Revised
Attachment B
Draft Board Resolution
PLN110366

PLN110366/PLN110367
Mozingo (Powell)

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

Resolution No.
Resolution by the Monterey County Board of Supervisors:)
a. Denying the appeal by Glen R. Mozingo from the)
Zoning Administrator's approval of an application by)
the Estate of William Dan Powell for an amendment to)
a Coastal Administrative Permit (PLN110366/Powell))
to allow the development of a test well and authorize)
the construction and use of the well for testing to)
establish a water source in a new location from the)
location that was previously approved; and)
b. Approving the amendment to a Coastal Administrative)
Permit (PLN110366/Powell) to allow the development)
of a test well and authorize the construction and use of)
the well for testing to establish a water source.)
(Appeal of an Amendment to a Coastal Administrative)
Permit – PLN110366/ Powell 3072 Serra Avenue, Carmel,)
Carmel Area Land Use Plan))

An appeal by Glen R. Mozingo from the Zoning Administrator approval of the Powell application PLN110366 came on for public hearing before the Monterey County Board of Supervisors on October 23, 2012, January 15, 2013 and February 26, 2013. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Monterey County Board of Supervisors hereby finds and decides as follows:

FINDINGS AND EVIDENCE

1. **FINDING:** **PROCESS** – The subject amendment to the Coastal Administrative Permit (PLN110366/Powell) complies with all procedural requirements.

EVIDENCE:

a) On June 11, 2008, the Director of Planning approved PLN070074 for a Coastal Administrative Permit to allow the development of a test well (authorizing the construction and use of the well for testing to establish a water source) in Resolution 070074.

b) On January 19, 2012, the Estate of William Dan Powell ("Applicant") applied for an amendment (PLN110366) to a previously approved Coastal Administrative Permit (PLN070074) to allow the development of a test well and authorize the construction and use of the well for testing to establish a water source in a new location from the location that was previously approved.

c) The Director of Planning is the Appropriate Authority to consider Coastal Administrative Permits, unless the matter is referred to public hearing. The Appellant requested a public hearing; therefore, the Amendment to the Coastal Administrative Permit was referred to the Zoning Administrator.

d) On August 9, 2012, the Zoning Administrator approved the amendment to the Coastal Administrative Permit for the test well.

e) On September 4, 2012, Glen R. Mozingo ("Appellant") filed a timely appeal from the Zoning Administrator's approval of the amendment to the Coastal Administrative Permit (PLN110366).

f) Public notices for the appeal hearing on October 23, 2012 were mailed on October 12, 2012, posted three different public places in the project vicinity by Planning Department staff on October 12, 2012, and published in *The Herald* on October 12, 2012, pursuant to Monterey County Code Chapter 20.84.

g) The Board of Supervisors continued the public hearing from October 23, 2012 to January 15, 2013 at the request of the Applicant and with the concurrence of the Appellant.

h) The Board of Supervisors continued the public hearing from January 15, 2013 to February 26, 2013 at the request of the Appellant and with the concurrence of the Applicant.

i) The Board of Supervisors conducted a public hearing on the appeal on February 26, 2013.

j) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN110366.

2. **FINDING:** **CONSISTENCY** - The Project, as conditioned, is consistent with the applicable plans and policies which designate this area as appropriate for development.

EVIDENCE: a) During the course of review of this application, the project has been reviewed for consistency with the text, policies, and regulations in:
- The 1982 Monterey County General Plan;
- The Carmel Area Land Use Plan (LUP);
- Monterey County Coastal Implementation Plan Part 4 (CIP); and
- Monterey County Zoning Ordinance (Title 20).

No conflicts were found to exist. No communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and regulations in these documents.

b) The property is located at 3072 Serra Avenue Carmel, (Assessor's Parcel Number 009-081-027-000), located at the intersection of Serra Avenue and Camino Del Monte, Carmel Area, Coastal Zone. The parcel is zoned Medium Density Residential, 2 units per acre in the Coastal Zone ["MDR/2 D (CZ)"] which allows a density of two residential units per acre. The project is located in the Coastal Zone, which allows for residential uses and the creation of wells subject to a Coastal Administrative Permit in each case. Therefore, the project is an allowed land use for this site.

c) Pursuant to Monterey County Code Section 20.12.040.G, the project does not cause impacts not already assessed in original permit action. As approved and amended, permit number, PLN110366 will become and be referred to as the approved permit.

d) The project is consistent with the applicable policies in the Carmel Area Land Use Plan (LUP) regarding Water Resources. LUP Policy 2.4.4.A.1 requires new development to demonstrate that adequate water is available. The test well yielded a capacity of approximately

29.51 gallons per minute, which exceeds the Monterey Peninsula Water Management District's (MPWMD) calculated maximum day demand of 1.23 gallons per minute (gpm) thereby meeting MPWMD requirements for obtaining a water distribution system permit. The post-recovery sustainable pumping rate of 7.14 gpm documented in the well assessment report exceeds the Monterey County Health Department's (MCHD) maximum day demand of 3 gpm, thereby exceeding MCHD requirements for obtaining a single-connection water system permit.

e) Regulations set forth in California Well Bulletins 74-81 and 74-90 and Monterey County Code (MCC) Chapter 15.08 (Well Ordinance) establish setback distances from potential contaminating sources such as sewer and wastewater pipes. At the time the well was constructed in February of 2009, County regulations did not require an owner to obtain permission from the adjacent property owner for a setback from a well to cross property lines.

f) On May 25, 2010, the Board of Supervisors adopted Interim Ordinance No. 5160, which recognized that the required setbacks from wells drilled on small lots may impact neighboring lots and that further study of the issue was needed. The Interim Ordinance No. 5160 did not establish any regulations related to well setbacks and has since expired.

g) In January of 2009, the Environmental Health Bureau (EHB) conducted a site inspection to consider the new location based upon interference from large oak trees near the original well site. The new well site being considered was 50-feet from the original site, north towards Serra Avenue and 14.5-feet away from the neighboring property. The approved well site was originally to be located within a proposed driveway for the proposed Powell residence. The well was altered due to two factors: 1) the well was located in an area near existing trees, not permitted for removal, which could interfere with the driller accessing the area where the well was to be drilled; and 2) the EHB agreed that the locating the well in the driveway in a vault was not preferable. EHB staff allowed the well to be relocated approximately 50 feet north from the originally approved well site, as it met the County's standards set forth in Chapter 15.08; however, the Applicant did not obtain an amendment to the Coastal Administrative Permit to move the location of the well, thus necessitating this amendment.

