Attachment D
Notice of Appeals for PLN110366 and PLN110367 (September 4, 2012)

PLN110366/PLN110367
Mozingo (Powell)

PLN110366

NOTICE OF APPEAL

Monterey County Code
Title 19 (Subdivisions)
Title 20 (Zoning)
Title 21 (Zoning)

No appeal will be accepted until written notice of the decision has been given. If you wish to file an appeal, you must do so on or before September 4, 2012 (10 days after written notice of the decision has been mailed to the applicant).

Date of decision: August 24, 2012

1. Name: Glen R. Mozingo, Esq.

   Address: 3080 Serra Avenue, Carmel-by-the-Sea, CA 93923

   Telephone: (831) 622-9672

2. Indicate your interest in the decision by placing a check mark below:

   Applicant _____

   Neighbor X .

   Other (please state)_____

3. If you are not the applicant, please give the applicant's name:

   Estate of William Dan Powell

4. Fill in the file number of the application that is the subject of this appeal below:

	Type of Application	Area

   a) Planning Commission: PC-_____ _____

   b) Zoning Administrator: ZA- Resolution No. 12-027 Pertaining to Application of William Dan Powell (PLN 110366). Resolution by Monterey County Zoning Administrator: (1) Finding the project categorically exempt per Section 15304; and (2) Approving the Amendment (PLN 110366) to Coastal Administrative Permit (PLN 070074) allowing the development of a test well and authorizing the construction and use of the well for testing to establish a water source.

   c) Minor Subdivision: MS-_____ _____

   d) Administrative Permit: AP-_____ _____

Notice of Appeal

5. What is the nature of your appeal?

   a) Are you appealing the approval or denial of an application? Approval .

b) If you are appealing one or more conditions of approval, list the condition number and state the condition(s) you are appealing. (Attach extra sheet if necessary)

(2) Approving the Amendment (PLN 110366) to Coastal Administrative Permit (PLN 070074) allowing the development of a test well and authorizing the construction and use of the well for testing to establish a water source.

6. Place a check mark beside the reason(s) for your appeal:

There was a lack of fair or impartial hearing _____
The findings or decision or conditions are not supported by the evidence __X__.
The decision was contrary to law __X__.

Give a brief and specific statement in support of each of the reasons for your appeal checked above. The Board of Supervisors will not accept an application for an appeal that is stated in generalities, legal or otherwise. If you are appealing specific conditions, you must list the number of each condition and the basis for your appeal. (Attach extra sheets if necessary) Please See Attached

Appellant appeals from the above condition of the Decision on the following grounds:

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);

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;

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;

4. The action was not supported by the evidence presented;

5. The action was contrary to both administrative and statutory law;

6. The action violated the previous rulings of the Monterey County Board of Supervisors;

7. The initial permit signed June 11, 2008 was not complied with;

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;

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;

10. The existing, unauthorized, location of the well encroaches on the adjacent neighbor's property;

11. The existing, unauthorized, location of the well violates the 25-foot setback requirement to prevent contamination;

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;

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;

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;

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;

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;

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;

18. No authority of any kind has been provided to support the alleged authorization by the Environmental Health Agency for relocation of the well;

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;

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;

21. No documents substantiating that the County ever received a request to relocate the well site have ever been produced;

22. No documents substantiating that authorization for the relocation of the well was ever given have ever been produced;

23. No authority was ever provided substantiating that the alleged twenty-five (25) foot setback could be abandoned;

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;

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;

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;

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;

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;

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.

7. As part of the application approval or denial process, findings were made by the decision-making body (Planning Commission, Zoning Administrator, or Minor Subdivision Committee). In order to file a valid appeal, you must give specific reasons why you disagree with the findings made. (Attach extra sheets if necessary)

   Please see attached appeal.

8. You are required to submit **stamped-addressed envelopes** for use in providing notice of the public hearing on the appeal to all interested persons and all property owners within **300 feet** of the subject property. You may obtain the mailing list from the Planning and Building Inspection Department.

   Please see attached.

9. You must pay the required filing fee of $5,146.81 (make check payable to "County of Monterey") at the time you file your appeal. (Please note that appeals of projects in the Coastal Zone are not subject to the filing fee.)

   This appeal pertains to a project in the Coastal Zone and is not subject to a filing fee.

10. Your appeal is accepted when the Clerk to the Board accepts the appeal as complete and receives the required filing fee and the stamped-addressed envelopes. Once the appeal has been accepted, the Clerk to the Board will set a date for the public hearing on the appeal before the Board of Supervisors.

The appeal, filing fee, and envelopes must be delivered to the Clerk to the Board or mailed and postmarked by the filing deadline. A facsimile copy of the appeal will be accepted only if the hard copy of the appeal, filing fee, and envelopes are mailed and postmarked by the deadline.

APPELLANT SIGNATURE _____ Date: 8/31/12

ACCEPTED _____ Date: _____

Clerk to the Board

cc: Original to Clerk to the Board; Planning & Building Inspection Department

Updated July 1, 2012

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NEW YORK STATE BAR
UNITED STATES FEDERAL BAR
INTERNATIONAL BAR
UNITED STATES TAX COURT
U.S. COURT OF INTERNATIONAL TRADE
LAW SOCIETY OF ENGLAND & WALES*

August 31, 2012

Transmitted via Overnight Mail

Monterey County Board of Supervisors
168 West Alisal Street, 1st Floor
Salinas, California 93901

Attention: Gail Borkowski, Clerk

Re: ***In the Matter of the Application of William Dan Powell (PLN 110366) Appeal to Resolution 12-027 Finding Project Categorically Exempt per Section 15304 and approving Amendment (PLN110366) to Coastal Administrative Permit (PLN 070074)***
Real Property Location: 3072 Serra Avenue, Carmel, California 93923
APN: 009-081-027-000
Appellant: Glen R. Mozingo, Esq.

Dear Board of Supervisors:

Timeliness of Appeal

Pursuant to Monterey County Zoning, Coastal Implementation Plan - Title 20, Section 10.86.030:

> *"An appeal shall be in writing and shall be filed with the Clerk of the Board of Supervisors and with Appropriate Authority*

within 10 days after written notice of the decision of the Appropriate Authority has been mailed to the applicant."

The Notice of Decision of the Zoning Administrator was mailed on August 24, 2012. Ten dates from August 24, 2012 is September 3, 2012. This Appeal was mailed August 31, 2012 and is, therefore, timely.

Basis of Appeal

1. The Owner of the Property on Which Well is Located is a New Owner

The entity which is presently seeking the Amendment under (PLN 110366), the Estate of William Dan Powell (hereinafter referred to as "New Owner.") This entity is not the same Applicant who obtained the original permit (PLN 070074), William Dan Powell, deceased (hereinafter referred to as "Prior Owner").

The New Owner is well aware of the ordinances in place (specifically the "May 21, 2012 Interim Guidelines for Well Permits and Processing Well Permits" drafted by the Environmental Health Bureau, a true and correct copy of which as obtained from the Monterey County website is attached hereto as "Exhibit "1") which addresses the construction of new wells and processing of new well permits which would not allow the test well in its present location unless an easement had been obtained from the adjacent property owner, which easement has never been requested or obtained as it pertains to the subject test well. The New Owner is also aware of the ruling of the Monterey County Board of Supervisors approximately three years ago denying the test will to proceed to a production well as the issued permit (PLN 070074) was not complied with.

In an attempt to circumvent these issues, the New Owner, deliberately mischaracterized the request for a new well permit in an attempt to ratify, inappropriate actions taken by Mr. Powell (deceased) and did not comply with the permit issued for this property. The New Owner requests that the County violate County ordinances for setbacks,

allow the unlawful taking of another's property, and violate the requirements of the permit process for issuance of a new permit, giving all parties an opportunity to object.

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.

When the original permit to drill a test well was issued to the Prior Owner, it contained the following provision:

> "Any use or construction ***not in substantial conformance*** with the terms and conditions of this permit is in violation of County Regulations and may result in modification or revocation of this permit and subsequent legal action. ***No use or construction other than that specified by this permit is allowed unless the appropriate authority approves additional permits.***" (Emphasis added.)

This language is also contained in attachment to Exhibit C of the "Draft Resolution," in Condition 1. Staff advises that no additional permits were ever requested or obtained before the well was drilled by Mr. Powell, deceased, and that they have no record of an application for a new site prior to drilling.

Since the new permit is prohibited pursuant to the United States Constitution, California State Constitution, the laws of this state, and the "May 21, 2012 Interim Guidelines for Well Permits and Processing Well Permits" drafted by the Environmental Health Bureau, the New Owner has intentionally attempted to mislead the Staff and Planning Department with regard to these facts in order to obtain a permit they know is prohibited.

