

**SANTA CRUZ COUNTY PLANNING DEPARTMENT  
ADMINISTRATIVE PRACTICE GUIDELINE**

Guideline No.: WATER AGREEMENT (Water Agreement in lieu of Will Serve Letter)  
*Deferred Submittal of Water Service Will Serve Letter for Discretionary Permit or Subdivision Applications, upon Applicant Submittal of Agreement to Defer Submittal of a Building Permit Application or Filing Final Map/Parcel Map until Water Will Serve Letter is Obtained from Water District*

Effective Date: 2/15/17

Originally Issued: 2/15/17

Revised:

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**Question**

Must a Water Will Serve Letter, or a Conditional Will Serve Letter, always be submitted at the time of filing an application for a discretionary development permit or subdivision, or is it acceptable that such a Letter be submitted at the time of application for a building permit or filing Final Map/Parcel Map?

**Applicable Regulatory Section(s)**

SCCC §13.10.324.1(B), 13.10.334(B), 13.10.344(B) and §14.01.206(L);  
General Plan/LCP Policy 7.18.2

**PRACTICE:**

It has been the practice of staff in the Development Review/Zoning section of the Planning Department to require applicants to submit a Will Serve or Conditional Will Serve Letter from the applicable water service provider at the time of filing applications for discretionary permits or subdivisions.

However, review of the entirety of SCCC §13.10.324.1 [paragraphs (A) through (F)] "*Public facilities requirements for residential districts*", §13.10.334 [paragraphs (A) through (D)] "*Public facilities requirements for commercial districts*", §13.10.344 [paragraphs (A) through (F)] "*Public facilities requirements for industrial districts*" and General Plan/LCP Policy 7.18.2 "*Written Commitments Confirming Water Service Required for Permits*"; as well as Subdivision Regulations §14.01.206(L) "*Form and content of tentative maps*", reveals that the intent of the policy and code provisions is a guarantee that water service for a development project will be available prior to the issuance of building permits, or in the case of a subdivision, prior to filing the Final Map or Parcel Map.

Therefore, an acceptable method of meeting the intent of these provisions is for applicants to enter into a written **Agreement to Defer Submittal of a Building Permit Application or Filing Final Map/Parcel Map Until Water Will Serve Letter is Obtained**.

## **EXPLANATION:**

### **Background**

Due to recent changes in the practices of the Soquel Creek Water District, applicants have requested to be able to file applications for discretionary permits for proposed projects, or for subdivisions, without such a will-serve letter from a water district. The reason is that Soquel Creek Water District is now requiring applicants to fully pay for and receive all Water Demand Offsets (WDOs) before a Will Serve or Conditional Will Serve Letter will be provided. This can be a large expense, and for certain larger projects the District will not provide all WDOs at the same time. An applicant may need to “get in line” again and wait for WDOs to become available and issued. Furthermore, since a proposed project may be changed during the application review period, potentially changing the level of WDOs required, applicants for discretionary permits desire to purchase or identify WDOs for an actual approved project rather than for a proposed project as initially submitted in an application for discretionary permit(s) or a subdivision. Furthermore, it can take one, two or more years for certain proposed development projects to complete the discretionary permit/subdivision review and approval process, which includes compliance with the California Environmental Quality Act. Waiting to begin this development review process until after obtaining all WDOs is not practical, particularly given uncertainties about whether or not a proposed project or subdivision will be approved.

An acceptable method of meeting the intent of the above-cited provisions of the Santa Cruz County Code and General Plan/LCP Policy 7.18.2 regarding “*Written Commitments Confirming Water Service Required for Permits*” is for applicants to enter into a written **Agreement to Defer Submittal of a Building Permit Application or Filing Final Map/Parcel Map Until Water Will Serve Letter is Obtained (“Agreement to Defer”)**, in a form required by the County, concurrent with submitting an application for a discretionary development permit or subdivision.

