

TO: James L. App, City Manager
FROM: Doug Monn, Public Works Director
SUBJECT: Policies for Private Water Well Use
DATE: November 17, 2009

NEEDS: That the City Council considers a Municipal Code Amendment to Title 14 establishing permit requirements for the development and use of private wells.

FACTS:

1. The City supplies potable water to the citizens of Paso Robles.
2. To accomplish this, it operates 17 water wells taking water from the Paso Robles Groundwater Basin and Salinas River underflow.
3. In order to maintain a stable supply the City must protect its water resources.
4. Section 14.06 of the Municipal Code currently limits well permits to agricultural uses only because the City recognized that it would not be able to provide City water service to those areas for some time. An amendment to Municipal Code Section 14 is proposed to preserve the resource by permitting private wells for other limited uses.
5. Over the past decade, Council considered four requests for private wells for residential uses plus an additional four for resort/recreational facilities (see **Exhibits A and B**). As presently established, the Municipal Code offers little policy supporting consideration of such requests and/or protection of the resource.
6. On November 6, 2007, the City Council discussed developing a Municipal Code amendment that more clearly illustrates the location of parcels potentially affected and to allow time to consult with those affected.
7. On June 29th and September 17th, 2009, the City hosted informational workshops for property owners and others affected by, or have an interest in, the proposed Municipal Code Amendment. Issues raised during those discussions have been addressed in the proposed ordinance.

ANALYSIS &

CONCLUSION: The Municipal Code establishes that the City is the water supplier within its jurisdiction. However, it does not currently provide for the protection of groundwater from the Paso Robles Groundwater Basin by limiting development of private wells. The City has a responsibility to provide water meeting drinking water regulations, and the operation of private wells can impair doing so.

Unregulated wells increase the risk of polluting community water supply as private wells are not regulated with regard to disinfection, backflow prevention, distances to

wastewater facilities, or other sources of pollution. As written, the proposed Municipal Code Amendment would establish a process by which requests for private wells can be evaluated and/or regulated to ensure the continuing quality of groundwater.

Background on potentially affected properties and policy considerations follow.

Potentially Affected Properties

The proposed Municipal Code amendment would expand the definition of properties eligible for private wells and "grandfather" in existing private wells.

Properties without access to City water are few.¹ These properties are proposed to be required to connect to the City water system, unless such connection would require a lengthy waterline extension.

Fewer than 30 residential properties are served by existing private wells, and these would be considered legal, non-conforming wells. However a permit application would be required if the well or property use was proposed to change or expand. The same approach is proposed for resorts, golf courses, etc. that are now served by private wells.

The proposed ordinance provides that the City would have the right to place meters on larger producing wells (i.e. those serving more than a single family residence) on property zoned Agriculture in order to comprehensively monitor total community ground water usage.

The proposed ordinance also provides that irrigation of recreational uses in Parks and Open Space or Agricultural Zones may be supplied by private wells or other non-potable water source, conditioned upon the owner agreeing to use recycled water when that resource becomes available.

There are approximately 460 acres zoned Agriculture within the City and it is the intent of the General Plan to accommodate agricultural land uses. **Exhibit C** illustrates all properties zoned Agriculture or Parks & Open Space within the City, along with their relative distance to City water sources. Some of those properties are currently irrigated by private wells.

The proposed Code amendment allows the use of private agricultural wells:

- 1) When a lengthy (more than 200 feet) waterline extension would be needed to serve the property; or
- 2) When the demonstrated primary use of the property is agricultural.

Policy Considerations Associated With All Wells

- 1) Overall, connection to the City water system (potable and future recycled water) is encouraged as sound stewardship of resources, to support adopted City policies and

¹ Approx. 10,000 properties receive City potable water service; fewer than 100 properties are either on private wells or located more than 200 feet from City water supply.

programs, and to avoid cross-contamination between City potable supplies and private supplies, among other benefits.