3. <u>The Action Being Requested is Not an Amendment to a Preexisting Permit but a Request for a New Permit by a New Property Owner</u>

This Appeal pertains to an existing test well that was never authorized or approved by the County.

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 <u>new permit</u>.

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 as outlined above.

The County Staff has affirmed that no previous Application for Amendment was prepared or received for this property or for PLN 070074 under Item 2(d) of Exhibit C of the "Draft Resolution," despite the fact that a New Application was admittedly required. The Monterey Bounty 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 <u>*no application to amend had ever been submitted*</u> 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.

It appears that the New Owner, in an attempt to circumvent the desires of the Board of Supervisor, chooses to ignore the intentions of the Environmental Health Bureau's "May 21, 2012 Interim Guidelines for Well Permits and Processing of Well Permits." The New Owner has attempted to convince the Zoning Administrator to ratify conduct that is in violation of the Planning Department Permit received by the Prior Owner, so as to gain a permit to convert an illegal test well into a production well. This action is in contravention of the desires of the Board of Supervisors, should not be countenanced and the Ruling of the Zoning Administrator should be overturned.

4. <u>The Actions by the Monterey Zoning Administrator are Contrary to Law and Should be Overturned</u>

A. 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.

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.

The New Owner has made this request under the assumption that the County should conclude, with absolutely no documentation to support that any such action or authorization ever took place, that an unidentified individual from the Environmental Health Agency, without authority to do so, granted authority to relocate the well to its present location, in violation of County setback ordinances. In the event the New Owner succeeds in having the

County accept this assumption, they can circumvent the Environmental Health Bureau's "May 21, 2012 Interim Guidelines for Well Permits and Processing of Well Permits" which specifically disallows the well's relocation to where the New Owners presently seek it to be located.

Specifically, pursuant to Exhibit "B" of the Staff Report, "History of Permit Activity," the Zoning Administrator was informed that in January of 2009 an unknown individual at "Environmental Health" conducted a site inspection to consider the new location of the well, as requested by the Prior Owner, and found the new location to be consistent with all County regulations regarding site development, standards, setback requirements from containment sources and the California Well Standard Bulletins. As a result the well was allowed to be sited fifty (50) feet from the original location. However, this unsupported assertion by an unnamed representative from the "Environmental Health Agency" has not been confirmed since no one seems to have any idea who inspected the new well location or made this assertion.

Despite this fact, and based solely upon this assertion, the Planning Department opined that "The County approved the relocation of the Powell well in 2009." This unsupported assertion by this unknown individual raises several issues:

1. 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 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 for relocation of the well or documentation supporting approval for relocation of the well by Environmental Health Bureau ever presented.

2. 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, why wouldn't this information have been presented to the County Board of

Supervisors three years ago. There is no question of its relevance to that hearing.

3. If, in fact, the Environmental Health Agency 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, when did The Environmental Health Agency authorize the relocation of this well from its original location. (No supporting documentation for this accusation has ever been provided).

4. Since the Monterey County Board of Supervisors had already ruled approximately three years that the relocation would not be permitted without a proper application to amend the authorized permit being filed by the Prior Owner, under what authority was such authorization provided.

5. Who is the unnamed and unidentified 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 Planning Department, Ordinances, Guidelines and laws of this state.

6. Was the person who allegedly authorized the fifty (50) foot relocation present at the Zoning Administrator hearing? If so, why did he or she not present evidence regarding the authority provided by them?

7. Where are the documents that support that the County received a request to relocate the well site?

8. Where is the documentation supporting authorization for the relocation of the well?

9. Why were none of these documents presented at the Zoning Administrator hearing? Based upon Appellant's prior communications with the Prior Owner

the Prior Owner stated that he did not have to follow the appropriate procedures because he had an "inside guy" at the Planning Department, Appellant is of the belief that neither the individual nor the documents were presented to the Zoning Administrator as neither exist.

10. By what authority was the twenty-five (25) foot setback abandoned?

11. 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.

12. By what authority did the Monterey County Planning Department dismiss this requirement for an application for new permit?

Appellant respectfully submits that before the Zoning Administrator was asked to believe, or accepted as fact, the representation that a statement made by an unidentified individual to a person who is now deceased (double hearsay), the above issues should have been addressed. Without support documentation being presented, and in the face of evidence to the contrary, the assumptions should have been discarded and not considered. Appellant questions what support the Monterey County Planning Department relied upon for its assertion that the Prior Owner "was not aware of the requirement" to seek a new permit for this relocation of the well.

Appellant respectfully submits that the Zoning Administrator's Decision pertaining to Amendment (PLN110366) to Coastal Planning Permit PLN 070074 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."

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. The Decision of the Monterey County Zoning Administrator is also contrary to the Previous Unanimous Board of Supervisors' Ruling pertaining to the "grandfathering" of test wells drilled in compliance with County Permits.

Of great significance, "Draft Resolution" E indicates that the new, unauthorized well site is located fifty (50) feet from the original, authorized site and allegedly fifteen (15) feet away from the adjacent property (in actuality the well is thirteen (13) feet away from the adjacent property). The approved well site was to be located within the proposed driveway of the Powell residence and was allegedly moved by the owner, without permission, for two reasons:

> *"(1) The well was located in an area near existing trees not permitted for removal; and (2) the EHB agreed that locating the well in the driveway near a vault was not preferable."*

This is belied by the following:

Item 1(f) of the "Draft Resolution" of the document entitled "Powell William D. PLN 070074," dated June 11, 2008, on page 2, states that the project planner for the original well site *"conducted a site inspection on April 21, 2008 to verify that the project on the site parcel conforms to the plans listed above."* This document clearly states that **the original site was approved.** There is no discussion of trees, no discussion of driveways and no subsequent documentation authorizing the relocation of this well by some fifty (50) feet. Further, in that same document, it specifically states under Item 3(d):

> *"Implementation of the project will not require tree removal, extensive grading, or development on slopes in excess of 30%."* (Emphasis Added)

Accordingly, as this same document ("Powell William D. PLN 070074," dated June 11, 2008) demonstrates, the project planner reviewed the site and that the project planner did not feel that the original well site was located in an area near existing trees not permitted for removal since the project planner for the original well site did not believe that implementation of the project would require tree removal. Therefore, contrary to what County Staff is now claiming, the evidence shows that there was no need to move the well site to its unauthorized location on the basis of trees.

The Staff Report, at page 4, paragraph 2 of Exhibit "B" refers to California Well Bulletin 74-81 & 74-90 plus Monterey County Code MCC15.08 Well Ordinance, which establishes setback distances from potential contaminating sources such as onsite sewage disposal systems, sewer pipes, animal enclosures and feed lots. Such concerns as these are inclusive not exclusive. Other contaminants such as gasoline, oil coolant, pesticides, fertilizer, weed abatement products or even water and soap used to wash a car that are located in rock gravel driveways are not excluded as a contaminant. The County Staff intimated that concerns over contaminants was a basis upon which the well owner moved the well to an unauthorized location.

However, in further reviewing the document entitled "Powell William D. PLN 070074," at Item 3(f) it specifically indicates that the project planner who reviewed the original well site found:

> *"No unusual circumstances were found to exist that would cause a potential significant environmental impact to occur."*

Accordingly, contrary to what the County Staff is now claiming, the evidence reveals that there was no need to move the well site to its unauthorized location on the basis of environmental claims. This is even more evident when considering that the same Environmental Health Agency who expressed concerns regarding the placement of the well in the driveway of the well owner due to potential contaminants, now asserts that there is no concern in placing that same well in the adjacent property owner's driveway. Further, no support for this position has ever been provided.

Pursuant to the notes of this same document ("Powell William D. PLN 070074," dated June 11, 2008), signed by Mike Novo, Director of Resource Management Agency Planning Department:

> *"The zoning ordinance provides that no building permit shall be issued nor any use conducted otherwise than in accordance with the conditions and terms of the permit granted or until 10 days after the mailing of notice of the granting of the permit by the appropriate authority or after granting of the permit by the Board of Supervisors in the event of appeal".*

Despite all of the above, on August 9, 2012, the Zoning Administrator approved an application which granted the new owners of the above-referenced property a new permit under the guise of an "Amendment" to the previously approved Coastal Administrative permit PLN 070074 issued to the Prior Owner allowing a test well, drilled in violation of the authority granted by permit, to remain in its present location. This action by the Monterey Zoning Administrator should be overturned as contrary to both the letter and intent of local ordinances as well as state And federal law as set out below:

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);

2. The action was not supported by the evidence presented;

3. The action was contrary to both administrative and statutory law;

4. The action violated the previous rulings of the Monterey County Board of Supervisors;

5. The initial permit signed June 11, 2008 was not complied with;

6. 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;

7. The existing, unauthorized, location of the well encroaches on the adjacent neighbor's property;

8. The existing, unauthorized, location of the well violates the 25-foot setback requirement to prevent contamination;

9. The existing, unauthorized, location of the well interferes with the esthetics of a historic monument, "Father Serra Statue" carved by Joe Morro in 1922;

10. 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; and,

11. 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.

