

NMFS informal comments on Well Ordinance update, submitted prior to the October 23, 2024, Planning Commission Meeting

Hi Sierra and John,

I'm going to try and make it to today's Planning Committee Meeting, but I may have a conflicting meeting. I'd like to submit the following informal comments for consideration moving forward. I appreciate the hard work Santa Cruz County has expended on this effort, and I believe it is pointed in the right direction, but the draft ordinance still has some issues that need to be addressed. I am ready to help the staff address these concerns either now, or at some predetermined interval following shortly after approval (this is not a "set it and forget it" process, but will instead require regular check-ups to ensure it is appropriately minimizing streamflow depletion impacts). Perhaps the overarching comment in addition to those below is that the draft ordinance does not clearly explain how assumptions relied upon in the ordinance will be validated, or how cumulative impacts will be analyzed and tracked over time.

Staff Report, page 4: Number 1a under "Resource Protection Policy" states "Definition and requirements for review and approval of different types of wells (Tiers 1-4)." Does review and discretionary approval apply only to Tier 4, or can applications from Tiers 1-3 be denied based upon environmental impacts (e.g., exceeding streamflow depletion thresholds)?

Staff Report, page 5: "Summary of Tiers for Evaluation and Approval of Well Permit Applications" table allows for a stream set-back of less than 2,000 feet if the "10th percentile dry season flow is not reduced by more than the allowed percent *after 10 years of pumping*." We suggest the County explain the rationale for waiting for 10 years of pumping before determining if streamflow depletion is occurring from a new, ministerially-permitted Tier 3 well extracting up to 49 AFY. Furthermore, please explain what recourse the County will have if, after 10 years, the additional streamflow depletion threshold has been exceeded? Can the County require a meter on the well, and limit extraction volume to bring the well into compliance? How would other wells that were permitted during the 10 year period following the Tier 3 well be dealt with, since those wells were permitted under the assumption that streamflow depletion was below the identified threshold and groundwater was available for extraction?

Under the definition for a "new well", the Staff Report states "a significant increase would result from a new use or change of use in the area served by the well that will result in an increase in the maximum annual amount of water extracted in the past 5 years." We believe defining a "significant increase" based upon replacement well not increasing "the maximum annual amount of water extracted in the past 5 year" is inappropriate because it does not reflect the potential for a critically dry year within the 5-year period to allow for a truly significant increase in a

replacement well's extraction amount. For instance, if a "replacement" well application is submitted next year, the five-year period of determining if a "significant increase" is proposed would be based upon groundwater extraction during the 2021 water year, the driest year on record and the second of driest two-year period in the State's history. Groundwater extraction during 2021 was likely the highest on record, meaning the pumper could in theory drastically increase their average water use by pumping up to the 2021 level every year. Of note, the revised Code Section 7.70 definition of "new well" does not include the added language defining "significant increase." Possible solutions include using the median extraction amount, not maximum amount. Also, analyze a longer data set than 5 years, where available.

Revised Code 7.70.110(C): The section requires applicants to estimate the annual water for proposed new, supplemental, or replacement wells, but not de minimis wells. We suggest the County include de minimis wells under this requirement to improve the accuracy of future modeling and analysis of groundwater extraction impacts.

Revised Code 7.70.110(E)(1): This is the first mention of "minimum standards" within the revised code. We suggest the County define what the minimum standards are, or whether or not they are the stream setback and/or annular seal depth requirements listed in the staff report table.

Revised Code 7.70.110(E)(3): The Tier 3 definition has been updated to include "new non-de minimis wells serving new uses that will pump less than 50 AFY." (*emphasis added*) We recommend the County explain any ecological justification for the change to 50 AFY from 100 AFY appearing in earlier drafts of the document.

Resource Protection Policy, "Definitions": The definition for "Tier" states the Health Officer "shall establish specific criteria and procedures for assigning the Tier and the extent of required evaluation and protective measures." We suggest the County define or provide examples of these protective measures that "shall be adopted by the Board of Supervisors by resolution."

Critical Streams Table: The column "current estimated depletion" appears to include several errors. We recommend the County further explain how some creeks (e.g., W. Branch Soquel @ E. Branch, Moore Gulch, Aptos ab Valencia, Branciforte, etc.) have higher observed dry season flow than estimated unimpaired dry season flow. Also, the "current estimated depletion" appears to be wrong for some of the creeks; for example, Soquel at West Branch has unimpaired and current flows of 1.23 and 0.1, respectively, for a current depletion of ~92 percent, but instead lists the depletion as 60 percent. Finally, the County should explain how they envision

measuring allowable streamflow depletion, since many of the current dry season flows are so low that accurate field measurements will be difficult, if not impossible.