



September 14, 2021

Board of Supervisors
County of Ventura
800 South Victoria Avenue
Ventura, CA 93009

SUBJECT: De Novo Hearing to Consider the Granting of a Modified Conditional Use Permit (CUP) to Authorize Changes in the Water System Operated by the Crestview Mutual Water Company and to Consider the Appeal of Planning Commission's Decision to Deny the CUP Application; Supervisorial District No. 3; (Case No. PL19-0039, Crestview Mutual Water Company, Applicant)

A. RECOMMENDED ACTIONS:

1. **CERTIFY** that your Board of Supervisors (Board) has reviewed and considered this Board letter and all exhibits hereto, and has considered all comments received during the public hearing process;
2. **DENY** CUP Case No. PL19-0039 due to the inability to make the required findings to grant the requested CUP as set forth in Section 8111-1.2.1.1a., subsections b, c, and d, of the Ventura County Non-Coastal Zoning Ordinance (NCZO) for the reasons stated in Section G below and the Planning Commission's Resolution (Exhibit 2), and based on the evidence and testimony presented to your Board and otherwise contained in the record of proceedings;
3. **DENY** the appeal (Exhibit 3) of the Planning Commission's decision to deny CUP Case No. PL19-0039 in its entirety, and **DENY** any requested refund of the Appellant's appeal fees in accordance with the Board-adopted Planning Division Fee Schedule; and,
4. **SPECIFY** that the Clerk of the Board is the custodian, and 800 S. Victoria Avenue, Ventura, CA 93009 is the location, of the documents and materials that constitute the record of proceedings upon which the decisions are based.

B. FISCAL/MANDATES IMPACT

There is no fiscal impact to the County associated with this Board item. Crestview Mutual Water Company, which is the Applicant and Appellant, submitted the required \$1,000 fee deposit as part of the appeal of the June 25, 2020 decision by the Planning Commission to deny the proposed project in accordance with the Board-adopted Planning Division Fee Schedule. If your Board grants the appeal in whole, the County must refund the appeal fees to the Appellant. If your Board grants the appeal in part, your Board must determine at the time the decision is rendered what portion of the appeal charges should be refunded to the Appellant.

C. EXECUTIVE SUMMARY

Crestview Mutual Water Company (“CMWC”), the Applicant and Appellant, requests that a modified CUP be granted to authorize changes in the CMWC-operated private water system to decommission one well and establish a new well and associated facilities. CMWC has indicated that the proposed well is needed to replace water production capacity lost due to the failing of its existing Well No. 5. This private water system serves approximately 600 customers in the Camarillo area.

The proposed replacement water well would be installed on a new well site owned by CMWC. The Planning Commission voted 5-0 to deny the modified CUP request due to the inability to make the required findings of approval for the project. In general, the Commission found that some components of the water system project proposed for the new well site, including method of construction, would be incompatible with the surrounding existing residential development.

The project comes before your Board because of a timely appeal of the Planning Commission decision by CMWC on July 6, 2020. Since that time, CMWC requested time to consider the community comments and potential modifications to its scope of work.

D. PROJECT DESCRIPTION

CMWC requests that a modified CUP be granted to authorize changes in the water system it operates. These changes include the decommissioning of one existing water well (Well No. 5) and associated facilities, and the installation of a replacement water well (Well No. 7) and ancillary facilities at a new operational site. The proposed activities at the two CMWC well sites are discussed below. Since the July 25, 2020 Planning Commission hearing, CMWC has made certain revisions to its project description which are shown in legislative format below. Additional information on the facilities operated by CMWC is provided in the Planning Commission staff report (Exhibit 1, Sections A.8-A.9).

Well Site No. 5 (602 North Valley Vista Drive; APN 159-0-032-065)

The existing and failing water well (Well No. 5) is proposed to be decommissioned and abandoned (Exhibit 1 at sub exhibit 4, Project Plans). The well head motor and pumping equipment would be removed from this site. The other existing water system facilities on this site, including a booster pump, filtration equipment and water tanks, would remain and continue to be used as part of the water system.

Well Site No. 7 (191 Alviso Drive; APN 152-0-341-065)

CMWC proposes to install a replacement water well (Well No. 7) on a nearby separate parcel (Exhibit 1 at sub exhibit 37, Updated Site Plan). The replacement water well would be drilled to a depth of approximately 1,400 feet below ground surface (bgs). Soil cuttings generated by the drilling of the well would be less than 500 cubic yards in volume. These

cuttings would be dried on the site and graded into an onsite fill to remain as part of the topography and proposed landscaping of the parcel.

