

**TO:** James L. App, City Manager  
**FROM:** Doug Monn, Public Works Director  
**SUBJECT:** Appeal of Conditional Well Permit Decision, Eberle  
**DATE:** August 19, 2014

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**NEEDS:** That the City Council consider an appeal filed by Filipponi & Thompson Drilling, Inc., on behalf of the Eberle Winery, regarding the City's decision to apply conditions of approval under City Ordinance No. 1002 N.S. on a well permit application pertaining to 3830 Highway 46 East (Assessor Parcel No. 025-436-039).

**FACTS:**

1. On February 4, 2014, the City Council adopted City Ordinance No. 1000 N.S., an interim urgency ordinance which temporarily prohibited the construction of new wells; or the modification, rehabilitation, or reconstruction of existing wells that would increase the amount of groundwater capable of being extracted from the North County (a.k.a. Paso Robles) Groundwater Basin.
2. On March 4, 2014, the City Council adopted City Ordinance No. 1002 N.S. which extends the same prohibitions of Ordinance No. 1000 N.S. until February 5, 2016.
3. On March 6, 2014, Filipponi & Thompson Drilling, Inc. filed a permit application with the City to drill a well at the Eberle Winery at 3830 Highway 46E. The application proposed an "irrigation replacement" well with a depth of 1,000 feet, an estimated pumping rate of 500 gallons per minute (gpm) and an estimated maximum use of 100,000 +/- gallons per day (gpd).
4. Subsequent to the March 6 permit application, City staff met with Mr. Gary Eberle and Mr. Doug Filipponi, discussed the City ordinances referenced above and outlined potential options. Among other matters, staff explained that the proposed new replacement well could be processed as a rehabilitation/reconstruction well provided that the existing well was capped and the new well would not increase the amount of groundwater capable of being extracted from the Basin.
5. On April 22, 2014, Mr. Filipponi re-submitted the well permit application proposing an agricultural replacement well with a depth of 1,000 feet, an estimated maximum pumping rate of 600 gpm (up from 500 gpm from the original application), and an estimated maximum use of 600 gpd (sic). (While the 600 gpd is clearly a mistake, staff estimates the maximum daily used could exceed 120,000+/- gpd) Along with the re-submitted application, Mr. Filipponi provided a letter claiming that the existing well "is currently pumping at approximately 600 gpm."

6. City staff determined that the potential issuance of a well permit would need to be conditioned on terms reasonably necessary to comply with the City Ordinance and relayed those conditions to Mr. Filipponi by email.
7. In subsequent discussions, Mr. Filipponi informed City staff that the existing well proposed for abandonment has an 8-inch casing and that the applicant proposes a 10-inch casing for the new well.
8. On July 15, 2014, the City sent a letter to Mr. Eberle and Mr. Filipponi advising that a well permit for a rehabilitation/reconstruction well could be processed if there was a formal agreement with the City that included certain conditions of approval as necessary and reasonable to comply with City Ordinance No. 1002 N.S. Among those conditions was that the replacement well must have the same or smaller casing size than that of the well to be abandoned.
9. By letter dated July 24, 2014, Mr. Filipponi requested an appeal hearing before the City Council claiming that the City should issue a well permit without any conditions.

#### **ANALYSIS &**

**CONCLUSION:** There are two wells currently operating on the Eberle property. In the well permit application materials submitted to the City and in related correspondence from Mr. Filipponi, the two wells are referred to as the “winery well” and the “vineyard well.” Mr. Filipponi indicates it is the winery well that is being replaced, however both applications indicate that the “replacement well” will be located near the vineyard well, which is approximately 1,400 feet west of the winery well.

In reviewing the application materials, City staff determined that any issuance of a well permit must be conditioned on terms both reasonable and necessary to comply with the City Ordinance. In particular, the City is *prohibited* from approving the proposed replacement well if it would “*increase the amount of groundwater capable of being extracted from the Paso Robles Groundwater Basin.*” Accordingly, City staff communicated several conditions that would be applied to permitting this application, as follows:

- The replacement well must have the same casing size (or smaller) as the well being abandoned.
- Construction details regarding the well being replaced must be provided, along with pumping records as available.
- The replaced well must be destroyed and abandoned in accordance with a permit obtained through the County Health Department
- The City must be allowed to monitor water levels and pumping from the new well.

