

Appeal to the State Water Board

April 17, 2008



Petitioners filing: John J. Willsen , M.D. & Gwyn P De Amaral
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We the above filing parties are appealing the recent action taken by the RWQCB, Central Coast Region public meeting in Salinas, California on March 20, 2008 regarding granting a waiver of an engineered disposal system, resolution R3-2008-0020: approval for exemption from the Basin Plan for an Engineered on site wastewater disposal System and discharge of wastewater, date of approval March 20, 2008.

We are appealing the action based on inappropriate procedures, lack of public notification, and inability to provide all pertinent evidence at the meeting and approval contrary to the Basin Plan and the California Environmental Quality Act (CEQA)

3) Date of Regional Board Action: March 20, 2008

4) We are appellants in an appeal to the Monterey County Board of Supervisors on the approval of Coastal Administrative permit for a single Family home TEST well, and a septic system on a 2/3 acre lot in Carmel Highlands. The County requested RWQCB approval on December 20, 2007 of an exemption from the Basin Plan for an Engineered on site waste disposal system and waiver of waste discharge requirements.

On January 18, 2008 Roger Briggs, Executive officer approved the exemption and waiver, subject to the Board's approval at its meeting in Salinas on March 20-21, 2008.

On December 05, 2007 we spoke with Mathew Keeling (staff of RWQCB) requesting time to speak individually and also have our Hydro geologist present evidence opposing this action. The meeting was on Friday, December 07, 2007 in San Luis Obispo, California. Mr. Keeling indicated in our conversation that it would not be necessary for us to attend regarding this matter, as it would not be discussed before the hearing in Salinas on March 20, 2008. He confirmed that **No Action** would be taken. We were prepared to attend this meeting but based on Mr. Keelings assurances we did not attend.

However, action **WAS taken** in Mr. Briggs (E.O) letter of January 18 ,2008 to Mr. Kashfi with CC to Mr. Russell Juncal one of our consultants , Mr. Kashfis' Attorney, and the County . We were not CC ed a copy of this letter although, Mr. Keeling was aware that we were appellants from our phone contact with him.

We were not made aware of Mr. Briggs letter until the end of February 2008, when we were notified by Liz Gonzales (project planner) of the Monterey Board of Supervisors meeting where they would be voting on this matter.

Mr. Briggs had set a February 18, 2008 deadline for comments or evidence to be introduced. We attempted to provide comments and evidence, But Mr. Briggs refused despite telling him we were not publicly notified in a timely manner as the other parties had been.

Finally, Mr. Briggs allowed only our consultant to speak at the March 20, 2008 RWQCB meeting within a very narrow scope. The information would need to be approved and could only be 15 minutes; therefore he was forced to omit pertinent evidence from his limited presentation. No outside information on the project could be discussed and the 4 appellants who were present were prohibited from speaking.

We believe the presentation of our evidence was severely compromised by not being publicly noticed in a timely matter and not being allowed to present **all pertinent** evidence against this approval.

We also desire to have the RWQCB decision reversed based on violations of CEQA and the Basin Plan.

The RWQCB did not take into account the cumulative impact of the wastewater disposal system on the environment considering there is a proposed well 113 feet from the approved waste system with the small lot (2/3 acre) being surrounded in close proximity to 7 existing neighboring septic systems and leach fields .

CEQA requires a lead agency to consider not only the effect of the project to the Environment but also the cumulative effect of the project in the present as well as the future. CEQA, Article 5, section 15064 (d) (h1)

The RWQCB heard testimony from our expert Hydrogeologist that there would be significant adverse Environmental Impact if this waste discharge were allowed.

The RWQCB also did not take into account the **Prohibitions** section of the Basin Plan which requires at least a 250 foot setback of a waste disposal system from a well, (actual setback 113) in areas of fractured granite and continuous channels. The Carmel Highlands area is known to be composed of multiple strata of fractured granite and channeling .(see RWQCB letter to Mr. Le Warne , Monterey County Environmental Health , March 07,2007 and May 07 ,2008).

CEQA requires a Environmental Impact Report (EIR) where there is reasonable certainty that a project will cause environmental harm although experts disagree. CEQA, article 5, section (f,1) (g)

This project is not exempt from CEQA and therefore the RWQCB should not have acted in the absence of an EIR. Ample evidence that this project should not be exempted from CEQA is present in the expert opinion of the RWQCB 's executive officer as noted in Mr. Briggs letters to Mr. Le Warne of the Monterey County Environmental Health Department (See RWQCB letters March 7 ,2007 & May 7,2007.

It is **unfortunate** how Mr. Roger Briggs could recommend waiver approval after reading his letters of March 07, 2007 & May 07, 2007.

5) We are aggrieved since our property borders the proposed site and the projects' close proximity could lead to pollution and degradation of ground water.

6) We the petitioners request the State Water Board to review all the evidence which is being sent by Fed Ex (tracking number 8613 7043 6478) on April 18, 2008 within the 30 day appeal period. With this evidence we wish the State Water Board to vacate the RWQCB , Central Coast Region's approval of resolution No.R3-2008-0020 .

7) The points and authorities for legal issues are outlined in a copy of a letter to the Monterey County by our Attorney, Richard Frampton dated April 16, 2008.

8) Copies of the petition have been sent to Mathew Keeling, Staff RWQCB and the discharger's (Richard Kashfi) attorney Mr. John Bridges, ESQ, Fenton & Keller, PO Box 791 Monterey California. 93942-0791

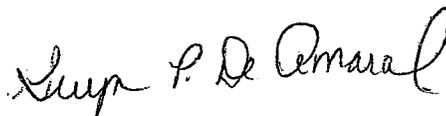
9) The issues concerning violations of the **Prohibitions** section of the Basin Plan were presented to the Board before the Board acted. However the objections to the violation of CEQA and the failure of timely notice were not able to be presented due to Mr. Briggs refusal to allow this due to missing his deadline because of failure of timely notice of his letter.

Thank you for your time and attention.

Sincerely,



John J Willsen , M.D.