Lastly, the Environmental Health Bureau's "May 21, 2012 Interim Guidelines for Well Permits and Processing Well Permits" (hereinafter referred to as "the Guidelines") clearly state, under "Guidelines Implementing General Plan Policies and Addressing Concerns of Interim Ordinance 5160 and its extension Ordinances 5163 and 5176:"

> *"**Wells must comply with existing Monterey County Code 15.08, all required Well Setbacks, as well as federal, state and local regulations, in addition to the following added guidelines.*** [Bolded in text]

The guidelines further state:

> *"**Minimum Lot Size and Well Setbacks:***
>
> 1. *The lot shall have enough room for two well sites and shall be a minimum of 20 feet apart;*
> 2. *The well sites shall be a minimum of 25 ft. from property line.*
> 3. *The well must maintain all Well setbacks.*
> 4. *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 front, back, and side yard setbacks. **If the setback cannot stay within these areas an easement or other written recorded approval of the owner of the adjacent lot must be obtained.**" (Emphasis added.)*

The language contained in item 4 under "Minimum Lot Size and Well Setbacks" above was reiterated by the Environmental Health Bureau four time within the Guidelines. The Guidelines also indicate clearly that *"In October 2010, General Plan Update 2010 (GPU 2010) was approved by the Monterey County Board of Supervisors, GPU 2010 contains several policies requiring developing regulations specific to wells for a non-coastal (inland) areas. These policies **are in effect** even though the specific regulations have not yet been adopted by the Board of Supervisors."* (Emphasis added.) Thus, the conversion of the test well into a production well would require compliance with CPU 2020 as well as the Guidelines as set out by the Environment Health Bureau on May 21, 2012.

The Guidelines go on to indicate, *"Anticipating that Ordinance 5160 will expire before the revised ordinance is adopted and General Plan policies are in effect, the*

following guidelines describe what requirements will be applied to well permits and how well applications will be processed and reviewed ***until the ordinance becomes effective.***" (Emphasis added.)

As such, the recommendations of both the County Staff and Mr. Montano appear to be in contradiction to the Environmental Health Bureau Guidelines. Accordingly, it would appear that the recommendations of the County Staff and Mr. Montano should be withdrawn and the Decision of the Zoning Administrator should be overturned as it pertains to the present location of the unauthorized well location and conversion of that well from a test well into a production well.

B. 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.

The staff in its "Project Overview" has identified the fact that the required "twenty-five (25) foot set back radius for the subject well **"slightly encroaches"** on the neighbor's property. That "slight encroachment" has been represented as a ten (10) foot encroachment while, in fact, it is a thirteen (13) foot encroachment. (The County has measured the setback from the center of the wellhead, not the vault walls.) The determination that this encroachment is **"slight"** has apparently been unilaterally made by an unknown representative of the Planning Department, without any authority being presented in support of this determination, and raises the following issues:

1. This encroachment violates County Ordinances, both at the time the well head was drilled and as the County Staff has proposed in its draft plan presently under review as well as the Guidelines of the Environmental Health Bureau dated May 21, 2012;

2. The twenty-five (25) foot setback from adjacent property was established to protect not the applicant, but the adjacent property owner, from claims of contamination and interference with use;

3. This encroachment 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;

4. This encroachment authorizes a private eminent domain over another's property, in favor of the well owner which is not permitted under California law or the United States Constitution, with no citation of legal authority presented by the Zoning Administrator that would circumvent either Constitution;

5. This encroachment requires the necessity of the adjacent property owner to file a recorded easement as proposed by The Monterey Peninsula Waste Management District, thereby reducing the adjacent property owner's property value;

6. This encroachment 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;

7. This encroachment prevents the adjacent property owner from its ability to utilize the land in a manner in which he or she sees fit, in compliance with County Ordinances;

8. The Zoning Administrator's Decision exercises jurisdiction over another's property with no legal authority; and,

9. The Zoning Administrator's Decision creates a potential claim of prescriptive easement after a statute five (5) year period.

Mr. Montano, the Assistant Planner, sets out in his recommendation to the Zoning Administrator: **"This application did not warrant referral to the LUAC because the project did not include a lot line adjustment."** The reason the application did not require a lot line adjustment or variance is due to the action that requested of the Zoning Administrator to act was simply an unilateral and unlawful taking of another's property which would, therefore, negate the necessity for a lot line adjustment or variance.

In "Draft Resolution," item D, the County points out that at the time the well was constructed, regulations did not require an owner to obtain permission from the adjacent property owner for a setback from a well to cross property lines. The reason this requirement did not exist is because the County had an ordinance which required a twenty-five (25) foot setback.

However, this language does appear in the Environmental Health Bureau's "May 21, 2012 Guidelines for Well Permits and Process of Well Permits" and the Proposed Ordinance which is expected to be approved by the end of the year. In fact, this language was specifically added to this ordinance to avoid future litigation with respect to unlawful taking of another's property, and as a restatement of both United States and California Constitutional law. Although the County now chooses to do so, the County is not required to include such a requirement, since State and Federal law prohibits the unlawful taking of another's property without compensation by a governmental agency and does not authorize a private individual from taking the property of another under **any** circumstance.

Additionally, the County staff is now proposing that the Proposed Ordinance allow the setback to be shortened, **provided that the adjacent property owner approves** of a lesser setback, as an exception to the law, not an addition to the law. The sole authority for this exception would rest with the adjacent property owner, not the applicant.

The County advises that the intrusion of the twenty-five (25) foot radius encompasses a total of approximately two hundred, forty-six (246) square feet with approximately fifty-four (54) square feet outside the area reserved for setback. These figures are in error as the measurements were taken from the center of the wellhead and not the vault walls.

All references by the County Staff to Monterey County Coastal Implementation Plan Section 20.12.060 should be disregarded as this Section pertains to "main structures." The wellhead in question is not and cannot be considered a main structure (i.e. a structure that stands above ground). Accordingly, it can only be assumed that any reference made in this regard was intended simply to mislead the Zoning Administrator.

While the Planning Department casually opines that the well location would affect only fifty-four (54) foot area for development, the area for development is not the issue before the Board of Supervisors. The issues before the Board of Supervisors are (1) the exposure and potential of contaminants to that wellhead; (2) the failure to follow permit requirements; (3) failure to obtain a permit; (4) failure to comply with easement and setback requirements and, (5) the unlawful taking of the adjacent property owner's property.

Regardless of whether the adjacent property owner chooses to develop his or her property or not, he or she is required to pay taxes on that property under the Zoning Commission's ruling. The adjacent property owner will be placed in a position of being required to permit an easement on his or her property against his or her will, contrary to the rights guaranteed to that adjacent property owner under the United States and California Constitutions. This action further creates a potential prescriptive easement claim of the Applicant after a statutory five (5) year period. In essence the adjacent property owner is being required to diminish the value of his property and to be exposed to or to expose subsequent buyers to claims of contamination of the wellhead, as the wellhead does not conform to the twenty-five (25) foot property line setback.

It would appear that the County Staff is arguing that the adjacent property owner must comply with setback rules while at the same time uttering the proposition that the applicant need not be held to the setback requirements. A wrongful taking of property is a wrongful taking of property regardless of the extent of that wrongful taking.

The United States Constitution, the California Constitution and Environment Health Bureau "May 21, 2012 Interim Guidelines for Well Permits and Processing Well Permits"

does not permit a taking in the event a Planning Department arbitrarily concludes that the taking is "insignificant."

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.

6. Conclusion

This "Amendment" application by a new land owner for what in reality is a "new well application" and the Application by the Applicant appears to be nothing more than an attempt to do an end run around a decision previously made by The Monterey County Board of Supervisors disallowing those who had not followed the permit process from proceeding to drill a well or convert an illegally drilled well to a production well until such time as other water resources become available.

The third paragraph of the document entitled **Project Description**, under **Project Review**, states as follows:

> "Because the new location of the well was "somewhat" distant from the previously approved location, an amendment to The Coastal Administrative Permit should have been required prior to the construction of the well; however, the owner was unaware of this requirement at the time. (emphasis added)."

It is questionable how Fifty (50) feet could be determined to be "somewhat" distant. Fifty (50) feet not "somewhat" distant, in fact, the Fifty (50) feet in question relocated the well to the entire other end of the lot.