This Agreement provides that the applicant is aware of, accepts the risk, releases liability and indemnifies the County against potential losses related to county review of an application for discretionary permit(s) for a proposed project or a subdivision. Without a Will Serve Letter, the time spent and costs of reviewing the development permit/subdivision application is “at risk”, such that if no water will serve letter is issued for the proposed project, then the applicant will not be able to submit an application for a building permit for the project that has obtained discretionary permit approval, or will not be able to file a Final Map or Parcel Map.

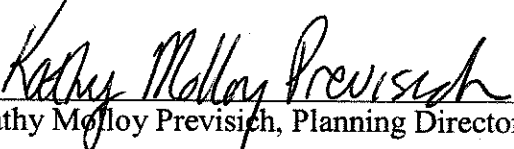
Most discretionary permits are issued with a three year life. Regarding time extensions to extend the life beyond three years, SCCC §18.10.133(A) provides that “*A development permit may be renewed up to five times for an additional period of not to exceed one year at a time ... pursuant to Level IV (public notice) ... An application to amend a development permit by changing the expiration date may be approved or denied, or the conditions of the original permit may be modified or new conditions added.*” Therefore, the applicant would also be taking the risk that, if a building permit is not issued within three years of approval of discretionary permit(s), then the project may not be granted a time extension, or modified or new conditions of approval may be imposed. Similarly, tentative map approvals are subject to expiration and uncertainties about whether time extensions will be granted.

Under this approach, a Water Will Serve Letter must be submitted concurrent with FILING a building permit application, or filing a Final Map/Parcel Map. It is NOT acceptable that submittal of the

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required Will Serve Letter be delayed until the time of ISSUANCE of a building permit. The Agreement to Defer shall require that applicants not submit an application for a building permit, or file a Final Map/Parcel Map, without first obtaining a Will Serve or Conditional Will Serve Letter from the water district, which must be submitted concurrently with filing the building permit application or Final Map/Parcel Map. One reason for this timing requirement relates to reducing time, costs and uncertainty regarding compliance with the California Environmental Quality Act (CEQA). If there is any uncertainty about whether a project will be supplied with water, that would be either a potentially significant or an unavoidably significant environmental impact, requiring preparation of an Initial Study/Mitigated Negative Declaration or even an Environmental Impact Report. The expected CEQA mitigation measure for such a situation would be to not allow issuance of a building permit or acceptance of Final Map/Parcel Map until after a Will Serve letter is obtained. Another reason for ensuring that the Will Serve Letter is obtained prior to submittal of a building permit application is to ensure that the project designer is preparing building plans for plan check under the appropriate California Building Code and SCCC Chapter 12.10 Building Regulations, which will reduce the risk that time and money is spent reviewing building plans that may not be able to be approved and issued within standard building plan check timeframes.

Acknowledgement that the applicant has entered into an Agreement to Defer will need to be included within the conditions of development permit approval, parcel map, or final map. In this way, the decision making body will be able to make findings of consistency with the General Plan/LCP and the County Code. Also, including reference to the Agreement to Defer within the conditions will ensure that future property owners or others involved with the project are aware of the situation. Development will not occur unless and until a Will Serve Letter is obtained for the project.

  
Kathy Molloy Previsich, Planning Director

2/15/2017  
Date

ATTACHMENTS

1. Text of SCCC §13.10.324.1(B), §13.10.334(B), §13.10.344(B) and §14.01.206(L); and General Plan/LCP Policy 7.18.2
2. Form of Agreement to Defer

Text of SCCC §13.10.324.1(B), §13.10.334(B), §13.10.344(B) and §14.01.206(L);  
and General Plan/LCP Policy 7.18.2

**Zoning Ordinance §13.10.324.1(B)      Public facilities requirements for residential districts**

All requirements of the local sanitation district and water district shall be met. Letters indicating adequate sewer and water service to the project shall be submitted with the project application. Within the Coastal Zone, adequate system capacity shall be reserved for priority coastal uses as per SCCC 17.02.070.

