



California Regional Water Quality Control Board

Central Coast Region



Linda S. Adams
Secretary for
Environmental
Protection

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Arnold Schwarzenegger
Governor

May 7, 2007

Richard LeWarne
County of Monterey
Division of Environmental Health
1270 Natividad Road
Salinas, CA 93906

RE: 74 CORONA ROAD, CARMEL HIGHLANDS (APN 241-052-001-000, PLN050447/REYNOLDS); RESPONSE TO MONTEREY COUNTY REQUEST FOR CLARIFICATION

We received your March 23, 2007 letter requesting clarification of our March 7, 2007 letter and statements presented to you via e-mail on March 13, 2007, by John Bridges regarding a proposed septic system at 74 Corona Road in the Carmel Highlands. Your letter requests clarification of seven statements listed on page two of your letter. Clarification of each of your statements is provided below in order and referenced by number from your list:

1. We understand that the Kashfi project has already been approved by the Monterey County Health Department and that your original request for our clarification as to whether the proposed project was in conformance with our Basin Plan¹ was based on an appeal to the County Board of Supervisors by neighboring residents. Our response was a conditional affirmative response in that the proposed project was in conformance with the numeric Basin Plan prohibitions as would normally be applied to on-site wastewater disposal system applications, but that conformance with the noted Basin Plan narrative prohibitions² was in question regarding on-site system permitting in the Carmel Highlands as a whole. Although we seriously question whether permitting of the proposed Kashfi project is in conformance with the noted narrative prohibitions, additional study is needed to clarify this and to establish appropriate engineering and institutional controls as required to protect water quality and public health as a result of continued development in the Carmel Highlands via the use of on-site wastewater disposal systems. Consequently, our March 7, 2007, letter indicated that we did not support the continued permitting of on-site wastewater disposal systems in Carmel Highlands without an on-site wastewater management plan to address whether continued permitting would be in conformance with the noted narrative prohibitions. Our response was not a revocation of the County's permitting authority for this case and the County remains the primary permitting authority for this and other cases per the July 13, 1999, Memorandum of Understanding (MOU) between the Central Coast Water Board

¹ September 8, 1994, Water Quality Control Plan, Central Coast Region

² Paragraphs 17 and 18 of Basin Plan section VIII.D.3.i as follows:

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

and the County of Monterey until such time as the MOU is terminated or modified. In summary, our response was intended to direct the County to expand its level of permit oversight by implementing the Basin Plan recommendation for an on-site wastewater management plan to determine what level of engineering and institutional controls are required to sustain any additional development within the Carmel Highlands.

2. Your paraphrasing of Mr. Bridges' use of the term "enforcement action" appears to be taken out of context and is not appropriate in this case, as we intend to deal with this issue administratively in coordination with the County to facilitate our ongoing relationship and constructively address our concerns. As stated above the County is the primary oversight authority for on-site wastewater disposal systems per the MOU. The MOU requires the County issue on-site wastewater disposal system permits in accordance with the Basin Plan and applicable County ordinances and regulations. The County has established and routinely implemented ordinances and regulations that are consistent with, and in some cases exceed, the Basin Plan requirements, specifically with regard to the numeric requirements and prohibitions for on-site systems. However, it appears the County may not be considering whether the issuance of on-site system permits in the Carmel Highlands, or other areas, is in conformance with the Basin Plan narrative prohibitions. This point is exemplified by the fact that the County has not prepared an on-site wastewater management plan for Carmel Highlands and other areas within its jurisdiction. It is generally accepted that compliance with the numeric requirements and prohibitions contained within the Basin Plan result in compliance with the narrative prohibitions for divisions of land of at least one-acre. This is not the case for existing divisions of land of less than one-acre as is generally the case in the Carmel Highlands. In addition, the documented geologic shortcomings of the Carmel Highlands only increases the likelihood of noncompliance with the narrative prohibitions. If the County continues to disregard the narrative prohibitions, particularly as they relate to existing divisions of land of less than one-acre and/or areas identified in the Basin Plan as needing on-site wastewater management plans, we may be required to assert our own permitting authority for these areas until an on-site wastewater management plan has been prepared and approved.
3. Mr. Bridges' indicated to Matthew Keeling of our staff that the applicant's consultant was recommending enhanced treatment and asked whether this would address our concerns. At the time of our conversation with Mr. Bridges, we were not aware of the type or level of enhanced treatment being considered. Regardless, our response to Mr. Bridges was that although enhanced treatment was a step in the right direction, an area wide on-site wastewater management plan was required to determine whether, or what type of, enhanced treatment was appropriate to protect water quality and public health.
4. See 1 and 2 above.
5. Our position regarding your interpretation of the California Department of Water Resources (DWR) Bulletin 74-90 regarding setback distances of domestic water supply wells from on-site wastewater disposal system distribution boxes is based on commonly used and accepted terminology and the fact that the Basin Plan, DWR Bulletin, and Monterey County Code make no distinction between the various components of septic tank systems when establishing minimum setbacks from water supply wells. As used in the DWR Bulletin table outlining minimum horizontal separation distances, the term "sanitary sewer line (main or lateral)" commonly refers to portions of a publicly owned collection system tributary to a centralized wastewater treatment facility. The language