Gwyn P De Amaral

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 AEROVISTA PLACE, SUITE 101
SAN LUIS OBISPO, CALIFORNIA**

RESOLUTION NO. R3-2008-0020

Waiver of Waste Discharge Requirements

For

**ENGINEERED ONSITE DISPOSAL SYSTEM
KASHFI RESIDENCE, 74 CORONA ROAD
CARMEL HIGHLANDS
CARMEL
(APN 241-052-001)
Monterey County**

The California Regional Water Quality Control Board, Central Coast Region (hereinafter Water Board) finds that:

1. California Water Code Section 13260(a) requires that any person discharging waste, or proposing to discharge waste within any region that could affect the quality of the waters of the state, other than into a community sewer system, shall file with the appropriate Regional Water Board a report of the discharge ("report of waste discharge" or "ROWD") or other report containing such information and data as may be required by the Regional Board.
2. California Water Code section 13263 authorizes the Water Board to prescribe waste discharge requirements that implement the Water Board's Water Quality Control Plan
3. California Water Code Section 13269 authorizes the Water Board to waive the issuance of waste discharge requirements provided that the waiver of waste discharge requirements is consistent with applicable water quality control plans and is in the public interest. In addition, any waiver must be conditional, may not exceed five years in duration, and may be terminated at any time. The waiver must also include monitoring unless the Regional Board determines that the discharges do not pose a significant threat to water quality.

BACKGROUND

4. The Monterey County Board of Supervisors adopted Ordinance No. 5093 on November 17, 2007. Ordinance No. 5093 extends Interim Ordinance No. 5086, adopted on October 2, 2007, which temporarily limits new development in the Carmel Highlands that has the potential to generate wastewater and temporarily limits the construction of new wells pending an area-wide study and consideration of an Onsite Wastewater Management Plan by the County. Ordinance No. 5093 also contains an exemption to allow a limited number of pending applications to be

processed subject to specified standards as outlined in Ordinance No. 5093. Interim Ordinance No. 5086 and Ordinance No. 5093 are attached hereto as Exhibits 1 and 2, respectively, and incorporated herein by reference.

5. The subject site consists of a 0.80-acre residential property located in the Carmel Highlands. The property is within an unincorporated portion of Monterey County and is not within a sewer services district and requires an onsite wastewater disposal system. The property owner, Rick Kashfi (hereafter Discharger), applied for a permit with the Monterey County Division of Environmental Health (County) to install an engineered onsite wastewater disposal system. The proposed onsite disposal system consists of an advanced treatment system with ultraviolet disinfection and subsurface drip irrigation as the primary mode of disposal with shallow pressurized leachfields as secondary disposal.
6. The Water Quality Control Plan for the Central Coast Region (Basin Plan) designates the beneficial uses of waters within the Region, specifies the water quality objectives to protect the beneficial uses, establishes prohibitions, and establishes implementation policies to implement the water quality objectives. Pursuant to Chapter 2 of the Basin Plan, present and potential beneficial uses of groundwater (both shallow and deeper water-bearing zones) underlying the Property include domestic and municipal water supply, agricultural water supply, and industrial water supply. The Basin Plan incorporates the state's drinking water standards adopted by DPH as water quality objectives.
7. The Water Board's Water Quality Control Plan (Basin Plan) and July 1979 Memorandum of Understanding between the Central Coast Water Board and County specifically prohibit the County from approving engineered onsite disposal systems for sites unsuitable for standard systems. The Basin Plan allows that the Water Board or Executive Officer may grant exemptions for engineered onsite disposal systems given sufficient justification that the continued operation of such systems in a particular area will not individually or collectively, directly or indirectly, result in pollution or nuisance, or affect water quality adversely.
8. An application package containing a Report of Waste Discharge: Supplemental Form for Regional Board Subsurface Disposal Exemption Submittal and associated design documents for the proposed engineered system was submitted to the Water Board by the County on behalf of the Discharger on December 20, 2007. The Monterey County Department of Health certified the Supplemental Form on December 20, 2007. The onsite disposal system design was prepared by Andrew Brownstone, BioSphere Consulting, and is dated November 5, 2007.
9. The proposed onsite disposal system meets the requirements of County Ordinance Nos. 5086 and 5093. The proposed system will also be subject to nonstandard permit conditions applied by the County prior to issuing a building permit. The nonstandard permit conditions require an operations and maintenance contract and deed notification. The nonstandard permit conditions and deed notification

(June 27, 2007 template) are attached hereto as Exhibits 3 and 4, respectively, and incorporated herein by reference.

10. The Executive Officer approved the Basin Plan exemption and notified the Discharger of the proposed Waiver on January 18, 2008.
11. The Water Board has considered the design information provided in the application package and has required the Discharger, as a condition of this waiver, to comply with all Monterey County Ordinances and permit requirements.
12. Individual subsurface disposal systems for domestic residences are categorically exempt from CEQA under California Code of Regulations, Title 14, Section 15303.
13. The Water Board finds that this waiver of waste discharge requirements is consistent with Water Code section 13269. Relevant factors in determining whether a waiver is in the public interest include the following:
 - a) Whether the discharge is already regulated by another governmental entity;
 - b) Whether the discharger will observe reasonable practices to minimize the deleterious effects of the discharge;
 - c) Whether a feasible treatment method exists to control the waste constituents in the discharge; and
 - d) Whether conditionally waiving ROWDs and/or waste discharge requirements will adequately protect beneficial uses while allowing the Water Board to utilize more of its resources to conduct field oversight, public outreach and, where necessary, enforcement.
14. The proposed onsite disposal system is regulated by Monterey County, which requires the Discharger to implement design and operational controls, maintenance activities, regular monitoring and reporting, and deed restrictions to prevent water quality impacts.
15. The conditions of this waiver protect beneficial uses and comply with the Basin Plan by:
 - a) Prohibiting pollution, contamination or nuisance;
 - b) Requiring monitoring and compliance with applicable Basin Plan prohibitions and Monterey County Ordinances and permit requirements; and
 - c) Requiring the Discharger to grant access to Water Board and Monterey County staff to perform inspections.
16. If the proposed onsite disposal system is properly operated and maintained in accordance with Monterey County Ordinances and permit conditions and the conditions of this Resolution, a waiver of waste discharge requirements is in the public interest and is consistent with applicable water quality control plans, including the Water Quality Control Plan, Central Coast Region.