h) The new well site is 14.5 feet away from the neighbor's (Mozingo) property line adjacent to Serra Avenue. The new location created a radius that would extend 10.5 feet into the adjacent property over a portion of the driveway of the Mozingo property. Upon reviewing setback requirements established under the zoning, the County has determined that the radius would only affect approximately 55 square feet of developable area, less than 1% of the Mozingo property. The impact is not a significant impact and does not substantially burden the neighbor's use of his property. Additionally, Monterey County Code section 18.02.040.F gives the local Building Official discretion to grant modifications to the California Plumbing Code for individual

cases if certain findings can be made. In the case of the Appellant's property, if the Appellant needed to place a sewer line on his property within 25 feet of the Powell well, he could apply to the Building Official for a modification of the 25-foot requirement. Provided that certain findings could be made, the Building Official could approve the modification, in which case the Powell well would have no effect at all on Appellant's use of his property. See response to Appellant's Contentions 4A and 4B.

i) The property is located within a Design Control district zoning overlay. No design approval was required for this project because the entitlement does not allow the development of any new structures.

j) The project planner conducted a site inspection in January of 2012 and October of 2012 to verify that the project on the subject parcel conforms to the plans listed above.

k) Water system facilities, including wells and storage tanks, are allowed pursuant to Title 20 (Section 20.12.040) and Title 15.04 of the Monterey County Code. The County requires water source wells to demonstrate water quality and source capacity over a 72 hour period when located in fractured rock. The Environmental Health Bureau reviewed the well completion report and has approved the well for domestic use.

l) The project was not referred to the Carmel Unincorporated/Highlands Land Use Advisory Committee (LUAC) for review. Based on the LUAC Procedure guidelines adopted by the Monterey County Board of Supervisors per Resolution No. 08-338, this application did not warrant referral to the LUAC because the project did not include a lot line adjustment, variance, or a Design Approval and was exempt from environmental review.

m) All applicable conditions of approval from PLN070074 have been carried forward to permit PLN110366. The following conditions have been previously cleared or are no longer required:

No.	Description	Status	Date Cleared
3	PD002-Permit Approval Notice	Cleared	7/21/2008
4	PD003(A)-Cultural Resources	No longer required	Drilling completed
5	PDSP001-Drilling Spoil Containment	No longer required	Drilling completed
6	PDSP002-Drainage Plan	No longer required	Drilling completed
7	PD033-Restoration of Natural Materials	No longer required	Drilling site revegetated
9	SPW0001-Encroachment	No longer required	Drilling completed
10	PD011-Tree and Root Protection	No longer required	Drilling completed

No.	Description	Status	Date Cleared
11	EH8-Well Construction permit	Previously complied with	Drilling completed
12	EH9-New Well Pump Test	Previously complied with	Drilling completed

n) The following new conditions of approval have been incorporated into the attached Conditions of Approval:

New Condition # PLN110366	Old Condition # PLN070074	Description
1	1	Specific Uses Only
2	3	Permit Approval Notice
3	2	Indemnification Agreement
4	8	Well Report

o) New Conditions of Approval are attached to this resolution.

p) The application, project plans, and related support materials submitted by the project applicant to the Monterey County Resource Management Agency - Planning Department for the proposed amendment found in project files PLN110366 and PLN070074.

3. **FINDING:** **HEALTH AND SAFETY** - The establishment, maintenance, or operation of the project applied for will not under the circumstances of this particular case be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.

EVIDENCE:

a) The project was reviewed by the RMA - Planning Department, Environmental Health Bureau, and Water Resources Agency. The respective agencies have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood.

b) Necessary public facilities are available; however because no new connection for water to can be provided from Cal Am, the property owner has been allowed to develop a ground water source to serve the property. A sewer connection is available and any new residential development shall be required to establish service through the sewer district.

c) The test well was developed to determine if an adequate water supply is available to serve future potential development of the parcel. A pumping impact assessment report was prepared for the project. Environmental Health Bureau reviewed the report and approved the test well for domestic use on the subject property.

d) The report prepared by the consultant Bierman Hydrogeologic Company indicated that the well is within 1,000 feet of the Chopin well PLN080017 which is 868 feet away. The report analyzed the Powell well to determine drawdown impact to surrounding wells. It was determined that the Powell and Chopin wells are not hydrogeologically linked. Additionally, the report concluded that there were no offsite impacts and that the use, as proposed, will not adversely affect the natural supply of water necessary to maintain the environment and the supply available to meet the minimum needs of existing users during the driest years.

e) The well meets the County regulations regarding site development standards, setback requirements from contaminant sources, Title 15.08 of the Monterey County Code, and the California Uniform Plumbing Code.

f) On April 22, 2002, the former owner applied for the development of a single family residence on the property. The application was deemed incomplete on May 22, 2002 due to the unavailability of water and placed on a water waiting list. The application, PLN000109, designated a building site for the property. The single family residence is reasonably foreseeable use of the property, but would be subject to the approval of a discretionary permit and associated environmental review if the current applicant decides to pursue that application.

g) At the time of the source capacity test for the Powell well, there was one production well within 1,000, feet of the subject project. The Well Assessment Report prepared for the project concluded that the subject well will have an insignificant and immeasurable impact on the surrounding well or sensitive receptors.

h) Finding 2 and the associated evidence in conjunction with the material in the Planning File PLN110366, support the conclusion that the allowing the existing test well to remain in the location where drilled will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood.

i) Staff conducted a site inspection in January of 2012 and October of 2012 to verify that the site is suitable for this use.

j) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN110366.

4. **FINDING:** **CEQA (Exempt) -** The project is categorically exempt from environmental review and no unusual circumstances were identified to exist for the proposed project.

EVIDENCE:

a) California Environmental Quality Act (CEQA) Guidelines Section 15304 categorically exempts minor alteration to land, water, and or vegetation.

b) The County previously approved the creation of a test well to determine if a domestic water source could be created for the Powell property. The well meets County regulations regarding site development standards, setback requirements from contaminant

sources pursuant to Monterey County Code Chapters 15.04 and 15.08 (Well Ordinance) and California Well Standards Bulletins 74-81 and 74-90 requirements regarding setbacks, source capacity and water quality testing. The Monterey County Environmental Health Bureau reviewed a report prepared for the project confirming that the well would not have a significant cumulative drawdown impacts on any neighboring wells within or out to 1,000 feet from the pumping well.

c) No adverse environmental effects were identified during staff review of the development application during a site visit in January of 2012 and October of 2012.

d) None of the exceptions under CEQA Guidelines Section 15300.2 applies to this project. The project is located in a residential zoning district which allows residential development and the development of a water source wells. The project is not located near a Scenic Highway, Hazardous Waste Sites, nor will it affect any Historical Resources. See County's Response No. 5 in Finding 5.

e) The Well Assessment Report (LIB120164) prepared for the project concluded that the subject well will individually have no direct or significant cumulative offsite impacts to neighboring wells.

f) Findings 2 and 3 and associated evidence, in conjunction with the material in the Planning File PLN110366, support the conclusion that the establishment of the existing test well as a permanent water source well does not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood.

g) Staff conducted a site inspection in January of 2012 and October of 2012 to verify that the site is suitable for this use.

h) This amendment will result in no construction impacts because it authorizes a well that has already been drilled.

i) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project Files PLN110366 and PLN070074.