The applicant contends that a larger 10-inch casing is needed to accept the pumping equipment from the existing vineyard well in case that becomes necessary in the

future. However, the language of the City Ordinance is clear that the City is not authorized to process, issue or approve any permit that would increase the amount of groundwater capable of being extracted from the Basin. A 10-inch casing would essentially double the capability of groundwater pumping from the “winery well.”

This is not to state the Eberle Winery has such an intention; however, the City must objectively carry out the requirements of the City Ordinance according to its terms.

In his appeal, Mr. Filipponi contends that City staff’s decision should be reversed and the well permit should be approved “under the old rules” because this entire matter is the result of a simple clerical mistake. Mr. Filipponi admits that his company erred by originally seeking a well permit from the County of San Luis Obispo, even though the Eberle Winery is entirely within City limits. He also points to the permit that was inadvertently issued by the County as justification for the issuance of a City permit. Mr. Filipponi claims that if he had applied to the City for a permit in August 2013, the City “would have had no reasons not to approve the permit” and there would have been “no problems” obtaining the permit. However, these statements deserve some additional context.

- On *August 6, 2013*, the County Board of Supervisors held a public hearing regarding stressed conditions of the Paso Robles Groundwater Basin, and the possibility of adopting a moratorium on new or expanded irrigated crop production and other land uses dependent on groundwater in the unincorporated areas. Very soon thereafter, the County published a draft urgency ordinance that would establish such a moratorium, and proposed to conduct a hearing on the matter on *August 27, 2013*.
- On *August 15, 2013*, Filipponi & Thompson filed a well permit application with the County Health Department to drill a new 10-inch irrigation well on the Eberle property.
- On *August 26, 2013*, the County Health Department approved that application. However that approval had no effect because the Eberle property and wells are entirely within the City’s boundaries.
- On *August 27, 2013*, the County Board of Supervisors adopted the moratorium under County Urgency Ordinance No. 3246.
- On *February 4, 2014* and on *March 4, 2014*, respectively, the City Council adopted City Ordinances 1000 N.S. and 1002 N.S., imposing a moratorium on the issuance or approval of new groundwater wells within the City’s limits to address a current and immediate threat to the public health, safety and welfare of the City and its residents.

These events indicate that the application was rushed to obtain a drilling permit in August 2013 before the County imposed groundwater pumping restrictions. However, it was filed with the wrong entity. Meanwhile, the City Council has adopted City Ordinances 1000 N.S. and 1002 N.S. that flatly prohibit the City from approving a larger irrigation well on the Eberle property as proposed. Nevertheless,

Mr. Filipponi's appeal asks the City Council to disregard those legal requirements, to treat his application to the County as if it had been filed with the City and to obtain a drilling permit "under the old rules" as if the City Ordinances did not exist. He believes that no conditions should be placed on the replacement well.

As noted above, the City Department of Public Works has determined that a well permit for a rehabilitation/reconstruction well on the Eberle property could be processed if there was a formal agreement with the City that included all of the conditions of approval outlined in the City's July 15, 2014 letter, which are both reasonable and necessary to comply with the requirements of City Ordinance No. 1002 N.S.

For these reasons, denial of the appeal is the appropriate action in order to comply with the City Ordinances. However the applicant could be advised that the City is willing to process a well permit under the conditions stated herein, which would assure the public that the City is fulfilling its commitment to be a responsible steward of the Groundwater Basin.

If, however, the Council wishes to grant the appeal, the City Ordinance must first be modified in a manner that would alter the requirements for the issuance of new well permits. Any such modification could likely result in the City receiving many other new applications for well permits (thus undermining the purpose of the Ordinance, e.g., to prohibit increasing the amount of groundwater capable of being extracted from the North County (a.k.a. Paso Robles) Groundwater Basin).

**POLICY**

**REFERENCE:** City Ordinance No. 1002 N.S.

**FISCAL IMPACT:** None.

**OPTIONS:** a. Deny the appeal requested by Filipponi & Thompson Drilling, Inc. on behalf of Gary Eberle and/or Eberle Winery and, in accordance with City Ordinance No. 1002 N.S., deny the well permit as proposed by the applicant for the Eberle property located at 3830 Highway 46 East.

b. Amend, modify or reject the above options.

