



MEMORANDUM

TO: City Council

FROM: Brian Pedrotti, Community Development Director

BY: Patrick Holub, Associate Planner

SUBJECT: Conduct Public Hearing and Consider a Resolution Denying the Installation of One (1) Domestic Well on Property Zoned Planned Development (PD); Applicant–Michael Harris; Representative–Richard Burde, SLO Civil Design and Marsha Burch, Attorney at Law

DATE: February 27, 2024

SUMMARY OF ACTION:

Following a public hearing, consider staff's recommended denial of the request of the property owner to drill and install a new domestic well at an unaddressed property on Noyes Road (APN: 007-781-055), northeast of the intersection of Noyes Road and Equestrian Way ("Subject Property").

IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:

There is no direct funding impact anticipated as a result of this denial. If the application is denied, the applicant will have the option to connect to City services, which will require staff time to process any subsequently submitted development application and/or a separate connection application. If the well application is approved, staff time will be required to finalize the well permit. Both approval options will require application fees to offset staff time.

RECOMMENDATION:

1) Adopt a Resolution denying the request by Michael Harris to drill and install one (1) new domestic well on an unaddressed property on Noyes Road (APN: 007-781-055) northeast of the intersection of Noyes Road and Equestrian Way; and
2) Determine that the denial is not a project subject to the California Environmental Quality Act ("CEQA") because CEQA does not apply to projects which a public agency disapproves or rejects (Pub. Resources Code § 21080(b)(5); State CEQA Guidelines, § 15270(a)), and it will not have direct or reasonably foreseeable indirect environmental impacts (State CEQA Guidelines, §§ 15060, subd. (c)(2)-(3), 15378.

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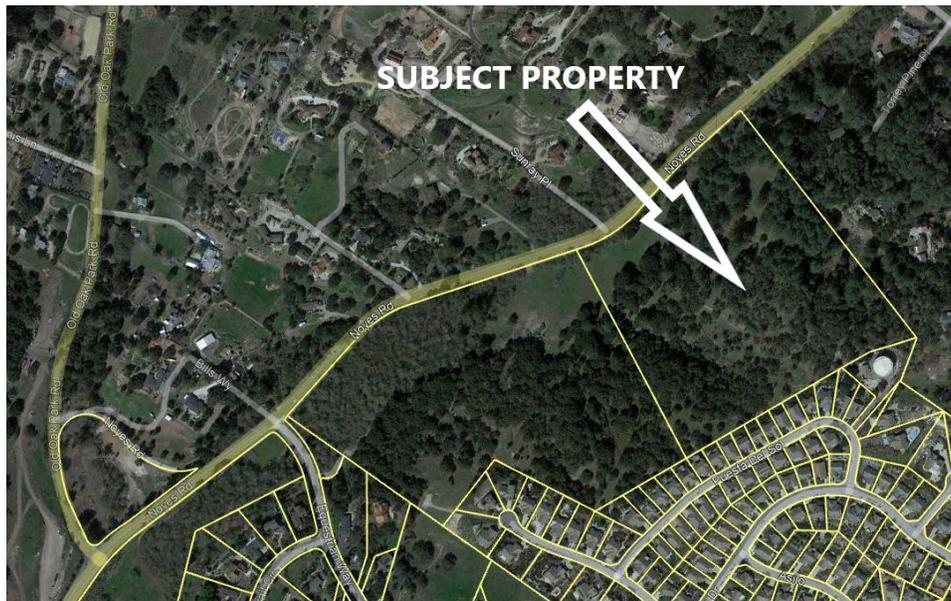
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BACKGROUND:

The City received a request from property owner Michael Harris seeking approval to drill a well at the Subject Property in order to provide domestic/drinking water to a future proposed residence. The proposed well meets the City’s definition of an individual domestic well because it is a single well used to supply water for the domestic needs of an individual residence.