5. **FINDING:** **NO VIOLATIONS** - The subject property is in not compliance with all rules and regulations pertaining to the County's zoning ordinance. Violations exist on the property. The approval of this permit will correct the violations and bring the property into compliance.

EVIDENCE:

a) EHB staff allowed the well to be relocated approximately 50 feet north from the originally approved well site, as it met the County's standards set forth in Chapter 15.08; however, the Applicant did not obtain an amendment to the Coastal Administrative Permit to move the location of the well, thus creating a violation of the Coastal Administrative Permit.

b) The proposed project corrects an existing violation regarding the relocation of the well. The amendment to the Coastal Administrative Permit will bring the subject property into compliance with all rules and regulations pertaining to the property and will remove the existing violations.

c) There are no other known violations on the subject parcel.

d) The application, plans and supporting materials submitted by the

project applicant to the Monterey County Planning Department for the proposed development are found in Project File PLN110366.

6. **FINDING:** **APPEAL** – The appellant contends that findings or decision or conditions are not supported by the evidence and that the decision by the Zoning Administrator to approve the Coastal Administrative Permit on August 9, 2012 was contrary to law. The Board finds that the Appellant's contentions are without merit for the reasons set out below.

EVIDENCE: ***Appellant's Contention No. 1: The Owner of the Property on Which Well is Located is a New Owner.***

The entity which is presently seeking the Amendment under PLN110366, the Estate of William Dan Powell (hereinafter referred to as "New Owner") is not the same Applicant who obtained the original permit PLN070074, William Dan Powell, deceased (hereinafter referred to as "Prior Owner"). Additionally, the New Owner who is presently seeking under PLN110367 the conversion of test well to a domestic production well is not the same Applicant who obtained the original permit PLN070074, William Dan Powell, the Prior Owner.

County's Response No. 1:

The Coastal Administrative Permit for the test well, PLN070074, was approved by the Director of Planning on June 11, 2008 (**Attachment E** of the February 26, 2013 staff report) and not appealed. The owner at that time was the William Powell Trust with William David Powell as the Trustee. That owner is now deceased. The next owner was the Estate of William Powell with Holly R. Bruce as the Successor Trustee. Holly R. Bruce transferred ownership of the property to William Dan Powell on April 21, 2011. William Dan Powell is now deceased, and the current owner is the Estate of William Dan Powell. Nonetheless, discretionary permits issued by the County of Monterey run with the property upon which they are issued—not with the particular owner. Therefore, the new owner of the property may apply for an amendment to the permit.

Appellant's Contention No. 2: Knowledge of Prior Owner of Need to Obtain New Permit.

At the time the Prior Owner began to drill the test well in its present location, the adjacent property owner expressed to the Prior Owner his concerns that the test well was being drilled in an unauthorized location. At that time, the adjacent property owner was directly advised by the Prior Owner that the Prior Owner was aware of the necessity to obtain a permit for this new location, but that he had an "inside guy" at the Planning Department, did not care about the requirement for a new permit, and would not be seeking the same since his "inside guy" at the Planning Department would take care of any issues that arose. Additionally, approximately three years ago, the Monterey County Board of Supervisors denied a request by the Prior Owner to authorize the relocation of the well based, in part, on

the fact that no application to amend the authorized permit had ever been filed. The Monterey County Board of Supervisors prohibited the Prior Owner from proceeding with the development of the well. The Prior Owner was, therefore, placed on both constructive and actual notice that he could not proceed unless he complied with the conditions of the permit he obtained which required him to locate the well fifty (50) feet from where Mr. Powell (deceased) chose to place the well.

County's Response No. 2:
The Appellant's assertions about Mr. Powell's statements and motivations are not corroborated by staff's research. The Appellant's assertions contradict Planning and Environmental Health staff's recollection of events. Mr. Powell is now deceased, and therefore, Appellant's recollection about their conversations cannot be confirmed.

Staff research indicates the following sequence of events. In 2008, after the approval of the Coastal Administrative Permit for the test well, William (David) Powell came to the County Planning Department counter and spoke to the project planner about moving the well location. The project planner directed Mr. Powell to speak with Environmental Health staff about the possibility of moving the well location, but did not give Mr. Powell permission to move the well site. Environmental Health staff made a site visit to the property in September 2008, made notes on a site plan, and approved the relocation of the well based upon the criteria of whether the well met the required setbacks from existing sanitary sewer lines. (See handwritten notes on map; see also applicant submission to EHB, attached as **Attachment L** of the February 26, 2013 staff report) The change in the location of the well did not require an amendment to the well permit issued by Environmental Health. Although the new well location was authorized by Environmental Health, the new well location was not authorized by the original Coastal Administrative Permit which approved a different well location. Therefore, to cure the violation of the Coastal Administrative Permit and allow the test well to remain in the location where drilled, an amendment to the Coastal Administrative Permit for the test well was necessary. The Applicant applied for an amendment to the Coastal Administrative Permit on January 19, 2012.

Moving to Appellant's next contention, the Appellant contends that, approximately three years ago, the Monterey County Board of Supervisors denied a request by the Prior Owner to authorize the relocation of the well based, in part, on the fact that no application to amend the authorized permit had ever been filed. This contention has no merit, as the Board took no prior action on a request for relocation of the well. The Board of Supervisors took no action on either of these applications or the previous application (PLN070074) three years ago. If the Appellant is referring to the Board of Supervisor's

action on the adoption of the Interim Urgency Ordinance No. 5160 on May 25, 2010, as subsequently modified and extended by Interim Ordinance Nos. 5163 and 5176, legislative action is not the same as action on a discretionary permit.