**ATTACHMENTS:**

1. Letter from Mr. Filipponi to the City dated 7-24-14
2. Letter from the City Engineer to Mr. Eberle and Mr. Filipponi dated 7-15-14
3. Well Permit application 4-22-14
4. Well Permit application 3-6-14



CITY OF EL PASO DE ROBLES  
"The Pass of the Oaks"

WATER WELL  
APPLICATION AND PERMIT

The City of Paso Robles Municipal Code Section 14.06 requires a permit for the construction or modification of water wells within City Limits.

Map: Please submit a map showing the exact location of the proposed well and within 200 feet the following features: property lines, sewage systems or lines, any water body or water courses, intermittent or perennial, drainage pattern of the property, existing wells and access roads.

- (3830 Hwy 46 East)
1. Location: CY PR PM 43/91 PTN PAR 3 APN: 025,436,039  
(Address and Assessor's Parcel Number)
  2. Name of Well Driller: Filipponi and Thompson
  3. Use of Well: Irrigation - replacement
  4. Proposed Depth of Well: 1000 Feet
  5. Estimated Maximum Pumping Rate (Gallons per minute): 500
  6. Estimated Maximum Use (Gallons per day): 100,000 +/-

Permit No.: \_\_\_\_\_ Permit Issued By: \_\_\_\_\_  
(Name & Title) Director of Public Works

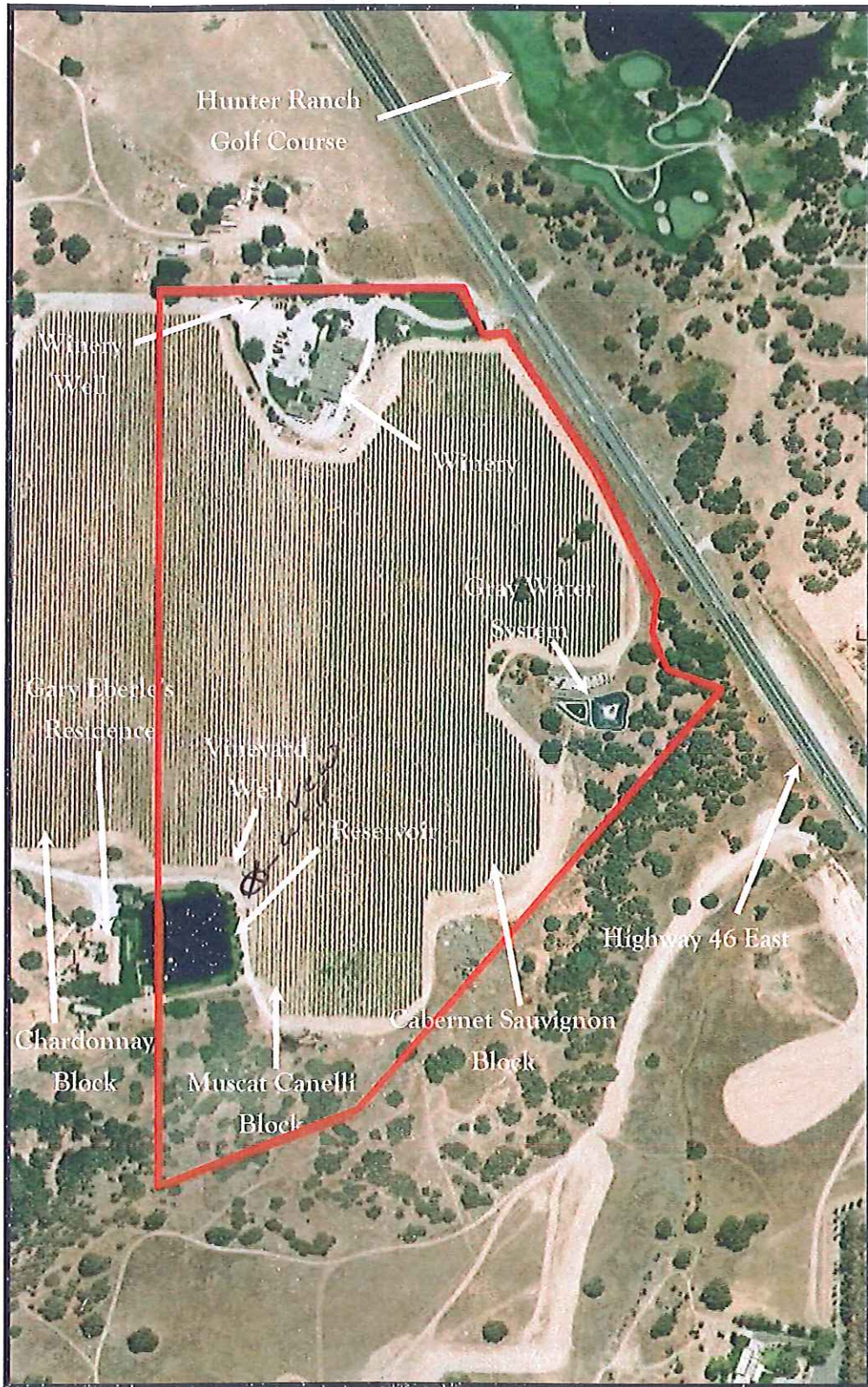
Issue Date: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Conditions:

1. Well use shall conform to the terms of the attached Well Agreement and the information provided on this permit application.
2. The City shall be notified 24 hours in advance of drilling and within 72 hours after completion
3. The driller shall provide a completion report to the City including well log.

THIS PERMIT MUST BE POSTED AT ALL TIMES AT THE WELL SITE DURING CONSTRUCTION

Aerial Photograph with Significant Features



**FT** Filipponi &  
Thompson  
Drilling, Inc.

State License No. C57 432680

April 22, 2014 P.O. Box 845 • Atascadero, CA 93423 • Phone 466•1271

City of Paso Robles  
1000 Spring Street  
Paso Robles, CA 93446

Attn: John Falkenstien, City Engineer

Dear John:

I appreciate your taking the time to speak with me yesterday regarding the water well permit application submitted by Filipponi & Thompson Drilling, Inc. on behalf of Gary Eberle. As we discussed this is admittedly understood to have been a clerical error when the application was sent to the San Luis Obispo County Environmental Health Department for approval. We received approved well permit #2013-269 for APN: 025-436-039 on 8/28/13. Per our discussion, you assured me that the City of Paso Robles will authorize Gary Eberle to drill a water well to the specifications noted on the approved SLO County permit by way of a City Well Permit as long as the old well is capped. We agreed that the new replacement well is not to exceed the existing well which is currently pumping at approximately 600 GPM. Please see the enclosed City Water Well Application and Permit with map.

After an approved permit from the City of Paso Robles is received, we will move on site to commence with drilling. Upon the connection of the new replacement well to the existing pump system we will cap and abandon the old well.

Please confirm this by letter to P.O. Box 845 Atascadero, CA 93423 or by email to [doug@ftdrilling.com](mailto:doug@ftdrilling.com).

Thank you,

  
Doug Filipponi

RECEIVED

APR 30 2014

City of Paso Robles  
Community Development Dept.



# CITY OF EL PASO DE ROBLES

"The Pass of the Oaks"

## WATER WELL APPLICATION AND PERMIT

*The City of Paso Robles Municipal Code Section 14.06 requires a permit for the construction or modification of water wells within City Limits.*

Map: Please submit a map showing the exact location of the proposed well and within 200 feet the following features: property lines, sewage systems or lines, any water body or water courses, intermittent or perennial, drainage pattern of the property, existing wells and access roads.

1. Location: 3830 Hwy 46 EAST APN: 025-436-039  
(Address and Assessor's Parcel Number)
2. Name of Well Driller: FILIPPONI & THOMPSON DRILLING, INC
3. Use of Well: AG
4. Proposed Depth of Well: 1,000
5. Estimated Maximum Pumping Rate (Gallons per minute): 600
6. Estimated Maximum Use (Gallons per day): 600

Permit No.: \_\_\_\_\_ Permit Issued By: \_\_\_\_\_  
(Name & Title) Director of Public Works

Issue Date: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

### Conditions:

1. Well use shall conform to the terms of the attached Well Agreement and the information provided on this permit application.
2. The City shall be notified 24 hours in advance of drilling and within 72 hours after completion
3. The driller shall provide a completion report to the City including well log.