Mr. Harris is the owner of the unaddressed property (shown above) on Noyes Road (APN: 007-781-055) northeast of the intersection of Noyes Road and Equestrian Way (“Subject Property”). In April 2019, Mr. Harris contacted the City regarding his intent to build a single-family residence on the Subject Property. City staff provided information regarding zoning and allowed uses, and indicated that residential uses were allowed on the Subject Property. Mr. Harris also had conversations with staff beginning in October 2022 regarding a domestic well, in conjunction with his submittal of a well application to the San Luis Obispo County Health Department (“SLO Health”). On October 18, 2022, the City’s Utility Manager sent a reply to SLO Health that the City Council is required to review and approve well applications. To date, Mr. Harris has not submitted an application for any residential development at the Subject Property.

In March 2023, staff had several e-mail conversations with Mr. Harris regarding scheduling the well application for a City Council hearing. Concerns by staff were raised during the review period leading up to and as part of the drafting of the staff report, and these concerns were expressed to Mr. Harris. Staff and Mr. Harris held several follow-up meetings in the subsequent months, including meetings with Mr. Harris and/or his

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representative on May 10, June 15, and August 15, 2023. Ultimately, the well application was scheduled for a City Council hearing on [October 24, 2023](#). On the day of the hearing, staff received a letter from Mr. Harris' attorney, Marsha Burch, with a 40-page attachment that included multiple legal assertions regarding the proposed project and staff's recommended denial ("Attorney Letter"). The Attorney Letter and its attachment are included as Attachment 3.

Due to the receipt of the Attorney Letter a few hours before the scheduled hearing and the legal assertions made therein, staff recommended a continuance to November 28, 2023, to allow for analysis of and response to the arguments in that Attorney Letter. Mr. Harris indicated on October 24, 2023 that he was unable to attend the November 28, 2023 public hearing in person, and requesting that the item be further continued. At the November 28, 2023, City Council meeting, at the request of Mr. Harris, the item was continued to January 9, 2024. On January 9, 2024, at the request of Mr. Harris, the City Council continued the public hearing to February 27, 2024. City staff issued new public hearing notice for purposes of the continued February 27, 2024 public hearing.

ANALYSIS OF ISSUES:

Arroyo Grande Municipal Code (AGMC) [Chapter 13.08](#) outlines the City's regulations regarding wells. Section 13.08.040 of the AGMC requires the City Council to consider, in its discretion, approval for new or replacement wells or abandonment of existing wells. Approval to drill a well within the City boundaries may be granted if the City Council determines: 1) the well will neither deplete nor contaminate the City water supply; and 2) service from the City's water system is neither practical nor feasible.

Depletion or Contamination

Mr. Harris' proposed location for the well is on the Subject Property northeast of the intersection of Noyes Road and Equestrian Way. Any well proposal would be required to submit verification that the well is located at least one-hundred feet (100') from septic system areas, which would also be confirmed by County Environmental Health. Additionally, any new well would be conditioned to be metered to determine annual usage. The well site is outside of the adjudicated Santa Maria Groundwater Basin and is located in the Los Robles Aquifer. The closest City well is located about 2,800 feet away southwest of the proposed well site. Because the proposed well would not tap the same aquifer utilized by the City's wells, staff's determination is that there is no anticipated interference or depletion to the City's system from the requested well.

Practicality and Feasibility of Connecting to the City's Water System

It is important to highlight that in determining the practicality and feasibility for a domestic water service connection, staff reads the practicality and feasibility test as one based on whether the City is reasonably able to provide a domestic water service connection from

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the City water service line, to the private property boundary, and at what cost to the City this can be done. Staff does not believe practicality and feasibility criteria should be based upon the private property owner’s costs associated with installing domestic water service, nor should it be based solely on the topography of the site.

Prior to 2017, and only for temporary or replacement irrigation wells for agriculture properties or sports fields, the City did consider the cost to an applicant to connect to the municipal water supply. When costs to an applicant were considered, reference to costs to the applicant strictly referred to the Water Availability Fee, Water Distribution Fee and Meter Fee associated with the City installing a water meter. These fees were all collected at the time of building permit issuance and were based only on the size of the proposed connection. The applicant/property owner would still be responsible for connecting the meter to their home and any additional costs unknown to the City.

From 2017 to present, the only factors considered in assessing the feasibility and practicality of a municipal water connection for a domestic well applicant were:

- 1) Distance from existing municipal water infrastructure;
- 2) Any necessary infrastructure improvements;
- 3) Any easements that might be needed to connect to the municipal water supply; and
- 4) Whether the proposed water connection is located outside City limits.