Additionally, the Appellant contends that the Monterey County Board of Supervisors prohibited the Prior Owner from proceeding with the development of the well. Contrary to the contention, the Board of Supervisors adopted Ordinance No. 5163 on June 29, 2010, an interim ordinance extending the Interim Urgency Ordinance No. 5160, which temporarily prohibited the acceptance and processing of water well applications within a portion of the California American Water Company-Monterey District Main System Service Area (**Attachment G** of the February 26, 2013 staff report). Section 2 of Ordinance No. 5163 revised subsection C of Section 5 (Exemptions) of the Interim Ordinance No. 5160 as follows:

> C. This ordinance does not apply to applicants who have constructed an authorized test well or received a discretionary development entitlement to construct a test well on a parcel in the unincorporated area of the County within the Coastal Zone prior to May 25, 2010, and the County is not prohibited from accepting and processing applications for a discretionary development entitlement to convert such test wells to production wells, provided that the test well was authorized prior to May 25, 2010 or constructed prior to May 25, 2010 in accordance with the terms of any permits issued by the County of Monterey. If a test well was constructed prior to May 25, 2010 not in accordance with the terms of any County discretionary development entitlements, the County is permitted to take such steps as may be necessary or appropriate to enforce the terms of such permits, including but not limited to the processing and issuance of such discretionary development entitlements and/or ministerial permits as may be needed. (emphasis added)

The Powell test well permit (Permit No. 06-10966) was issued by the Environmental Health Bureau on August 12, 2008. The test well was completed on February 5, 2009. Per the ordinance language quoted above, if a test well, constructed prior to May 25, 2010, was not in accordance with the terms of any County discretionary development entitlements, the County was permitted to process and issue such discretionary development entitlements and/or ministerial permits as may be needed, notwithstanding any other restrictions on processing established by the interim ordinance. The amendment to the Coastal Administrative Permit comes within that exception. The amendment for the test well, if approved, cures any violation of the Coastal Administrative Permit by authorizing the location of the well where it was drilled. Therefore, per the section quoted above, Interim Ordinance No. 5163 did not prohibit the Applicant from applying for the amendment to the Coastal Administrative Permit for the test well

nor did it preclude the County from processing the application. In any event, the Interim Ordinance is not relevant to the current applications because Interim Urgency Ordinance No. 5160, as modified and extended by Interim Ordinance No. 5163 and Interim Ordinance No. 5176, expired on May 24, 2012.

Appellant's Contention No. 3: The Action Being Requested is Not an Amendment to a Preexisting Permit but a Request for a New Permit by a New Property Owner.

At the hearing before the Zoning Administrator, this Application was characterized by the New Owner as "an amendment to a preexisting permit," when, in fact, it is an application by the New-Owner for a new permit. The original approved permit did not authorize the location of the well in its present location. The Prior Owner was aware of this fact and aware that a new permit was required for the present location, which is approximately fifty (50) feet away from the authorized location. The County Staff has affirmed that no previous Application for Amendment was prepared or received for this property or for PLN070074 under Item 2(d) of Exhibit C of the "Draft Resolution," despite the fact that a New Application was admittedly required. The Monterey County Board of Supervisors ruled approximately three years ago that the prior application may not be amended and that a new permit application is necessary based upon the fact that no application to amend had ever been submitted and the Prior Owner was prohibited from proceeding with the well development due to his failure to comply with the conditions of the authorized County permit to drill a test well.

County's Response No. 3:

The County acknowledges that the Coastal Administrative Permit for the test well did not authorize the location of the well where it was drilled. The amendment to the Coastal Administrative Permit for the test well, PLN110366, is necessary to authorize the location where the well was drilled. It is, in essence, a new permit. Whether it is called a new permit or an amendment to the permit does not make a material difference. Amendments to Coastal Administrative Permits are discretionary actions.

The Director of Planning is the Appropriate Authority to consider Coastal Administrative Permits, unless the matter is referred to public hearing. The original permit, PLN070074, was approved by the Director of Planning. Monterey County Code section 20.76.115.A states that if, in the opinion of the Appropriate Authority, the amendment is of a minor or trivial nature, with no impacts not already assessed in the original permit action, and generally in keeping with the action of the Appropriate Authority, the amendment may be approved by the Appropriate Authority. Because the Appellant requested a public hearing, the Amendment was referred to the Zoning Administrator. The Zoning Administrator conducted a noticed public hearing and approved the Amendment (PLN110366)

on August 9, 2012. In regard to Appellant's contention regarding action the Board of Supervisors allegedly took three years ago, see County's Response to Contention No. 2 above.

Appellant's Contention No. 4A: The Actions by the Monterey Zoning Administrator are Contrary to Law and Should be Overturned. The Decision of the Monterey County Zoning Administrator is Contrary to and in Violation of the Fifth Amendment of the Constitution of the United States and Fourteenth Amendment of the California Constitution, California State Law, and the Environmental Health Bureau's "May 21, 2012 Interim Guidelines for Well Permits and Processing of Well Permits.

Appellant's Contention No. 4B: The Actions by the Monterey Zoning Administrator are Contrary to Law and Should be Overturned. The Decision of the Monterey County Zoning Administrator Permits a Wrongful Taking of Property by an Adjacent Property Owner and Creates a Claim of Prescriptive Easement Upon the Property of the Adjacent Property Owner Based on Adverse Possession.

Appellant alleges that the request by the New Owner asks the County to violate County ordinances for setbacks, allow the unlawful taking of another's property contrary to the United States and California Constitutions and statutory laws of this state, and to violate the requirements of the permit process for issuance of a new permit which require notice to all interested parties and an opportunity to object. Due to the overlap in the contentions in 4A and 4B, responses below are organized by the various issues raised by appellant.

County's Response Nos. 4A and 4B:

1. Takings

Appellant contends that approval of the amendment to the CAP and approval of the CAP permits an unlawful taking of property, in violation of the Fifth Amendment of United States Constitution and the 14th Amendment of the California State Constitution. The appeal alleges that the Zoning Administrator's decision allowing the well to remain in its present location violates the "Article 5" of the United States Constitution, as recognized by the 14th amendment. (Appeal, page 11 of August 31 letter attachment.) Article 5 of the United States Constitution governs amendments to the United States Constitution and has no relation to the appeal before the Board of Supervisors. We presume the Appellant was referring to the Fifth Amendment to the United States Constitution, referenced elsewhere in the appeal.

The Fifth Amendment, made applicable to the states through the 14th

Amendment, provides that private property "shall not be taken for public use, without just compensation." Section 19 or Article I of the California Constitution also prohibits the taking or damage of private property without just compensation. While the appeal does not specifically articulate the basis of Appellant's takings assertion, his contention appears to rest on the argument that the 25-foot well setback requirement encroaches on to the Appellant's property. Our conclusion, having evaluated the law and facts, is that allowing the well to remain in the present location, where drilled, does not result in an unconstitutional taking of the Appellant's property.

The well setback is mandated by the California Plumbing Code for reasons of public health and safety. The required setback radius between water wells and building sewers is typically 50 feet. However, Table 7-7 in the 2010 California Plumbing Code sets the minimum horizontal distance for water supply wells from building sewers to be not less than 25 feet when the drainage piping is constructed of materials approved for use within a building. Regulations set forth in California Well Bulletins 74-81 and 74-90 and Monterey County Code (MCC) Chapter 15.08 (Well Ordinance) establish setback distances from potential contaminating sources such as sewer and wastewater pipes. The well setback requirement serves an important public health and safety purpose. Maintaining a setback provides distance between the well, a conduit to the groundwater supply, and the potential source of contamination in the event of a leak or pipe break. There are no sewer laterals or wastewater lines within 25 feet of the Powell well.

