



MEMORANDUM

TO: City Council

FROM: Brian Pedrotti, Director of Community Development

SUBJECT: Consider a Resolution Revising the Conditions of Approval for PPR 23-001 Which Approved the Installation of One (1) Domestic Well on Property Zoned Planned Development; Applicant – Michael Harris; Representative – Richard Burde, SLO Civil Design

DATE: November 12, 2024

RECOMMENDATION:

- 1) Adopt a Resolution revising the conditions of approval of Plot Plan Review 23-001, which approved the installation of one new domestic well on an unaddressed property on Noyes Road (APN: 007-781-055) northeast of the intersection of Noyes Road and Equestrian Way (“Project”); and
- 2) Determine that the Project, with the proposed revised conditions, is 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.).

IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:

There is no direct impact to the City’s financial or personnel resources anticipated as a result of this item.

BACKGROUND:

The Project was originally scheduled on a public hearing for [October 23, 2023](https://pub-arroyogrande.escribemeetings.com/filestream.ashx?DocumentId=8966)¹, but was continued to November 28, 2023, January 9, 2024, and February 27, 2024. On [February 27, 2024](https://pub-arroyogrande.escribemeetings.com/filestream.ashx?DocumentId=10148)², the City Council held a continued public hearing to consider a resolution denying the installation of a domestic well on a vacant parcel on Noyes Road. Following submittal of approximately 1,500-pages of additional documentation to the City two hours prior to that hearing, the City Council continued the hearing to March 26, 2024. The City

¹ <https://pub-arroyogrande.escribemeetings.com/filestream.ashx?DocumentId=8966>

² <https://pub-arroyogrande.escribemeetings.com/filestream.ashx?DocumentId=10148>

Item 10.b.

City Council

Consider a Resolution Revising the Conditions of Approval for Plot Plan Review 23-001 Which Approved the Installation of One (1) Domestic Well on Property Zoned Planned Development (PD); Applicant – Michael Harris; Representative – Richard Burde, SLO Civil Design

November 12, 2024

Page 2

Council subsequently approved a continuance from the [March 26, 2024³ hearing](#), to allow the applicant and staff time to work on procedural matters associated with the application. A new hearing was ultimately set for [May 28, 2024⁴](#), and the City Council approved the Project subject to fifteen (15) conditions of approval (the “Original Conditions”).

Following approval of Plot Plan Review 23-001, the applicant’s attorney, Paul Beard, sent a letter to the City on June 19, 2024 (the “June 19 Letter”), shown in Attachment 2, challenging the legal basis for some of the conditions of approval of the Project. While the City did not agree with each legal assertion, the City Attorney met with the applicant’s attorney several times between July and September of 2024 to discuss, with the applicant proposing revisions to the conditions of approval. The result of these negotiations and tracked revisions to the Original Conditions is shown in Attachment 3 to this staff report. Ultimately, City staff determined that the negotiated conditions of approval discussed between City and applicant were acceptable and lawfully protect the health and safety interests of the public. Accordingly, City staff are willing to recommend the negotiated, amended conditions of approval attached to the accompanying Resolution.

City staff have also made factual findings supporting the conditions, contained in the administrative record. The City has invested heavily in a public water system that maintains stringent state and federal health and safety standards. Allowing residential homeowners to opt-out of the City’s water supply based on the private cost to an individual homeowner must be weighed against the larger cost to all residential rate-payers. Connecting to the public water supply includes additional benefits like regulated water quality standards, consistent supply, lower maintenance requirements, and reductions in the risk of water contamination. Accordingly, the City has consistently imposed conditions on well permits to mitigate health and safety impacts from residents who draw their water supply from wells rather than the City water system. Many of those standard conditions remain within the attached, amended Conditions of Approval and were not contested by the applicant’s attorney.

The application and corresponding proposed conditions are being considered based on the application currently before the City. The applicant’s civil engineer, in a May 15, 2023, email, stated that his client had no plans to further subdivide the property and intended to build one single-family residence with no subdivision or lot split. No other development is currently anticipated for the site beyond the installation of the well. More detailed factual findings relating to the conditions are provided in the “Analysis” section below.