Additionally, absolutely no evidence was ever provided to support the conclusion that Mr. Powell (deceased) was unaware of the requirement to request an amendment to The Coastal Administrative Permit before the well was drilled? And, in fact, the testimony of the adjacent property owners confirmed direct knowledge of the fact that this statement is false and that Mr. Powell (deceased) did know that a new permit was necessary, but believed he could do whatever he wished.

Secondly, no one has been able to produce any evidence from any individual authorizing this Fifty (50) foot relocation of the well. Therefore, there is no proof that such an authorization has ever been given or as to why this conclusion has been reached.

Appellant has requested and continues to request the name of the individual who allegedly authorized this Fifty (50) foot relocation, under what authority such relocation was authorized, and any documentation supporting this conclusion to no avail. Accordingly, alleged statements that someone who is yet to be identified, spoke with a man, who is now deceased, should not be accepted by the County since no proof has ever been presented that such a conversation ever took place.

Accordingly, the Zoning Administrator was not only asked to accept double hearsay regarding the statement that "someone" from the Environmental Health Agency authorized the Fifty (50) foot relocation, but also to accept double hearsay regarding the Prior Owner's alleged lack of knowledge as to the necessity for a new permit, without any evidence or support for either of these statements. In doing so, the Zoning Administrator was asked to completely ignore the rules and regulations as set out by the Monterey County Board of Supervisors, Environmental Health Bureau and Planning Commission in the "May 21, 2012 Interim Guidelines for Well Permits and Processing of Well Permits," the United States Constitution, and the California State Constitution, which prohibit the wrongful taking of another's property.

Additionally, the New Owner arguing that due to a the Prior Owner being "unaware of certain permit requirements," especially in the face of those requirements being provided to Prior Owner in writing, exempts the New Owner from complying with the rule of law for the permit process, is an absurdity. The legal axiom "Ignorance of the Law is no excuse not to comply with the law" is a longstanding provision of law, otherwise all laws would be unenforceable. This argument is insulting to our Administrative Process, requires us to ignore common sense, and should not be countenanced.

Appellant, respectfully requests, that the Monterey County Board of Supervisors properly apply the rule of law and reject:

1) The double hearsay from an unidentified and apparently unauthorized employee of the Environmental Health Agency;

2) The unsupported statements made by third parties regarding the understanding, knowledge or conversations of the Prior Owner, especially in light of testimony given by an individual who had direct communication with the Prior Owner contradicting these unsupported statements; and

3) Accept the fact that the Prior Owner chose to effectively thumb his nose at the regulations established to protect all property owners within the County of Monterey.

Appellant further requests that the Monterey County Board of Supervisors take notice that the Monterey County Board of Supervisors already addressed this issue, with the New Owner, who has now attempted to circumvent the Decision of Monterey County Board of Supervisors' by this present action. The Decision of the Monterey County Board of Supervisors to the New Owner's request concluded that the permit process was not followed by the Prior Owner, and therefore, the New Owner would not be allowed to "grand-father" in with those who did follow the permit process, regulations and ordinance restrictions thereby protecting adjacent property owners and permitting public comment.

Based upon all of the above, it is respectfully requested, that the Monterey County Board of Supervisors:

1) Determine that the action of the New Owner to be exactly what it is, a request by a New Owner for a new well permit;

2) Apply the Environmental Health Bureau May 21, 2012 Interim Guidelines for Well Permits and Processing of Well Permits; and,

3) Overturn the Decision of the Zoning Administrator due to the misrepresentations of the New Owner in attempting to disguise this application for a new well permit to make it appear to be an application to amend permit PLN 070074 which effectively authorizes the use of a well that is not in substantial conformance with the terms and conditions of Permit PLN 070074 and is in violation of County Regulations.

Respectfully submitted,

Glen R. Mozingo, Esq.

cc: Richard LeWarner, Assistant Director of Environmental Health Bureau
John Ramirez, Director of Environmental Health Bureau
Mike Novo, Director of Planning, RMA - Planning Department
Benny Young, Director of Resource Management Agency
Carl Holm, Interim Deputy Director of Resource Management Agency
Michael Rodriguez, Chief Building Official, Resource Management Agency
Paul Greenway, Acting Director of Public Works, Resource Management Agency
Shawne Ellerbee, Finance Manager of Resource Management Agency
Liz Fuchs, AICP, Manager, Statewide Planning, California Coastal Commission
Rick Hyman, Sr. Planner, Statewide Planning Unit, California Coastal Commission
Dan Carl, Central Coast District Director, California Coastal Commission
Silvio Bernardi, Director of Water Resources Agency
Richard Ortiz, Director of Water Resources Agency
Doug Smith, Director of Water Resources Agency
Ken Ekelund, Director of Water Resources Agency
Mike Scantini, Director of Water Resources Agency
Claude Hoover, Director of Water Resources Agency
David Hart, Director of Water Resources Agency
Fred Ledesma, Director of Water Resources Agency
Jacqueline R. Onciano, Zoning Administrator

Laura Lawrence, Planning Services Manager
Ramon Montano, Project Planner
Delinda Robinson, Senior Planner
Barbara Buikema, General Manager, Carmel Area Waste Water District
Supervisor Fernando Armenta
Supervisor Louis R. Calcagno
Supervisor Jane Parker
Supervisor Dave Potter
Supervisor Simon Salinas
Board of Supervisors, County Clerk
Charles J. McKee, Esq., Monterey County Counsel
Wendy S. Strimling, Esq., Monterey County Counsel

Interim Well Construction Guidelines
5/21/12
INTERIM GUIDELINES FOR WELL PERMTS
AND
PROCESSING WELL PERMITS

PURPOSE:
To clarify what requirements will be applied to wells in the inland area and the coastal zone of Monterey County and the processing of applications for well permits.

BACKGROUND:
Ordinance 5160 was adopted on May 25, 2010 to prohibit drilling new wells on parcels less than 2.5 acres in the unincorporated area California American Water Company-Monterey District Main System service area that is underlain by fractured rock. Interim Urgency Ordinance No. 5160 and its extensions 5163 and 5176 was adopted to limit most new well construction until new regulations could be considered that would address concerns that new wells have on the public health, safety, and welfare of Monterey County Residents. The Interim Urgency Ordinance will expire on May 25, 2012.

In October 2010, General Plan Update 2010 (GPU 2010) was approved by the Monterey County Board of Supervisors. GPU 2010 contains several policies requiring developing regulations specific to wells for the non-coastal (inland) areas. These policies are in effect even though the specific regulations have not yet been adopted by the Board of Supervisors.

Monterey County Health Department Environmental Health Bureau is currently revising Chapter 15.08 of the Monterey County Code to implement the policies of GPU 2010 and to address the concerns in Ordinance 5160. Anticipating that Ordinance 5160 will expire before the revised ordinance is adopted and General Plan policies are in effect, the following guidelines describe what requirements will be applied to well permits and how well applications will be processed and reviewed until the ordinance becomes effective.

PROTOCOL
Until the proposed revised MCC Chapter 15.08 has been adopted the following guidelines shall be implemented:

1) Well applications in the Inland Area of Monterey County
   Parcels located in the inland area are subject to the GPU 2010 (Policies PS-2.4, PS-2.5, PS-2.8, PS-3.3, PS-3.4, PS-3.5, PS-3.6, CV-3.20, NC-3.8, and NC-5.4).
   - Discretionary Permit. An Administrative Permit is required (Planning Department) for a new well.
   - Technical Regulations. The attached guidelines most closely reflect the County's interpretation of the policies in GPU 2010 regarding wells. Therefore, these guidelines are in response to the policies of GPU 2010 and will be implemented until the Board of Supervisors adopts MCC 15.08. The new ordinance will be in effect 30 days after the final Board action.
2) Well applications in the Coastal Zone of Monterey County
   Parcels located in the Coastal Zone are subject to the Local Coastal Plan.

EXHIBIT 1

Interim Well Construction Guidelines
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- Discretionary Permit. An Administrative Permit is required (Planning Department) for a new well.
- Technical Regulations. The attached guidelines are consistent with the Local Coastal Plan and therefore the proposed revisions will be implemented until the Board of Supervisors adopts MCC 15.08 and the Coastal Commission certifies the adopted version of MCC 15.08.

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Guidelines Implementing General Plan Policies And Addressing Concerns Of Interim Ordinance 5160 and its extensions Ordinances 5163 and 5176

Wells must comply with existing Monterey County Code 15.08, all required Well Setbacks, as well as federal, state and local regulations, in addition to the following added guidelines.