- 2) Private well permits may be issued to support agricultural production, irrigation of resort/recreational uses, in cases of hardship due to the distance from existing City water sources, to create a customer base for future recycled water, to support other adopted City policies, or other extraordinary circumstances as defined by the Public Works Director.
- 3) Once permitted, private well use would be restricted to the subject property, would be operated so as not to present a threat to health and safety, and other restrictions as delineated in the proposed Municipal Code Amendment.
- 4) Other provisions as outlined in the proposed Municipal Code Amendment would apply.

Adoption of the proposed ordinance would establish reasonable, uniform and consistent criteria for evaluating requests for private wells. Allowing too many private wells places demands on the groundwater basin, could set the stage for well interference, and may create avenues for basin contamination. On the other hand, overly-restrictive policies would require significant investment in infrastructure to serve single properties. The proposed Municipal Code Amendment seeks to strike a balance between wise conservation of the City's potable water supplies and impacts on property use. The amended language reflects past Council actions in this regard, thereby codifying the manner in which prior requests have been addressed.

POLICY

REFERENCE: City Municipal Code Sections 14.06.132, 14.06.136 and 14.06.138

FISCAL IMPACT: None.

- OPTIONS:**
- a. Introduce for first reading Ordinance No. XXX N. S., Municipal Code Amendments outlining the terms for approval of the use of private wells, and set December 1, 2009, for adoption of said Ordinance, or
 - b. Amend, modify or reject the above options.

ATTACHMENTS:

1. Exhibit A: Locations of Requests for Use of Existing Private Wells for Residential Uses
2. Exhibit B: Locations of Requests for Use of Private Wells for Resorts and Golf Courses
3. Exhibit C – Properties Zoned Agriculture or Parks & Open Space, Proximity to Water
4. Amended Ordinance



Buena Vista Dr.

Butterfield

025-434-007

PASO ROBLES AIRPORT

Airport Rd.

Dry Creek Rd.

Stratus Ln.

025-436-005
Canaday

025-436-006
Root

Wilson

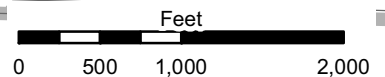
025-436-018

025-435-009

Erskine

Highway 46

EXHIBIT A
Locations of Requests for Use of
Existing Private Wells
for Residential Uses