17. Pursuant to California Water Code Section 13269, this action waiving the issuance of waste discharge requirements for this on-site domestic wastewater disposal system: (a) is conditional, (b) may be terminated at any time, (c) does not permit an illegal activity, (d) does not preclude the need for permits which may be required by other local or governmental agencies, and (e) does not preclude the Water Board from administering enforcement remedies (including civil liability) pursuant to the California Water Code.
18. Operation of the proposed onsite disposal system consistent with this Resolution is not anticipated to degrade groundwater and is consistent with State Water Resources Control Board Resolution 68-16 ("Policy for Maintenance of the High Quality of Waters of the State"). State Water Board Resolution No. 68-16 requires the Regional Board to maintain the high quality of waters of the state unless the Regional Board determines that some degradation of waters is consistent with maximum benefit to the people of the state, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than set forth in the Basin Plans. The Regional Boards must assure that waste discharge requirements will result in best practicable treatment or control of the discharge necessary to assure that pollution or nuisance will not occur and the highest water quality is maintained. In short, the degradation may not violate water quality objectives and must not unreasonably affect existing and designated beneficial uses. Operation of the proposed system is consistent with Resolution 68-16 because it is designed to treat the domestic wastewater to secondary standards (85% reduction of biochemical oxygen demand and total suspended solids), remove 65% of total influent nitrogen, and disinfect the effluent prior to disposal via ultraviolet treatment.
19. The monitoring and reporting requirements of this Resolution are imposed pursuant to CWC Section 13267. The monitoring and reporting are necessary to ensure compliance with the conditions of this Resolution and to verify the adequacy and effectiveness of the conditions.
20. The Regional Board provided an opportunity for a public hearing on March 21, 2008, in Salinas, California, and considered all comments and evidence concerning this matter.

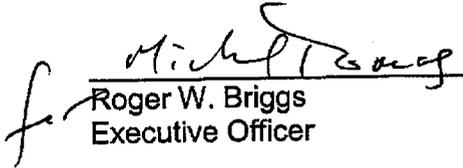
THEREFORE BE IT RESOLVED:

1. In accordance with California Water Code Sections 13267 and 13269, waste discharge requirements for the proposed on-site domestic wastewater disposal system are hereby waived subject to the following conditions:
 - a) The onsite disposal system shall be installed under the oversight of Monterey County and the designer per the November 5, 2007 Alternative Onsite Wastewater System Design by Andrew Brownstone, BioSphere Consulting, and

- be operated and maintained in accordance with Monterey County Ordinances and permit conditions and manufacturer specifications.
- b) The Discharger shall comply with all Monterey County Ordinances and Permit Conditions [including Section 2 of County Ordinance No. 5093 and nonstandard permit conditions].
 - c) The Discharger and future property owners shall be subject to the requirements of the County's pending Onsite Wastewater Management Plan.
 - d) The sewage disposal system shall be inspected every two years for solids buildup and be pumped as required by a licensed septic tank contractor.
 - e) Peak daily flow shall not exceed 900 gallons per day.
 - f) Use of the individual sewage disposal system shall not create a condition of pollution, contamination, or condition of nuisance, as defined by CWC Section 13050.
 - g) Only domestic wastewater shall be discharged to the individual sewage disposal system.
 - h) The Water Board and Monterey County shall be immediately notified of any proposed change(s) in discharge volume, nature, or location.
 - i) The Water Board and Monterey County shall be immediately notified of any discharges threatening water quality or public health.
 - j) The Water Board and Monterey County may inspect the onsite disposal system at any time to evaluate compliance with applicable requirements.
 - k) Operation of the sewage disposal system shall not result in the daylighting (surfacing) of effluent from the disposal area or other portions of the system.
 - l) The Discharger and future property owners shall also provide copies of all monitoring data per County requirements to the Water Board.
2. This Waiver shall not create a vested right to discharge and all such discharges shall be considered a privilege, as provided for in CWC Section 13263.
 3. The Executive Officer or Water Board may terminate the applicability of the Waiver described herein at any time.
 4. This Waiver shall become effective on **March 20, 2008**, and shall expire on **March 20, 2013**.
 5. As provided by CWC Section 13350(a), any person may be civilly liable if that person is in violation of a waiver condition or waste discharge requirements, intentionally or negligently discharges waste, or causes waste to be deposited where it is discharged, into the waters of the State and creates a condition of pollution or nuisance.

6. Any person affected by this action of the Regional Board may petition the State Water Resources Control Board (State Board) to review the action in accordance with section 13320 of the California Water Code and Title 23, California Code of Regulations, Section 2050. The State Board must receive the petition within 30 days of the date of this Resolution. Copies of the law and regulations applicable to filing petitions will be provided upon request.

I, Roger W. Briggs, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Central Coast Region, on March 20, 2008.



Roger W. Briggs
Executive Officer

Interim Ordinance No. 5086

AN INTERIM ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, OF LIMITED DURATION, ADOPTED PURSUANT TO GOVERNMENT CODE SECTION 65858, IMPOSING TEMPORARY PROHIBITIONS ON SPECIFIED NEW DEVELOPMENT THAT CAUSES GENERATION OF WASTEWATER AND ON THE CONSTRUCTION OF WELLS IN A SPECIFIED AREA OF THE CARMEL HIGHLANDS PENDING THE COUNTY'S STUDY AND CONSIDERATION OF AN ONSITE WASTEWATER MANAGEMENT PLAN FOR THE AREA.

County Counsel Summary

This interim ordinance, adopted pursuant to Government Code Section 65858, takes effect immediately to protect the public health and safety by temporarily limiting new development that has the potential to generate wastewater and limiting the construction of new wells in a specified area of the Carmel Highlands, pending the County's study and consideration of an Onsite Wastewater Management Plan for the area. This ordinance contains limited exemptions. This ordinance contains the standard enforcement and severability provisions. Based upon the threat to public health and safety, this is an urgency ordinance requiring a four-fifths vote of the Board of Supervisors for adoption.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. FINDINGS AND DECLARATIONS

A. Pursuant to Article XI of the California Constitution, the County of Monterey ("County") may adopt and enforce ordinances and regulations to protect and promote the public health, safety, and welfare of its citizens.