Modification of the minimum distance between a well and sewer line is allowed under the California Well Standards Bulletin 74-90. When, at the approval of the enforcing agency, a water well is to be located closer to a source of pollution or contamination than allowed by the California Well Standards Bulletin 74-90, the annular space shall be sealed from ground surface to the first impervious stratum, if possible. The annular seal for all such wells shall extend to a minimum depth of 50 feet. The Powell well is sealed to a depth of 105 feet. Therefore, the relocated Powell well meets these setback requirements (**Attachment R** of the February 26, 2013 staff report).

The local Building Official also has authority to reduce 25-foot well setback required by the California Plumbing Code on a case by case basis if certain findings can be made. Pursuant to California Plumbing Code sections 1.8.7.1 and 1.8.7.2, the local building department may, on a case-by-case basis, approve alternate materials, designs, tests, or methods of construction for single family dwellings except for structures located in mobilehome parks, structures located in special occupancy parks and factory-built housing. This authority to modify certain standards is also reflected in and provided by Monterey County Code section 18.02.040.F, which states that "[w]herever there are practical difficulties involved in carrying out

the provisions of this Chapter [the Chapter includes and incorporates by reference the California Plumbing Code], the Building Official shall have the authority to grant modifications for individual cases, upon application of the owner or owner's representative, provided the Building Official shall first find that (1) special individual reasons makes the strict application of this Chapter impractical; (2) the modification is in compliance with the intent and purpose of this Chapter; and (3) that such modifications do not lessen health, accessibility, life and fire safety, or structural requirements."

The Appellant does not contend or demonstrate that approval of the well at its current site results in a physical invasion of appellant's property or deprives the Appellant of all economically viable use of his property. The well is on Powell's property, not the Appellant's. Thus, the decision results in no physical invasion. Accordingly, the appropriate standard to evaluate the takings claim is the standard for regulatory takings set forth in Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978). Penn Central requires "ad hoc, factual inquiries" into several factors, including "the economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment backed expectations," and the character of the governmental action. (Id. at 124; see also Lingle v. Chevron U.S.A., Inc., 544 U.S. 528, 538-39 (2005); Herzberg v. County of Plumas, 133 Cal App. 4th 1 (2005).)

An examination of the particular facts and evidence in this case shows that the well setback does not effect a takings. The well setback does not significantly impact or substantially burden Appellant's use of his property and does not deprive the Appellant of economically viable use of his property. The Appellant already has a house on his property with which the well setback does not physically interfere. The 25-foot radius from the well where drilled extends approximately 10.5 feet onto the Appellant's property. The 25 foot radius has been measured from the center of the well casing (10.75 inches in diameter). In consultation with Environmental Health staff, the 25-foot radius should be measured from the outside of the well casing—adding an additional 5.375 inches to the measurement. (The Environmental Health Bureau would not take a measurement from the vault walls if the well were placed in a vault.) Measuring from the outside of the well casing, the well setback extends approximately 10.5 feet onto the Appellant's property. The total area affecting the Appellant's property is an estimated 250 square feet with the majority of that area within the front and side setbacks. The setbacks are required by site development standards in the Monterey County Coastal Zoning Ordinance (Title 20). Section 20.12.060 requires main structures to maintain a setback of 20 feet from the front property line, 5 feet from the side property line, and 10 feet from the rear property line. Further, non-habitable accessory structures, such as garages, are required to maintain a front setback of 50 feet or behind the main structure, whichever is less, 6 feet on front one-half

of property and 1 foot on rear one-half of property from the side property line, and 1 foot from the rear property line. The amount of the well setback that extends on to a usable area of Appellant's property, beyond the front, side and rear setbacks, is an estimated 55 square feet, a small area (less than 1%) relative to his whole property (**Attachment K** of the February 26, 2013 staff report). In other words, the amount of the well setback that is within the portion of the Appellant's property that could be developed is 55 square feet; at most, the well setback affects less than 1% of the Appellant's property. The Appellant's property is already developed with a single family residence and a garage on the rear of the property, on the other side of the property from the well setback (**Attachment J** of the February 26, 2013 staff report). The single family dwelling is located approximately 40 feet from the front property line and the garage is more than 80 feet from the front property line. The well setback does not have any effect on the single family home or the garage. The 55 square foot area is currently the Appellant's driveway. The setback does not require any change in the use of this area as a driveway. The location of the well setback also does not substantially restrict the future development of Appellant's property, as there is ample room for expansion of the single family residence not in the 55 square foot area. Even if a structure were to be built in that area, the only restriction would be that indoor plumbing fixtures could not be placed within that 55 square foot area. If the Appellant were to move the garage area forward, sewer laterals would not necessarily be an issue because garage typically lack bathrooms. However, if wastewater lines were to be installed in the garage, the sewer laterals would run toward the rear of the property, opposite the well site, toward the location of the sewer main in the easement at the rear of the property (**Attachment H** of the February 26, 2013 staff report).

The Appellant has provided no evidence that the well setback actually impacts the use of his property or diminishes the value of his property. A diminution in property value due to the well setback would not necessarily result in a taking, and in this case, the Appellant has supplied no evidence of a loss of use or value resulting from Powell's well. The facts show that the well setback serves an important public health purpose of preventing groundwater contamination, imposes limited restrictions on less than 1% of the Appellant's property, and does not deprive the Appellant of economically viable use of his property. The Appellant has also made no application to develop within the 55 foot area. His concern that the well setback might burden a future use, for which he has not applied, is not proof of a substantial burden on or deprivation of use of his property. Without an application by Appellant (or subsequent owner of that property) to develop within the setback area, it is premature to conclude that any deprivation would occur. In fact, the Powell well may result in no impact on Appellant's property. If Appellant desired to place a sewer lateral within the 25 foot setback

area, the Appellant could apply to the County Building Official for a modification of the Plumbing Code's 25-foot requirement. As explained above, the County Building Official has the discretion to grant modifications to the California Plumbing Code well setback requirement in individual cases provided that "(1) special individual reasons makes the strict application of this Chapter impractical; (2) the modification is in compliance with the intent and purpose of this Chapter; and (3) that such modifications do not lessen health, accessibility, life and fire safety, or structural requirements." (Monterey County Code section 18.02.040.F.) The application for modification would be judged on its facts at the time of the application, but it is possible that a modification could be approved in light of the location of the well, the annular seal depth, and soil characteristics. According to the well log on file with the Health Department, the unconsolidated sediment (soil) on the Powell property extends to a depth of 65 feet. These sediments contain clays which are less permeable, allowing for more filtration of contaminants before reaching consolidated material (hard rock) which has fractures and can be more permeable. Therefore, based on this factual analysis, we conclude that the amendment to the Coastal Administrative Permit to authorize the new location of the test well and the Coastal Administrative Permit to convert the test well to a production well do not result in a taking of Appellant's property.

