

# EXHIBIT A

## MEMORANDUM

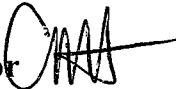
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RESOURCE MANAGEMENT AGENCY  
COUNTY OF MONTEREY



**DATE:** September 7, 2012

**TO:** Board of Supervisors  
County of Monterey

**FR:** Carl P. Holm, AICP   
RMA Deputy Director

**RE:** Response to referral from Supervisor Parker  
Coastal Desal Ownership Requirement

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This memo responds to Supervisor Parker's Referral No. 2012.09 requesting staff to present to the Board of Supervisors the process for applying to the Coastal Commission to include within County's certified Local Coastal Program (LCP) an ordinance requiring public ownership of desalination plants. The referral notes that "County maintains an ordinance requiring public ownership of desalination plants" and states that the purpose of the referral is to "ensure consistency between local coastal plans and county ordinance on a timely policy issue." We assume that the referenced "ordinance" is Chapter 10.72 of the Monterey Code, which was adopted by ordinance in 1989. Staff consulted with Environmental Health Bureau, RMA-Planning, and County Counsel in the preparation of this response.

The County's certified Local Coastal Program consists of four certified Land Use Plans and a certified Coastal Implementation Plan (CIP). The CIP contains the regulations implementing the Land Use Plans and is codified as Title 20 of the County Code. Chapter 20.94 and Appendix 13 of the Coastal Implementation Plan outline a step-by-step process to amend the Coastal Implementation Plan. As more fully explained in this memo, however, staff's analysis is that Chapter 10.72 applies countywide and therefore already applies in the coastal zone. In regard to the purpose of the referral to achieve countywide consistency, an amendment to the LCP is not necessary to achieve consistency in the application of Chapter 10.72 to the inland and coastal areas of the County.

Chapter 10.72 is not a part of the County's LCP, but it does not need to be part of the LCP to apply in the coastal zone. It is clear that Chapter 10.72 is not part of the County's certified Local Coastal Program. Chapter 20.96 of Title 20 lists the chapters of the County Code which are incorporated by reference into Title 20. Chapter 10.72 is not on that list. The ordinance enacting Chapter 10.72 was adopted in 1989, subsequent to certification of Title 20. Chapter 20.96 has not been amended to include Chapter 10.72, nor has County submitted

Chapter 10.72 to the Coastal Commission for certification. Importantly, however, a County regulation need not be a part of the County's LCP to apply in the coastal zone.

Even without being a part of the LCP, Chapter 10.72 applies in the coastal zone because it is a duly adopted County regulation that is not in conflict with the Coastal Act or County's LCP. The Coastal Act does not limit the power of a county "to adopt and enforce additional regulations" not in conflict with the Coastal Act. (Public Resources Code section 30005.) The County's Coastal Implementation Plan itself recognizes the applicability of County regulations if they are not in conflict with the Coastal Act, certified Land Use Plan, or County's certified Coastal Implementation Plan. (Monterey County Code, section 20.02.060.) We are not aware of a conflict between Chapter 10.72 on the one hand and the Coastal Act or County's certified Local Coastal Program on the other hand. Therefore, staff's view is that Chapter 10.72 applies in the coastal zone without need of amending the County's Local Coastal Program.

This analysis is consistent with the position expressed by the Board of Supervisors in 2003. The California Coastal Commission's November 2003 periodic review of the County's LCP included recommendations for policies to guide review of future proposed desalination facilities. The periodic review referred to Policy LU-9.4 that was part of the 2003 draft General Plan Update (GPU3), which was designed to apply countywide. In December 2003, in response to the Coastal Commission's periodic review, the Board advised the Coastal Commission of Chapter 10.72 and its applicability in the coastal zone. (See attached December 9, 2003 letter.)

An LCP amendment to incorporate a desalination plant ownership requirement also raises jurisdictional questions. The LCP implements and carries out Coastal Act policies in the coastal zone and ensures that development in the coastal zone is consistent with the Coastal Act. (Public Resources Code sections 30200, 30500.) The Coastal Act contains policies relevant to the design, location, uses, and impacts of desalination facilities (see, e.g., Public Resources Code section 30254), but the Coastal Act does not address issues of ownership per se. Therefore, in our opinion, the LCP is not required to address ownership of desalination facilities.

If you have any questions regarding this recommendation or wish to provide further direction, please do not hesitate to contact me.

cc: Lew Bauman, County Administrative Office  
Charles McKee, County Counsel  
Les Girard, County Counsel  
Ray Bullick, Health Department  
John Ramirez, Environmental Health Bureau  
Benny Young, Resource Management Agency  
Mike Novo, RMA - Planning Department

#37 on Revised Agenda

# MONTEREY COUNTY



## THE BOARD OF SUPERVISORS

<b>FERNANDO ARMENTA, Chair</b> 60 West Market Street, Suite 110 Salinas, California 93901	Phone: (831) 755-5011 (831) 647-7991 e-mail: district1@co.monterey.ca.us
<b>LOUIS R. CALCAGNO, Vice Chair</b> 10681 McDougall Castroville, California 95012	Phone: (831) 755-5022 (831) 647-7722 (831) 724-8228 EXT. 5022 e-mail: district2@co.monterey.ca.us
<b>W.B. "BUTCH" LINDLEY</b> 522 C Broadway King City, California 93930	Phone: (831) 755-5033 (831) 385-8333 (831) 647-7963 e-mail: district3@co.monterey.ca.us
<b>EDITH JOHNSEN</b> 2616 1 <sup>ST</sup> Avenue Marina, CA 93933	Phone: (831) 883-7570 (831) 755-5044 e-mail: district4@co.monterey.ca.us
<b>DAVE POTTER</b> 1200 Aguajito Road, Suite 001 Monterey, California 93940	Phone: (831) 647-7755 (831) 755-5055 e-mail: district5@co.monterey.ca.us

December 9, 2003

Mr. Mike Reilly, Chair  
C/o Mr. Charles Lester, Deputy Director  
California Coastal Commission  
Central California District Office  
725 Front Street, Suite 300  
Santa Cruz, CA 95060-4508

Re: California Coastal Commission, December 2003 Agenda, Item 7(a) – Monterey County Periodic Local Coastal Program Review Public Hearing.