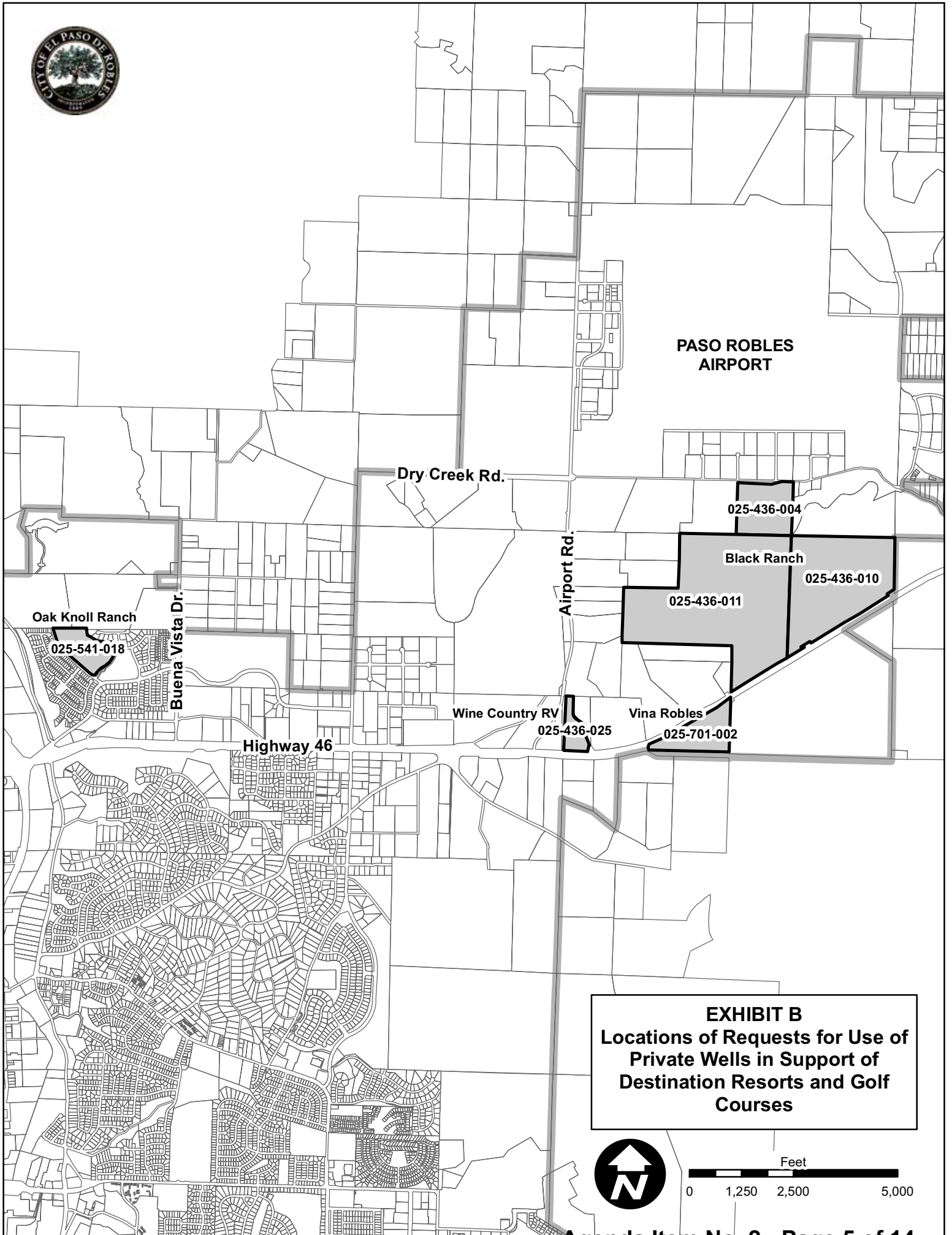


EXHIBIT B
Locations of Requests for Use of
Private Wells in Support of
Destination Resorts and Golf
Courses