**THIS PERMIT MUST BE POSTED AT ALL TIMES AT THE WELL SITE DURING CONSTRUCTION**

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Rev. 2A/72s



# WELL PERMIT PLOT PLAN

SAN LUIS OBISPO COUNTY ENVIRONMENTAL HEALTH SERVICES  
2156 Sierra Way  
San Luis Obispo, California 93401  
Telephone: 805-781-5544

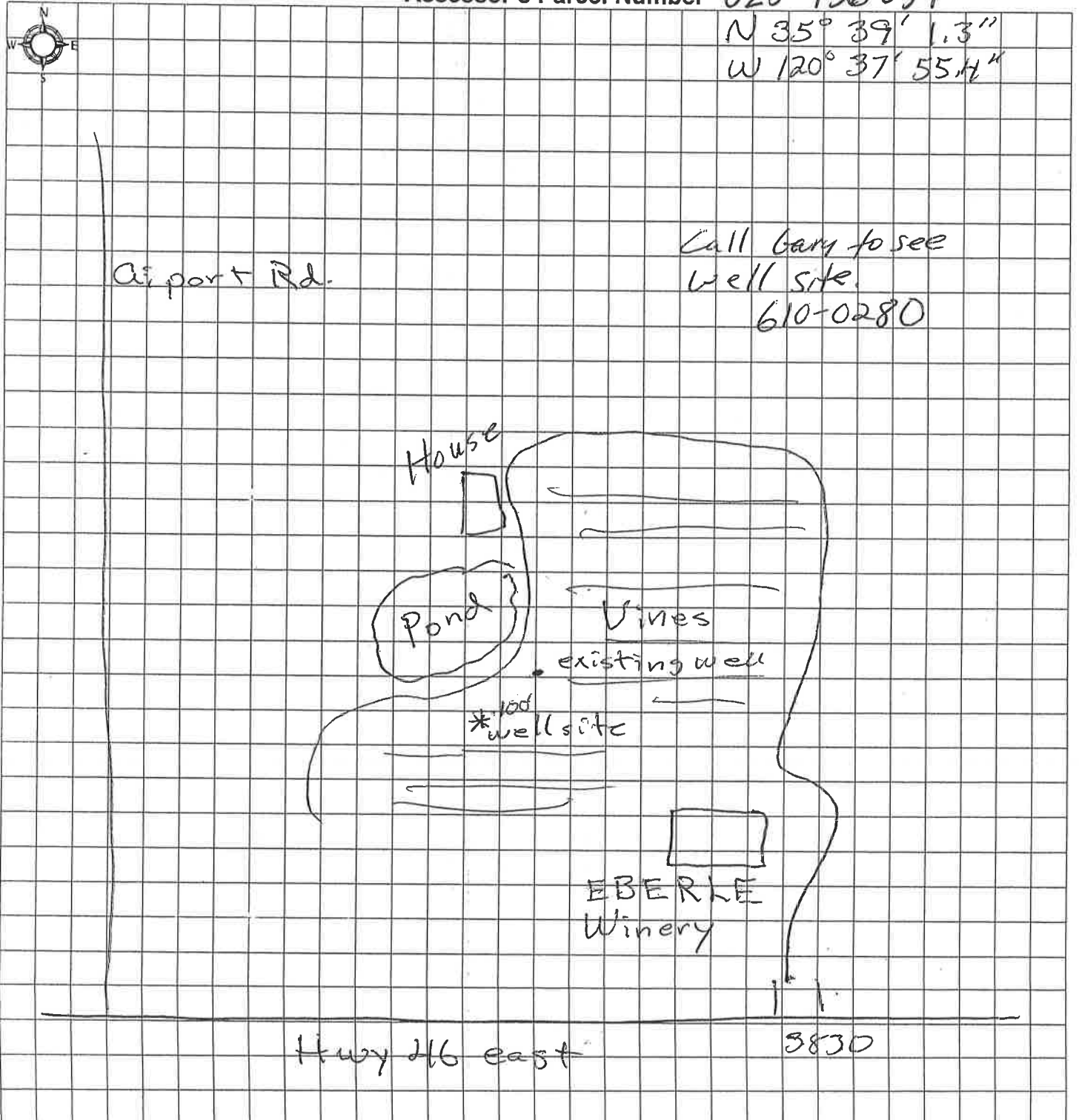
Gary Eberle

Page 2 of 2 pages

SCALE: 1/4" = 25'

