

COLAB SAN LUIS OBISPO COUNTY

WEEK OF JULY 30-AUGUST 5, 2011

INSIDE THIS UPDATE:

WILL COUNTY IMPOSE SMART GROWTH ON CITIES?

APCD APPROVES UGLY FEES ON SPLIT VOTE

PLANNING COMMISSION RECS COULD KILL SPECIAL EVENTS

DANGER TO AGRICULTURE AND BUSINESS: IMPENDING APCD
FUGITIVE DUST RULES

Board of Supervisors

Board Meeting of July 26, 2011 (Completed)

Road Fee Deferral. The Board of Supervisors adopted the fee deferral. The fee is designed to help offset the cumulative road cost engendered by new development. Currently the fee must be paid at the time a building permit is issued. This allows for a 20% down payment and payment of the balance when a certificate of occupancy is issued. This could benefit home builders and others, especially during the continuing recession. The fees range from \$10,000 to \$20,000.

Public Facility Fee Deferral. The Board also adopted an implementing resolution, which would allow deferral of facilities fees that are levied on new construction until a certificate of occupancy is issued. As our readers know, the Board directed staff to bring forward a policy on April 5, 2011.

Background: In order to pay for capital infrastructure improvements which are made necessary by development, the County charges Public Facilities fees to help offset the marginal costs of new development for libraries, fire facilities, Sheriff's facilities, parks, and general government facilities. The fee for a single family unit is \$5,705; a multifamily unit, \$3,709; an office project, \$2,283 per 1000 sq. ft., \$1,737 per 1000 sq. ft. for retail, and \$1,056 per 1000 sq. ft. for industrial. Currently the fee must be paid at the time a building permit is issued. The problem is that the applicant cannot realize revenue (and the potential service and facility impacts do not occur) until the new house, business or whatever is occupied. In recognition of the economic recession, the Board will allow

applicants to defer part of the payment until an occupancy permit is issued. During its April 5, 2011 meeting, the Board discussed the idea and directed staff to return with a proposal.

Under the proposed deferral, the applicant will enter into an agreement with the County to pay all fees prior to final inspection. A 20% deposit plus an administrative processing fee will be required. To be eligible, the applicant must be in compliance with all project conditions and have no unpaid balances due to the county; all taxes and assessments shall be current; and no County Code violations may be present on the property. The deferral provision will sunset on September 30, 2014, in the belief that the recession may be over by then.

County Jail Will Incarcerate More Sentenced Prisoners. The Board received a report from staff about new State shifts of sentenced prisoners to counties. As a result of the State structural budget deficit, the Legislature approved and the Governor signed AB 109, which will result in the incarceration of some non-violent, non-serious, and non-sexual offender convicts in county jails instead of the State Prison System. Some offenders will no longer be on State Parole, but will be placed under the supervision of the county probation departments. The bureaucratic term for this shift is “realignment.” It should be more accurately termed, "State devolution of its historic responsibilities." The County will supposedly receive \$2.2 million from the State to cover the costs. The real problem is that there is no guarantee that the State can or will provide funding in future fiscal years. Our prediction is that this is yet another punch by the State politicians which will further undermine local government. The County Administrative Officer carefully pointed this problem out.

Of course a prudent County would do everything possible to diversify and intensify its economic base in order to withstand the blows which will come when the State eventually welches on this one. This in turn would require a sea change in the regulatory, fee, and tax approach.

Board Meeting August 2, 2011

Sale of County Owned California Valley Land. The Board will consider authorizing the Director of General Services to conduct a public auction to sell (bulk sale) 415 parcels totaling 1,052 acres in California Valley. The parcels were acquired through tax foreclosures over the years. The minimum price will be \$1.9 million. It appears that one of the companies building the solar plants may be a potential purchaser because its permit approvals required acquisition of more “mitigation land” for local wild life and preservation of “visual resources.”

County Imposes Smart Growth Principles on City of Atascadero. As part of the legal procedure which allows cities to grow naturally over time, the City of Atascadero is going through a process known as expanding its sphere of influence. The procedure is legally mandated by the State to promote orderly growth and is managed by a quasi-independent local agency called the San Luis Obispo Local Agency Formation Commission (LAFCO). LAFCO is governed by a derivative Board of Directors consisting of two County

Supervisors, two City Council members, two representatives of special districts, and a citizen representative. The expansion of the sphere of influence often precedes future annexation. The County and the City are entering into a contract to manage the transition, which could take place over period of years. Significantly and in part, the contract states, “The County’s Strategic Growth Principles will be considered by the City with the purpose of supporting and complementing the City’s vision of the area. Once annexed, the City’s General Plan and/or Specific Plan will be implemented for the Sphere of Influence Area. The following goals should be considered in developing the Specific Plan:

- Creation of walkable and bicycle friendly neighborhoods with logical connections and future transit opportunities if feasible.
- Planning for a trail system to accommodate pedestrians, bicyclists, and equestrians which connects to the existing community.
- Development of a range of housing opportunities and choices.
- A land use pattern that clusters development in a manner that reduces environmental impacts.”