The well design includes a cement grout sanitary seal that would extend from the surface to a depth of 940 feet bgs. This cement seal in the annular space between the well casing and the surrounding native rock serves to separate the well bore from subsurface zones that contain poor water quality.

The proposed replacement water well (Well No. 7) would be placed in an operational rotation with two existing CMWC wells to produce water for domestic use in the company's service area. The total groundwater production by the CMWC system would continue to be limited to an allocation established by the Fox Canyon Groundwater Management Agency.

Ancillary facilities proposed to be installed at Well Site No. 7 include:

- An approximately 1,000 sq. ft. roll-apart, ~~prefabricated steel~~ custom pump house structure designed with roof tile, pitch, articulation, window treatment, façade, paint color and other features so as to blend in with, and be indistinguishable from, the surrounding homes. Permanent lighting fixtures would be installed on this structure consistent with lighting in the surrounding residential neighborhood;
- A 2,000-gallon chlorine tank enclosed within a secondary 2,500-gallon precast concrete vault;
- An excess production discharge chamber connected to a 4,995-gallon water tank. The water accumulated in this tank would be used to irrigate new landscaping at the subject site;
- A 300-kilowatt emergency generator placed in a metal prefabricated weatherproof enclosure; and,
- Hardscape and landscape improvements including a concrete driveway, decomposed granite paths, and a mixture of bushes, shrubs, ground cover, and citrus trees.

Operation of the proposed well would require connection to natural gas and water pipelines in the County road right-of-way in Alviso Drive adjacent to Well Site No. 7.

E. STANDARD OF REVIEW AND AUTHORITY OF YOUR BOARD

This land use matter comes before your Board as an appeal of the Planning Commission's decision on June 25, 2020 to deny the request that a modified CUP be granted.

CMWC's request for a modified CUP comes to your Board for a hearing *de novo*, or anew. This means that your Board is required to conduct a public hearing on the issuance of the requested modified CUP as if the matter came to your Board in the first instance. Your Board is not required to give any deference to the Planning Commission's decision to deny the modified CUP request. Your Board is free to make the same findings and decisions as the Planning Commission if, based upon your independent judgment, your Board finds them to be persuasive and supported by substantial evidence in the record. While your Board should consider the appeal points raised by the applicant, your Board is not limited by them. Whether or not the appeal should be granted is a consequence of your Board's decision on the merits of the land use entitlement request, and not on the merits of the appeal points.

Pursuant to Section 8111-7.5 of the NCZO, your Board "shall either approve, deny, or approve with modifications, the appeal request."

Should your Board wish to approve the appeal request and grant the requested modified CUP, Planning Division staff would need to return at a later date with the accompanying approval documents.

F. LAW GOVERNING DECISION

Pursuant to the NCZO (§§ 8105-4 and 8111-1.2 et seq.), the Planning Director is the decision-maker for the requested modified CUP. However, the Planning Director deferred the decision on this project to the Planning Commission due to significant public comment received and public controversy pursuant to Section 8111-4.1.1b of the NCZO. As described in Section E above, the Planning Commission held a public hearing on June 25, 2020 and voted 5-0 to deny the modified CUP request.

Required Findings of Approval under the Ventura County NCZO

In order to grant the requested modified CUP, your Board must make all of the findings for approval (i.e., permit approval standards) set forth in Section 8111-1.2.1.1a of the NCZO. The applicant has the burden of proving that each of the following findings can be made based on substantial evidence in the record.

- a. *The proposed development is consistent with the intent and provisions of the County's General Plan and of Division 8, Chapters 1 and 2, of the Ventura County Ordinance Code;*
- b. *The proposed development is compatible with the character of surrounding, legally established development;*
- c. *The proposed development would not be obnoxious or harmful, or impair the utility of neighboring property or uses;*

- d. The proposed development would not be detrimental to the public interest, health, safety, convenience, or welfare;*
- e. The proposed development, if allowed by a Conditional Use Permit, is compatible with existing and potential land uses in the general area where the development is to be located;*
- f. The proposed development will occur on a legal lot; and,*
- g. The proposed development is approved in accordance with the California Environmental Quality Act and all other applicable laws.*

Compliance with the California Environmental Quality Act (CEQA)

Pursuant to sections 15270 and 15061(b)(4) of the CEQA Guidelines (Cal. Code Regs., title 14, § 15000 et seq.), projects that are rejected or disapproved are exempt from CEQA. Consequently, should your Board deny the requested permit, staff recommends that your Board determine the action to be exempt from CEQA.