Dear Mr. Lester:

The County of Monterey, Board of Supervisors does hereby respectfully request that Item 7(a)- Monterey County Periodic Local Coastal Program Review Public Hearing currently scheduled for December 10<sup>th</sup> in San Francisco, California be tabled until the Commission's March meeting in Monterey. The Board objects to the Commission receiving a presentation from staff and opening the public hearing given the short time we have had to review this item.

We are in receipt of the *Staff Report on the Periodic Review of the Monterey County Local Coastal Program* dated November 26<sup>th</sup> and distributed by the Santa Cruz office. The fact that the staff report was distributed on November 26<sup>th</sup>, just one day prior to the Thanksgiving holiday, has put an undue and unreasonable burden on our staff and the Board of Supervisors to analyze the proposed recommendations, compare them to the current state of Monterey County's *Local Coastal Program*, consider them with respect to the current status of our on-going General Plan

Mr. Charles Lester  
California Coastal Commission  
9 December 2003  
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Update, and prepare our comments and a presentation for the Commission within just six working days of the December 10th hearing. We are particularly concerned because many of the staff proposals appear to result, when evaluated cumulatively, in unconstitutional and unsubstantiated takings that, if implemented, would expose the County to millions of dollars of liability for no appreciable environmental benefit.

A cursory inspection of the staff report shows that our Board and the staff of the Coastal Commission are traveling down gravely divergent paths with respect to many of the twenty-eight specific issue areas cited in the staff report. A few examples, which are not, by any means, exhaustive, follow:

LU-9.2 Do not allow private water supplies in Cal-Am service area (page 37)

This constitutes an unconstitutional and illegal taking of water rights. The County of Monterey may arguably be left to pay for the groundwater rights for every legal lot of record in the Carmel Local Coastal Program. Someone not familiar with the law of groundwater rights may have prepared this proposal.

LU-9.4 Add review criteria for any proposed desalination facilities (page 37)

Monterey County has an ordinance that requires that any desalination plant be owned and operated by a public entity. The Commission staff appears not to be aware of this ordinance, which was adopted in 1989. The criteria for a proposed facility should not only be "public as warranted by application of Coastal Act policies" but also that the proposed facility be a legal land use as warranted by local code. The Coastal Commission is required to acknowledge and not promote any violation of the County's ordinance and the Local Coastal Program should reflect this fact (Cal-Am is not a public entity, it is a privately-owned enterprise.)

LU-11.1 Re-designate Elkhorn Slough Foundation parcel to Resource Conservation (page 39).

APN 133-221-007 is currently zoned Recreation and Visitor Serving Commercial. The parcel has been annually used for two decades by the Moss Landing Antique Fair as a parking lot. Re-designation would, in effect, shut down the Antique Fair and severely harm the seventeen charities that derive benefit from the Fair. A single review by your staff of the history of Moss Landing would have revealed the grave damage this proposal will cause to the Moss Landing Community and the public charities that depend upon it.

LU-11.2 Update Moss Landing Community plan (page 39)

There appears to be no justification to update the Moss Landing Community plan with the cited changes because the components of the recommendations are merely restatements of the current policy. However, there is a thinly veiled objective within the staff's proposed changes to undermine the development of visitor-serving facilities in the Moss Landing Community. The Department of Boating and Waterways has given public funds to the Moss Landing Harbor District for this expressed purpose based on the existing policies in the existing program, and altering these policies after the fact to restrict publicly owned visitor-serving facilities may not only be unethical but may have consequences that undermine the principle that justified the adoption of the *Coastal Act* over two decades ago: the protection of the public's right to access the coastal resources.

LU-11.3 Avoid or minimize damage to marine organisms from seawater pumps (page 39)

The Board of Supervisors, the California Regional Water Quality Control Board, and the State Water Resources Control Board have sole authority to set, enforce and permit public health ordinances, water quality standards and NPDES facilities. The Coastal Commission does not have any statutory or legal authority to set or enforce these standards. The Commission staff should review the *Porter-Cologne Act*, the *Federal Clean Water Act*, and the *California Government Code* before proposing such policies to Monterey County.

SH-29-7 Manage forests to address pine pitch canker (page 58).

Monterey County does not have the resources to satisfy the staff's proposal to map all the trees in the county at this time. Further, current evidence appears to indicate that pine pitch canker may be peaking, and more research is necessary before intelligent and implementable policies can be proposed for the *Local Coastal Program*.

In view of the foregoing, we request an additional sixty days for the purpose of giving your staff's report a thorough examination and review so that our Board's representatives can make a knowledgeable presentation before the Coastal Commission at a later date. The Board of Supervisors feels that it is very important to identify, before the Coastal Commission, as many issues as possible and present our case before your staff's Periodic Review of the Monterey County Local Coastal Program moves further along in its process. We apologize for the late notice. We hope that the Coastal Commission considers our request favorably, particularly in the interest of the historic cooperation on Local Coastal Program issues between our county and your commission.

Mr. Charles Lester  
California Coastal Commission  
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Sincerely,

A handwritten signature in cursive script that reads "Fernando Armenta".

Fernando Armenta  
Chair, County of Monterey  
Board of Supervisors

CC: Coastal Commission Members  
Peter M. Douglas, Executive Director, California Coastal Commission