B. Pursuant to Section 13260 of the California Water Code, the Regional Water Quality Control Board (Central Coast Region) (RWQCB or Regional Board) is authorized to regulate all discharges, which could affect the quality of the waters in the state, including discharges from individual sewage disposal systems.

C. Pursuant to Section 13269 of the California Water Code, the Regional Board has waived immediate regulatory oversight of individual sewage systems and has entered into a Memorandum of Understanding (MOU) with the County that designates the County Director of Health or his or her authorized representative as the administrator of the individual sewage disposal system regulations. Under the MOU, the County may not permit individual sewage disposal systems unless they are in conformity with the Water Quality Control Plan, Central Coast Region (September 8, 1995) (hereafter the "Basin Plan") and applicable County regulations. These requirements include certain numeric (setback) requirements and narrative prohibitions relating to on-site individual wastewater disposal systems.

D. In letters dated March 7, 2007 and May 7, 2007, the Regional Board alerted County to the immediate potential threat to the public health, safety, and welfare posed by permitting additional on-site wastewater disposal systems on individual lots in the Carmel Highlands, given existing site conditions such as: density of on-site wastewater systems; and domestic water supply wells. The RWCB then directed the County to conduct an area wide study of the Carmel Highlands Area in order to prepare a sufficiently detailed wastewater management plan that addresses the capacity of the area to handle additional on-site wastewater disposal systems.

E. The specified area of concern is that portion of the Carmel Highlands that is designated as Low Density Residential in the Carmel Area Land Use Plan of Monterey County and served by individual sewage disposal systems, further delineated as "Carmel Highlands Study Area" in the map attached as Exhibit A to this ordinance (hereafter "Carmel Highlands Area.>").

F. The Regional Water Quality Control Board has informed the County that continued permitting of on-site individual wastewater disposal systems, in the absence of individual project level full mitigation or an area wide study, may not comply with the Prohibitions section of the Basin Plan, which prohibits the following:

17. *Lot sizes, dwelling densities or site conditions causing detrimental impacts to water quality.*
18. *Any area where continued use of onsite systems constitutes a public health hazard, an existing or threatened condition of water pollution, or nuisance.*

(Basin Plan, Section VIII.D.3.i, paras. 17 and 18.)

G. The Regional Board has directed the County to develop and implement an Onsite Wastewater Management Plan for the Carmel Highland Area. The Plan is to be based on an onsite wastewater disposal study conducted to identify basin specific criteria to prevent water quality degradation and public health hazards and to provide an evaluation of the effects of existing and proposed developments and changes in land use. The Regional Board directed the County to submit a timeline and schedule by August 1, 2007, to outline the tasks and milestones necessary to develop and implement an Onsite Wastewater Management Plan for the Carmel Highlands Area. The Environmental Health Division has requested an extension from RWQCB to extend the date to December 1, 2007 due to the complexities of this issue. RWQCB staff indicated verbally that an extension was reasonable. County staff intends to bring to the Board of Supervisors in the near future for its consideration a plan of action for conducting the area wide evaluation that would be the basis for a Wastewater Management Plan that would determine the appropriate engineering and institutional controls to protect water quality and public health in the Carmel Highlands Area.

H. The potential threat to public health and water quality posed by certain types of new development and new well construction in the Carmel Highlands Area results from a variety of factors, including the following:

1. A high density of small lots under one acre in size with an existing or a potential individual sewage disposal system.
2. The growing well densities in an area of high-density individual sewage disposal systems.
3. The fractured granitic geology of the Carmel Highlands.
4. Filtering of wastewater effluent through fractures is minimal.
5. The sole source of recharge of groundwater found in the fractures of the specified area of the Carmel Highlands is precipitation, which percolates through the subsurface. Therefore, any effluent from a wastewater disposal system introduced into the subsurface will find its way into the groundwater.
6. A high density of individual wastewater disposal systems disposing sewage effluent into this fractured granite has the potential to result in surfacing effluent and potential impacts to existing domestic water supply wells in the area that are pumping groundwater from the fractured bedrock.
7. The need for an area wide study to determine the appropriate setbacks from individual sewage disposal systems to wells, given the geological shortcomings of this area, that would be sufficiently protective of public health and water quality in the Carmel Highlands Area.

I. As a result of the factors affecting the Carmel Highlands Area, temporary regulations to limit new development that has the potential to generate wastewater and to limit the construction of new wells are necessary to protect the public health and water quality for existing and future residents, pending study and consideration of an Onsite Wastewater Management Plan. In the interim period while this ordinance is in effect, it is necessary to limit new land uses that have the potential to cause the generation of wastewater such as bedroom additions, new dwelling units, new guest houses, and new or proposed expansion of commercial activities, and it is also necessary to limit construction of wells because wells have the potential to serve as a conduit for groundwater contamination.

J. The correspondence from the Regional Board, beginning with the RWQCB letter of March 7, 2007, arose in the context of the Board of Supervisors' consideration of an appeal from the County Zoning Administrator's approval of a project application (PLN050447/Reynolds (Kashfi)). The Regional Board has distinguished between the pending appeal and additional on-site wastewater disposal systems in the Carmel Highlands area, deferring to the County to determine whether that project application pending on appeal is protective of public health and water quality, taking into account site conditions and other factors, while not supporting other additional permits until a sufficiently detailed wastewater management plan is prepared. The County also desires to accord all parties the opportunity to be heard on the pending appeal.

Accordingly, this ordinance allows the continued processing of applications on appeal before the Board of Supervisors as of March 7, 2007, provided that the application proposes and the County evaluates engineering design for on-site sewage treatment and well construction design to ensure the proposal will not affect the public health or water quality.

K. There is a current and immediate threat to the public health, safety, and welfare, and the approval of additional ministerial permits and discretionary development entitlements, except as provided under this Ordinance, would result in further threats to public health, safety, and welfare. Such a threat would be forestalled with the application of interim restrictions contained in this ordinance during the County's development of an Onsite Wastewater Management Plan for the Carmel Highlands Area.