contained in part A of Monterey County Code section 15.20.040 – Required connection to public sewer³, is also consistent with this definition. The DWR Bulletin table makes no distinction between the various components of a septic system, most notably distribution boxes and conveyance lines, by way of establishing a 100-foot setback of wells from a "watertight septic tank or subsurface sewage disposal leaching field." It should be noted that the second paragraph of part A of Monterey County Code section 15.20.070 – Standards and specifications⁴, also collectively refers to the components of a "septic tank system, or part thereof" in establishing a minimum horizontal setback from domestic water supplies of 100 feet, and part T of section 15.20.010. – Definitions, defines "septic tank system" as "a wastewater disposal system, and means a septic tank with the effluent discharging into a subsurface disposal field." The County's definition is inclusive of the appurtenances between the septic tank and disposal field and would therefore include the conveyance lines and distribution box. Consequently, we feel the application of the 50-foot DWR setback criteria for sewer lines is not appropriately applied for any portion of a septic system, including distribution boxes, and again direct you to seek clarification from DWR regarding their well setback standards. We find it interesting that the County appears to be applying well setback requirements from septic tank systems that are not consistent with septic tank system setback requirements from wells.

6. Our comment regarding the validity of the 250 foot setback distance inferred by Russell Juncal under the context of "fractured conditions" was intended to clarify that merely establishing a de facto setback requirement of 250 feet for new on-site systems in Carmel Highlands would not address our concerns. Appropriate setbacks and other engineering and institutional controls need to be evaluated and established as part of the on-site wastewater management plan for Carmel Highlands as required to adequately protect water quality and public health.

7. See 3 and 6 above.

We are confident in the County's oversight of on-site wastewater disposal systems with the exception of not following the Basin Plan recommendation for the development of an on-site wastewater management plan for Carmel Highlands and Carmel Valley. At this time we will defer to the County to determine whether the proposed project is protective of water quality and public health, given existing site conditions and density of on-site systems and domestic water supply wells. In the absence of an on-site wastewater management plan the County's evaluation is limited to existing ordinances and regulations, and the best professional judgment of its staff.

However, as stated in our March 7, 2007 letter, we still do not support the County's issuance of any additional on-site wastewater disposal system permits within the Carmel Highlands area until a sufficiently detailed wastewater management plan is prepared that addresses the shortcomings of this area with regard to its capacity to handle any additional on-site wastewater disposal systems. Until such time as an on-site wastewater management plan has been

³ A. Except as provided in subdivision B of this Section, no person shall use or maintain any building or structure where people reside, congregate, or are employed which is within two hundred (200) feet of an approved sanitary sewer, or which is located on a parcel of land which abuts a road, street, or alley in which any such sewer has been installed, unless it is connected to such sewer.

⁴ A. No septic tank system, or part thereof, shall be located at any point having less than the minimum distances indicated in Tables A and B, unless for good cause, a variance therefrom is allowed by the Director.

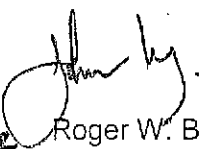
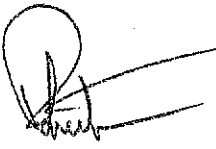
prepared and approved we will not consider any permit applications for on-site systems in Carmel Highlands referred to us by the County for Basin Plan exemptions and request that the County provide semiannual reports documenting failures of, and permitting activities relating to, onsite wastewater disposal systems in the Carmel Highlands.

Until an on-site wastewater management plan as been prepared and approved please submit semiannual reports to us **by August 1st and February 1st** documenting the number and type of on-site system failures (with a description of the implemented repairs and upgrades) and the number of permit applications received and the status thereof for the Carmel Highlands area. Each of the entries should contain site information including address, assessor's parcel number, and lot size, dates of failure occurrence and completed repairs, and dates of permit application and approval or denial. Please submit your first semiannual report to us by August 1, 2007, that contains all outstanding permits and permits issued since January 1, 2007, and a list of system failures dating back to January 2002.

In an effort to facilitate the County's timely development and implementation of a wastewater management plan please submit a proposed time schedule outlining the various milestones/tasks necessary to develop and implement a wastewater management plan. Please submit the time schedule with your August 1st semiannual report.