Fractured Rock Geology

Technical Standards:

1. Minimum well seal shall be 100 feet below ground surface (bgs) unless a clay layer is encountered and must seal 10 feet into the clay layer. The well seal shall not be less than 50 feet bgs.
2. Required minimum 72 hour pump test by a registered professional geologist or hydrogeologist for lots less than 20 acres.

Minimum Lot Size and Well Setbacks:

Lots where the geology is fractured rock:

Those existing lots that were created to have sewage disposal by sewer system and water supplied by a water system shall meet the following:

1. The lot shall have enough room for two well sites and shall be a minimum of 20 feet apart.
2. The well sites shall be a minimum of 25 ft. from property line.
3. The well must maintain all Well setbacks.
4. 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 front, back, and side yard setbacks. If the setback cannot stay within these areas an easement or other written recorded approval of the owner of the adjacent lot must be obtained.
5. 50% of the lot must stay permeable after build out and a deed restriction recorded.
6. A Rainwater Harvesting System shall be required for those wells that have an approved flow rate less than 5 gallons per minute and shall be a minimum of 20 feet from the well. Plans must be submitted for review and approval. A deed restriction shall be recorded on the property regarding required maintenance by the owner.

Those existing lots of record where sewage disposal is by OWTS shall meet the following:

1. No new well permit shall be issued for an existing lot less than 1 acre unless it is a replacement well.

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2. All existing lots within a water system that have an existing connection or can connect to the water system shall be a minimum of 2.5 acres.
3. The lot shall have enough room for two well sites and shall be a minimum of 20 feet apart.

4. If existing legal lot has less than 20 feet soil depth over fractured rock, then an alternative OWTS is required if the site location is between 100 feet and 250 feet. If the site location is greater than 250 feet a conventional OWTS may be used.
5. The well setback may not cross property lines unless the setback stays within a portion of the adjacent lot that has developmental constraints such as steep slopes, easements front, back, and side yard setbacks, or lots in which the primary use is agricultural production.
6. If the well setback of the proposed well cannot stay within those areas of the adjacent lot as listed in requirement 5, then an easement or other written recorded approval of the owner of the adjacent lot must be obtained.

Lot where geology is other than fractured rock:

A. Existing lots within a water system that have an existing connection or can be provided with an existing system and sewage disposal is by OWTS must comply with requirements 1, 2, 3, 4, and 6 below.
B. Existing lots within a water system that does not have an existing connection and the water system cannot provide a connection, and sewage disposal is by OWTS must comply with requirements 2, 3, 4 or 5, and 6 below.
C. Existing lots not within a water system that does not have an existing connection and the water system cannot provide a connection and sewage disposal is by OWTS must comply with requirements 2, 4 or 5, and 6 below.
D. Well for a new domestic water system must comply with requirements 6, 7, and 9 below.
E. Well for an existing domestic water system must comply with requirements 8, 9, below.
F. Agricultural Wells must comply with 10, 11 below.

1. The lot must be a minimum of 2.5 acres if the lot is being served by an existing water connection or the water system has the capacity to provide a connection to serve the lot.
2. The lot shall have sufficient area for 2 well sites and the well sites shall be a minimum of 20 feet apart.
3. The well is for individual use and not part of the water system.
4. The well setback may not cross property lines unless the setback stays within a portion of the adjacent lot that has developmental constraints such as steep slopes, easements front, back, and side yard setbacks, or lots in which the primary use is agricultural production.
5. If the well setback of the proposed well cannot stay within those areas of the adjacent lot as listed in requirement 4, then an easement or other written recorded approval of the owner of the adjacent lot must be obtained.
6. Well sites, well setbacks, OWTS and repair increment shall be shown on a map and submitted to EHB for approval.

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7. Wells for new domestic water systems shall be in a well lot.
8. Wells for existing domestic water systems shall be in a well lot or easement and described in the water system's agreement and submitted for approval by EHB.
9. Well setbacks of proposed wells for domestic water systems may cross property lines if there is minimal impact to potential development of the adjacent lot(s) for those lots that lie within the water system's service area. Well setbacks shall not cross property lines of lots not served by the domestic water system unless it complies with requirements 4 or 5.
10. Well setbacks may encroach upon lots in which the main use is agricultural production, but not lots whose primary use is domestic or commercial unless requirements 4 or 5 is met.
11. The well shall be a minimum of 20 feet from property line.

Replacement Well:

A proposed well is considered a replacement if it meets the following criteria

1. The type of use will be similar in use to the well being replaced; and
2. The well being replaced will be destroyed within 90 days following completion of the replacement well.
3. The replacement well shall be designed so that intensification of use beyond that of the original well's intended use cannot occur; and
4. The Replacement well meets one of the following descriptions:
   a. The Replacement well is to replace the water production of an existing well on an existing legal lot of record for that lot's use, the primary use of the lot is residential and/or commercial, replacement well will be on the same lot of record as the existing well, and the existing well will be destroyed in accordance of the requirements of this MCC 15.08; or
   b.. The replacement well is to replace the water production of an existing well of an existing domestic water system that cannot supply sufficient water to the domestic water system either because of water quality or quantity problems, and the existing well will be destroyed in accordance with the requirements of MCC 15.08; or
   c. The replacement well is an agricultural well that is replacing the water production of an existing agricultural well; the replacement well is located on an existing legal lot of record in a location such that the replacement well's water supply will serve a similar geographic area to that of the existing agricultural well.

Impact assessment of new domestic and high capacity wells (>1,000 gpm):

The following shall apply to new domestic well or a high capacity wells, replacement wells are exempt:

1. Determine whether there are streams or wells nearby. If there are then refer the application to WRA for an initial assessment for potential impacts the in-stream flows or interference with nearby domestic wells.
2. If WRA determines a potential impact, then a hydrogeological report will be required to be prepared by a qualified professional. The report shall include any mitigations that may minimize the impact (i.e. move well, well design, etc.)

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3. If the hydrogeological report indicates potential impact, then EHB must consult with Planning Dept. for the requirement of a biological report to analyze the impact to the biota of the stream.

Water quality test for new individual domestic wells:

Upon completion of a new well, the following tests shall be required:

1. Total Coliform including *E. coli.*
2. Primary and Secondary constituents per Title 22 of CCR.
3. If the well is not vulnerable then tests for asbestos, methyl-tert-butyl ether (MTBE) may be waived.
4. If the well is vulnerable then Organic Chemicals per Title 22 as determined by EHB.

Saltwater intruded areas:

New wells are prohibited in saltwater intruded areas as identified by Monterey County Water Resources Agency or other water management agency.

PLN110367

NOTICE OF APPEAL

Monterey County Code
Title 19 (Subdivisions)
Title 20 (Zoning)
Title 21 (Zoning)

No appeal will be accepted until written notice of the decision has been given. If you wish to file an appeal, you must do so on or before September 4, 2012 (10 days after written notice of the decision has been mailed to the applicant).

Date of decision: August 24, 2012

1. Name: Glen R. Mozingo, Esq.

   Address: 3080 Serra Avenue, Carmel-by-the-Sea, CA 93923

   Telephone: (831) 622-9672

2. Indicate your interest in the decision by placing a check mark below:

   Applicant _____

   Neighbor ___X___.

   Other (please state)_____

3. If you are not the applicant, please give the applicant's name:

   Estate of William Dan Powell

4. Fill in the file number of the application that is the subject of this appeal below:

	Type of Application	Area
a) Planning Commission: PC- _____		

   b) Zoning Administrator: ZA- Resolution No. 12-028 Pertaining to Application of William Dan Powell (PLN 110367). Resolution by Monterey County Zoning Administrator: (1) Finding the project categorically exempt per Section 15304; and (2) Approving a Coastal Administrative Permit (PLN 110367) to allow the conversion of an approved test well previously apporoved under PLN 070074 (amended under PLN 110366) to a domestic production well.

   c) Minor Subdivision: MS- _____ _____

   d) Administrative Permit: AP- _____ _____

Notice of Appeal

5. What is the nature of your appeal?

   a) Are you appealing the approval or denial of an application? Approval.

b) If you are appealing one or more conditions of approval, list the condition number and state the condition(s) you are appealing. (Attach extra sheet if necessary)

(2) Approving a Coastal Administrative Permit (PLN 110367) to allow the conversion of an approved test well previously apporoved under PLN 070074 (amended under PLN 110366) to a domestic production well.

6. Place a check mark beside the reason(s) for your appeal:

There was a lack of fair or impartial hearing _____
The findings or decision or conditions are not supported by the evidence __X__.
The decision was contrary to law __X__.