Staff has determined that the project, if approved by your Board, is categorically exempt pursuant to CEQA's Class 1 (Section 15301 – Existing Facilities), Class 2 (Section 15302 – Replacement or Reconstruction), Class 3 (Section 15303 – New Construction of Small Structures), and Class 4 (Section 15304 – Minor Alterations to Land) exemptions (Exhibit 1 at sub exhibit 22, CEQA Exemption Analysis).

G. PLANNING COMMISSION HEARING

At the June 25, 2020 hearing, the Planning Commission considered written information provided by staff, CMWC and the general public, and was presented with several hours of public testimony. The Commission's denial of the proposed project is based on its inability to make four of the required findings of approval pursuant to Section 8111-1.2.1.1a of the NCZO.

The Planning Commission was unable to find that:

- the proposed development is compatible with the character of surrounding, legally established development;*
- the proposed development would not be obnoxious or harmful or impair the utility of neighboring property or uses;*
- the proposed development would not be detrimental to the public interest, health, safety, convenience, or welfare; and,*

- *the proposed development is compatible with existing and potential land uses in the general area where the development is to be located.*

Reproduced below are the specific factual findings listed in the Planning Commission Resolution (Exhibit 2):

- Well Site No. 5 is located at 602 North Valley Vista Drive in the unincorporated area of Ventura County. Existing development within the vicinity of this site includes single family dwellings. The component of the Project that would occur on this site includes decommissioning and abandoning an existing water well (Well No. 5). The existing permitted filtration system and tanks would remain on the site.
- Well Site No. 7 is located at 191 Alviso Drive in the unincorporated area of Ventura County. The component of the Project that would occur on this site includes the construction of a replacement water well with ancillary equipment for well operations to be enclosed within an approximately 1,000-square-foot pump house, along with installation of landscaping, an emergency back-up generator, and irrigation tank. Existing development within the vicinity of this site includes single family dwellings.
- The proposed land use and structures for Well No. 7 are inconsistent with established covenants, conditions and restrictions of the Las Posas Hills Homeowner's Association.
- Adjacent property owners with existing septic systems within 200 feet of the proposed Well No. 7 would be burdened with the preparation of additional technical studies subject to County review and determination at the time their affected septic systems would need future repair and or replacement. This issue was addressed in the hydrogeologic Review of Crestview Mutual Water Company's "Well No. 7" Camarillo Hills, Ventura County, California by Kear Groundwater, dated June 22, 2020 (Exhibit 1 at sub exhibit 35).
- Temporary 24-hour construction and ongoing operational noise of Well No. 7 would be a nuisance to neighboring properties.
- The proposed periodic delivery and indoor storage of chlorine for Well No. 7 lacks technical information from the Applicant, including information regarding chemical delivery and operational odors to ensure compatibility with the surrounding existing residential development.
- Nuisance to the community for the proposed grading activities, volume, and truck trips for construction of Well No. 7.

Since June 25, 2020, CMWC has reviewed the Planning Commission's findings for denial and has convened multiple meetings of its Board of Directors regarding each area of concern (Exhibits 4.0 and 4.a through 4.m).

H. APPEAL OF THE PLANNING COMMISSION DECISION

On July 6, 2020, CMWC filed a timely appeal (Exhibit 3) of the Planning Commission's decision to deny the proposed project. CMWC requests that your Board grant the requested modified CUP based on the entirety of the information in the record, including updated project information provided in Exhibit 4 of this Board Letter.

In Exhibit 4.0, CMWC provides a letter responding to and addressing concerns raised by the Planning Commission. Specific changes proposed to address some of the concerns include:

- Sound attenuation features during the one month to six-week period of well installation to ensure that noise levels at no time exceed the applicable noise regulations, together with immediate work stoppage and contractor penalties for any violation and a program to house project neighbors upon request at hotel lodgings up to the rate of \$500/day. (Exhibit 4.0)
- A Crestview board resolution that commits to reimburse project neighbors for any future septic system advanced treatment or other costs that are required by a regulatory agency and that are caused by the existence of Well No. 7. (Exhibit 4.0 and 4.d.)

As described in Section D above, Crestview is also proposing certain aesthetic improvements for the development of the Well No. 7 site. (Exhibits 4.0, 4.f, 4.g, and 4.h).

Ground of Appeal:

The request and ground of appeal, provided by CMWC are included in the appeal application that is attached to this Board Letter as Exhibit 3, and are reproduced verbatim below, along with a response by County staff.