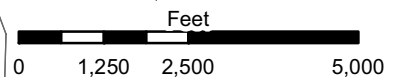
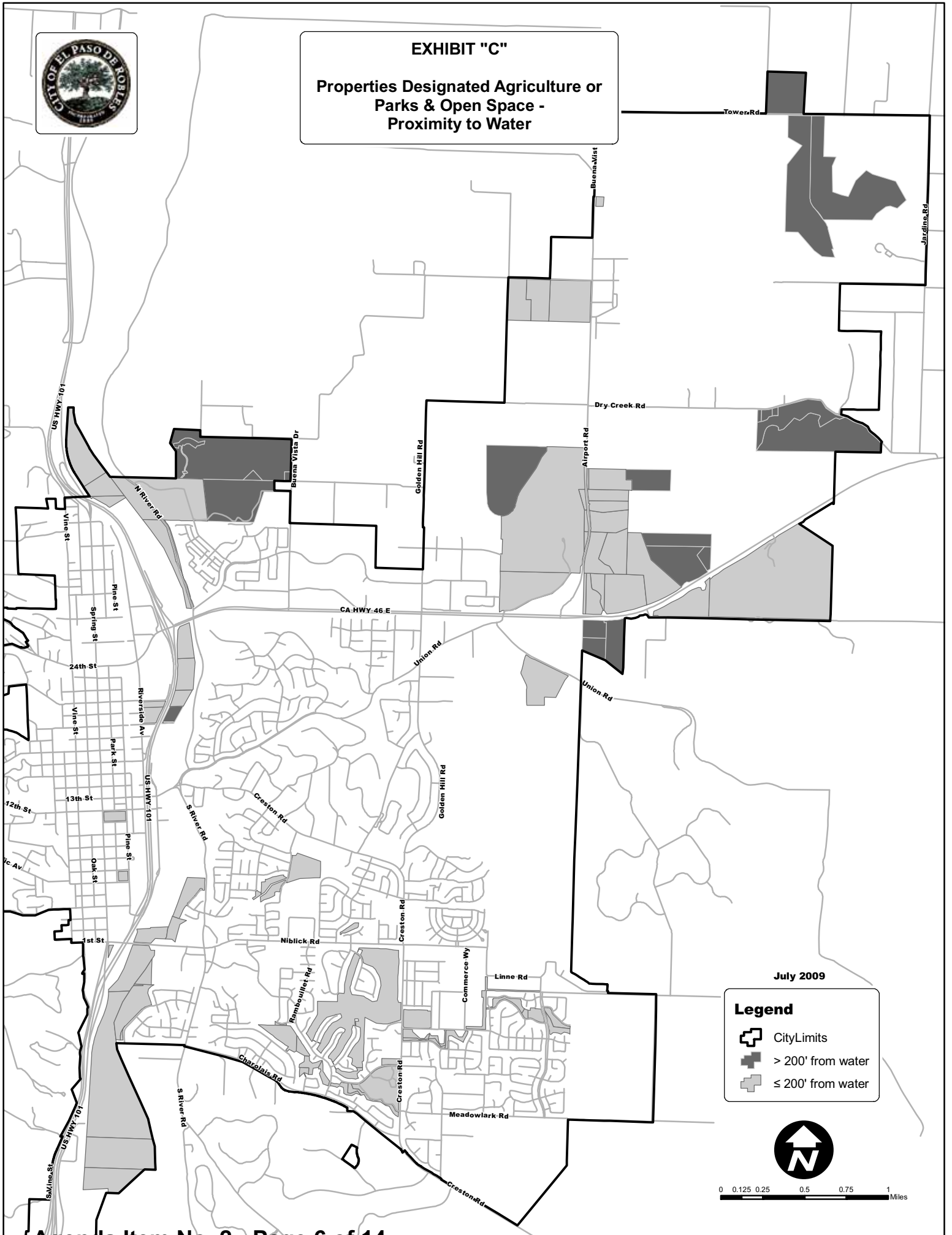







EXHIBIT "C"

Properties Designated Agriculture or Parks & Open Space - Proximity to Water



July 2009

Legend

-  City Limits
-  > 200' from water
-  ≤ 200' from water



0 0.125 0.25 0.5 0.75 1 Miles

AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF EL PASO DE ROBLES AMENDING SECTIONS
14.06.132, 14.06.136 AND 14.06.138 OF CHAPTER 14.06 OF
TITLE 14 OF THE MUNICIPAL CODE OF
THE CITY OF EL PASO DE ROBLES, CALIFORNIA,
RELATING TO PRIVATE WELLS WITHIN THE CITY

The City Council of the City of El Paso de Robles does ordain as follows:

Section 1. The definition of "noncity well" in Section A. of Section 14.06.020 of Title 14 of the Municipal Code of the City of El Paso de Robles, California, is hereby deleted and the following paragraph shall be inserted in its place to read as follows:

“14.06.020 Definitions and interpretation.

.....

10. "Private well" means any well that supplies potable or nonpotable water, or both, to residential, agricultural, commercial, industrial, parks, open space, recreational or any other users and that is located on property within the boundaries of the city. As used in this Chapter 14.06, the term "noncity well" shall mean "private well."

Section 2. Subsection C. of Section 14.06.049 of Title 14 of the Municipal Code of the City of El Paso de Robles, California, is hereby amended to read as follows:

“14.06.049 Permit – General requirements.

....

C. Permit – Suspension and Revocation. The department of public works may suspend or revoke any permit issued pursuant to this chapter, whenever it finds that the permittee has violated any of the provisions of this chapter, or has misrepresented any material fact in his application, or any supporting documents, for such a permit. An appeal of a decision by the department of public works may be made as described under Section 14.060.052.”