Give a brief and specific statement in support of each of the reasons for your appeal checked above. The Board of Supervisors will not accept an application for an appeal that is stated in generalities, legal or otherwise. If you are appealing specific conditions, you must list the number of each condition and the basis for your appeal. (Attach extra sheets if necessary) Please See Attached

Appellant appeals from the above condition of the Decision on the following grounds:

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);

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;

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;

4. The action was not supported by the evidence presented;

5. The action was contrary to both administrative and statutory law;

6. The action violated the previous rulings of the Monterey County Board of Supervisors;

7. The initial permit signed June 11, 2008 was not complied with;

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;

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;

10. The existing, unauthorized, location of the well encroaches on the adjacent neighbor's property;

11. The existing, unauthorized, location of the well violates the 25-foot setback requirement to prevent contamination;

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;

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;

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;

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;

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;

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;

18. No authority of any kind has been provided to support the alleged authorization by the Environmental Health Agency for relocation of the well;

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;

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;

21. No documents substantiating that the County ever received a request to relocate the well site have ever been produced;

22. No documents substantiating that authorization for the relocation of the well was ever given have ever been produced;

23. No authority was ever provided substantiating that the alleged twenty-five (25) foot setback could be abandoned;

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;

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;

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;

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;

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;

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.

7. As part of the application approval or denial process, findings were made by the decision-making body (Planning Commission, Zoning Administrator, or Minor Subdivision Committee). In order to file a valid appeal, you must give specific reasons why you disagree with the findings made. (Attach extra sheets if necessary)

   Please see attached appeal.

8. You are required to submit **stamped-addressed envelopes** for use in providing notice of the public hearing on the appeal to all interested persons and all property owners within **300 feet** of the subject property. You may obtain the mailing list from the Planning and Building Inspection Department.

   Please see attached.

9. You must pay the required filing fee of $5,146.81 (make check payable to "County of Monterey") at the time you file your appeal. (Please note that appeals of projects in the Coastal Zone are not subject to the filing fee.)

   This appeal pertains to a project in the Coastal Zone and is not subject to a filing fee.

10. Your appeal is accepted when the Clerk to the Board accepts the appeal as complete and receives the required filing fee and the stamped-addressed envelopes. Once the appeal has been accepted, the Clerk to the Board will set a date for the public hearing on the appeal before the Board of Supervisors.

The appeal, filing fee, and envelopes must be delivered to the Clerk to the Board or mailed and postmarked by the filing deadline. A facsimile copy of the appeal will be accepted only if the hard copy of the appeal, filing fee, and envelopes are mailed and postmarked by the deadline.

APPELLANT SIGNATURE _____ Date: 8/31/12

ACCEPTED _____ Date: _____
Clerk to the Board

cc: Original to Clerk to the Board; Planning & Building Inspection Department

Updated July 1, 2012

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FIRM ADMINISTRATOR
PAMELA AMIRAULT, CEP

MEMBERS
CALIFORNIA STATE BAR
NEW YORK STATE BAR
UNITED STATES FEDERAL BAR
INTERNATIONAL BAR
UNITED STATES TAX COURT
U.S. COURT OF INTERNATIONAL TRADE
LAW SOCIETY OF ENGLAND & WALES*

August 31, 2012

Transmitted via Overnight Mail

Monterey County Board of Supervisors
168 West Alisal Street, 1st Floor
Salinas, California 93901

Attention: Gail Borkowski, Clerk

Re: ***In the Matter of the Application of William Dan Powell (PLN 110367) Appeal to Resolution 12-028 Finding Project Categorically Exempt per Section 15304 and approving a Coastal Administrative Permit (PLN 110367) to Allow the Conversion of an Approved Test Well Previously Approved under PLN 070074 (amended under PLN 110366) to a Domestic Production Well)***
Real Property Location: 3072 Serra Avenue, Carmel, California 93923
APN: 009-081-027-000
Appellant: Glen R. Mozingo, Esq.

Dear Board of Supervisors:

Appellant has appealed the ruling of the Zoning Administrator allowing the Amendment of the original permit PLN 070074 under Permit PLN 110366. Accordingly, since a final ruling has not been made to date concerning the requested amendment under PLN 110366 to the original permit PLN 070074, there is no basis to allow conversion of a well that has not been approved under PLN 110366.

*LICENSED TO PRACTICE LAW IN FORTY-NINE COMMON LAW COUNTRIES

The bases for the appeal to the request of the New Owner, the Estate of William Dan Powell under PLN 110366 to Amend the well Permit obtained by the Prior Owner William Dan Powell, deceased, under PLN 007074 apply equally to this request under PLN 110367 to convert the subject test well to a domestic production well, and are therefore, repeated in this appeal. However, since the arguments are the same for both appeals, Appellant herein advises the Board of the consistency of argument, so as to avoid the necessity of the reviewing Board reading the same arguments twice.

Timeliness of Appeal

Pursuant to Monterey County Zoning, Coastal Implementation Plan - Title 20, Section 10.86.030:

> *"An appeal shall be in writing and shall be filed with the Clerk of the Board of Supervisors and with Appropriate Authority within 10 days after written notice of the decision of the Appropriate Authority has been mailed to the applicant."*

The Notice of Decision of the Zoning Administrator was mailed on August 24, 2012. Ten dates from August 24, 2012 is September 3, 2012. This Appeal was mailed August 31, 2012 and is, therefore, timely.

Basis of Appeal

1. The Owner of the Property on Which Well is Located is a New Owner

The entity which is presently seeking under (PLN 110367), the Estate of William Dan Powell (hereinafter referred to as "New Owner") the conversion of test well PLN 070074 from a test well to a domestic production well. This entity is not the same Applicant who obtained the original permit (PLN 070074), William Dan Powell, deceased (hereinafter referred to as "Prior Owner").

The New Owner is well aware of the ordinances in place (specifically the "May 21, 2012 Interim Guidelines for Well Permits and Processing Well Permits" drafted by the Environmental Health Bureau, a true and correct copy of which as obtained from the Monterey County website is attached hereto as "Exhibit "1") which addresses the construction of new wells and processing of new well permits which would not allow the test well in its present location unless an easement had been obtained from the adjacent property owner, which easement has never been requested or obtained as it pertains to the subject test well. The New Owner is also aware of the ruling of the Monterey County Board of Supervisors approximately three years ago denying the test will to proceed to a production well as the issued permit (PLN 070074) was not complied with.

In an attempt to circumvent these issues, the New Owner, deliberately mischaracterized the request for a new well permit in an attempt to ratify, inappropriate actions taken by Mr. Powell (deceased) and did not comply with the permit issued for this property. The New Owner requests that the County violate County ordinances for setbacks, allow the unlawful taking of another's property, and violate the requirements of the permit process for issuance of a new permit, giving all parties an opportunity to object.

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.

When the original permit to drill a test well was issued to the Prior Owner, it contained the following provision:

> "Any use or construction ***not in substantial conformance*** with the terms and conditions of this permit is in violation of County Regulations and may result in modification or revocation of this permit and subsequent legal action. ***Nouse or construction other than that specified by this permit is allowed unless the appropriate authority approves additional permits.***" (Emphasis added.)_

This language is also contained in attachment to Exhibit C of the "Draft Resolution," in Condition 1. Staff advises that no additional permits were ever requested or obtained before the well was drilled by Mr. Powell, deceased, and that they have no record of an application for a new site prior to drilling.

Since the new permit is prohibited pursuant to the United States Constitution, California State Constitution, the laws of this state, and the "May 21, 2012 Interim Guidelines for Well Permits and Processing Well Permits" drafted by the Environmental Health Bureau, the New Owner has intentionally attempted to mislead the Staff and Planning Department with regard to these facts in order to obtain a permit they know is prohibited.

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

This Appeal pertains to an existing test well that was never authorized or approved by the County.

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 as outlined above.

The County Staff has affirmed that no previous Application for Amendment was prepared or received for this property or for PLN 070074 under Item 2(d) of Exhibit C of the "Draft Resolution," despite the fact that a New Application was admittedly required. The Monterey Bounty 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.

It appears that the New Owner, in an attempt to circumvent the desires of the Board of Supervisor, chooses to ignore the intentions of the Environmental Health Bureau's "May 21, 2012 Interim Guidelines for Well Permits and Processing of Well Permits." The New Owner has attempted to convince the Zoning Administrator to ratify conduct that is in violation of the Planning Department Permit received by the Prior Owner, so as to gain a permit to convert an illegal test well into a production well. This action is in contravention of the desires of the Board of Supervisors, should not be countenanced and the Ruling of the Zoning Administrator should be overturned.

4. **The Actions by the Monterey Zoning Administrator are Contrary to Law and Should be Overturned**

A. **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.**

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.