2. Notice

The Appellant appears to assert that the application process did not provide for notice to all interested parties and an opportunity to object. The Appellant and all interested parties were given opportunity to object to the amendment to the Coastal Administrative Permit for the test well as well as the Coastal Administrative permit for the production well. Notices for the amendment to the Coastal Administrative Permit for the test well were mailed to all interested parties and property owners within 300 feet of the Powell property on May 30, 2012, posted in the project vicinity on May 31, 2012 for an Administrative approval scheduled for June 13, 2012. Because the amendment was originally considered to be of a minor and trivial nature, the publication of a notice in the newspaper was not required per Monterey County Code section 20.76.115.A which only requires mailing and posting of notices. On June 4, 2012, staff received a copy of a letter from the Appellant requesting a public hearing on the application. Staff granted the request and scheduled the project for public hearing before the Zoning Administrator on August 9, 2012.

Notices for the Coastal Administrative Permit for the production well were mailed to all interested parties and property owners within 300 feet of the Powell property on June 8, 2012, posted in the project vicinity on June 8, 2012, and published in *The Herald* on June 10, 2012 for an Administrative approval scheduled for June 27, 2012. On June 12, 2012, staff received a copy of a letter from the Appellant

requesting a public hearing on the application. Staff therefore referred the project for public hearing before the Zoning Administrator, and the public hearing at the Zoning Administrator was held on August 9, 2012. Notices for the Zoning Administrator hearing for both permits were mailed on July 27, 2012, posted in the project vicinity on July 30, 2012, and published in the *Salinas Californian* on July 28, 2012.

The hearing before the Board of Supervisors on this appeal has been duly noticed. Notices for the October 23, 2012 public hearing were mailed on October 12, 2012, posted in the project vicinity on October 12, 2012, and published in *The Herald* on October 12, 2012. The Board of Supervisors continued the hearing from October 23, 2012 to January 15, 2013 at the Applicant's request with the concurrence of the Appellant, and the Board continued the hearing from January 15, 2013 to February 26, 2013 at Appellant's request with the concurrence of the Applicant. This hearing is de novo, and the Appellant and all members of the public have the opportunity to testify and be heard.

3. Interim Guidelines

The Appellant contends that the Zoning Administrator's decisions violate the Environmental Health Bureau's "May 21, 2012 Interim Guidelines for Well Permits and Processing Well Permits." The Guidelines state that wells must comply with existing Monterey County Code, all required well setbacks, as well as federal, state and local regulations, in addition to the guidelines. The guidelines state that well sites shall be a minimum of 25 feet from property line and that the well setback shall not cross property lines unless the well setback stays within a portion of the adjacent lot that has developmental restraints such as steep slopes, easements, or front, back, and side yard setbacks. If the setback cannot stay within these areas, the guidelines suggest an easement or other written recorded approval of the owner of the adjacent lot must be obtained.

The Environmental Health Bureau's "May 21, 2012 Interim Guidelines for Well Permits and Processing Well Permits", marked as Exhibit 1 in the appeal (**Attachment D** of the February 26, 2013 staff report), are not binding. They were issued as interim guidelines for Environmental Health Bureau staff. On June 6, 2012, John Ramirez, Director of Environmental Health issued a memo and guidelines to the Drinking Water Protection Services Section of the Environmental Health Bureau (**Attachment M** of the February 26, 2013 staff report) to clarify the protocol for processing applications for wells until the ordinance revising Monterey County Code Chapter 15.08 is adopted by the Board of Supervisors and, in the coastal zone, certified by the California Coastal Commission. These are guidelines for staff; they have not been adopted by the Board of Supervisors, are not codified, and are not binding. Moreover, the interim guidelines reflect a draft

well ordinance that has not been adopted. Since the drafting of the guidelines, and in response to public comments received on the draft, staff is revising the draft ordinance, and the interim guidelines no longer reflect staff's current guidance. Therefore, the Board of Supervisors is not required to comply with the guidelines. Chapter 15.08 of the Monterey County Code, which governs wells, is binding. It requires compliance with state standards (25-foot setback), but does not prohibit the siting of wells where the well setback required by state standards would cross property boundaries. Therefore, approval of the amendment to Coastal Administrative Permit to amend the test well location and the Coastal Administrative Permit to convert the test well to a production well do not violate County regulations.

4. Easement requirement from Monterey Peninsula Waste Management District

The Appellant contends that the encroachment requires him to record an easement as proposed by the "Monterey Peninsula Waste Management District" thereby reducing his property value. Staff is not exactly certain to what entity the Appellant is referring to. Monterey Regional Waste Management District is the district that manages the Monterey Peninsula's solid waste stream. This district would not require an easement for water wells.

Monterey Peninsula Water Management District (MPWMD) is the district that is responsible for managing, augmenting and protecting the water supplies on the Monterey Peninsula. According to Henrietta Stern, MPWMD Project Manager, the district does not record easements on property. They do require the property owner for the well to record a "Notice of Limitation of Use" on their property. This notice includes a copy of the Water Distribution permit for the well, conditions of approval, a site map, and an indemnification agreement. This notice does not get recorded on adjacent properties unless the well is serving water to the adjacent properties. The Powell well will only serve water to the Powell property. The MPWMD will not require the recordation of an easement on the Appellant's property.

The Carmel Area Wastewater District (CAWD) treats wastewater from Carmel and the surrounding area. CAWD's sewer lines in the area are located in the street on Santa Fe Avenue and along the southern property lines of the Applicant's and Appellant's properties in an easement (**Attachment H** of the February 26, 2013 staff report) near the rear setbacks. The Powell well is located toward the front of both properties, fronting on Serra Avenue. In February 2010, Ray von Dohren, former General Manager of CAWD, submitted a letter to the Environmental Health Bureau regarding the issue of well setbacks from sanitary sewer facilities. In cases where the setback extends to adjacent properties, CAWD recommended that the County record an

encroachment with the County Recorder's Office in those cases or require that the entire setback be located on the well applicant's property (**Attachment I** of the February 26, 2013 staff report). It is not necessary in this case to follow these advisory recommendations. The sewer mains in the area of the project are located in the street on Santa Fe Avenue west of the Applicant's property, approximately 87 feet from the well (**Attachment K** of the February 26, 2013 staff report) and along the southern property lines of the Applicant's and Appellant's properties in an easement (**Attachment H** of the February 26, 2013 staff report) near the rear setbacks. Because of the location of the existing sewer mains, it is highly improbable that new sewer mains will be installed in an area anywhere close to the Powell well setback. Even if the home on Appellant's property were to be remodeled, the location of and connection of the single family dwelling to the CAWD sewer main would not change.