³ <https://pub-arroyogrande.escribemeetings.com/filestream.ashx?DocumentId=10415>

⁴ <https://pub-arroyogrande.escribemeetings.com/filestream.ashx?DocumentId=11037>

City Council

Consider a Resolution Revising the Conditions of Approval for Plot Plan Review 23-001 Which Approved the Installation of One (1) Domestic Well on Property Zoned Planned Development (PD); Applicant – Michael Harris; Representative – Richard Burde, SLO Civil Design

November 12, 2024

Page 3

ANALYSIS OF ISSUES:

The June 19 Letter challenged seven of the fifteen Original Conditions. Subsequent discussions between City and the applicant's attorney have resulted in agreement on a revised set of conditions, that applicant's attorney has represented are acceptable. As revised, the proposed conditions are designed to address particular potential impacts to public health, safety, and welfare from the drilling and operation of the well. This is consistent with the mandate and purpose of Arroyo Grande Municipal Code (AGMC) Chapter 13.08 to "provide for the construction, repair, modification and destruction of wells in such a manner that the groundwater of the city will not be contaminated or polluted and that water obtained from wells will be suitable for beneficial use and will not jeopardize the health, safety or welfare of the people of the city." (AGMC section 13.08.010.) The proposed conditions limit the well approval to the parcel identified, and limit future development, such as what could be created through future subdivisions, and prevents the impact of significant water usage. The revised conditions bear an essential nexus to the proposed project because they allow the applicant to develop the property pursuant to the existing municipal code land use regulations while protecting the interests of the community who rely on a safe and reliable water supply. The proposed revised conditions are roughly proportional to the impacts of the Project because they are consistent with other requirements associated with single-family development throughout the City, including those with domestic wells.

Original Conditions 1-5 were not challenged by the applicant, and those are maintained in the proposed conditions based on the City's general police power, and are standard to all applicants. Condition 1 relates to the requirement that the applicant complete the project in compliance with the law, a general requirement applicable to any project approved in the City. This condition acts as a reminder that the City does not identify every law with which the applicant is obligated to comply, but the permit approval is subject to the well-being operated lawfully. Condition 2 requires the applicant to complete the project as it was submitted to the Community Development Department — this reflects the fact that the project must be built as proposed and prevents unauthorized deviations from the expectations of the City Council in approving this project. Condition 3 requires compliance with the conditions of approval in the proposed Resolution and the requirements of the County of San Luis Obispo Public Health Department, which are both other legal requirements applicable to the permitting and operation of the well. A minor revision has been made to reflect the date that the proposed resolution would be approved. Condition 4 requires the applicant to indemnify the City for claims relating to this permit, such that any legal costs resulting from the approval of this permit are borne by the applicant since those legal fees would arise as a result of the well permit approval. Condition 5 notes that the approval expires unless the applicant obtains the required drilling permit from San Luis Obispo County Public Health Department, reflecting that conditions giving rise to the City's approval at this time may change over a two year

Item 10.b.

City Council

Consider a Resolution Revising the Conditions of Approval for Plot Plan Review 23-001 Which Approved the Installation of One (1) Domestic Well on Property Zoned Planned Development (PD); Applicant – Michael Harris; Representative – Richard Burde, SLO Civil Design

November 12, 2024

Page 4

period. A minor revision has also been made to this condition to reflect the date of the anticipated Resolution approval.

Proposed Condition 6 as revised is imposed to reflect that the well permit approval is valid as to the current APN, and the well permit is being approved based on the representation of use in the May 15, 2023, email from applicant's engineer. Proposed Condition 7 as revised requires that the applicant install a water meter on his well and engage in annual reporting, which is used to monitor water usage of the well and help aid in City's water conservation efforts, as well as detect any defects in the performance of the well. The meter is used for tracking to verify that water usage is within normal domestic ranges and not stressing the water basin, and it also is beneficial for water planning purposes. Proposed Condition 8 as revised requires compliance with Section 13751 of the California Water Code, an existing legal obligation of the applicant. Proposed Condition 9 as revised requires permitting for all electrical connections required for the new well pumps, which is necessary to ensure that the connections are done in accordance with electrical codes and to prevent an electrical or fire safety hazard, as well as prevent groundwater contamination from faulty wiring. Proposed Condition 10 as revised provides that the applicant must locate the well 100 feet from any septic system, which is designed to prevent contamination of the well from wastewater polluted by human use. Proposed Condition 11 as revised is intended to merely put the applicant on notice that noncompliance with the well permit conditions may result in penalties and remedies of the Arroyo Grande Municipal Code. The applicant has represented to the City via legal counsel they are amenable to accepting the conditions as revised.

Each proposed revision to the Original Conditions are also detailed below:

Scope of Approval Conditions (Revised and Consolidated)

Original Condition 6. *This approval shall only be valid for the residential construction of up to one (1) single family home, one (1) accessory dwelling unit, and one (1) junior accessory dwelling unit. Any additional development of the property will be required to connect to the City's water infrastructure at the sole cost of the property owner at the time of proposed development.*

Original Condition 7. *This approval shall only be valid for the existing legal parcel and shall not extend to any future parcels created through subdivision of the property. Prior to recordation of any subdivision of the property, the owner shall abandon the well in accordance with County Environmental Health Standards.*

Item 10.b.