L. This Ordinance is intended to be of limited duration of up to two years if extended pursuant to existing law; accordingly, nothing in this Ordinance is intended to effect or be construed to effect an unconstitutional taking of any property affected during its duration.

SECTION 2. APPLICABILITY.

A. The regulations set forth in this Ordinance shall apply to properties located in the unincorporated area of Monterey County designated as Low Density Residential in the Carmel Highlands in the Carmel Area Land Use Plan, delineated as the "Carmel Highlands Study Area" in Exhibit A attached hereto and incorporated herein by reference.

B. In the event of a conflict between this Ordinance and any other existing County ordinance or regulations, the provisions of this Ordinance shall prevail.

SECTION 3. DEFINITIONS.

For purposes of this Ordinance, the terms below have the definitions set forth herein:

A. **Discretionary Development Entitlement.** "Discretionary Development Entitlement" shall mean any County action, permit, or approval pursuant to an application for a permit for development as that term is defined under the Monterey County Code, which requires the exercise of judgment, deliberation, or a decision, and which contemplates the imposition of revisions or conditions by the County, including by any board, commission, or department of the County and any official or employee of the County, in the process of approving or disapproving any such application, as distinguished from a County action, permit, or approval which merely required the County, including any board, commission, or department of the County and any official or employee of the County, to determine whether there has been compliance with applicable statutes, ordinances, regulations, or conditions of approval. For the purposes of this Ordinance, the term "discretionary development entitlement" shall include, but is not limited to, zoning and plan amendments, conditional use permits, combined development permits, lot line adjustments, special use permits, administrative permits, variances, site plan reviews, tentative subdivision maps, and tentative parcel maps.

B. **Dwelling Units.** "Dwelling Unit" means a place of human habitation that is self sufficient (i.e. bedrooms(s), bathroom(s), kitchen with sink, oven/stove, refrigerator, and storage of food) and conforms to the most recent edition of the Uniform Building Code and the Uniform Housing Code. Examples include but are not limited to: a primary dwelling unit, a caretaker unit, a senior citizen unit, and second dwellings.

C. **Onsite Wastewater Management Plan.** "Onsite Wastewater Management Plan" (Plan) is a comprehensive planning tool to specify onsite disposal system limitations to prevent ground or surface water degradation, in accordance with section VIII.D.2.b of the Basin Plan.

D. **Filed.** An application is "filed" with the County within the meaning of this ordinance if the applicant has submitted the application to the County and paid the required application fees.

E. **Ministerial Permits.** "Ministerial Permit" shall mean any County action, permit, or approval which merely requires the County, including any board, commission, or department of the County and any official or employee of the County, to determine whether there has been compliance with applicable statutes, ordinances, regulations, or conditions of approval.

F. **Wastewater.** "Wastewater" includes sewage, graywater, and any and all other contaminated liquid associated with human habitation.

G. **Well.** "Well" is an artificial excavation or structure put down by any method such as digging, driving, boring, or drilling for the purposes of withdrawing water from underground aquifers and for the purposes of this ordinance includes test wells, production wells, and bore holes.

SECTION 4. REGULATIONS.

A. During the term of this ordinance, unless exempted under the terms of this ordinance, the County will not process or approve any application for ministerial permits or discretionary development entitlement for a new land use or intensification of use in the Carmel Highlands Area as defined herein if the new land use or intensification of use has the potential to cause the generation of wastewater. Examples include but are not limited to bedroom additions, new dwelling units, new habitable accessory or second units, new guesthouses, and new or expanded commercial activities.

B. During the term of this ordinance, unless exempted under the terms of this ordinance, the County will not process or approve any application for a ministerial permit or discretionary development entitlement for the construction of a new well, whether a test well or a production well, in the Carmel Highlands Area.

SECTION 5. EXEMPTIONS

The following applications for a ministerial permit or discretionary development entitlement in the Carmel Highlands Area are exempt from the limitations on processing set forth above. The applications below may be processed in accordance with County regulations and the specifications set forth below:

A. Applications on appeal before the Board of Supervisors as of March 7, 2007,

1. Such applications will be required to propose engineering and sewage treatment designs for individual sewage disposal systems and/or well construction design to ensure that the proposal will not affect the public health or water quality. Applicant will be required to demonstrate that the project will have less than significant direct and cumulative impacts to surface and ground water resources. Such applications will be subject to environmental review under the California Environmental Quality Act.

B. Applications for new or existing uses that do not have the potential to cause the generation of wastewater.

1. Examples of such applications include but are not limited to non-habitable accessory structures such as garages, sheds, gazebos, and fences.

C. Applications affecting existing uses that do not affect the design of the individual wastewater disposal system such as the repair of an existing onsite wastewater disposal system; repair of a well; or remodel of an existing house, provided that the proposed change to the existing house does not increase the number of existing bedrooms.

SECTION 6. ENFORCEMENT.

A. It shall be the duty of the Director of Health and the Director of the Resource Management Agency of the County of Monterey and all officers and employees of said County herein charged by law with the enforcement of this Ordinance, to enforce all provisions of this Ordinance.

B. Any person, firm, or corporation, whether as principal or agent, employee or otherwise, violating or causing or permitting the violation of any of the provisions of this Ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable for a fine of not more than one thousand dollars (\$1,000) or by imprisonment in the County Jail of said County for a term not exceeding 180 days or by both such fine and imprisonment. Such person, firm, or corporation shall be deemed to be guilty of a separate offense for each day during any portion of which any violation of this Ordinance is committed, continued, or permitted by such person, firm, or corporation, and shall be punishable as herein provided.

C. Any building or structure set up, erected, constructed, altered, enlarged, converted, moved, or maintained, contrary to the provisions of this Ordinance, and/or any use of any land, building, or premises, established, conducted, operated, or maintained, contrary to the provisions of this Ordinance, shall be, and the same is hereby declared to be, a violation of this Ordinance and a public nuisance.

D. The County may summarily abate the public nuisance and the County Counsel or the District Attorney may bring civil suit, or other action, to enjoin or abate the nuisance.