5. Allegation of potential contamination from the Appellant's property on the well

The Appellant alleges the existing, unauthorized, location of the well violates the 25-foot setback requirement to prevent contamination. He notes that the previously approved well site was to be located within the proposed driveway of the Powell residence. According to the California Well Standards Bulletin 74-90, the use of well pits, vaults, or equivalent features to house the top of a well casing below ground surface shall be avoided, if possible, because of their susceptibility to the entrance of poor-quality water, contaminants and pollutants. Well pits or vaults can only be used if approval is obtained from the enforcing agency. The original well location and configuration was approved by the Environmental Health Bureau. However, during a site visit in the summer of 2008, the well driller requested relocation of the well site because access to the original well site would have required the removal of trees that had not been permitted for removal.

The Appellant alleges that the location of the well creates a potential contamination claim for such items as oil, gasoline, radiator coolant, grease, gardening contaminants such as fertilizer, insecticides, weed abatement and the run off from washing of cars. The well is located on the Applicant's property in an unpaved area. The paved driveway on the Appellant's property extends to the common property line. It is highly improbable that contaminants from the Appellant's property, as cited above, would exist in such great quantities as to run off the property, percolate more than 100 feet vertically and 15 feet laterally as to contaminate the well and the groundwater. The purpose of the well seal is to prevent such contamination. See County's response to Nos. 4A and 4B above.

6. Prescriptive easement

Appellant contends the Zoning Administrator's decision creates a potential claim of prescriptive easement after a statute five (5) year period. The approval of the well does not create a prescriptive easement. A prescriptive easement can only be established by judicial decree. To find a prescriptive easement, the court must find that the use was adverse to the person in possession of the land in question, open or notorious, and continued for five years without interruption. (*California Easements and Boundaries*, sec. 1.32 (CEB, 2012.) The County's action itself does not create an easement in favor of the County nor create a prescriptive easement. A prescriptive easement is a matter of private dispute between Applicant and Appellant. Appellant could also negotiate an easement with the owner. Correspondence on file dated June 18, 2010 from Appellant indicates that the owner in 2010 offered to pay for an easement and Appellant refused the offer.

Appellant's Contention No. 5: False Conclusions Presented to Zone Administrator.

As demonstrated above, the County Staff provided several erroneous conclusions to the Zoning Administrator:

1. *The well meets the County Regulations regarding site development standards and setback requirements for contaminant sources. The basis of this entire issue is the fact that the well has been placed in an unauthorized area and that it does not comply with the twenty-five (25) foot set back.*
2. *There was one production well within one thousand (1,000) feet of the Powell well at the time of the source capacity test of the Powell. However, there are now two wells within one thousand (1,000) feet of the present location of the test well.*
3. *The County Staff has concluded that there are no violations created by the present well location. Considering all of the above, this representation is concerning at best, as there clearly are many violations.*
4. *The present well site is not located near historic resources. In fact it is within the location of a historic resource, the Father Serra statue carved by Joe Moro in 1922 which is an entrance point to the City of Carmel. The relocation of the well in question will require a well filtration system and a three thousand (3,000) gallon storage tank be placed within a location which will be visible to all who enter the City of Carmel at this historic site.*

County's Response No. 5:

1. See County's Response No. 4A and 4B.
2. The 72 hour pump test for the Powell well was complete between August 4 and August 7, 2009. A review of County records shows only one other well within 1,000 feet of the Powell well. The other well, permitted under Chopin Enterprises (PLN080017), is located on Assessor's Parcel Number 009-012-013-000. While investigating the

contention, Planning staff also checked with Henrietta Stern at the Monterey Peninsula Water Management District to verify the wells within the vicinity of the Powell well. Their records also confirm that the Chopin well is the only well documented within 1,000 feet of the Powell well.

3. See County's Response Nos. 3, 4A, and 4B.
4. CEQA Guidelines section 15304 categorically exempts minor alterations to land, water and/or vegetation. The Powell well has been determined to be categorically exempt from environmental review under this section. The CEQA Guidelines also state exceptions to categorical exemptions, under section 15300.2, including but not limited to substantial adverse changes in the significance of a historic resource. The Powell well would not cause a substantial adverse change in the significance of a historical resource as defined in CEQA Guidelines section 15064.5. A substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired. The Powell well is not visible from the Father Serra statue. The Powell well and property are screened from the resource by fencing, vegetation, and trees. The surrounding area is a developed residential neighborhood (**Attachment J** of the February 26, 2013 staff report). Therefore, the Powell well does not interfere with the aesthetics of the statue.

   The installation of the Powell well did not cause the physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings. The significance of the resource is not materially impaired. In addition, no well filtration system nor 3,000 gallon water tank are proposed at this time. The construction of a single family dwelling, a well filtration system, and a water tank would require a Coastal Administrative Permit. The impacts of that development on historic resources would be evaluated at the time the Coastal Administrative Permit is considered. The County applies a standard condition to projects that states if, during the course of construction, cultural, archaeological, historical or paleontological resources are uncovered at the site (surface or subsurface resources) work shall be halted immediately within 50 meters (165 feet) of the find until a qualified professional archaeologist can evaluate it. The Father Serra statue is not on the project site. As stated above, the installation of the Powell well did not cause the physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings. The significance of the resource is not materially impaired. Therefore, the categorical exemption for the project is appropriate.

***Appellant's Contention No. 6: The Appellant listed the following 29 contentions in the Notice of Appeal as grounds for the Appeal of both projects* (citation to staff response follows each contention):**