INDICATE BELOW THE EXACT LOCATION OF PROPOSED WELL WITH RESPECT TO THE FOLLOWING ITEMS: PROPERTY LINES, WATER BODIES OR WATER COURSES, DRAINAGE PATTERN, ROADS, EXISTING WELLS, SEWERS AND PRIVATE SEWAGE DISPOSAL SYSTEMS, ANIMAL ENCLOSURES AND ANY OTHER CONCENTRATED SOURCES OF POLLUTION. INCLUDE DIMENSIONS. ALL PROPOSED WELL SITES SHALL BE DESIGNATED WITH A FLAGGED SURVEYOR'S STAKE LABELED "WELL SITE." DRILLING SHALL NOT COMMENCE UNTIL THIS APPLICATION IS APPROVED.

Assessor's Parcel Number- 025-436039





**CITY OF EL PASO DE ROBLES**  
*"The Pass of the Oaks"*

July 15, 2014

Gary Eberle  
Eberle Winery  
PO Box 2459  
Paso Robles, CA 93447

Doug Filipponi  
Filipponi & Thompson Drilling, Inc.  
P.O. Box 845  
Atascadero, CA 93423

RE: Eberle Well Permit Applications

Dear Mr. Eberle and Mr. Filipponi:

This letter memorializes the City's recent consideration of the water well applications submitted on behalf of Gary Eberle and Eberle Winery for property referred to as Assessor Parcel 025-436-039. The City appreciates the information you have provided and looks forward to a continued dialogue on this matter.

By way of background, the first well permit application was submitted to the City on March 6, 2014. That application proposed an "irrigation replacement" well with a depth of 1,000 feet, an estimated maximum pumping rate of 500 gallons per minute (gpm), and an estimated maximum use of 100,000 +/- gallons per day (gpd).<sup>1</sup> That first application, and the timing of its submittal, immediately caught the attention of City staff. That is because on January 21, 2014, the City Council had introduced, and on February 4, 2014 adopted, City Ordinance No. 1000 N.S., an interim urgency ordinance which temporarily prohibited the City from (i) accepting, processing, or approving any permit application for the construction of a new well within the boundaries of the City or (ii) accepting, processing, issuing or approving any permit application for the modification, rehabilitation or reconstruction of an existing well that would increase the amount of groundwater capable of being extracted from the Paso Robles Groundwater Basin.<sup>2</sup> On March 4, 2014, the City Council adopted City Ordinance No. 1002 N.S., which extends the same prohibitions of Ordinance No. 1000 N.S. until February 5, 2016.<sup>3</sup> By its own terms, the March 6th well permit application proposed a new "replacement" well, and it provided no information on the amount of water capable of being extracted from the existing well or whether the existing well would be abandoned.

In the spirit of cooperation and to obtain more information about the proposal, City staff discussed the well application with Mr. Filipponi. As part of that process, there was discussion that the Eberle replacement well might be considered a "rehabilitation / reconstruction" well provided that the existing well is capped and the rehabilitation / reconstruction well would not increase the amount of groundwater capable of being extracted from the Basin, in accordance with the requirements and limitations of Ordinance No. 1002 N.S.

Following that discussion, on April 22, 2014 Mr. Filipponi submitted a second well permit application to the City. That application proposed an agricultural replacement well with a depth of 1,000 feet, an

<sup>1</sup> A copy of the March 6th well permit application is included as Attachment "A" hereto.

<sup>2</sup> A copy of City Ordinance No. 1000 N.S. is included as Attachment "B" hereto.

<sup>3</sup> A copy of City Ordinance No. 1002 N.S. is included as Attachment "C" hereto.

estimated maximum pumping rate of 600 gpm, and an estimated maximum use of 600 gallons gpd.<sup>4</sup> Along with the second application, Mr. Filipponi submitted a letter stating that the existing well “is currently pumping at approximately 600 gpm.”

Upon carefully evaluating the second well application and the requirements of Ordinance No. 1002 N.S., City staff determined that the potential issuance of a well permit would need to be conditioned on terms reasonably necessary to comply with the City Ordinance. In particular, the rehabilitation / reconstruction well could not “*increase the amount of groundwater capable of being extracted from the Paso Robles Groundwater Basin.*” Accordingly, City staff communicated several conditions that likely would be applied to permitting this application, as follows:

- The replacement well must have the same casing size (or smaller) as the well being abandoned.
- Information regarding the construction of the well to be replaced must be provided with pumping records as available.
- The replaced well must be destroyed and abandoned in accordance with a permit obtained through the County Health Department.
- The City must be allowed to monitor water levels and pumping from the new well.