E. Each day any violation of this Ordinance continues shall be regarded as a new and separate offense. The remedies provided in this Ordinance shall be cumulative and not exclusive.

F. Any person, firm, or corporation, who creates or maintains a public nuisance in violation of this Ordinance shall be liable for the costs of abatement which shall include, but not be limited to:

- a. Costs of investigation;
- b. Court costs;
- c. Attorneys fees;
- d. Costs of monitoring compliance.

G. Upon a continuation of the public nuisance after notice from the County to cease the nuisance, any person, firm, or corporation shall be liable for the costs of abatement set forth above plus a civil penalty of fifty percent (50%) of those costs payable to the County in addition to any other costs of enforcement imposed by the Court.

SECTION 7. SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 8. ACTIONS HELD IN ABEYANCE.

Should any person, firm, or corporation violate the terms of this Ordinance and any action is authorized either by the Board of Supervisors, County Counsel, or District Attorney, or is in fact filed by said agencies for said violation, no other action shall be taken on any application filed by or on behalf of said person, firm, or corporation, until the litigation has been resolved.

SECTION 9. EFFECTIVE DATE.

In light of the recitals in this Ordinance, the Board declares that this Ordinance is necessary as an emergency measure for preserving the public health and safety. This Ordinance shall take effect immediately for the reasons set forth herein and shall expire 45 days thereafter unless extended pursuant to law.

SECTION 10. NO TAKING OF PROPERTY INTENDED.

Nothing in this Ordinance shall be interpreted to effect an unconstitutional taking of property of any person. If the Board of Supervisors determines, based on specific evidence in the administrative record, that the application of one or more of the provisions of this Ordinance to a proposed project would effect an unconstitutional taking of private property, the Board shall disregard such provision or provisions to the extent necessary to avoid such unconstitutional taking.

SECTION 11. PUBLIC HEARING.

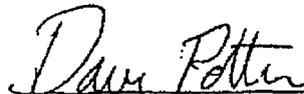
The Board hereby sets, and the Clerk to the Board shall notice, a public hearing for Board consideration of an extension of this Ordinance or a modification or amendment to this Ordinance for November 6, 2007 at 10:30 a.m. or as soon thereafter as practical, in the Board Chambers of the County.

PASSED AND ADOPTED this 2nd day of October, 2007, by the following vote:

AYES: Supervisors Armenta, Calcagno, Salinas and Potter

NOES: None

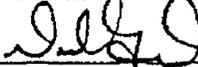
ABSENT: Supervisor Smith



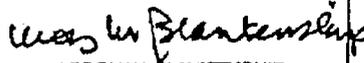
DAVID POTTER
Chair, Board of Supervisors

ATTEST:

LEW C. BAUMAN
Clerk of the Board of Supervisors

By 

DARLENE DRAIN
Clerk to the Board of Supervisors

APPROVED AS TO FORM:


LEROY W. BLANKENSHIP
Assistant County Counsel

**Before the Board of Supervisors in and for the
County of Monterey, State of California**

- a. Adopt an ordinance to modify and extend Interim Ordinance No. 5086 for)
an additional 10 months and 15 days, until and through October 1, 2008,)
pending the County's completion of an Onsite Wastewater Management)
Plan (4/5th vote required);)
- b. Approve staff recommendation to use State Small Water Systems account)
funds as the funding mechanism for development of the Onsite)
Wastewater Management Plan and associated activities; and)
- c. Recommend staff return to the Board with a proposed action to establish a)
fair share fee for the purpose of reimbursement to the State Small Water)
Systems account.)

Upon motion of Supervisor Calcagno, seconded by Supervisor Salinas, and carried by those members present, effective November 13, 2007, the Board hereby:

- a. Adopts an ordinance, (No. 5093), to modify and extend Interim Ordinance No. 5086 for an additional 10 months and 15 days, until and through October 1, 2008, pending the County's completion of an Onsite Wastewater Management Plan (4/5th vote required);
- b. Approves staff recommendation to use State Small Water Systems account funds as the funding mechanism for development of the Onsite Wastewater Management Plan and associated activities; and
- c. Recommends staff return to the Board with a proposed action to establish a fair share fee for the purpose of reimbursement to the State Small Water Systems account.

PASSED AND ADOPTED on this 13th day of November 2007, by the following vote, to wit:

AYES: Supervisor Calcagno, Salinas, Armenta, and Potter

NOES: None

ABSENT: Supervisor Smith

I, Lew C. Bauman, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 74 for the meeting on November 13, 2007.

Dated: November 14, 2007

Lew C. Bauman, Clerk of the Board of Supervisors,
County of Monterey, State of California

By



Annette D'Adamo, Interim Deputy

ORDINANCE NO. 5093

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, EXTENDING INTERIM ORDINANCE 5086, WITH MODIFICATIONS, IMPOSING TEMPORARY PROHIBITIONS ON SPECIFIED NEW DEVELOPMENT THAT CAUSES GENERATION OF WASTEWATER AND ON THE CONSTRUCTION OF WELLS IN A SPECIFIED AREA OF THE CARMEL HIGHLANDS, PENDING THE COUNTY'S STUDY AND CONSIDERATION OF AN ONSITE WASTEWATER MANAGEMENT PLAN FOR THE AREA.