**Zoning Ordinance §13.10.334(B)      Public facilities requirements for commercial districts**

All requirements of the local sanitation district and water district shall be met. Letters indicating adequate sewer and water service to the project shall be submitted with the project application. Within the Coastal Zone, adequate system capacity shall be reserved for priority coastal uses as per SCCC 17.02.070.

**Zoning Ordinance §13.10.344(B)      Public facilities requirements for industrial districts**

All requirements of the local sanitation district and water district shall be met. Letters indicating adequate sewer and water service to the project shall be submitted with the project application. Within the Coastal Zone, adequate system capacity shall be reserved for priority coastal uses as per SCCC 17.02.070.

**Subdivision Regulations §14.01.206(L)      Form and content of tentative maps**

Submit a letter from a responsible person for a source of water supply, certifying as to the availability of water and its ability to serve the subdivision, or submit a letter from Environmental Health Services of the County Health Department, certifying as to the ability of the subdivision to meet requirements of Part IV of the Design Criteria Manual

**General Plan/LCP Policy 7.18.2**

**Written Commitments Confirming Water Service Required for Permits**

Concurrent with project application, require a written commitment from the water purveyor that verifies the capability of the system to serve the proposed development. Projects shall not be approved in areas that do not have a proven, adequate water supply. A written commitment is a letter from the purveyor guaranteeing that the required level of service for the project will be available prior to the issuance of building permits, or in the case of a subdivision, prior to filing the Final Map or Parcel Map. The County decision making body shall not approve any development project unless it determines that such project has adequate water supply available.

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**ATTACHMENT TWO**

**Form of  
Agreement to Defer Submittal of a Building Permit Application or Filing Final Map/Parcel Map  
Until Water Will Serve Letter is Obtained**

[ATTACHED BEHIND THIS COVER PAGE]

Return recorded form to:

Planning Department  
County of Santa Cruz  
701 Ocean Street, 4<sup>th</sup> Floor

Attention: «Planning\_Staff»  
Application #: «Application\_Number»

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Agreement

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION  
(CALIFORNIA GOVERNMENT CODE §27361.6)

Return recorded form to:

Planning Department  
County of Santa Cruz  
701 Ocean Street, 4<sup>th</sup> Floor

Attention: «Planning\_Staff»  
Application #: «Application\_Number»

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**Agreement Re: Water Service**

APN(s): «APN»

Site Address: «Site\_Address» (Property)

Application No: «Application\_Number»

Summary Description of Proposed Project and Requested Development Permits:  
«Brief\_Project\_Description»

Applicant: «Applicant»

Property Owner(s): «Current\_Owner»

**Agreement to Defer Submittal of a Building Permit Application or Filing Final Map/Parcel Map Until Water Will Serve Letter is Obtained**

**WHEREAS,**

- A. Applicant has submitted the above-referenced Application for a development project or subdivision (“Proposed Project”) within the County of Santa Cruz (“County”);
- B. County Zoning Code provisions related to residential, commercial and industrial development (13.10.324.1(B), 13.10.334(B) and 13.10.344(B), respectively) state that “Letters indicating adequate sewer and water service to the project shall be submitted with the project application”; and
- C. County Subdivision Regulations §14.01.206(L) requires that applicants “Submit a letter from a responsible person for a source of water supply, certifying as to the availability of water and its ability to serve the subdivision, or submit a letter from Environmental Health Services of the County Health Department, certifying as to the ability of the subdivision to meet requirements of Part IV of the Design Criteria Manual”; and
- D. Pursuant to County Planning Department Administrative Practice Guideline No. WATER AGREEMENT, Applicant has voluntarily elected to enter into this Agreement to Defer Submittal of a Building Permit Application or Filing Final Map/ Parcel Map Until Water Will-Serve Letter is Obtained (“Agreement”) for the Project, in lieu of submitting a Water Will-Serve Letter with the application for the Project.

