

IN THE BOARD OF SUPERVISORS
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

PRESENT: Supervisors _____ day _____, 20__

ABSENT:

RESOLUTION NO. _____

RESOLUTION AFFIRMING THE DECISION OF THE HEALTH
OFFICER REFUSAL TO ISSUE A WELL PERMIT ON THE KILGORE
PROPERTY AS REQUESTED IN THE APPLICATION OF BEN
GIORDANO FOR WELL PERMIT NO. 2013-001

The following resolution is now offered and read:

WHEREAS, Well Permit Application No. 2013-001 was submitted by Ben Giordano of Cascade Well & Pump for a proposed domestic well to be located on property owned by Helen M. Kilgore, Trustee, (APN 024-122-003) on Richard Avenue in the unincorporated community of Cambria, California; and

WHEREAS, after reviewing the application, the Director of Environmental Health Services on behalf of the Health Officer advised the applicant, Ben Giordano, and the property owner, Helen M. Kilgore, Trustee, that the permit application is refused for the reasons set forth in the Public Health Department's letter addressed to Helen M. Kilgore dated February 20, 2013, a copy of which is on file with the Director of Environmental Health Services and is incorporated by reference herein as though set forth in full; and

WHEREAS, Michael R. Erickson, Manager of UnClog Cambria LLC, purportedly on behalf of Helen Kilgore, has filed an appeal of the decision of the Director of

Environmental Health Services referred to above to the Board of Supervisors of the County of San Luis Obispo (hereinafter referred to as the "Board of Supervisors") pursuant to the applicable provisions of Chapter 8.40 of Title 8 of the San Luis Obispo County Code; and

WHEREAS, a hearing on the matter was duly noticed and conducted by the Board of Supervisors on June 4, 2013, and determination and decision was made on June 4, 2013; and

WHEREAS, at said hearing, the Board of Supervisors heard and received all oral and written protests, objections, and evidence, which were made, presented, or filed, and all persons present were given the opportunity to hear and be heard in respect to any matter relating to said appeal; and

WHEREAS, the Board of Supervisors has duly considered the appeal and finds that the appeal should be denied and the decision of the Director of Environmental Health Services on behalf of the Health Officer should be affirmed based upon the findings set forth below.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Supervisors of the County of San Luis Obispo, State of California, as follows:

1. That the recitals set forth hereinabove are true, correct and valid.
2. That the Board of Supervisors makes all of the findings of fact and determinations set forth in Exhibit A attached hereto and incorporated by reference herein as though set forth in full.
3. That this project is found to be statutorily exempt from the California Environmental Quality Act under the provisions of Public Resources Code section

21080(b)(1) and (b)(5), which provides that CEQA does not apply to projects which are ministerial nor to projects which a public agency rejects or disapproves.

4. That the appeal filed by Michael R. Erickson, Manager of UnClog Cambria LLC, purportedly on behalf of Helen Kilgore, is hereby denied, and that the decision of the Director of Environmental Health Services on behalf of the Health Officer to refuse to issue a well permit on the Kilgore property is affirmed based upon the findings of fact and determinations set forth in Exhibit A attached hereto and incorporated by reference herein as though set forth in full.

Upon motion of Supervisor _____, seconded by Supervisor _____, and on the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAINING:

the foregoing resolution is hereby adopted.

Chairperson of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

[SEAL]