If you have questions regarding this matter, please contact **Matthew Keeling at (805) 549-3685** or mkeeling@waterboards.ca.gov, or John Robertson at 805-542-4630.

Sincerely,

For  
Roger W. Briggs
Executive Officer

Paper File: Monterey County Septic Systems
Electronic File: H:\Miscellaneous\74 Corona Rd 041007 resp.doc
Task Code: 12601

Attachment:

Monterey County March 23, 2007 letter re: 74 Corona Raod, Carmel Highlands, APN 241-052-001-000, PLN050447/Reynolds(Kashfi)

cc:

Russell Juncal
Ground Zero Analysis, Inc.
1714 Main Street
Escalon, CA 95320

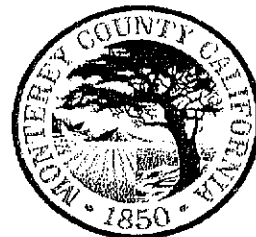
John Bridges
Fenton & Keller
2801 Monterey-Salinas Hwy
Monterey, CA 93940

Aaron Bierman
Weber, Hayes & Associates
120 Westgate Drive
Watsonville, CA 95076

Rick Kashfi
73 Spruce Way
Carmel, CA 93922

California Environmental Protection Agency

MONTEREY COUNTY



Public Health Department

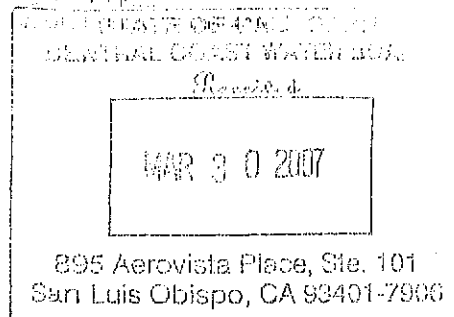
Public Health Department
Attn: Environmental Health
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March 23, 2007

Matthew Keeling
California Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401



Re: 74 Corona Road, Carmel Highlands
APN 241-052-001-000
PLN050447/Reynolds (Kashfi)

Dear Mr. Keeling:

We are writing for clarification from the Regional Board Staff regarding the above referenced Kashfi project that is currently under consideration by the Monterey County Board of Supervisors. Environmental Health staff have reviewed the March 7, 2007 letter from John Robertson for Roger Briggs, which was in response to my letter dated February 6, 2007. My letter described the parameters that our Department used in determining whether the well and the proposed onsite wastewater treatment system for the referenced lot are in conformance with the Central Coast Basin Plan.

The March 7, 2007 letter indicated that the proposed septic system was in conformance with the Basin Plan in regards to site specific setbacks based on site specific data that was collected. However, your agency did not feel that our existing level of oversight for the Carmel Highlands area was in conformance with the Basin Plan in regards to paragraphs 17 and 18 of Basin Plan section VII.D.3.i. due to lot sizes, densities, and geological conditions of the area.

The March 7th letter indicated that in the absence of an area wide evaluation that would be part of a wastewater management plan, Regional Board staff:

- 1) Did "not support the County's issuance of any additional onsite wastewater disposal system permits within the Carmel Highlands area";
- 2) Questioned "whether the establishment of a 250 foot setback for onsite wastewater disposal systems from domestic water supply wells would be sufficiently protective of water quality and public health".

Mr. Robertson's letter also indicated that Regional Board staff "believe" that the distribution box is part of the leachfield and not part of the sanitary sewer line.

Subsequent to the March 7, 2007 letter, Aaron Bierman, hydrogeologist for Mr. Kashfi, sent a letter to me proposing enhanced treatment (i.e. an intermittent sand filter) as a site-specific wastewater

management plan to address the concerns brought forth by the March 7th letter. Also, on March 13, 2007 John Bridges, legal representative of Mr. Kashfi, contacted you to seek clarification on certain issues regarding the March 7th letter.

Mr. Bridges' e-mail to me dated March 14, 2007 (attached), asserts that you provided clarification that has now created concerns over our original understanding of the intent of the March 7th letter. Our review of the March 7th letter has also generated additional questions and concerns regarding the intent of the letter.

In order that Monterey County clearly understands the position of the Regional Board staff, please confirm or correct the following statements as needed. Your input will greatly facilitate our efforts to be in compliance with the Basin Plan.