Section 3. Section 14.06.070 of Title 14 of the Municipal Code of the City of El Paso de Robles, California, is hereby deleted in its entirety.

Section 4. Section 14.06.104 of Section 14.06.049 of Title 14 of the Municipal Code of the City of El Paso de Robles, California, is hereby amended to read as follows:

“14.06.104 Confidentiality of report.

In accordance with California Water Code Section 13752, reports prepared as set forth in Section 14.06.102 shall not be made available for inspection by the public, but shall be made available to governmental agencies for use in making studies, or to any person who obtains a written authorization from the owner of the well. However, a report associated with a well located within two miles of an area affected or potentially affected by a known unauthorized release of a contaminant shall be made available to any person performing an environmental cleanup study associated with the unauthorized release, if the study is conducted under the order of a regulatory agency. A report released to a person conducting an environmental cleanup study shall not be used for any purpose other than for the purpose of conducting the study.”

Section 5. Section 14.06.132 of Chapter 14.06 of Title 14 of the Municipal Code of the City of El Paso de Robles, California, is hereby amended to read as follows:

“14.06.132 Special Additional Requirements Regarding Private Wells.

It is the goal of the City of El Paso de Robles to supply water to all premises within the boundaries of the City. With only a few exceptions, the City potable water system is available to serve the entire city, and therefore private wells may be approved only under limited conditions. The City’s goal and policy regarding private wells is founded on the following principles:

The stewardship by the City, County, landowners and other involved parties of the Paso Robles Groundwater Basin resources should be shared.

The City is committed to prudent City-wide use of water and water conservation.

The City's desire to implement its stated goals and objectives of City integrated water and wastewater plans and urban water management plan to provide a long-term, reliable, and high quality water supply for the City.

The City's desire to allow for the possible future development of a City recycled water system to offset the potable water demand, consistent with statewide water recycling goals and the City's integrated water resources management plan.

The policy should support the Water Master Plan, the success of which is dependent upon completion of each individual link in the system identified in that Plan. Unless each property is required to install or pay for its share of the system, the financial feasibility of completing the system is questionable.

The desire to minimize potential conflicts with well users in the unincorporated areas.

The need to control cross-connections and minimize the possibility that private well usage might degrade groundwater quality.

Policing the proper abandonment of wells is difficult.

Nevertheless, it is recognized that some private wells already exist in the City as of November 2009, and it may be appropriate to allow construction of new private wells within the City under certain limited circumstances. Private wells may be temporarily needed to provide water in areas without City water service, including areas recently annexed to the City, agricultural areas, or for resort and recreation uses in appropriate zones.

Therefore, in recognition of these circumstances the Public Works Director both may grant permission to construct, repair/reactivate and/or modify private wells for the supply of potable or irrigation water and may issue orders for the abandonment of such private wells. Property owners shall be required to construct, repair, modify, render inactive and abandon private wells in accordance with the applicable rules, regulations, and requirements of federal, state or local agencies.”

Section 6. Section 14.06.135 of Chapter 14.06 of Title 14 of the Municipal Code of the City of El Paso de Robles, California, is hereby added to read as follows:

“14.06.135 Existing Private Wells.

Any private well that is operating prior to the effective date of the ordinance adding this Section 14.06.135 to the Municipal Code may continue in operation and shall be exempt from the requirements of Sections 14.06.136 and 14.06.138 for so long as such well operations continue as exists on such effective date. In the event that (i) use or uses of the property served by the well is proposed to change or intensify, or (ii) deepening or re-drilling the well is proposed, or (iii) there are modifications proposed for such well that would significantly increase the volume of water to be supplied by such well, or (iv) the continued operation of the well has created or is likely to create or result in any nuisance, or other hazard that threatened the public health and safety, then a permit shall be required and the requirements of Section 14.06.136 and 14.06.138 shall apply to such permit application for the operation of such private well.”