1. *The action was taken in violation of the United States Constitution, Article 5 (as recognized by the 14th Amendment of the California State Constitution).* See County's response to Contentions 4A and 4B.
2. *The action was taken in violation of the Environmental Health Bureau's "May 21, 2012 Interim Guidelines for Well Permits and Processing of Well Permits.* See County's response to Contentions 4A and 4B.
3. *The action taken permits a wrongful taking of property by an adjacent property owner and creates a claim of prescriptive easement upon the property of the adjacent property owner based upon adverse possession.* See County's response to Contentions 4A and 4B.
4. *The action was not supported by the evidence presented.* See County's response to Contentions 1, 2, 3, 4A, 4B, and 5.
5. *The action was contrary to both administrative and statutory law.* See County's response to Contentions 4A and 4B.
6. *The action violated the previous rulings of the Monterey County Board of Supervisors.* See County's response to Contention 2.
7. *The initial permit signed June 11, 2008 was not complied with.* See County's response to Contention 2.
8. *A new permit to move the well was never requested or obtained and the Zoning Administrator made a false assumption that the Prior Owner, from whom the Zoning Administrator could not have received first hand knowledge for obvious reasons, was unaware of the requirement to seek a new permit.* See County's response to Contention 2.
9. *The adjacent property owner had a direct conversation with the Prior Owner at the time the well was being placed in its present location expressing his concern that the approved permit was not being followed. At that time the Prior Owner advised that he had an "inside man" at the Planning Department and was not worried that he was not complying with the authorized permit as this "inside man" would take care of it.* See County's response to Contention 2.
10. *The existing, unauthorized, location of the well encroaches on the adjacent neighbor's property.* See County's response to Contentions 4A and 4B.
11. *The existing, unauthorized, location of the well violates the 25-foot setback requirement to prevent contamination.* See County's response to Contentions 4A and 4B.
12. *The existing, unauthorized, location of the well interferes with the esthetics of a historic monument, "Father Serra Statue" carved by Joe Morro in 1922.* See County's response to Contention No. 5.
13. *There has been no proof presented that the Monterey County RMA - Planning Department has evaluated the impact of*

allowing the relocation of the well within approximately 100 feet of the historic monument, "Father Serra Statue" carved by Joe Morro in 1922; See County's response to Contention No. 5.

14. *Historically the Monterey County RMA - Planning Department has assigned a 50 meter (165 foot) setback to all projects involving all cultural, historical, archeological, paleontological sites, however, the subject project is approximately 100 feet from a historic monument.* See County's response to Contention No. 5.
15. *The issue of relocation of the well was raised during the initial hearings before the Monterey County Board of Supervisors approximately three years ago, at which time this intended relocation was denied by the County Board of Supervisors due to the fact that no application to amend the authorized permit had ever been filed. At no time during this hearing process was any claim of approval of the relocation or any documentation supporting approval or relocation of the well by Environmental Health Bureau ever presented.* See County's response to Contention 2.
16. *If, in fact, the Environmental Health Agency authorized the relocation of this well from its original location, as is now being claimed by County Staff, this information was never presented to the County Board of Supervisors three years ago. However, there is no question about its relevance to that hearing.* See County's response to Contentions 2, 4A and 4B.
17. *If, in fact, the Environmental Health Agency alleged authority was provided after the hearing in which the Monterey County Board of Supervisor denied the attempt to relocate the well due to the Prior Owner's failure to file an application to amend the authorized permit, no authority to overturn the prior ruling of the Monterey County Board of Supervisors was ever provided.* See County's response to Contentions 2, 4A and 4B.
18. *No authority of any kind has been provided to support the alleged authorization by the Environmental Health Agency for relocation of the well.* See County's response to Contentions 2 and 3.
19. *The identity of the alleged individual who allegedly gave this ultra vires authorization for a fifty (50) foot relocation without requiring the applicant to apply for a new permit as required by the Monterey County Board of Supervisors, Ordinances, Guidelines and laws of this state has never been provided.* See County's response to Contention 2.
20. *It is unknown whether the alleged individual who allegedly gave this ultra vires authorization for a fifty (50) foot relocation without requiring the applicant to apply for a new permit as required by the Monterey County Board of Supervisors, Ordinances, Guidelines and laws of this state was present at the Zoning Administrator hearing, but this individual never testified or provided any support for the alleged authorization given.* See County's response to Contention 2.
21. *No documents substantiating that the County ever received a request to relocate the well site have ever been produced;* See

County's response to Contentions 1 and 2.

22. *No documents substantiating that authorization for the relocation of the well was ever given have ever been produced.* See County's response to Contention 2.
23. *No authority was ever provided substantiating that the alleged twenty-five (25) foot setback could be abandoned.* See County's response to Contentions 4A and 4B.
24. *The Monterey County Planning Department has conceded that an authorization allowing the relocation of the original well by some fifty (50) feet required an application for a new permit, which would necessarily provide notice to the public and allow objection by the public to be filed.* See County's response to Contentions 2, 3, 4A and 4B.
25. *No authority was provided allowing the Monterey County Planning Department to dismiss the requirement for an application for new permit prior to allowing relocation of the test well.* See County's response to Contention 2.
26. *The County Staff erroneously concluded that the well meets the County Regulations regarding site development standards and setback requirements for contaminant sources. The basis of this entire issue is the fact that the well has been placed in an unauthorized area and that it does not comply with the twenty-five (25) foot set back.* See County's response to Contentions 4A and 4B.
27. *The County Staff erroneously concluded there was one production well within one thousand (1,000) feet of the Powell well at the time of the source capacity test of the Powell. However, there are now two wells within one thousand (1,000) feet of the present location of the test well.* See County's response to Contention 5.
28. *The County Staff erroneously concluded that there are no violations created by the present well location. Considering all of the above, this representation is concerning at best as there clearly are many violations.* See County's response to Contentions 1, 2, 3, 4A, 4B, and 5.
29. *The County Staff erroneously concluded the present well site is not located near historic resources. In fact it is within the location of a historic resource, the Father Serra statue carved by Joe Moro in 1922 which is an entrance point to the City of Carmel. The relocation of the well in question will require a well filtration system and a three thousand (3,000) gallon storage tank be placed within a location which will be visible to all who enter the City of Carmel at this historic site.* See County's response to Contention No. 5.

7. **FINDING:** **APPEALABILITY** - The decision on this project may not be appealed to the California Coastal Commission.

EVIDENCE: Per Section 20.86.080.A.3. Monterey County Zoning Ordinance (Development Appealable to the Coastal Commission), the project is not subject to appeal by/to the California Coastal Commission

because the project is listed as a principal use allowed and does not fall into categories under subsections A. 1, 2, and 4.

DECISION

NOW, THEREFORE, BASED ON THE ABOVE FINDINGS AND EVIDENCE, BE IT RESOLVED, THAT THE Board of Supervisors does hereby:

a. Deny the appeal by Glen R. Mozingo from the Zoning Administrator's approval of an application by the Estate of William Dan Powell for an amendment to a Coastal Administrative Permit (PLN110366/Powell) to allow the development of a test well and authorize the construction and use of the well for testing to establish a water source in a new location from the location that was previously approved; and
b. Approve the amendment to a Coastal Administrative Permit (PLN110366/Powell) to allow the development of a test well and authorize the construction and use of the well for testing to establish a water source in a new location from the location that was previously approved, in general conformance with the attached sketch and subject to the conditions both being attached hereto and incorporated herein by reference.

PASSED AND ADOPTED on this 26th day of February 2013, by the following vote, to-wit:

AYES:
NOES:
ABSENT:

I, Gail T. Borkowski, 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___ for the meeting on _____.

Dated:

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By _____
Deputy