

**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 of 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.

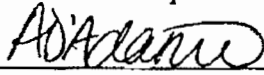
**PASSED AND ADOPTED** this 13<sup>th</sup> day of November, 2007, by the following vote:

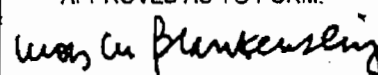
AYES: Supervisors Armenta, Calcagno, Salinas, Potter  
 NOES: None  
 ABSENT: Supervisor Smith

  
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 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