Section 7. Section 14.06.136 of Chapter 14.06 of Title 14 of the Municipal Code of the City of El Paso de Robles, California, is hereby amended to read as follows:

“14.06.136 Private Well Permit Eligibility

The Public Works Director may grant a permit for a private well only under one of the following circumstances:

Domestic Uses in Agricultural Zones

For a potable water source for a proposed residence, secondary residence, or an addition to either that is located in an area zoned Agricultural or Parks and Open Space, and where the property boundary is either (i) located farther than 200 feet¹ from a City potable water source or (ii) the demonstrated primary use of the property is agricultural and the proposed residence is located more than 1,000 feet from a City potable water source.

Agricultural Uses in Agricultural Zones

For non-potable water that would be used to support agricultural uses on agriculturally-zoned properties within the City limits and where the nearest property boundary is located more than 1,000 feet from a City recycled water source.

Water Used for Non-Potable Purposes Related to Resort and Recreational Land Uses

For non-potable water that would be used to support a recreational land use (golf course, athletic field, related non-potable purposes) in a Parks and Open Space or Agricultural Zone and where the property boundary is located more than 1,000 feet from a City recycled water source.

Properties Distant from City Water Supply

To provide water supply to any property within the City limits whose nearest property boundary is located more than 200 feet from a City water source.

Existing Well on Property Being Annexed to City

For an active well providing water on property that is annexed to the City after the effective date of the ordinance amending this Section 14.06.136 and that meets one of the conditions described above in this Section 14.06.136.

The granting of a permit for a private well pursuant to this Chapter 14 shall not be deemed to satisfy any other condition required by City regarding the improvements on the property, including, but not limited to, fire suppression needs.”

Section 8 Section 14.06.138 of Chapter 14.06 of Title 14 of the Municipal Code of the City of El Paso de Robles, California, is hereby amended to read as follows:

¹ Footage references are as measured through public right-of-way or existing utility easements. The intent is not to require property owners to secure right-of-way through adjoining private properties.

“14.06.138 Private Well Approval Conditions

Any permit for a private well shall be conditioned upon compliance with an agreement executed by the property owner ("Owner") and the Public Works Director on behalf of the City. Such agreement shall be in a form approved by the City Attorney. The terms of such private well agreement shall include, but are not limited to, the following provisions, as applicable:

The private well shall provide water only to the property identified in the agreement, and strictly for the purposes and for the volume specified in the agreement. Water from the private well shall not be used for any other purpose or for the benefit of or to provide water to any other property.

The private well shall be operated and maintained in a manner to protect against any threat to the public health and safety.

Owner shall provide City with specific information on the location of the well, including accurate coordinates through land surveying or use of a Global Positioning System (GPS) and a property map showing the well location in sufficient detail to allow a City agent to readily locate the well.

City shall have the right to inspect the wellhead and appurtenances with reasonable advance notice to the Owner. The Owner shall grant to the City the authority to enter the property for periodic inspection to ensure proper operation and maintenance of the well. Owner shall pay the City for the costs of any such inspections.

All costs of maintenance and repair of the private well shall be at the Owner's expense.

For private wells serving (i) more than one (1) single family residence on property zoned Agriculture or (ii) recreational or resort land use on property zoned Agriculture or Parks and Open Space, City shall have the right to place a meter on the well to monitor its production volume. The Owner shall enroll in the San Luis Obispo County Flood Control and Water Conservation District's groundwater monitoring program and report actual pumping to the District as may be requested from time-to-time.

Owner shall waive any and all claims against the City for interference with Owner's right or ability to extract water from the private well, or the quality or quantity of the water available from such well, and shall defend, indemnify and hold the City harmless from any such claims from third parties.

Any private well and appurtenances shall be constructed in accordance with all applicable requirements of the California Department of Water Resources, California Department of Health Services, San Luis Obispo County Health Department, City Public Works Department, and any other local, State or Federal agency with jurisdiction.

The private well and related facilities shall be operated and maintained in a safe and sanitary manner at all times, at no expense to the City.