Since 2017 these factors have been consistently applied to all domestic water well applications. Since 2017 there have been six total well applications, three of which were for domestic wells, and no staff reports mention costs to the applicant as a factor in granting or denying the well application. At no time has the cost to the applicant ever been a factor considered for a domestic well application such as Mr. Harris’ application.

Mr. Harris has provided a groundwater feasibility analysis that examines the local conditions and finds that developing a groundwater well to serve the Subject Property is feasible from a hydrological perspective, which is included as part of the application materials in Attachment 2.

As stated above, Chapter 13.08 of the AGMC provides that the City Council may approve a well if “service from the city water system is neither practical nor feasible.” Staff determined that it is both feasible and practical for the City to connect the City’s water supply to the Subject Property. This determination is due to several factors. First, the Subject Property is immediately adjacent to the City’s Reservoir No. 5, which is a 1.2 million gallon above-ground storage tank. Second, a residential water service connection can be made directly to the City owned water main from the tank and a connection placed to Mr. Harris’s property line with a standard water meter on the property. The connection

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from Reservoir No. 5 to Mr. Harris' property would be approximately 50 feet in length along generally level land, with minimal surface restrictions. The connection would not require any easements or improvements to existing City infrastructure. Lastly, the connection at the Subject Property is within the City's boundaries.

In light of these facts, staff has determined it is both practical and feasible for the City to connect Mr. Harris's property to the municipal water supply.

Applicant's Analysis

In contrast to staff's determination, Mr. Harris and his representatives have argued that this connection is neither practical nor feasible. Mr. Harris cites the location of the preferred building site on the property as approximately 600-800 feet from the reservoir, depending on the trenching route, and would involve grading through steeper slopes and sensitive oak trees. Mr. Harris has stated that the City should consider tree impacts in making its determination, citing the Community Tree Program in Chapter 12.16 of the AGMC. Mr. Harris argues that due to the challenges of connecting a potential future home to the municipal water supply, it is expensive to connect to the municipal water supply and thus he should be entitled to a well permit. Staff disagrees with this position. First, the City does not need to take into consideration impacts to trees when considering a well application. The AGMC allows the Director of Public Works to issue permits for the removal and replacement of any impacted oak trees on properties within the City. This authority takes into consideration any impacts connecting to the municipal water supply and allows the mitigation of those impacts.

Regarding the cost of connecting a future home to the municipal water supply, such costs are purely speculative at this point. As of the date of this Staff Report, Mr. Harris has not submitted any applications to build any structures on the Subject Property and he has never submitted such an application to the City. The City can only make decisions based on the facts before it at the time the decision is made. If new facts are presented at a later time, and Mr. Harris submits a new permit application or development application, the City will analyze any applications under those new facts.

Furthermore, the City is not responsible for the proposed location of residential structures on a property; the location of residential structures is proposed by an applicant and ultimately reviewed by the City to ensure code requirements are met, such as setbacks, height limits, and health and safety standards contained in the California Building Standards Code. With regard to the cost to Mr. Harris of connecting to the municipal water supply, as noted above, this is not a factor considered by the City when determining the practicality and feasibility analysis.

Comparison to Other Well Approvals

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The City Council has approved several well applications in the City, including agricultural replacement wells, irrigation replacement wells, two replacement domestic wells, and one new domestic well. These wells are listed below with their date of approval, type of well, and location:

- September 27, 2005 – Replacement Agricultural Irrigation Well – Coach Road
- November 27, 2007 – Replacement Agricultural Irrigation Well – 871 East Cherry Avenue
- November 25, 2008 – Replacement Sports Field Irrigation Well – 207 Pilgrim Way
- December 18, 2008 – Replacement Sports Field Irrigation Well – 495 Valley Road
- February 14, 2017 – Replacement Agricultural Irrigation Well – 980 East Cherry Avenue
- December 12, 2017 – Temporary Agricultural Irrigation Well – Noyes Road
- February 13, 2018 – Replacement Domestic Well – 687 Printz Road
- July 14, 2020 – Two Replacement Agricultural Irrigation Wells – 500 Fair Oaks Avenue
- January 12, 2021 – New Domestic Well – 575 Easy Street
- January 10, 2023 – Replacement Domestic Well – 959 Valley Road

As shown in the list above, the City Council approved five replacement agricultural wells for several properties for agricultural purposes such as crop irrigation and/or livestock watering and approved two replacement irrigation wells for sports fields. The City Council also approved one temporary agricultural well for interim agricultural purposes.