County Counsel Summary

This Ordinance extends Interim Ordinance No. 5086 with modifications for approximately 10 months 15 days, until and through October 1, 2008. Adopted on October 2, 2007 pursuant to Government Code Section 65858, Interim Ordinance No. 5086 temporarily limits new development that has the potential to generate wastewater and temporarily limits the construction of new wells in a specified area of the Carmel Highlands, pending the County's study and consideration of an Onsite Wastewater Management Plan for the area. Interim Ordinance No. 5086 contains limited exemptions, and this ordinance adds an exemption to allow a limited number of pending applications to be processed subject to specified standards approved by the County Health Department and the California Regional Water Quality Control Board. Based upon the threat to public health and safety, this is an urgency ordinance requiring a four-fifths vote of the Board of Supervisors for adoption.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. FINDINGS AND DECLARATIONS

- A. On October 2, 2007, the Board of Supervisors adopted Interim Ordinance No. 5086 ("Ordinance") pursuant to Government Code section 65858. The Ordinance, with limited exemptions, temporarily limits new development that has the potential to generate wastewater and temporarily limits the construction of new wells in a specified area of the Carmel Highlands, pending the County's study and consideration of an Onsite Wastewater Management Plan for the area. Interim Ordinance No. 5086 is attached hereto as Exhibit 1 and incorporated herein by reference. Absent extension of the Ordinance, the Ordinance will expire on November 16, 2007.
- B. In enacting Interim Ordinance No. 5086, the Board made several findings and declarations constituting the grounds upon which the Ordinance was based. The Board found, among other findings, that there is a current and immediate threat to the public health, safety, and welfare from permitting

additional on-site wastewater disposal systems on individual lots in the Carmel Highlands, given existing site conditions, in the absence of individual project level full mitigation or an area wide study.

- C. On October 2, 2007, the Board also directed staff to consult with the Regional Water Quality Control Board ("RWQCB" or "Regional Board") to determine if Interim Ordinance No. 5086 could be modified with certain stringent interim standards that would allow a limited number of pending projects to be processed through the various planning processes and still protect public health and water quality. As of October 2, 2007, ten applications in the specified Carmel Highlands area were filed with the County and were pending (hereafter "Pending Applications"). The Pending Applications are listed in Exhibit 2 attached hereto and incorporated herein by reference. These Pending Applications are in addition to the project(s) on appeal before the Board as of March 7, 2007, which the Ordinance had already addressed.
- D. The Monterey County Department of Health sent a letter dated October 26, 2007 to the Regional Board that proposed certain interim standards to apply to the limited number of Pending Applications. These interim standards were developed based on the best professional judgment of the Regional Board and Health Department based on knowledge of the specified area of the Carmel Highlands in the absence of an area wide study. The Regional Board sent a letter dated October 29, 2007 that approved certain interim standards that were proposed in the Health Department's letter dated October 26, 2007 in order to provide relief to a limited number of pending applicants. These interim standards have been incorporated into the modification of the Ordinance to apply to the Pending Applications filed on or before October 2, 2007, as listed in Exhibit 2. The exception status would allow the Pending Applications to continue through the planning and permit review process, subject to the interim standards, with no guarantee for approval.
- E. The Board of Supervisors' findings and declarations contained in Interim Ordinance No. 5086, as clarified and amplified herein, remain and continue to be true under the present circumstances and are incorporated herein in their entirety by this reference. In light of said findings and declarations and the findings and declarations contained herein, there continues to exist a current and immediate threat to the public health, safety, and welfare necessitating the extension of Interim Ordinance No. 5086.
- F. On October 23, 2007, more than ten days before the expiration of Interim Ordinance No. 5086, the Board of Supervisors issued a written report pursuant to Government Code 65858(d) describing the measures the County of Monterey has taken and continues to take in order to alleviate the conditions which led to the adoption of said Ordinance.

- G. In light of the above findings and declarations, it is necessary to extend all relevant provisions of Interim Ordinance No. 5086, as modified herein, for approximately 10 months 15 days, until and through October 1, 2008. On November 13, 2007, prior to the expiration of the Ordinance, the Board of Supervisors held a duly noticed public hearing on the proposed extension.
- H. This Ordinance is intended to be of limited duration of up to two years if extended pursuant to existing law; accordingly, nothing in this Ordinance is intended to effect or be construed to effect an unconstitutional taking of any property affected during its duration.

SECTION 2. AMENDMENT TO REGULATIONS.

Section 5.D of Interim Ordinance No. 5086 is added to read in its entirety as follows:

D. Pending Applications, defined as those projects with applications that have been filed with the County on or before October 2, 2007 in the Carmel Highlands Area and that are listed in Exhibit 2 attached hereto and incorporated herein by reference.

1. Pending Applications shall comply with all of the following standards:

a. Such applications must propose engineering and sewage treatment designs for individual sewage disposal systems that meet the following criteria:

1) **The Wastewater Treatment Unit must:**

- a) Have National Sanitation Foundation (NSF) approval;
- b) Reduce biological oxygen demand and total suspended solids by a minimum of 85%;
- c) Reduce the total Nitrogen concentration by a minimum of 65%.
- d) Provide disinfection by means of approved ultraviolet treatment technology prior to the treated wastewater being dispersed into the subsurface dispersal system.
- e) Have a remote monitoring system so that a local service provider may respond in a timely manner to correct system upsets or malfunctions when they are detected.

2) **Sampling Points.** Sampling points shall be part of the design of the individual wastewater system and shall be designed in a manner to sample the influent and the disinfected treated effluent. The sampling ports shall be designed to be easily accessible for sampling.

3) **The Dispersal System.**

- a) Drip irrigation shall be the preferred method for treated wastewater dispersal.
- b) If it is not feasible to design and locate a drip irrigation system so that a drip irrigation system cannot meet the

required setbacks to a well, then a shallow leachfield no deeper than 5 feet below ground surface shall be the next preferred method. If the shallow leach field cannot meet the required setbacks to a well, then a deep trench that is no more than 12 feet below ground surface is the next preferred design and must meet the required setbacks to a well.

4) **Loading Rates.**

- a) Drip irrigation systems. The manufacturer's recommended loading rates for treated wastewater shall be used to design the drip irrigation system. Drip irrigation systems for treated wastewater shall be approved by the Health Department.
- b) Leachfields. Leachfields can be no deeper than 12 feet below the ground surface. The applications rates that shall be used for sizing the side wall area for the leachfields are as follows:

Percolation Rates Minutes/Inch	Loading Rate Gallon per Day/Square Foot
1 - 30	0.8
31 - 60	0.6

5) **Soils Study.** A registered professional engineer, geologist, or hydrogeologist with requisite experience shall perform soils studies and percolation tests in compliance with section 15.20 of the Monterey County Code prior to the construction of a well. In addition there shall be 3 or more soil borings and/or soil corings, as determined by the Health Department to a minimum depth of 70 feet below ground surface (bgs). The purpose of these soil borings/corings is to characterize the soil and determine if there are fractures, cracks, or continuous channels in the soils or formations at these depths.