**NOW, THEREFORE,**

1. Applicant represents and warrants that it is aware of, accepts the risk, releases from liability and agrees to defend and indemnify the County from and against any and all claims and liabilities of any kind related to County review of the application for the Project, including but not limited to costs of any and all County staff time and costs for review of the application for the Project, which shall be at Applicant's sole risk.
2. If no Water Will-Serve Letter is issued for the proposed Project, Applicant understands and agrees that it will not be able to submit an application for a building permit for the Project, or to file a Final Map/Parcel Map, even if all other discretionary approvals have been issued, and the exercise of any and all such approvals is hereby deemed and understood to be conditional upon obtaining and submitting to the County a Water Will-Serve Letter for the Project.
3. Applicant understands and agrees that, in accordance with the County Code, if a building permit is not issued within three (3) years of approval of discretionary permit(s) for the Project, or if a Final Map/Parcel Map is not filed within applicable timeframes established by County Code and/or State law, then there are risks that the Project may not be granted a time extension, or modified or new conditions of approval may be imposed, and applicant voluntarily assumes these and all such associated risks.
4. Applicant represents and warrants that it is the named applicant on the Project application, has sufficient authority to execute this Agreement on behalf of itself and any (other) owner(s) of the Property, and has sufficient authority to authorize, and hereby does authorize, recording of this Agreement. This Agreement shall be binding on all successors in interest to the Property.

**CALIFORNIA CIVIL CODE SECTION 1542 WAIVER**

The foregoing release extends to all claims whether or not claimed or suspected and constitute a waiver of each and all the provisions of the California Civil Code, Section 1542 (to the extent it would be applicable), which reads as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.**

I have read and understood the foregoing and indicate that fact by my signature below.

**Applicant's signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_



**ALL SIGNATURES ARE TO BE ACKNOWLEDGED BEFORE A NOTARY PUBLIC.  
IF A CORPORATION, THE CORPORATE FORM OF ACKNOWLEDGMENT SHALL  
BE ATTACHED.**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA, COUNTY OF SANTA CRUZ} ss

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

SIGNATURE \_\_\_\_\_  
(Signature of Notary Public)

COUNTY OF SANTA CRUZ

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Kathleen Molloy Previsich  
Planning Director

**ALL SIGNATURES ARE TO BE ACKNOWLEDGED BEFORE A NOTARY PUBLIC.  
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I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

SIGNATURE \_\_\_\_\_  
(Signature of Notary Public)



## County of Santa Cruz Planning Department

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### Steps for Completing the Attached Recordable Document

1. Review all of the information on the document to be recorded. The property owner is responsible for reviewing **all** of the entered information, including the Assessor's Parcel Number (APN), site address, owner's name(s), document number(s), and recording dates. If any of this information is found to be incorrect, notify the Planning Department of the inaccuracy **prior** to recording the document. If necessary, a corrected version of the document will be prepared at the owner's request.
2. Obtain the signature(s) of **all** property owners. A notary public must verify all signatures. The Planning Department has a notary public and/or the phone book lists several other notaries public.
3. Return both originals, signed & notarized, to the Project Planner. The Project Planner will obtain the Planning Director's signature.
4. Both copies of the agreement will be returned to the property owner or applicant.
5. Record the agreement in the County Recorder's Office, Room 230. One copy of the agreement is your copy and the other original must be returned to your project planner. Please contact the Recorder's Office regarding their fees & hours of operation at: (831) 454-2800. **Note: Do not record this instruction form with your recordable documents.**
6. The copy may be mailed directly to the Planner or routed to the planner through the Planning reception desk as you step off the elevator on the 4<sup>th</sup> floor.
7. The original agreement will be sent to the Planning Department in 3-5 weeks and placed in permanent records.

**Your application will not be approved by the planning department until steps 1-6 are completed.**