With regard to domestic wells, the City Council approved a replacement domestic well for 687 Printz Road in 2018, and a new domestic well for 575 Easy Street in 2021. For both of these properties, which are located in the same general vicinity, the City determined that it was neither practical nor feasible to extend services to these properties because the nearest City waterlines were located over 1,000 feet away. Making a connection between the existing infrastructure and these properties would have crossed multiple other private properties and additional open space. Connection to the City's water system for the above two residential properties was determined to be infeasible because multiple private property owners would be required to grant an easement to the applicant just to make the connection. This is in contrast with the current application, where the Subject Property is adjacent to City property and no easements/agreements with other private property owners are required to connect services. Additionally, the Subject Property is very close to an existing City reservoir. It should be noted that the City also approved a replacement domestic well on 959 Valley Road, but unique circumstances of this replacement well existed at time of approval, including that this well replaced an existing long-established well within the City limits for a residence that was located outside of the

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City after the existing well ran dry, and there was an established access easement for the connection.

In reviewing past well approvals granted by the City, it is important to note that agricultural and domestic wells have consistently been treated separately due to their distinct impacts on the City's water supply. The City is responsible for managing the demands on the municipal water system, as well as the ground water aquifers that the City utilizes. Agricultural land uses have historically been connected to groundwater wells rather than the City's water distribution system due to their significant volumes of consumption. Such heavy usage of municipal water for irrigation purposes will negatively impact the municipal water system. Additionally, using water for agricultural irrigation does not require the water be treated for human consumption. Therefore, it is better for agricultural properties to access well water for irrigation because well water is not treated for human consumption.

The City's water supply comes from a mix of surface water from Lopez Lake and groundwater, which must be managed by the City. Management of these water sources includes conservation measures that apply to all users, such as cash for grass programs, limits on outdoor watering days, no outdoor watering between 10 am and 4 pm, tiered pricing, and additional restrictions during times of drought to ensure a continuous reliable supply of water to the City's users. All of the domestic water passing through the City's distribution system has been treated to a level acceptable for potable human consumption. Irrigation wells are not required to meet this standard because they irrigate crops at the ground surface level and are not intended for domestic use. Therefore, the City has historically allowed some agricultural properties, particularly those that need replacement agricultural wells, to utilize groundwater and domestic properties to connect to the City's domestic water system to minimize unnecessary costs associated with water treatment and distribution.

Alleged CEQA Violations

Mr. Harris alleges that denial of the well application constitutes a project under CEQA because it will indirectly require utility connections to service the planned single-family residence, which will include the removal of oak trees. As such, it is claimed that the exemption used by the City is insufficient. CEQA applies only to projects undertaken, supported, or authorized by a public agency. (Pub. Resources Code, § 21080, subd. (b)(5); State CEQA Guidelines, 15270, subd. (a).) Denials of a project are exempt from CEQA review pursuant to State CEQA Guidelines Section 15270. Moreover, even if this denial could be considered a "project" subject to CEQA, a "project" refers to the whole of an action that has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. (State CEQA Guidelines, § 15378, subd. (a).) An indirect effect on the environment is not

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reasonably foreseeable if the future activity is uncertain and is independent of the project. (*Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1450; *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1223.) As stated above, Mr. Harris has not submitted an application to the City for the planned single-family residence. Development of a single-family residence is therefore uncertain and analyzing the potential environmental impacts of said residence where there is no description available would be too speculative for meaningful evaluation. In addition, the denial of the well application is separate from, and independent of, the need to connect to the City's water and the associated review that would occur in concert with a future application. Therefore, the denial of the well application will not have the potential to result in either a direct, or reasonably foreseeable indirect, physical change in the environment. (State CEQA Guidelines, §§ 15060, subd. (c)(2)-(3), 15378.)