The New Owner has made this request under the assumption that the County should conclude, with absolutely no documentation to support that any such action or authorization ever took place, that an unidentified individual from the Environmental Health Agency, without authority to do so, granted authority to relocate the well to its present location, in violation of County setback ordinances. In the event the New Owner succeeds in having the County accept this assumption, they can circumvent the Environmental Health Bureau's "May 21, 2012 Interim Guidelines for Well Permits and Processing of Well Permits" which specifically disallows the well's relocation to where the New Owners presently seek it to be located.

Specifically, pursuant to Exhibit "B" of the Staff Report, "History of Permit Activity," the Zoning Administrator was informed that in January of 2009 an unknown individual at "Environmental Health" conducted a site inspection to consider the new location of the well, as requested by the Prior Owner, and found the new location to be consistent with all County regulations regarding site development, standards, setback requirements from containment sources and the California Well Standard Bulletins. As a result the well was allowed to be sited fifty (50) feet from the original location. However,

this unsupported assertion by an unnamed representative from the "Environmental Health Agency" has not been confirmed since no one seems to have any idea who inspected the new well location or made this assertion.

Despite this fact, and based solely upon this assertion, the Planning Department opined that "The County approved the relocation of the Powell well in 2009." This unsupported assertion by this unknown individual raises several issues:

1. 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 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 for relocation of the well or documentation supporting approval for relocation of the well by Environmental Health Bureau ever presented.

2. 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, why wouldn't this information have been presented to the County Board of Supervisors three years ago. There is no question of its relevance to that hearing.

3. If, in fact, the Environmental Health Agency 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, when did The Environmental Health Agency authorize the relocation of this well from its original location. (No supporting documentation for this accusation has ever been provided).

4. Since the Monterey County Board of Supervisors had already ruled approximately three years that the relocation would not be permitted without

a proper application to amend the authorized permit being filed by the Prior Owner, under what authority was such authorization provided.

5. Who is the unnamed and unidentified 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 Planning Department, Ordinances, Guidelines and laws of this state.

6. Was the person who allegedly authorized the fifty (50) foot relocation present at the Zoning Administrator hearing? If so, why did he or she not present evidence regarding the authority provided by them?

7. Where are the documents that support that the County received a request to relocate the well site?

8. Where is the documentation supporting authorization for the relocation of the well?

9. Why were none of these documents presented at the Zoning Administrator hearing? Based upon Appellant's prior communications with the Prior Owner the Prior Owner stated that he did not have to follow the appropriate procedures because he had an "inside guy" at the Planning Department, Appellant is of the belief that neither the individual nor the documents were presented to the Zoning Administrator as neither exist.

10. By what authority was the twenty-five (25) foot setback abandoned?

11. 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.

12. By what authority did the Monterey County Planning Department dismiss this requirement for an application for new permit?

Appellant respectfully submits that before the Zoning Administrator was asked to believe, or accepted as fact, the representation that a statement made by an unidentified individual to a person who is now deceased (double hearsay), the above issues should have been addressed. Without support documentation being presented, and in the face of evidence to the contrary, the assumptions should have been discarded and not considered. Appellant questions what support the Monterey County Planning Department relied upon for its assertion that the Prior Owner "was not aware of the requirement" to seek a new permit for this relocation of the well.

Appellant respectfully submits that the Zoning Administrator's Decision pertaining to Conversion (PLN 110367) of the well authorized under Coastal Planning Permit PLN 070074 (for which a final decision under PLN 110366 has not been rendered) 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."

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. The Decision of the Monterey County Zoning Administrator is also contrary to the Previous Unanimous Board of Supervisors' Ruling pertaining to the "grandfathering" of test wells drilled in compliance with County Permits.

Of great significance, "Draft Resolution" E indicates that the new, unauthorized well site is located fifty (50) feet from the original, authorized site and allegedly fifteen (15) feet away from the adjacent property (in actuality the well is thirteen (13) feet away from the adjacent property). The approved well site was to be located within the proposed driveway

of the Powell residence and was allegedly moved by the owner, without permission, for two reasons:

> *"(1) The well was located in an area near existing trees not permitted for removal; and (2) the EHB agreed that locating the well in the driveway near a vault was not preferable."*

This is belied by the following:

Item 1(f) of the "Draft Resolution" of the document entitled "Powell William D. PLN 070074," dated June 11, 2008, on page 2, states that the project planner for the original well site *"conducted a site inspection on April 21, 2008 to verify that the project on the site parcel conforms to the plans listed above."* This document clearly states that **the original site was approved**. There is no discussion of trees, no discussion of driveways and no subsequent documentation authorizing the relocation of this well by some fifty (50) feet. Further, in that same document, it specifically states under Item 3(d):

> *"Implementation of the project will not require tree removal, extensive grading, or development on slopes in excess of 30%."* (Emphasis Added)

Accordingly, as this same document ("Powell William D. PLN 070074," dated June 11, 2008) demonstrates, the project planner reviewed the site and that the project planner did not feel that the original well site was located in an area near existing trees not permitted for removal since the project planner for the original well site did not believe that implementation of the project would require tree removal. Therefore, contrary to what County Staff is now claiming, the evidence shows that there was no need to move the well site to its unauthorized location on the basis of trees.

The Staff Report, at page 4, paragraph 2 of Exhibit "B" refers to California Well Bulletin 74-81 & 74-90 plus Monterey County Code MCC15.08 Well Ordinance, which establishes setback distances from potential contaminating sources such as onsite sewage

disposal systems, sewer pipes, animal enclosures and feed lots. Such concerns as these are inclusive not exclusive. Other contaminants such as gasoline, oil coolant, pesticides, fertilizer, weed abatement products or even water and soap used to wash a car that are located in rock gravel driveways are not excluded as a contaminant. The County Staff intimated that concerns over contaminants was a basis upon which the well owner moved the well to an unauthorized location.

However, in further reviewing the document entitled "Powell William D. PLN 070074," at Item 3(f) it specifically indicates that the project planner who reviewed the original well site found:

> *"No unusual circumstances were found to exist that would cause a potential significant environmental impact to occur."*

Accordingly, contrary to what the County Staff is now claiming, the evidence reveals that there was no need to move the well site to its unauthorized location on the basis of environmental claims. This is even more evident when considering that the same Environmental Health Agency who expressed concerns regarding the placement of the well in the driveway of the well owner due to potential contaminants, now asserts that there is no concern in placing that same well in the adjacent property owner's driveway. Further, no support for this position has ever been provided.

Pursuant to the notes of this same document ("Powell William D. PLN 070074," dated June 11, 2008), signed by Mike Novo, Director of Resource Management Agency Planning Department:

> *"The zoning ordinance provides that no building permit shall be issued nor any use conducted otherwise than in accordance with the conditions and terms of the permit granted or until 10 days after the mailing of notice of the granting of the permit by the appropriate authority or after granting of the permit by the Board of Supervisors in the event of appeal".*

Despite all of the above, on August 9, 2012, the Zoning Administrator approved an application which granted the new owners of the above-referenced property a new permit under the guise of an "Amendment" to the previously approved Coastal Administrative permit PLN 070074 issued to the Prior Owner allowing a test well, drilled in violation of the authority granted by permit, to remain in its present location. This action by the Monterey Zoning Administrator should be overturned as contrary to both the letter and intent of local ordinances as well as state And federal law as set out below:

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);

2. The action was not supported by the evidence presented;

3. The action was contrary to both administrative and statutory law;

4. The action violated the previous rulings of the Monterey County Board of Supervisors;

5. The initial permit signed June 11, 2008 was not complied with;

6. 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;

7. The existing, unauthorized, location of the well encroaches on the adjacent neighbor's property;

8. The existing, unauthorized, location of the well violates the 25-foot setback requirement to prevent contamination;

9. The existing, unauthorized, location of the well interferes with the esthetics of a historic monument, "Father Serra Statue" carved by Joe Morro in 1922;

10. 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; and,

11. 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.

