

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.D3.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



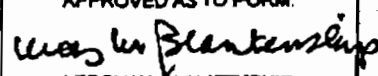
DAVID POTTER
Chair, Board of Supervisors

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