In subsequent discussions, Mr. Filipponi informed City staff that the existing well has an 8-inch casing. He also confirmed that the applicant requests a 10-inch casing for the proposed well, and is not willing to limit the proposed well to an 8-inch casing. Based on this information, the City Public Works Director has determined that a 10-inch casing would “*increase the amount of groundwater capable of being extracted from the Basin,*” which means that the application cannot be processed as a rehabilitation / reconstruction well.

In summary, the City Department of Public Works has determined that a well permit for a rehabilitation / reconstruction well could be processed if there was a formal agreement with the City that included all of the conditions of approval outlined above. The City believes that these conditions are both necessary and reasonable to comply with the requirements of City Ordinance No. 1002 N.S. If you disagree with this determination, then in accordance with Section 14.06.052 of the City Municipal Code, any person may appeal a decision by the Department of Public Works regarding the issuance, denial, or suspension of a permit, or any conditions attached thereto, by filing an appeal with the City Council.

Again, the City appreciates the information you have provided and hopes that a productive dialogue can continue in this matter. Should you have any questions or concerns, please feel free to contact me at your convenience.

Sincerely,



John Falkenstien  
City Engineer  
City of Paso Robles  
(805) 237-3860  
[jfalkenstien@prcity.com](mailto:jfalkenstien@prcity.com)

cc: Doug Monn, Director of Public Works  
Jim App, City Manager  
Iris Yang, City Attorney

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<sup>4</sup> A copy of the April 22<sup>nd</sup> well permit application is included as Attachment “D” hereto.



State License No. C57 432680  
P.O. Box 845 • Atascadero, CA 93423 • Phone 466•1271

RECEIVED

JUL 30 2014

City of Paso Robles  
Community Development Dept.

July 24, 2014

City of Paso Robles  
1000 Spring Street  
Paso Robles, CA 93446

Attn: John Falkenstien

Our company met with Gary Eberle in August of 2013 to discuss drilling a potential 10" PVC well. This well would replace his existing 8" well which is now being used to provide water to his winery. The existing well is older and may need to be abandoned sometime in the future.

Our company applied for a permit with the County of San Luis Obispo, per our usual protocol. Our staff was unaware the proposed site location was considered to be in the City of Paso Robles due to its distance from Hwy 101. The SLO county staff also missed the fact that the permit applied for was located within the City limits. The county approved the well permit and we signed a contract for a potential 1,000' 10" PVC well.

Early the following year the City of Paso Robles enacted an ordinance limiting the drilling of new wells. This was after the permit had been approved and issued by the County of SLO. The discrepancy on the permit was discovered shortly thereafter.

The well permit, had it been applied for at that time from the correct governing body, would have had no problems being issued. This was a clerical error by our company and the County of SLO. The City is now refusing to allow the permit under the previous rules.

We are requesting to appeal the decision of Paso Robles City Staff to the City Council. Please consider the following facts for the appeal:

- The permit was applied for and approved prior to the new ordinance.
- The City would have had no reasons not to approve the permit request had our staff and the staff at the County of San Luis Obispo not missed the fact that it was located within the city limits.
- We do not wish our client to bear the punishment for our company not having a lot of prior experience with submitting permits to the City of Paso Robles.
- The property owned by Eberle Winery where the well has been proposed is completely planted with grapes and a winery site.
- No additional water is going to be used by adding a new well, despite the size of the casing.

"No one ever lost business because quality was too high, or service too good"

- Eberle Winery has reduced its water demand over the years by switching from overhead sprinklers to drip irrigation.
- The new proposed well would replace the winery well at this time but in future years it may need to replace the 500 GPM existing irrigation well. This was clearly a business decision made by Eberle Winery to drill one well that could serve both purposes.
- The casing size needs to be 10" to accept the pumping equipment from the 500 GPM existing irrigation well, should it be needed.
- Prior to that time it will have a smaller pump supplying the water to the winery.

We are respectfully requesting an appeal hearing to the City Council to discuss and approve the drilling of this well under the old rules. We feel this was a clerical error and should be reinstated at the time the original permit was issued.

Sincerely,

  
Doug Filipponi