Straight talk

Here is an explanation of the some of the buzzwords and phrases being tossed about by both sides in the Barton Springs water quality debate. The buzzwords appear in boxes followed by explanations in text:

"The Save Our Springs initiative would constitute a "taking."'

This refers to the Fifth Amendment of the U.S. Constitution, which prohibits the government from taking property without compensation. Several recent legal cases against local, state and federal government entities have claimed that regulations restricting economic use of land constitute "taking" in that sense.

The U.S. Supreme Court is considering such a case involving beachfront property in South Carolina. In Texas, a state district court awarded $8.5 million to two developers who challenged the Dallas suburb of Sunnyvale's one-acre minimum for residential lots.

Some opponents of the SOS initiative contend that it would force the city to pay hundreds of millions of dollars in compensation.

Proponents reject that notion. They say the "taking" argument does not apply to rules against activities on private land that endanger public health or safety. Further, proponents say the SOS ordinance would not deprive people of economic use of land because because they would still be able to build on it, though less extensively. Opponents say severely limiting development opportunities would amount to "taking" economic value.

'Developments are "grandfathered" under HB4. Also, the SOS initiative conflicts with HB4.'

This refers to sections 481.141 through 481.143 of the Texas Government Code, enacted in 1987 as House Bill 4. The law says regulatory agencies must consider permit applications solely on the basis of rules in effect when the applications are filed.

For property development, this generally means that projects must meet only the regulations in effect on the day the preliminary plat application is filed. Barton Creek Properties filed such applications April 8 for 13 separate subdivisions on the company's 4,000 acres in the hills above the creek.

An attorney for the development company said the law means Barton Creek's new subdivisions would not be subject to the SOS initiative if it were passed. An attorney with the Save Our Springs Coalition disagreed, saying the state law applies only to administrative functions and does not bar cities from enacting new legislation.

In addition, a city attorney's opinion in 1991 said subdivision and actual development are separate endeavors and entail separate initial permit applications. That would mean a developer could be "locked in" with one set of regulations for the subdivision platting process, then be subject to new regulations later after applying for site development or building permits. Some development attorneys disagree.

The SOS initiative provides that preliminary subdivision plans and site development plans expire after two to three years. Opponents say this provision conflicts with HB4.

'How can the City of Austin impose regulations on areas outside the city limits?'

Several state laws apply to the "extraterritorial jurisdiction," the area within five miles of city limits. An Austin assistant city attorney said that, in general, state law gives cities the power to impose subdivision and land-development regulations on this area to protect public health and safety.

An amendment the Legislature passed in 1989 said cities may not regulate use of buildings or property in the extraterritorial jurisdiction, or limit the ratio of building floor space to land area — unless otherwise authorized by state law. However, the state water code specifically requires cities to establish water-pollution control programs and authorizes them to impose those regulations on the extraterritorial jurisdiction.

Both the existing Austin Comprehensive Watersheds Ordinance and the proposed SOS ordinance affect the extraterritorial jurisdiction and fall under these provisions of state law.

In addition, the Texas Water Commission has authority over water quality and is reviewing Austin's watersheds ordinance.

'If the SOS initiative is passed, homeowners would not be allowed to build backyard decks or rebuild houses if they burn.'

The initiative exempts existing single-family houses, single-family attached residences and duplex residences. Construction of improvements "incidental to that residential use" also is exempted. To be exempted, lots must have been platted by Nov. 1, 1991.

In addition, developments of less than 8,000 square feet of building and pavement are exempted. For example, a small commercial building such as a real estate office with its parking lot might take up 8,000 square feet.

An attorney for the SOS Coalition said the ordinance would not prohibit repair of existing structures.

'Eighty-seven percent of the developments under the city's Comprehensive Watersheds Ordinance have received exemptions.'

This statistic was cited in a report Austan Librach, director of the city Environmental and Conservation Services Department, submitted to City Council Member Ronney Reynolds on Oct. 1, 1991.

Librach's report said that during the first five years after adoption of the Comprehensive Watersheds Ordinance in 1986, a total of 685 development applications were filed with the city. Of those, 82 were public utility projects and not subject to exemption. During the period, the city granted 524 exemptions. That is 86.89 percent of the 603 applications subject to exemption.

Opponents of the SOS initiative point out that the number applies to the ordinance before stricter pollution-control measures for the Barton Springs watershed were added last October. Many of the exemptions applied for were available only for limited times and expired without the development having been built. In addition, opponents say some of the exemptions actually provided for greater environmental protections than required in the ordinance.