The action of the Planning Commission was arbitrary, capricious, contrary to law, and not supported by substantial evidence. The action contradicted the expert recommendations and advice of the following County Divisions: Planning, Fire, Public Works, Environmental Health, Building and Safety, and County Counsel, as well as the well approval of the State Water Resources Control Board. The action was based on the personal, non-expert opinions of individual Planning Commissioners, some or all of whom did not correctly understand and apply the applicable State and County laws, nor the critical need for an additional water source to serve the public's health and safety.

Staff Response:

County decision-makers, including members of the Planning Commission, are not required to give any deference to the recommendations of County staff when considering applications for land use entitlements. Commissioners represent the community at large and are not required to be technical experts in any field. They are obligated, however, to consider all relevant information presented at a public hearing and make an independent judgement based upon supporting substantial evidence, as to whether a proposed project should be approved or denied.

In the case of the application before your Board, the Commission denied the project based on information in the public record that the Commission determined precluded it from making the required findings for approval in accordance with the NCZO. This information is listed in the Planning Commission Resolution (Exhibit 2) and reproduced above in Section G of this Board letter. This information includes facts cited by the Planning Commission directly relevant to the findings that must be made to approve the project.

For example, it is a fact (confirmed by the Environmental Health Division, pursuant to Ventura County Building Code Table CPC Appendix H-1) that the property owners with existing septic systems located within 200 feet of the proposed Well No. 7 would be responsible for the preparation of additional technical studies, subject to County review and determination in the future should their affected septic systems need repair or replacement (Exhibit 1 at sub exhibit 31, Determination of Completeness Letter dated August 1, 2019 containing advisory information from Environmental Health Division.) This adverse effect on neighboring property owners is directly relevant to the Commission's inability to find that "*the proposed development would not be obnoxious or harmful or impair the utility of neighboring property or uses.*" Thus, the decision made by the Planning Commission is not arbitrary, capricious, contrary to law or unsupported by substantial evidence.

Based on the above discussion, the ground of appeal is without merit.

I. PUBLIC AND JURISDICTIONAL REVIEW

On August 26, 2021, the Planning Division e-mailed notification of this hearing to all interested parties, the City of Camarillo, Las Posas Hills Homeowners Association, the State Water Resources Control Board, and the Fox Canyon Groundwater Management Agency. On September 1, 2021, the Planning Division mailed notification of this hearing to property owners within 300 feet of the project sites (i.e., Well Site Nos. 5 and 7), interested parties, the City of Camarillo, Las Posas Hills Homeowners Association, the State Water Resources Control Board, and the Fox Canyon Groundwater Management Agency. On September 4, 2021, the notice of hearing for the proposed project was also published in the *Ventura County Star* (Countywide circulation).

This Board item was reviewed by County Counsel. If you have any questions regarding this matter, please contact me at (805) 654-2481 or John Kessler, Case Planner, at (805) 654-2461.

A handwritten signature in blue ink, appearing to read "Dave Ward", is written over a horizontal line.

Dave Ward, AICP, Director
Ventura County Planning Division

Attachments:

- Exhibit 1 – June 25, 2020 Planning Commission staff report and sub exhibits 1 through 37
- Exhibit 2 – Planning Commission Resolution for the June 25, 2020 hearing
- Exhibit 3 – Appeal Form dated July 6, 2020
- Exhibit 4.0 – Crestview Letter of Responses to PC Findings dated August 25, 2021
- Exhibit 4.a – Shareholder Survey Results dated July 14, 2021
- Exhibit 4.b – Pathogen Transport Memo dated July 14, 2021
- Exhibit 4.c – Nitrate Analysis dated July 14, 2021
- Exhibit 4.d – Crestview Resolution to Reimburse
- Exhibit 4.e – Technical Memo Information Chlorine dated August 10, 2021
- Exhibit 4.f – ArchFX Rendering from 179 Alviso
- Exhibit 4.g – ArchFX Rendering from Overhead
- Exhibit 4.h – ArchFX Rendering from 217 Alviso
- Exhibit 4.i – Water Rate Review Report dated July 14, 2021
- Exhibit 4.j – Well 7 Feasibility Evaluation dated July 14, 2021
- Exhibit 4.k – Well 7 Siting Study dated July 14, 2021
- Exhibit 4.l – Pipeline Cost Tech Memo dated July 14, 2021
- Exhibit 4.m – Zim Noise Control Letter dated August 25, 2021
- Exhibit 5 – Public Comments 2021