

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Public Health	(2) MEETING DATE 6/4/2013	(3) CONTACT/PHONE Penny Borenstein / 781-5519	
(4) SUBJECT Hearing to consider an appeal by Michael R. Erickson on behalf of Helen M. Kilgore 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 for property on Richard Avenue, Cambria (APN 024-122-003). District 2.			
(5) RECOMMENDED ACTION Adopt and instruct the Chairperson to sign the 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, based on the findings listed in the resolution (Attachment 1).			
(6) FUNDING SOURCE(S) General Fund	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? No
(10) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Presentation <input checked="" type="checkbox"/> Hearing (Time Est. <u>45 min.</u>) <input type="checkbox"/> Board Business (Time Est. <u> </u>)			
(11) EXECUTED DOCUMENTS <input checked="" type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: N/A <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP N/A	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY <input checked="" type="checkbox"/> N/A Date: _____	
(17) ADMINISTRATIVE OFFICE REVIEW <i>Emily Jackson</i>			
(18) SUPERVISOR DISTRICT(S) All Districts -			

County of San Luis Obispo



TO: Board of Supervisors

FROM: Jeff Hamm, Health Agency Director
Penny Borenstein, MD, MPH, Health Officer

DATE: June 4, 2013

SUBJECT: Hearing to consider an appeal by Michael R. Erickson on behalf of Helen M. Kilgore 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 for property on Richard Avenue, Cambria (APN 024-122-003). District 2.

RECOMMENDATION

Adopt and instruct the Chairperson to sign the 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 P permit No. 2013-001, based on the findings listed in the resolution (Attachment 1).

DISCUSSION

Background

Any person who desires to construct, repair, modify or destroy a water well shall have a valid permit issued by the Health Officer. Applications for permits are made to the Health Officer and contain relevant information as specified in Chapter 8.40 of Title 8 of the San Luis Obispo County Code. All permits that are issued after review of the application will expire within six months following the issuance of the permit. Permits can only be issued to well drilling contractors in possession of a valid C-57 Water Well Contractor's License. The well drilling contractor is required to complete the work authorized by the permit prior to the expiration date. A copy of the well driller report required by California Water Code Section 13751 shall be submitted to the Health Officer upon completion of construction of each well.

Chapter 8.40 further provides that no person shall conduct any site grading or fill activities in conjunction with the construction of any well without first satisfying all applicable provisions of Sections 22.05.020 et seq. or Sections 23.05.020 et seq. of the County Code (grading), which may include the necessity of obtaining a grading permit [coastal development permit] from the County Department of Planning and Building in addition to the permit issued by the Health Officer.

As such, when a well is proposed to be constructed within the Coastal Zone, a referral to the Planning and Building Department is made prior to approval of the application and issuance of the permit in order to ensure compliance with the Coastal Zone Land Use Ordinance (Title 23) and the County's certified Local Coastal Program. Otherwise, a water well permit issued by the Health Officer may expire prior to approval of a land use permit/coastal development permit required under Title 23 of the County Code.

In addition, in some areas of the Coastal Zone groundwater is limited and extraction must be monitored to satisfy the requirements of the California Coastal Act of 1976. All water well permit applications within the Coastal Zone will need to be reviewed by the Department of Public Works [County Engineer] to determine if participation in a water monitoring program is necessary.

Any person aggrieved by the refusal of the Health Officer to issue a permit may appeal from the action of the Health Officer to the Board of Supervisors by filing a written notice of appeal with the Clerk of the Board. The Board of Supervisors is required to hold a hearing and hear the evidence offered by the applicant and the Health Officer, and then

decide the issue. Unless the Board of Supervisors rescinds the Health Officer's action by a majority vote, the decision of the Health Officer shall be deemed affirmed.

Refusal to Issue a Well Permit on the Kilgore Property

On January 10, 2013, Ben Giordano of Cascade Well & Pump submitted a water well permit application to construct and drill a domestic water well on property owned by Helen M. Kilgore [Trustee of the Helen M. Kilgore Family Trust] located on Richard Ave. in Cambria, California (APN 024-122-003) (the "Kilgore property"). See Attachment 7

By letter dated February 20, 2013, the Health Officer, by and through the Director of Environmental Health Services, refused to issue a water well permit on the Kilgore property as requested in the well permit application of Ben Giordano for Well Permit No. 2013-001 for the following reasons:

- According to the County Department of Planning and Building, a Minor Use Permit is required to be approved for drilling a water well on the Kilgore property under the County's certified Local Coastal Program and the Coastal Zone Land Use Ordinance (Title 23 of the San Luis Obispo County Code).
- The drilling of a water well and any associated grading or site disturbance are included within the definition of "Development," and all development within the Coastal Zone requires a coastal development permit.
- The Kilgore property is located within the Urban Area of Cambria, designated Residential Single Family, with Combining Designations of Geologic Study Area and Terrestrial Habitat. According to the maps and contour lines, the property has an average slope of twenty-seven percent. All of the property is located in the Coastal Zone and subject to the requirements of the Local Coastal Program including the requirement to obtain a coastal development permit. Because the property is located in a mapped Terrestrial Habitat (for the Cambria Pine Forest), any approved development may be appealed to the California Coastal Commission.
- "Water Wells and Impoundments" are an S-9-P use on the Allowable Use Chart, which 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 California Coastal Commission pursuant to Section 23.01.043 of this Title require approval of a Minor Use Permit unless a Development Plan is otherwise required."
- According to Planning and Building Department records, no Minor Use Permit has been applied for or approved for drilling a water well on the Kilgore property.
- Since the Kilgore property is located within the boundaries of the Cambria Community Services District, the District is the water service provider for the property. Under the provisions of the County's Building and Construction Ordinance, when an on-site well is proposed as a potable water supply, a building permit may only be issued for a building site located outside the boundaries of a community water system. The Kilgore property, however, is located within those boundaries.

Appeal of the Health Officer Decision to Refuse the Well Permit on the Kilgore property.

On March 1, 2013, Michael R Erickson on behalf of the property owner, Helen M. Kilgore, appealed the Health Officer decision. The appeal is based on the following issues and concerns and summarized below:

Appeal Issue 1 – Kilgore property not in Cambria Community Services District (Cambria CSD) legally defined service boundary.

The appellant states, the Cambria Community Services District (Cambria CSD), the community water service provider, cannot verify that it plans to serve the Kilgore property; therefore the defined boundary of the Cambria CSD does not include this parcel within the legally defined service boundary.

Staff Response: The Kilgore property is located within the boundaries of the Cambria CSD, the water and sewer service provider for properties within the District. The decision of the Cambria CSD whether to issue a water will-serve letter or intent to serve letter for the Kilgore property does not exclude the property from the District's service boundary. This issue is not relevant to the Health Officer's decision under Title 8 to refuse to issue a water well permit for the Kilgore property.

Appeal Issue 2 – Kilgore property is not on the water wait list.

The appellant states, the Kilgore property is not on the water wait list and is not a potential customer of the Cambria CSD. Unless the Cambria CSD plans to provide water service to the property, the Cambria CSD is not the water service provider to the property.

Staff Response: The Kilgore property is included within the boundaries of the Cambria CSD, the water and sewer service provider within the District. Whether the Kilgore property is on the District's water wait list does not exclude the Cambria CSD from being the water service provider for the property. This issue is not relevant to the Health Officer's decision under Title 8 to refuse to issue a water well permit for the Kilgore property.

Appeal Issue 3 – Kilgore property cannot apply for a position on the water wait list.

The appellant states, the Kilgore property cannot apply for a position on the water wait list.

Staff Response: Whether the Kilgore property can apply for or has applied for a position on the Cambria CSD's water wait list is not relevant to the Health Officer's decision under Title 8 to refuse to issue a water well permit for the Kilgore property.

Appeal Issue 4 – Regulations forbidding approval of a domestic well permit have not been identified.

The specific regulation that forbids the approval of a domestic well permit, when the subject property is within the boundary of a community water service provider has not been identified.

Staff Response: The Health Officer's letter to refuse to issue a water well permit to drill a water well on the Kilgore property was based on a requirement for the applicant to obtain approval of a Minor Use Permit under Title 23 of the County Code. According to the Department of Planning and Building, no application has been filed by the property owner with Department for a Minor Use Permit [Coastal Development Permit] for the Kilgore property. The information provided in the Health Officer's letter concerning the County's Building and Construction Ordinance was provided for information purposes only (i.e., its provisions deal with County requirements necessary for obtaining issuance of a building permit) and was not a basis for refusing the water well permit application.

Appeal Issue 5 – Verification that Kilgore property is within the Cambria CSD service boundary.

The County has not verified with the Cambria CSD that the Kilgore property is within the District's service boundary.

Staff Response: The Kilgore property is located within the boundaries of the Cambria CSD, the water and sewer service provider for properties within the District. See North Coast Area Plan, Chapter 3(E) and Figure 3-3 of the County's certified Local Coastal Plan (LCP).