Of course, these are direct phrases from the County’s so called smart growth doctrine.

OTHER GOVERNMENT ENTITIES

Planning Commission Meeting of July 28, 2011(Completed)

Events Ordinance. The Commission approved the content of the new more restrictive ordinance wording on a split 3 to 2 vote. It now moves forward to the Board of Supervisors with the Commission’s recommendation for adoption. COLAB spoke against the restrictive and event killing provisions. A representative of Hearst ranch was also in opposition. A number of not-for-profit organizations wrote letters of opposition. This was a continued hearing from June 30, 2011. This is essentially a complete re-write of the ordinance. We have been presenting the material in the background section below to alert stakeholders of the increased restrictions and processing requirements. Businesses and agriculturalists that augment their income by conducting events should stay on guard as the Supervisors take up this matter. Similarly, not-for-profit organizations that conduct events also need to continue to pay attention. New requirements related to site access, sites located on agricultural land, riparian setbacks, parking on public roads, off-site parking, traffic control, hours of operation, amplified sound, lighting, building remodeling, dust control, setbacks, public noticing, water, toilets, solid waste disposal, vector control, and food service are promulgated in the new ordinance.

During our presentation COLAB again asked why the County would intensify this ordinance at this time during an economic recession when many businesses and not-for-profit organizations are already struggling. Ideology trumps economic reality.

The Commission majority seems to see its role as technical and the Chair actually opined that the Board had to deal with the broader policy issues. The problem is that now the Board is confronted with the Commission’s recommendation and would have to overrule its

own appointments to make improvements. The Board should send the proposal back to the Commission or suspend the issue until the economy improves.

Background: “The purpose of this section is to establish a set of regulations applicable to the various types of events held throughout the County. The Board of Supervisors through adoption of these standards recognizes the important role that events play including promoting countywide tourism, providing a source of additional income to agriculturalists and landowners, as an educational or recreational tool for the public and support of nonprofit organizations. The Board also recognizes that, even as they provide economic, educational and recreational benefits, events also have the potential to negatively impact surrounding residential or agricultural uses by increasing burdens to infrastructure, such as rural roads and add noise or other impacts that may negatively affect the rural and neighborhood character, the essential quality on which tourism and the County’s economy depends. The specific purpose of this Section is to set standards for events to ensure compatibility with surrounding residential and agricultural uses.”

Changes from prior versions:

Nonprofit events:

- Will be limited to 3 per year on any property.
- Maximum attendance is limited to 500.
- Any event with more than 175 must bus people from the nearest urban or village area.
- No more than 50 vehicles allowed to park on site.

All events:

- Ministerial Permit required if event 175 or less is still subject to all requirements.
- Minor use Permit required for events 176-250.
- Conditional use permit required for 250 or more.
- Decreased set back from a water course (blue line stream) from 300 ft. to 100 ft.
- Parking allowed on public roads outside of urban or village reserve line where traffic control plan allows

Arroyo Grande Creek Channel Flood Management. The Planning Commission approved the Coastal Development Plan, which will allow the County to raise the height of the levees, remove silt from the flood channels and lagoon, and remove reeds and willows from the flood channels.

Several Commissioners asked the staff how the various Federal and State agencies that must review and or approve the plan were reacting. Staff naively believes that it is on track.

The real test is whether the State Department of Fish and Game, the State Regional Water Quality Control Board, the United States Fish and Wildlife Service, and especially the California Coastal Commission will grant concurrent approvals/permits for the project. Their decisions contain an acid policy test of which is more important to the governments involved: the people who are being flooded out or the reeds which have taken over the channels and lagoon (and which used to be removed periodically).

Planning Commission Meeting of August 4, 2011

Shandon Community Plan. The long-running hearing continues as the Commission resumes its chapter-by-chapter and page-by-page word smithing of the draft Plan Amendment, which could result in a larger village center over many decades. The broader policy context is whether or not a village center supported by the County as part of its Strategic Growth (smart growth) initiative can be economically successful in this location. What employment, retail, and amenities can be successful and a market basis? The Commission is focused on technical details such as traffic, water, sewer, density, infrastructure, and design, which cannot really be planned until the basic economic issues and functions of the village center are solved.

Los Osos Community Service District Friction. Because of changes in the location of the proposed sewer treatment plant and other facilities, the District determined to sell an eleven acre parcel and an eighty acre parcel which it retained after the new and separate Los Osos Sewer Authority was created. Purchase or sale of property by a public entity in the unincorporated area must be reviewed by Planning to determine conformance of such actions to the County's adopted General Plan. The Planning Director found that the proposed sale was not in conformance. Therefore, the District is appealing to the Commission.