City Council

Consider a Resolution Revising the Conditions of Approval for Plot Plan Review 23-001 Which Approved the Installation of One (1) Domestic Well on Property Zoned Planned Development (PD); Applicant – Michael Harris; Representative – Richard Burde, SLO Civil Design

November 12, 2024

Page 5

The proposed revised condition is:

This domestic well approval is valid for the parcel identified by APN 007-781-055 and for any beneficial use on said parcel allowed by law.

Staff and the applicant’s attorney have agreed that the consolidation of conditions #6 and #7 help to clarify what is allowed on the existing parcel in terms of development, which includes those land uses allowed under the existing municipal code and reflects that some approvals authorized under State law (including on ADUs) are ministerial. Most notably, this limits the well approval to the existing parcel identified by the relevant APN, and any future subdivision requiring discretionary entitlements would be assigned new APNs to the subdivided parcels. Any additional development of the property would require the City and applicant to review the requirements within the Municipal Code as it related to approvals associated with City’s water infrastructure. The City has a legitimate state interest in ensuring the safety and availability of the City water supply, and Harris’s property has greater land area, and therefore greater development potential than other lots that have received well permits. Accordingly, it is reasonable to apply conditions that differ from those conditions imposed on smaller plots of land.

Scope of Approval Condition (Removed)

Original Condition 13. *This well approval is conditioned on the stated planned development of a single family home, Accessory Dwelling Unit and Junior Accessory Dwelling Unit on the subject parcel. If the residential use on the site is intensified, such as a subdivision or additional housing units are created, applicant must return to the City Council for a new hearing and approval to use the well pursuant to the City’s Municipal Code existing at the time of such intensification of use.*

Staff and the applicant agree that this condition is encompassed by the consolidated conditions #6 and #7, which resolves the concern that the well permit would be used to significantly expand water usage on the parcel, and is thus recommended for removal.

Backflow Device Condition (Removed)

Original Condition 9. *“An approved backflow device shall be installed per City standard on the water meter service.*

Staff and the applicant agree that this condition is unnecessary because backflow devices are intended to prevent contamination to the City’s water supply. The proposed well will not connect to the city water system and therefore no contamination is anticipated.

Item 10.b.

City Council

**Consider a Resolution Revising the Conditions of Approval for Plot Plan Review 23-001 Which Approved the Installation of One (1) Domestic Well on Property Zoned Planned Development (PD); Applicant – Michael Harris; Representative – Richard Burde, SLO Civil Design
November 12, 2024
Page 6**

General Legal Requirements Condition (Removed, Addressed by Condition 1)

Original Condition 14. The well must comply with all general legal requirements imposed by the California Department of Water Resources, State Water Resources Control Board, and any other applicable state or federal law.

Staff and the applicant’s attorney agree that condition #14 may be removed, as it is duplicative of condition #1 which requires compliance with all State, County and City laws applicable to the project.

Noncompliance Condition (Revised)

Original Condition 15. During any period of noncompliance with these conditions, the well will constitute an unapproved use of land subject to the penalties and remedies of the Arroyo Grande Municipal Code.

Staff and the applicant’s attorney have agreed to modifications to this condition to remove the term, “constitute an unapproved use of land” to simplify and clarify that the noncompliance with the conditions will be enforced through the Arroyo Grande Municipal Code. The modified condition is as follows:

During any period of noncompliance with these conditions, the well will be subject to the penalties and remedies of the Arroyo Grande Municipal Code.

As stated above, the intent of this condition is to put the applicant on notice of potential consequences for noncompliance with the conditions that the applicant negotiated with the City.

Ultimately, the City Council has discretion to consider all the evidence and testimony presented and make a final determination on the proposed revisions to the approved Well Application. The City Council will consider all evidence and testimony presented at this hearing in its decision on the Well Application and the revised Conditions of Approval, and any appeals are limited to the issues raised in this hearing.

ALTERNATIVES:

1. Adopt the Resolution revising the conditions for approved Plot Plan 23-001 approving the installation of one (1) new domestic supply well;
2. Do not adopt the resolution so that the original approval stands and no changes to the challenged conditions of approval are made; or
3. Provide other direction to staff.

City Council

Consider a Resolution Revising the Conditions of Approval for Plot Plan Review 23-001 Which Approved the Installation of One (1) Domestic Well on Property Zoned Planned Development (PD); Applicant – Michael Harris; Representative – Richard Burde, SLO Civil Design

November 12, 2024

Page 7

ADVANTAGES:

Approval of the resolution will revise the conditions of approval applicable to Plot Plan 23-001 as negotiated by staff and the applicant.

DISADVANTAGES:

Denial of the resolution would still allow the applicant to submit a well application under the original conditions of approval.

ENVIRONMENTAL REVIEW:

The project is 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.)

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 Public Hearing Notice for the November 12, 2024 Public Hearing was published on October 31, 2024.

ATTACHMENTS:

1. Proposed Resolution
2. June 19, 2024 Letter
3. Redline Conditions (for reference purposes only)