Proponents of the initiative say the 1991 amendments do nothing to limit exemptions, and the history of exemptions shows that existing regulations are full of loopholes. The SOS initiative strictly limits exemptions.

'Golf courses at Lost Creek and Barton Creek country clubs are major polluters of Barton Creek.'

The Texas Water Commission lists golf courses generally as a source of pollution for the aquifer recharging Barton Springs.

Both Barton Creek and Lost Creek country club golf courses use pesticides and fertilizers and irrigate with treated sewage from nearby development. But the similarity of the two operations ends there.

Barton Creek — which irrigates primarily with river water, only rarely using treated sewage — has computerized controls to prevent each individual sprinkler from oversaturating the soil. Barton Creek also has scientifically designed programs to prevent overuse of pesticides or fertilizers.

Environmentalists point out that both courses are managed by ClubCorp International. But Lost Creek, the older of the two operations, was built without sophisticated runoff controls in place at Barton Creek, whose golf courses are also farther from the creek itself.

While degradation in the form of unsightly algae growth has been almost a permanent condition below the Lost Creek course, Barton Creek officials have frequently disputed whether their operation is impacting the creek.

Last week — in response to the discovery of new algae growth below one of their golf courses, Barton Creek officials announced they would clean it up and analyze their operation, if it was at fault, to locate and eliminate the cause.

'The Barton Springs swimming pool, which was damaged by flooding, could not be repaired under the SOS initiative.'

Both the SOS initiative and the existing watersheds ordinance prohibit development within a specified distance of Barton Creek. The pool falls within that distance under either regulation.

Initially, city officials said repair of the pool did not constitute "development." But then, on April 23, the city parks department decided that it had to apply for a development permit and exemption from the Comprehensive Watersheds Ordinance before undertaking substantial work needed to repair flood damage.

SOS proponents say their position is that repair of the pool would not constitute development and, therefore, would be allowed under the proposed ordinance.

An SOS Coalition leader said the city's decision to seek a permit and waiver was the result of political pressure designed to make the pool an issue in the SOS debate.

'The SOS initiative is aimed at the Barton Creek Properties and Circle C Ranch developments.'

The Barton Creek Properties development, cover-

Continued on next page

Debate springs eternal

From previous page

ing 4,000 acres, constitutes less than 1 percent of the territory covered by either the existing watersheds law or the proposed SOS initiative. Circle C, with 3,200 acres, is slightly smaller.

Proponents of the initiative say the developments' importance is more than size: The location is critical to water quality, and they set the pace for other residential and commercial development. Also, they say the two projects make up a major percentage of the land likely to be developed anytime soon and are the only big projects poised for immediate development.

A document prepared by the SOS Coalition said of big developments: "Excessive new developments in the Barton Springs zone pose the greatest threat to the springs, the creek and our water supply, and are the primary focus of this ordinance."

> 'The SOS initiative is about the same as the "interim ordinance" that was replaced by less-stringent regulations last October.'

In 1990, the Austin City Council asked the staff to draft a "non-degradation" ordinance that would protect Barton Creek and Barton Springs from pollution caused by water runoff from development. In the spring of 1991, the council adopted an ordinance limiting commercial development to 18 to 30 percent of the land surface of any tract in the most sensitive areas. It also restricted exemptions that had been allowed under the previous ordinance. In those ways, the interim ordinance was similar to the SOS proposal.

In October 1991 — after objections from the development community, council elections and intense public debate — the council adopted the current rules. In general, the amendments allowed more development than the interim ordinance.

Proponents of the SOS initiative say they drafted it to undo the harm done with the October amendments. But they say the initiative was a response to the ordinance as a whole, not just the amendments. It would impose stricter limits on impervious cover, set water-quality standards based on "loading" of 13 pollutants and do away with most exemptions.

Opponents of the SOS ordinance say the amendments enacted in October were necessary to resolve flaws in the interim ordinance and make it a more rational way to achieve non-degradation. A major problem, one development attorney said, was that the interim ordinance set standards based on the amount of pollutants added to water, rather than the concentration of pollutants. That meant developments would have had to clean water to an unreasonable or impossible degree, he said.

> 'The SOS initiative is intended to stop growth.'

Opponents say restrictions imposed by the ordinance would be so severe that commercial and multi-family development would be impossible. Only single-family homes on very large lots would comply with the ordinance, they say. Proponents counter that SOS would allow responsible development while limiting the amount of impervious cover.