Air Pollution Control District (APCD) (Completed)

Fee Increases. The APCD Board approved a 5.7% across the board fee increase for FY 2011-12 on a split vote. Supervisors Mecham, Teixeira, and two city representatives voted against the increase. Shockingly, staff reasoning is that they did not get a fee increase for the prior year, salary and pension costs have gone up, and they lost annual inspection fee revenue because the Morro Bay Power Plant is being phased out. Supervisor Mecham doggedly tried to get the staff to explain the real reasons for the increase. Their bottom line (amplified by Supervisor Gibson, who voted for the increase) is that they are carrying out unfunded mandates of the State and Federal Governments. When asked about alternatives, staff indicated that the District Board could consider a per capita fee to be charged to each city and the county based on population. Another idea was to raise the motor vehicle fee. The clincher for the District Board members who voted for the increase was that representatives of the impacted businesses had neither protested at a previous hearing nor during this hearing, even though all the impacted businesses had been notified. The

businesses may have thought that the fee increases were a done deal and that it was fruitless to protest.

Background: The APCD is yet another quasi-independent agency governed by a board of directors consisting of the County Board of Supervisors and a representative council member from each city in the County. We call these “derivative boards” because they are composed of officials elected to other bodies that have other primary responsibilities and are not directly elected to govern entities such as the APCD and similar derivative agencies, such as the Integrated Waste Management Authority, Transit District, San Luis Obispo Council of Governments, or Local Agency Formation Commission. The APCD has extensive authority to promulgate and enforce its own air quality regulations as well as enforce State and Federal regulations. It has a budget of \$4 plus million, 23 staffers, and a battery of expert consultants. It derives more than half of its revenue from fees it charges for permits, annual permit renewals, and inspections.

The APCD regulates emissions on everything from oil processing facilities to crematory incinerators to gasoline pumps to wine fermentation and storage to bakeries to wood working operations. In order to renew its existing annual permit a wood working operation will have to pay \$744. After paying a base fee of \$424 for just existing, a winery will have to pay \$3.60 per 1000 gallons of storage plus \$.48 for each 1000 gallons of white wine fermentation and \$1.20 for each 1000 gallons of red wine fermentation. A large bakery will pay \$4,689. An agricultural burn permit will cost from \$50 to \$250 depending on the size of your property and the amount of material to be burned. Each gasoline dispensing nozzle will be \$50.40. Clearly the aggregate cost burden to the community and business imposed by this agency is significant.

As we have asked repeatedly in connection with so many different programs, why would our elected officials raise fees given the state of the economy and the County’s avowed commitment to economic development?

One of the efforts in APCD’s work program is listed as the Climate Action Plan (CAP). This effort is in addition to that of the County Planning and Development Department, which published a Draft Climate Action Plan in June. The San Luis Obispo County Council of Governments is also working on Climate Action Plan related efforts. Other than suspending the whole CAP effort, consideration could be given to fixing responsibility and not having multiple agencies running around duplicating analysis, writing, attending meetings, traveling and otherwise generating more reason and ways to mess with us.

Oceano Dunes Dust and State Park Campfire Smoke. The APCD Board received an update on the status of consultant studies and field monitoring of “fugitive dust” which is carried by the wind from the recreational dunes area to the Nipomo Mesa to the south. The Study, which is being conducted by the Desert Research Institute (DRI), is due in September and is to be circulated (not publicly) to the “stakeholder agencies” for internal comment on about September 7, 2011. The significant event at this hearing was the attendance and commentary by a group of Nipomo Mesa residents who believe that the dust (and campfire smoke from the State Park) are a health hazard. This group is fiercely committed to banning the use of all-terrain vehicles (ATV’s) at the Dunes and prohibiting campfires. One member believes that all wood burning for any purposed should be banned, including home fire

places, grilling, and brush burning. The group says the dust contains abrasive silica particles which hurt people's lungs. They are angry that the ATV's have not already been banned. They are demanding additional dust monitoring at Nipomo schools. The district has maintained that it lacks the money.

Bottom Line: The APCD, County Health Department, State Parks Department, and Board of Supervisors will be under huge pressure to ban the ATV's and campfires. At this point, the presentation of the DRI Report is scheduled for Wednesday September 28, 2011. The tentative date for adoption of rules is Wednesday, November 28, 2011. There will be significant heavy-duty science in support of the APCD staff's recommendations. The cities, industries, vacation rental owners, and jobholders, whose economic survival is dependent on this historic visitor serving recreational asset, should pay attention and gear up. As one speaker said, "Why should we let this go on, so they can sell one more bowl of clam chowder?"

DANGER TO AGRICULTURE: During the discussion, there was some inference that setting of fugitive dust standards in regard to the Dunes issue could or would have implications for dust generated in the normal course of farming operations, such as plowing fields and operating equipment over dirt roads which serve agricultural fields. The standards could be extrapolated to apply to other areas.

State Legislature and Governor

AB 455 Veto: The Governor vetoed Assembly Bill 455. As our readers may recall, this bill would have forced cities, counties and special districts which operate personnel merit system boards, such as the San Luis Obispo Civil Service Commission, to allow unions to stack half the membership with pro-union members. In his veto message the Governor said in part, "This measure seeks to impose a level of State control that is inconsistent with my administration's efforts to realign State services and to insure local control."