The private well shall be constructed with a reduced pressure principal backflow prevention assembly (RP device) at the discharge outlet of the well. The RP device shall conform to the standards of the University of Southern California Foundation for Cross-Connection Control and Hydraulic Research, and said device shall be inspected and tested at least once per year by a City-approved qualified technician, at the Owner's expense. A report of the inspection shall be submitted to the City Public Works Department. Further, Owner shall maintain an air gap at all times between the private well system and the City water system.

If in the opinion of the Public Works Director, the San Luis Obispo County Health Department, the San Luis Obispo County Flood Control and Water Conservation District, or any other local, State or Federal agency with jurisdiction, operation of the private well has created or is likely to create or result in any nuisance, or other hazard that threatens the public health and safety, the Owner shall comply with the directives of the enforcement agency. The Owner shall bear any expenses incurred for such compliance. In addition, if a health hazard or nuisance is determined to exist, the City may terminate the private well agreement and revoke the certificate of occupancy for those utilizing the private well pursuant to Sections 102 and 109.6 of the California Building Code and/or Sections 1001.1 and 1001.2 of the Uniform Housing Code, as those sections may be amended from time to time.

Private wells may be rendered inactive only in accordance with the provisions of the California Health and Safety Code and any applicable regulations, and the requirements of this Chapter 14.06.

The private well agreement shall be recorded against the property, and its provisions shall run with the land and be binding upon any successors in interest to Owner.

For any existing private well on property that is annexed to the City after the date of the ordinance amending this Section 14.06.138, Owner shall be required to provide City with all applicable information required by this Chapter 14.06 regarding such existing well.

If the Public Works Director issues an order to abandon the private well due to contamination of the well or other situation posing a pollution risk or other threat to groundwater resources, the private well shall be abandoned at the Owner's expense in accordance with the standards of the California Department of Water Resources, and any other agency with jurisdiction, and the requirements of this Chapter 14.06.

The private well agreement shall terminate if:

Owner fails to comply with the terms of the agreement, or

The parties mutually consent, or

The City determines that the private well is interfering with City's ability to deliver potable or recycled water to City residents, is jeopardizing the quality of City water, or is otherwise posing a threat to public health or safety, or

Owner terminates use of the private well, in which case Owner shall take all steps to properly abandon the well in accordance with the requirements of this Chapter 14.06 and provide evidence thereof to the City.

At the discretion of the Public Works Director, the private well permit agreement may include additional conditions as follows:

Owner shall submit to the Public Works Director a report prepared by a qualified and licensed professional assessing the impact of the proposed well, both on quality and quantity, on other wells in the area, and the potential impact of such proposed well on surrounding properties, whether within the City or not.

Owner's agreement to not oppose formation of an assessment district or other type of public financing mechanism for the purposes of constructing water mains to provide City water service to Owner's property.

The parties shall terminate the private well agreement, and Owner shall either abandon or render inactive the private well and connect to City water either when directed to do so by the Public Works Director or when the conditions set forth under "Domestic Uses in Agricultural Zones" in Section 14.06.136 no longer apply. Owner shall pay City water connection fees at the rates in effect at the time of connection. Owner shall take all steps necessary to either abandon or render inactive the private well, in accordance with the applicable rules and regulations of state law, any or local regulatory or enforcement agency with jurisdiction over such matters, and this Chapter 14.06."

Section 9. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of El Paso de Robles hereby declares it would have passed this ordinance and each section or subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, clauses or phrases be declared invalid.

Section 10. The City Clerk is hereby ordered and directed to certify to the passage of this ordinance and to cause the ordinance to be published in a newspaper of general circulation, published and circulated in the City of Paso Robles, within 15 days after adoption of this ordinance.

Section 11. This ordinance shall be in full force and effect thirty-one (31) days after its adoption.

INTRODUCED at a regular meeting of the City Council held on November 17, 2009, and PASSED AND ADOPTED by the City Council of the El Paso de Robles on this 1st day of December, 2009, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Duane Picanco, Mayor

ATTEST:

Lonnie Dolan, Deputy City Clerk