If and when Mr. Harris submits a project proposal or application to build a single-family residence, the City will conduct environmental review at that time that will include utilities and the required connection to City water. In addition, the City will determine what land use entitlements, if any, will be required at that time, including the possibility of a tree removal permit. The City is not required to do any further environmental review at this time associated solely with the denial of the well application. However, should the City Council approve the well application, the approval is categorically exempt from CEQA pursuant to State CEQA Guidelines section 15303 (Class 3), as further explained below.

Review Process

Mr. Harris has alleged that staff originally recommended approval of the well application and distributed a staff report to that effect. While it is true that a staff member indicated in e-mail correspondence to Mr. Harris that there was a likelihood that staff would recommend approval, this draft staff recommendation was before the City's full review was completed, and staff's recommendation is not final until the final staff report has been distributed to the City Council and the public. No alternative draft staff reports were distributed to the City Council or to any member of the public at any time.

Allowed Land Uses on the Property

Staff's recommendation to deny the well application is strictly based on the above practicality and feasibility analysis. Neither staff nor the City envision any particular use of private property in the City. The City simply reviews uses proposed by applicants. Mr. Harris has alleged that staff envision that the Subject Property should be developed with multiple residences. This is incorrect, and staff's recommendation on the well application is not contingent on any particular development at the Subject Property. Further, staff has confirmed with Mr. Harris that one single-family residence is an allowed use on the Subject Property. As stated earlier, no application for development has been submitted to date for the Subject Property.

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ALTERNATIVES:

1. Adopt the Resolution denying the installation of one (1) new domestic supply well;
2. Reject staff’s recommendation denying the installation of one (1) new domestic supply well; or
3. Provide other direction to staff.

ADVANTAGES:

Denial of the application may result in the required connection of the property to the City’s water system for domestic use, depending on the specifics of any future, submitted development application. Connection to the City’s water system for domestic use is consistent with City policy to ensure that properties within the City will connect to the system when it is practical and feasible to do so.

DISADVANTAGES:

None identified.

ENVIRONMENTAL REVIEW:

In compliance with CEQA, it has been determined that if the application is denied, the item does not qualify as a “project” under CEQA, because CEQA does not apply to the disapproval or rejection of projects. (Pub. Resources Code, § 21080, subd. (b)(5); State CEQA Guidelines, § 15270, subd. (a).). There will be no construction or development as a result of the denial of this application for a domestic water well, and therefore the denial has no potential to result in either a direct, or reasonably foreseeable indirect, physical change in the environment. (State CEQA Guidelines, §§ 15060, subd. (c)(2)-(3); 15378.)

In the alternative, should the City Council approve the installation of a domestic water well, this project would be categorically exempt from CEQA under the Class 3 exemption, which applies to the construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. (State CEQA Guidelines, § 15303.). This project falls within the Class 3 exemption because approval of the project would result in the installation of one small well structure. Furthermore, none of the exceptions outlined in State CEQA Guidelines section 15300.2 apply here. The project is not located in a particularly sensitive environment because the project site is zoned for residential use. There will be no cumulative impact of successive projects of the same type in the same place, over time, because only one domestic well is necessary to serve any future proposed residential uses on the project site. There are no unusual circumstances such that the project will have a significant environmental impact. The project will not result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially

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designated as a state scenic highway. The project is not located on a site included on any list compiled pursuant to Government Code section 65962.5. In addition, the project will not cause a substantial adverse change in the significance of a historical resource. Therefore, the project is categorically exempt from CEQA and no further environmental review is required.

Staff recommends that whether City Council denies or approves the application for a domestic water well, a Notice of Exemption should be filed with the County Clerk and State Clearinghouse within five days of the City Council’s final action.

PUBLIC NOTIFICATION AND COMMENTS:

The Agenda was posted at City Hall and on the City’s website in accordance with Government Code Section 54954.2. A new public hearing notice was published in the Tribune on February 16, 2024.

ATTACHMENTS:

1. Proposed Resolution
2. Application Materials
3. Letter from Marsha Burch dated October 24, 2023, and attached “Harris Report”.
4. Previous Well Approvals – Resolutions
5. Previous Well Approvals – Staff Reports