EXHIBIT A – FINDINGS

1. On January 10, 2013, Ben Giordano of Cascade Well & Pump submitted a Water Well Permit Application No. 2013-001 under Chapter 8.40 of the San Luis Obispo County Code to construct and drill a domestic water well on property described in the application as owned by Helen M. Kilgore located on Richard Ave. at the southwest corner of Ardath Drive and Richard Ave. in Cambria, California (APN 024-122-003) (the “Kilgore property”).
2. According to Trust Transfer Deed recorded August 8, 1991, at Book 3735, Page 568 (Document No. 48659) of Official Records in the Office of the County Recorder of the County of San Luis Obispo, the Kilgore property is owned by ‘HELEN M. KILGORE, Trustee, or Successor Trustee, under the “HELEN M. KILGORE FAMILY TRUST dated August 5, 1991” rather than “Helen M. Kilgore” as an individual as described in the Well Permit Application No. 2013-001 filed with Environmental Health Services of the Public Health Department.
3. The Kilgore property is located in the Urban Reserve Area of Cambria, designated Residential Single Family, with Combining Designations of Geologic Study Area and Terrestrial Habitat. According to the topographic maps and contour lines, the property has an average slope of 27%. All of the property is located in the Coastal Zone, and in addition to other requirements, subject to requirements found in the County’s certified Local Coastal Program. Because the parcel is located in the mapped Terrestrial Habitat (for the Cambria Pine Forest), also an Environmentally Sensitive Habitat, any approved development under the County’s Coastal Zone Land Use Ordinance (Title 23) may be appealed to the California Coastal Commission.
4. The drilling of a water well and any associated grading or site disturbance are included in the definition of “Development,” and all development requires a Coastal Development Permit under the County’s certified Land Coastal Program. “Water Well and Impoundments” are an S-9-P Use on the Allowable Use Chart – Coastal Zone Framework for Planning, which then refers to Section 23.08.178 of the Coastal Zone Land Use Ordinance for special conditions. Section 23.08.178 states:

“Water Wells and Impoundments that are appealable to the Coastal Commission pursuant to Section 23.01.043 of the Title require approval of a Minor Use Permit, unless a Development Plan is otherwise required.”

In addition, since the project is appealable to the California Coastal Commission, Section 23.05.025 requires that grading (excavation, fill, or combination thereof) in connection with drilling the well also needs approval of a Minor Use Permit as set forth in Section 23.02.033 of the Coastal Zone Land Use Ordinance.

5. No Minor Use Permit has been applied for or approved by the County for construction of a water well on the Kilgore property as required by the Coastal Zone Land Use Ordinance (Title 23 of the San Luis Obispo County Code).
6. The Kilgore property is located within the boundaries of the Cambria Community Services District, the water and sewer service provider for properties located within the boundaries of the District. Water for domestic purposes for a residence on the Kilgore property needs to be obtained from the Cambria Community Services District.
7. As well as being mapped Terrestrial Habitat (for the Cambria Pine Forest), an Environmentally Sensitive Habitat, the Kilgore property is covered with pine trees and the proposed location of the water well would require the excavation and/or fill of dirt and the disturbance of pine trees in order to reach the well site and drill the proposed water well.
8. After reviewing Well Permit Application No. 2013-001 submitted by Ben Giordano of Cascade Well & Pump for a proposed domestic well on the Kilgore property, the Director of Environmental Health Services of the Public Health Department advised that the applicant (Ben Giordano) and the property owner listed on the well permit application (Helen M. Kilgore) that the permit application is refused because a Minor Use Permit is first required to be approved for a water well on the property under the County's certified Local Coastal Program. In particular, the property is located within an area where development (including the approval of a water well) is appealable to the California Coastal Commission, requiring approval of a Minor use Permit. [See Section 23.08.0178 of Title 23 of the San Luis Obispo County Code.]
9. The Board finds that the action of the Director of Environmental Health Services in refusing to issue the water well permit as described in Finding 8 above was the correct action and there was no error. In particular, Section 8.40.030(c) states:
 - (c) No person shall conduct any site grading or fill activities in conjunction with the construction, repair, modification or destruction of any well without first satisfying all applicable provisions of Sections 22.05.020 et seq. or Sections 23.05.020 et seq. of this code (grading), which may include the necessity of obtaining a grading permit from the county department of planning and building in addition to the permit required by this chapter.
10. In that a Minor Use Permit is required under Title 23 and has not been applied for nor approved, the Director of Environmental Health Services properly refused to issue the requested water well permit on the Kilgore property. This is especially pertinent since an issued water well permit under Section 8.40.004 will expire within six months following the issuance of the permit. See Section 8.40.004, subsection (c). Since an application for a Minor Use permit is a discretionary project subject to the California Environmental Quality Act and is appealable to

the California Coastal Commission it is highly unlikely that a Minor Use Permit application could be applied for, processed, and approved prior to the expiration of an issued water well permit for the Kilgore property. As a result, a water well permit for the Kilgore property should not be issued prior to the approval of the required Minor Use Permit in order to avoid having an issued water well permit expire before the water well can be constructed.

11. Based on the above, the appeal filed by Michael R. Erickson, Manager of UnClog Cambria LLC, on behalf of Helen Kilgore, is denied and the decision of the Director of Environmental Health Services to refuse to issue the water well permit on the Kilgore property is affirmed.