Appeal Issue 6 - A lawfully subdivided, residentially zoned property must have a water supply source.

The appellant states, the Kilgore property is a lawfully subdivided, residentially zoned property. There must be a feasible water supply source.

Staff Response: The Kilgore property is located within the boundaries of the Cambria CSD, the water and sewer service provider for properties within the District. Whether the Kilgore property was legally created is not relevant to the Health Officer's decision under Title 8 to refuse to issue a water well permit for the Kilgore property.

Appeal Issue 7 - Consideration of a water supply source.

The appellant states, every feasible water supply source has not been considered.

Staff Response: This issue is not relevant to the Health Officer's decision to refuse to issue a water well permit for the Kilgore property. As stated above, the property owner needs to apply to the Department of Planning and Building for a Minor Use Permit to drill the water well and no such application has been filed.

Appeal Issue 8 – San Luis Obispo County has not ordered the Cambria CSD to open the water waiting list.

The appellant states, the County has not ordered the Cambria CSD to open the water waiting list and accept an application from the landowner to join the wait list.

Staff Response: The County has no authority to order the Cambria CSD to open its water wait list as the District is the water and sewer service provider for properties located within its boundaries. This issue is not relevant to the Health Officer's decision under Title 8 to refuse to issue a water well permit for the Kilgore property.

Appeal Issue 9 – Landowner has the right to develop the property.

Appellant states, the landowner of a lawfully subdivided, residentially zoned property has the right to develop the property.

Staff Response: In order to drill a water well on the Kilgore property, the property owner needs to comply with all requirements of Title 23 of the San Luis Obispo County Code including the requirement to obtain a Minor Use Permit from the County. At this point in time, the property owner has not filed an application with the Department of Planning and Building as required by Title 23 of the San Luis Obispo County Code. This issue is not relevant to the Health Officer's decision under Title 8 to refuse to issue a water well permit for the Kilgore property.

Appeal Issue 10 – Ms. Kilgore has a right to be informed of Cambria CSD plans to provide future services.

Appellant states, Ms. Kilgore has a right to be informed whether or not the Cambria CSD has a plan to provide future services.

Staff Response: This is not relevant to nor the subject of this appeal. The refusal by the Health Officer to issue a well permit for the Kilgore property was based on compliance with County Code Chapter 8.40 of Title 8 of the San Luis Obispo County Code, and the fact that no Minor Use Permit has been applied for or approved as required by Title 23. Any questions that the appellant may have concerning Cambria CSD plans to provide future services should be directed to the Cambria CSD.

Environmental Determination

Issuance of a water well permit application under Chapter 8.40 of Title 8 is a ministerial action and, as such, is not subject to the provisions of the California Environmental Quality Act.

OTHER AGENCY INVOLVEMENT/IMPACT

County Counsel reviewed and approved the Resolution as to form, content and legal effect.

FINANCIAL CONSIDERATIONS

Other than the Health Agency's Environmental Health Services application fee for a water well permit application, there is no appeal fee for an appeal of Health Officer's refusal to issue a water well permit application Chapter 8.40 of Title 8. Therefore, the cost of responding to this appeal comes from the Health Agency's general fund.

RESULTS

Denial of the appeal means the applicant, Ben Giordano of Cascade Well & Pump will not be permitted to drill a domestic water well on the Kilgore property in Cambria. Approval of the appeal would allow the applicant to drill a domestic water well on the Kilgore property, after compliance with all requirements of Title 23 of the San Luis Obispo County Code. Failure to obtain prior approval of a Minor Use Permit as required by Title 23 before drilling the water well would result in a violation of Title 23 and the County's certified Local Coastal Program and would constitute a public nuisance.

ATTACHMENTS

1. 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
2. Notice of Public Hearing to consider appeal by Michael R. Erickson on behalf of Helen Kilgore regarding refusal to issue a water well construction permit #2013-001
3. Site Maps Kilgore property on Richard Ave., Cambria (APN 024-122-003)
4. Memorandum dated May 22, 2013 from John Hofschroer to Curtis Batson regarding Well Permit Application for Kilgore property on Richard Ave., Cambria (APN 024-122-003)
5. Appeal to Well Permit #2013-001 refusal for property on Richards Ave., Cambria (APN 024-122-003)
6. Refusal of Well Permit Application #2013-001 for property on Richards Ave., Cambria (APN 024-122-003)
7. Helen M. Kilgore Well Permit Application #2013-001