6) **Setbacks (Well/water courses to onsite wastewater treatment system).**

- a) A 100-foot set back to wells/water courses from onsite wastewater treatment systems will apply if there are no fractures, cracks, or continuous channels less than 70 feet bgs.
- b) A 250-foot setback to wells/water courses from onsite wastewater treatment systems will apply if there are fractures, cracks, or continuous channels in the soils or formations less than 70 feet bgs.

b. **Qualified Design Professional.** A Registered Professional Engineer with requisite onsite wastewater treatment system knowledge and

experience that is acceptable to the Health Department shall prepare the design of the treatment system and dispersal system.

- c. **Compliance.** The proposed onsite wastewater treatment system shall be in compliance with:
 - 1) The Prohibitions section of the Central Coast Basin Plan; and
 - 2) Monterey County Code 15.20 and the standards set forth herein.

- d. **Approvals.** The proposed wastewater treatment system design shall be approved by the Regional Water Quality Control Board (Central Coast Region) and the Monterey County Health Department

- e. **Maintenance Requirements.**
 - 1) The permittee and all future owners of the subject property shall be required to contract with service providers in perpetuity to provide maintenance in accordance with the manufacturer of the wastewater treatment system recommendations and requirements of NSF to maintain the NSF approval of the wastewater treatment unit.
 - 2) The applicant or permittee shall provide the Health Department a copy of the contract with the service provider within 10 calendar days upon contracting with a service provider.
 - 3) The owner or the service provider acting as an agent of the owner shall provide a copy of their routine maintenance report (format to be determined by the Health Department) to the Health Department within 10 calendar days of providing routine service to the wastewater treatment unit or any portion of the individual wastewater treatment system.
 - 4) The service provider and/or owner shall notify the Health Department within 24 hours when a system upset or malfunction has occurred and what corrective actions were taken. A written report that states the problem and the corrective actions taken shall be submitted to the Health Department within 5 days of the occurrence.

- f. **Treatment Standards.** The treated effluent shall demonstrate a reduction of:
 - 1) 85% of Biological Oxygen Demand and Total Suspended Solids from the influent; and
 - 2) 65% of Total Nitrogen from the influent; and
 - 3) 95% of Fecal Coliform.

- g. **Monitoring Requirements.**
 - 1) There shall be quarterly sampling of the treated wastewater for the first 12 months from the date that the wastewater treatment unit is placed into use.
 - 2) The service provider and/or the owner shall submit the quarterly sample results to the Health Department from a California state

certified laboratory within 10 calendar days of receiving the sample results.

- 3) If the Health Department notifies the service provider and/or the owner that the sampling results do not meet the treatment standards, the owner must take immediate corrective action and must notify the Health Department within five calendar days as to the corrective action taken. The owner's notification to the Health Department must be followed by a written report by the owner stating what caused the failure to meet standards and what corrective actions were taken within 10 calendar days of the Health Department's notification to the owner of the treated wastewater not meeting standards.
- 4) If the quarterly sampling meets or exceeds the monitoring standards as set in this ordinance the sampling schedule may be reduced to every six months.
- 5) If 50% of the sampling results of a six month sampling schedule fail to meet standards in a year, the Health Department may require the sampling schedule to return to a quarterly sampling schedule or more frequent.
- 6) The owner must perform such other monitoring and provide such other reports as the Health Department may require to ensure the protection of public health and water quality.

h. Well Construction and Design.

- 1) A California certified hydrogeologist shall oversee the drilling of the well and recording of the cuttings from the well drilling operation for the well log.
- 2) After reviewing the soils study and the well log, the hydrogeologist shall propose a well construction design to ensure the protection of groundwater quality from contaminant sources.
- 2) A hydrogeologist shall oversee the well seal and ensure that the seal meets the approved well construction design.

i. Water Softeners. No Self-Regenerating Water Softeners shall be used for treating water.

j. Plumbing Fixtures. Only Low Flow Plumbing Fixtures shall be used.

k. The permittee and future owners shall be subject to the requirements of the Onsite Wastewater Management Plan when it is implemented to the extent permitted by law. Any entitlements issued to permittee which allow individual sewage disposal systems prior to the adoption of the Onsite Wastewater Management Plan shall be conditioned to require permittee and all future owners to comply with the maintenance, monitoring, treatment, and other requirements set forth in this ordinance.

- l. The permittee and future owners shall recompense the County for any oversight, monitoring or enforcement action that is taken.
- m. Applicant will be required to demonstrate that the project will have less than significant direct impacts to surface and ground water resources. Such applications will be subject to environmental review under the California Environmental Quality Act.
- n. A project on the Pending Applications list (See Exhibit 2) may include subsequent applications for further permits such as a Combined Development Permit if necessary to complete the planning process, but all such further permit applications shall be subject to the standards herein.

SECTION 3. EXTENSION.

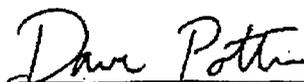
Based on all of the foregoing findings and declarations, the Board of Supervisors hereby extends Ordinance No. 5086, as amended by Section 2 above, except for its Section 11, until and through October 1, 2008.

SECTION 4. EFFECTIVE DATE.

Pursuant to the findings and declarations set forth in this ordinance and set forth in Interim Ordinance No. 5086 and incorporated by reference, the Board declares that this Ordinance is necessary for the protection of public health, safety, and welfare, and shall take effect immediately. This Ordinance shall be of no further force and effect upon its expiration pursuant to Section 3, unless extended pursuant to law.

PASSED AND ADOPTED this 13th day of November, 2007, by the following vote:

AYES: Supervisors Armenta, Calcagno, Salinas, Potter
 NOES: None
 ABSENT: Supervisor Smith



 DAVID POTTER
 Chair, Monterey County Board of Supervisors

ATTEST:

LEW C. BAUMAN
 Clerk of the Board of Supervisors

By 

 Annette D'Adamo, Interim Deputy

APPROVED AS TO FORM:

 LEROY W. BLANKENSHIP
 Assistant County Counsel