB in a newspaper article for spending money on its smart growth/County failure to do CEQA lawsuit. If your lawyers sued you, would you continue to retain them?

Public Defender: The Defender could exceed its budget by as much as \$600,000 at June 30, 2012, due to a multiple murder trial. (Each defendant has to have separate counsel – called conflict counsel.)

Planning Commission Meeting of Thursday November 29, 2012 (Cancelled)

San Luis Obispo County Air Pollution Control District (APCD) Meeting of November 14, 2012 (Completed)

Dunes Dust Ban Faltering. During the meeting it was revealed that the implementation of the ban is not going well. The Air Pollution Control Officer (the director of the agency) reported that the State Parks Department is not cooperative in working with APCD in developing the plan to install mitigations intended to reduce the dust. He suggested (in so many words) that State Parks is stonewalling. As COLAB had previously reported, State Parks has joined a private group (Friends of the Dunes) in a lawsuit challenging the APCD dust control order.

Supervisor Patterson was quick to jump in, “this concerns me immensely-sounds like they are continuing to challenge (the fact) that activity on the dunes is responsible for increased PM-10” (the type of dust). “What do we do as a Board to move this forward?”

Supervisor Hill stated that the local park manager is a “wiley bureaucrat.” He suggested that the APCD Board complain to State representatives, Senators, and the Governor. He stated that he had already complained to the State Environmental Secretary and an unnamed staffer in the Governor's office.

San Luis Obispo Mayor Jan Marx characterized the Parks Department as a “scofflaw” that hid \$30 million (actually \$54 million).

California Coastal Commission Meeting of November 14, 2012 (Completed)

PG&E Diablo Nuclear Plant Seismic Testing Permit Denied. The Commission denied the permit with some vigor. One Commissioner opined that the whole effort was a waste of time and money because the plant is too dangerous and should be shut down immediately.

Where is the Board of Supervisors Leadership Now? As we have been reporting, the specter of plant closure is growing all the time. What if PG&E said OK, submitted a phase out plan, and petitioned the State Public Utilities Commission for a rate increase to recover its unamortized plant costs and foregone future revenues. PG&E could then file a property tax appeal with the County to reduce the value to its open space value. The County would lose \$2,168,840,000 in assessed value (9.32% of its total assessed value). This equals about \$21 million in foregone annual tax revenues. Of course the County could then plan on the economic impacts of the layoff/transfer of the workforce and the negative economic multipliers as purchases of goods and services related to plant activities ceased. These in turn would ripple through the housing, retail, and employment markets of the County.



Those Who Survived Were Thankful

County Sued On Illegal Paso Robles Water Basin Land Moratorium

The group **Concerned Landowners in the Paso Robles Basin (CLPRB)** has retained an expert Los Angeles law firm to challenge the County's imposition of the Paso Robles Ground Water Basin moratorium. This is a separate group from COLAB, but as readers know, we reported after the hearing at which the Board adopted the ordinance that lawsuits were likely. The media advisory is quoted below:

NEWS RELEASE FOR IMMEDIATE RELEASE

November 15, 2012

Contact: Steve Hoch 213.417.5158

*Writ Challenges Paso Robles Groundwater Basin Conservation Ordinance
Concerned Landowners in the Paso Robles Basin Claim that Ordinance Violates California
Environmental Quality Act*

Los Angeles, CA --- Morris Polich & Purdy LLP (MPP) filed a writ in the San Luis Obispo County Superior Court on October 30, 2012, on behalf of the Concerned Landowners in the Paso Robles Basin (CLPRB) which challenges the Paso Robles Groundwater Basin Conservation Ordinance.

Adopted by the San Luis Obispo County Board of Supervisors on September 20, 2012, the Ordinance restricts certain discretionary property development in San Luis Obispo County, prohibits certain land divisions in San Luis Obispo County and makes certain changes to the San Luis Obispo County General Plan purportedly to save water. The Board also deemed the Ordinance to be categorically exempt from the strictures of the California Environmental Quality Act (CEQA).

"CEQA is supposed to work for everyone. The Board played fast and loose with its requirements. Our challenge is to assure fairness in the process in passing ordinances that effect the environment and the people of the community," said Counsel for CLPRB Steven L. Hoch, MPP partner. "You can't decide to follow the rules sometimes and then not follow them for political expediency."

Specifically, the writ claims that the Board failed to take into account that the Ordinance would produce many environmental impacts and failed to take into account that the Ordinance's description was vague, ambiguous, incomplete and inadequate and that it improperly segmented, resulting in an improper, incomplete and inadequate "piecemeal" review of the potential impacts.

"We are attempting to convince the Board that they made a mistake and hopefully reconsider the issue before the cost of their mistake takes too much out of the public's

coffers,” continued Mr. Hoch. “The funds are not coming out of the Board’s pockets. Everyone one in the county will have to pay for their error.”

Mr. Hoch is an environmental regulatory and litigation attorney who is a recognized authority and leader in his field with over 35 years of experience with both federal and state environmental laws and regulations.

About MPP

Morris Polich & Purdy LLP is a law firm, with offices in Los Angeles, Irvine, San Diego, San Francisco and Las Vegas, that works with its clients on a national basis. We represent clients in every state, as well as many U.S. possessions, where their cases arise. We also have a wealth of international affiliations.

Our dedication to clients, combined with extensive experience, both in the trial and appellate courts, are the qualities that distinguish us from other law firms. Our attorneys are known for their vast experience and success, and have earned the firm its reputation with the bench and bar as down to earth, practiced, sensible, skillful, professional litigators. We provide superior legal services in a manner consistent with our clients' best interests and goals. We are committed to expertise in all our areas of practice, knowing our clients' businesses and providing client service at its highest level.