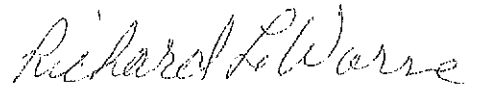
1. The March 7th letter was not intended to prevent the approval of the Kashfi project. *(Per John Bridge's March 14, 2007 e-mail)*
2. Regional Board staff do not intend to initiate any type of enforcement action against the County if the Kashfi project is approved. *(Per John Bridge's March 14, 2007 e-mail)*
3. You had indicated to Mr. Bridges that you liked the enhanced treatment proposed by Mr. Bierman, in his March 9, 2007 letter addressed to Richard LeWarne Monterey County Environmental Health Division, as a site specific onsite wastewater plan. *(Per John Bridge's March 14, 2007 e-mail)*
4. The Regional Board will not approve projects subsequent to the Kashfi project until a wastewater management plan for the Carmel Highlands area has been approved by the Regional Board.
5. What legal authority is the Regional Board's staff position rooted in regarding distribution boxes or is this in anticipation of amendments to the Basin Plan and/or the implementation of AB885?
6. The March 7, 2007 letter questioned whether a 250 foot setback for onsite wastewater treatment systems from domestic water supply wells would be sufficient to protect water quality and public health in the absence of an area evaluation of the Carmel Highlands area. What minimum setback distance would the Regional Board staff recommend for the Carmel Highlands area?
7. Would the same concerns about the 250 foot setback distance being sufficient to protect water quality and public health be applicable to the Kashfi well and the existing onsite wastewater treatment systems on the surrounding lots, even if Mr. Kashfi were to provide enhanced treatment to his own onsite wastewater treatment system?

The Regional Board's staff's concern whether a 250 foot setback is sufficient to protect water quality and public health in the Carmel Highland area raises certain California Environmental Quality Act issues that Monterey County will have to consider in further deliberations of the Kshfsi project.

Monterey County Health Department's primary concern and responsibility is to protect the environment as it affects public health. So we share your Board's concerns regarding the protection of water quality and public health. Regional Board staff's valuable input will help our Department in assisting the Monterey County Board of Supervisors in making policy decisions. The next hearing date for the Kashfi project is May 1, 2007 before the Board of Supervisors. It would be helpful if you would respond by April 6, 2007 so that we may review your response and prepare for the May 1, 2007 hearing date.

If you have any questions regarding this matter you may contact Mary Anne Dennis at (831) 755-4557 or dennism@co.monterey.ca.us or Richard LeWarne at (831) 755-4544 or lewarner@co.monterey.ca.us.

Sincerely,

A handwritten signature in cursive script that reads "Richard LeWarne".

Richard LeWarne, R.E.H.S.
Assistant Director
Environmental Health Division
Monterey County Health Department

cc: Allen Stroh, Director of Environmental Health
Mary Anne Dennis, Supervisor Environmental Health Review
Carl Holm, Planning Department
Liz Gonzales, Planning Department
Russel Juncal
John Bridges

Stroh, Allen J. x4539

From: John Bridges [jbridges@fentonkeller.com]
Sent: Wednesday, March 14, 2007 11:44 AM
To: LeWarne, Richard x4544
Cc: Aaron Bierman; Rick Kashfi
Subject: Kashfi project - RWQCB letter

Richard: I spoke with Matthew Keeling yesterday regarding his 3-7-07 letter to you about the Kashfi project. Specifically, I asked him if his use of the term "additional" in the last full paragraph of pg. 4 of the letter meant that Kashfi could proceed (since his permit had already been reviewed and approved by the staff and the ZA -albeit presently on appeal to the Board).

Keeling said that would be a fair interpretation of his intent and that it was really up to the County to decide in terms of the Kashfi project. He indicated that he would not object to a County approval of the Kashfi project nor would such an approval trigger any kind of action by the RWQCB against the County's current authority to review such matters.

What he seems most interested in seeing is a County response, "prospectively," to address the broader issues raised in his letter about the "area" as a whole. He then again confirmed to me that his letter was not intended as any kind of enforcement action regarding the Kashfi project.

I also broached with him the extra treatment Aaron Bierman suggested (in his 3-9-07 letter to you) for the Kashfi septic system and he liked that idea.

Keeling suggested that I invite you to call him directly to ask the same question I did, namely, is the Kashfi project specifically a concern or can it go forward. The distinct impression I got from Mr. Keeling was that Kashfi could proceed (because his project meets all the requirements) and that they really just want the County to move forward affirmatively "after" Kashfi to address the broader picture issue. Keeling does not think that Kashfi needs to be denied and he seemed sympathetic to the fact that Kashfi has been in process and fully cooperating for over 2 years.

I am confident you will get the same impression when you speak with Keeling and I encourage you to call him. Then perhaps, with the additional treatment Aaron Bierman has proposed, you will be able to stand by your 2-6-07 opinion and continue to recommend that Kashfi be approved. We look forward to meeting with you soon to discuss all of this.

JOHN

John S. Bridges, Esq.
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3/26/2007

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