Lastly, the Environmental Health Bureau's "May 21, 2012 Interim Guidelines for Well Permits and Processing Well Permits" (hereinafter referred to as "the Guidelines") clearly state, under "Guidelines Implementing General Plan Policies and Addressing Concerns of Interim Ordinance 5160 and its extension Ordinances 5163 and 5176:"

> *"**Wells must comply with existing Monterey County Code 15.08, all required Well Setbacks, as well as federal, state and local regulations, in addition to the following added guidelines.*** [Bolded in text]

The guidelines further state:

> *"**Minimum Lot Size and Well Setbacks:***
>
> 1. *The lot shall have enough room for two well sites and shall be a minimum of 20 feet apart;*
> 2. *The well sites shall be a minimum of 25 ft. from property line.*
> 3. *The well must maintain all Well setbacks.*

4. *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 front, back, and side yard setbacks. **If the setback cannot stay within these areas an easement or other written recorded approval of the owner of the adjacent lot must be obtained.**" (Emphasis added.)*

The language contained in item 4 under "Minimum Lot Size and Well Setbacks" above was reiterated by the Environmental Health Bureau four time within the Guidelines. The Guidelines also indicate clearly that *"In October 2010, General Plan Update 2010 (GPU 2010) was approved by the Monterey County Board of Supervisors, GPU 2010 contains several policies requiring developing regulations specific to wells for a non-coastal (inland) areas. These policies **are in effect** even though the specific regulations have not yet been adopted by the Board of Supervisors."* (Emphasis added.) Thus, the conversion of the test well into a production well would require compliance with CPU 2020 as well as the Guidelines as set out by the Environment Health Bureau on May 21, 2012.

The Guidelines go on to indicate, *"Anticipating that Ordinance 5160 will expire before the revised ordinance is adopted and General Plan policies are in effect, the following guidelines describe what requirements will be applied to well permits and how well applications will be processed and reviewed **until the ordinance becomes effective.**"* (Emphasis added.)

As such, the recommendations of both the County Staff and Mr. Montano appear to be in contradiction to the Environmental Health Bureau Guidelines. Accordingly, it would appear that the recommendations of the County Staff and Mr. Montano should be withdrawn and the Decision of the Zoning Administrator should be overturned as it pertains to the present location of the unauthorized well location and conversion of that well from a test well into a production well.

B. 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.

The staff in its "Project Overview" has identified the fact that the required "twenty-five (25) foot set back radius for the subject well **"slightly encroaches"** on the neighbor's property. That "slight encroachment" has been represented as a ten (10) foot encroachment while, in fact, it is a thirteen (13) foot encroachment. (The County has measured the setback from the center of the wellhead, not the vault walls.) The determination that this encroachment is **"slight"** has apparently been unilaterally made by an unknown representative of the Planning Department, without any authority being presented in support of this determination, and raises the following issues:

1. This encroachment violates County Ordinances, both at the time the well head was drilled and as the County Staff has proposed in its draft plan presently under review as well as the Guidelines of the Environmental Health Bureau dated May 21, 2012;

2. The twenty-five (25) foot setback from adjacent property was established to protect not the applicant, but the adjacent property owner, from claims of contamination and interference with use;

3. This encroachment 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;

4. This encroachment authorizes a private eminent domain over another's property, in favor of the well owner which is not permitted under California law or the United States Constitution, with no citation of legal authority presented by the Zoning Administrator that would circumvent either Constitution;

5. This encroachment requires the necessity of the adjacent property owner to file a recorded easement as proposed by The Monterey Peninsula Waste Management District, thereby reducing the adjacent property owner's property value;

6. This encroachment 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;

7. This encroachment prevents the adjacent property owner from its ability to utilize the land in a manner in which he or she sees fit, in compliance with County Ordinances;

8. The Zoning Administrator's Decision exercises jurisdiction over another's property with no legal authority; and,

9. The Zoning Administrator's Decision creates a potential claim of prescriptive easement after a statute five (5) year period.

Mr. Montano, the Assistant Planner, sets out in his recommendation to the Zoning Administrator: **"This application did not warrant referral to the LUAC because the project did not include a lot line adjustment."** The reason the application did not require a lot line adjustment or variance is due to the action that requested of the Zoning Administrator to act was simply an unilateral and unlawful taking of another's property which would, therefore, negate the necessity for a lot line adjustment or variance.

In "Draft Resolution," item D, the County points out that at the time the well was constructed, regulations did not require an owner to obtain permission from the adjacent property owner for a setback from a well to cross property lines. The reason this requirement did not exist is because the County had an ordinance which required a twenty-five (25) foot setback.

However, this language does appear in the Environmental Health Bureau's "May 21, 2012 Guidelines for Well Permits and Process of Well Permits" and the Proposed Ordinance which is expected to be approved by the end of the year. In fact, this language was specifically added to this ordinance to avoid future litigation with respect to unlawful taking of another's property, and as a restatement of both United States and California Constitutional law. Although the County now chooses to do so, the County is not required to include such a requirement, since State and Federal law prohibits the unlawful taking of another's property without compensation by a governmental agency and does not authorize a private individual from taking the property of another under **any** circumstance.

Additionally, the County staff is now proposing that the Proposed Ordinance allow the setback to be shortened, **provided that the adjacent property owner approves** of a lesser setback, as an exception to the law, not an addition to the law. The sole authority for this exception would rest with the adjacent property owner, not the applicant.

The County advises that the intrusion of the twenty-five (25) foot radius encompasses a total of approximately two hundred, forty-six (246) square feet with approximately fifty-four (54) square feet outside the area reserved for setback. These figures are in error as the measurements were taken from the center of the wellhead and not the vault walls.

All references by the County Staff to Monterey County Coastal Implementation Plan Section 20.12.060 should be disregarded as this Section pertains to "main structures." The wellhead in question is not and cannot be considered a main structure (i.e. a structure that stands above ground). Accordingly, it can only be assumed that any reference made in this regard was intended simply to mislead the Zoning Administrator.

While the Planning Department casually opines that the well location would affect only fifty-four (54) foot area for development, the area for development is not the issue before the Board of Supervisors. The issues before the Board of Supervisors are (1) the exposure and potential of contaminants to that wellhead; (2) the failure to follow permit requirements; (3) failure to obtain a permit; (4) failure to comply with easement and setback requirements and, (5) the unlawful taking of the adjacent property owner's property.

Regardless of whether the adjacent property owner chooses to develop his or her property or not, he or she is required to pay taxes on that property under the Zoning Commission's ruling. The adjacent property owner will be placed in a position of being required to permit an easement on his or her property against his or her will, contrary to the rights guaranteed to that adjacent property owner under the United States and California Constitutions. This action further creates a potential prescriptive easement claim of the Applicant after a statutory five (5) year period. In essence the adjacent property owner is being required to diminish the value of his property and to be exposed to or to expose subsequent buyers to claims of contamination of the wellhead, as the wellhead does not conform to the twenty-five (25) foot property line setback.

It would appear that the County Staff is arguing that the adjacent property owner must comply with setback rules while at the same time uttering the proposition that the applicant need not be held to the setback requirements. A wrongful taking of property is a wrongful taking of property regardless of the extent of that wrongful taking.

The United States Constitution, the California Constitution and Environment Health Bureau "May 21, 2012 Interim Guidelines for Well Permits and Processing Well Permits"

does not permit a taking in the event a Planning Department arbitrarily concludes that the taking is "insignificant."

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.

6. Conclusion

This "Amendment" application by a new land owner for what in reality is a "new well application" and the Application by the Applicant appears to be nothing more than an attempt to do an end run around a decision previously made by The Monterey County Board of Supervisors disallowing those who had not followed the permit process from proceeding to drill a well or convert an illegally drilled well to a production well until such time as other water resources become available.

The third paragraph of the document entitled **Project Description**, under **Project Review,** states as follows:

> "Because the new location of the well was "somewhat" distant from the previously approved location, an amendment to The Coastal Administrative Permit should have been required prior to the construction of the well;

however, the owner was unaware of this requirement at the time. (emphasis added)."

It is questionable how Fifty (50) feet could be determined to be "somewhat" distant. Fifty (50) feet not "somewhat" distant, in fact, the Fifty (50) feet in question relocated the well to the entire other end of the lot.

Additionally, absolutely no evidence was ever provided to support the conclusion that Mr. Powell (deceased) was unaware of the requirement to request an amendment to The Coastal Administrative Permit before the well was drilled? And, in fact, the testimony of the adjacent property owners confirmed direct knowledge of the fact that this statement is false and that Mr. Powell (deceased) did know that a new permit was necessary, but believed he could do whatever he wished.

Secondly, no one has been able to produce any evidence from any individual authorizing this Fifty (50) foot relocation of the well. Therefore, there is no proof that such an authorization has ever been given or as to why this conclusion has been reached. Appellant has requested and continues to request the name of the individual who allegedly authorized this Fifty (50) foot relocation, under what authority such relocation was authorized, and any documentation supporting this conclusion to no avail. Accordingly, alleged statements that someone who is yet to be identified, spoke with a man, who is now deceased, should not be accepted by the County since no proof has ever been presented that such a conversation ever took place.

Accordingly, the Zoning Administrator was not only asked to accept double hearsay regarding the statement that "someone" from the Environmental Health Agency authorized the Fifty (50) foot relocation, but also to accept double hearsay regarding the Prior Owner's alleged lack of knowledge as to the necessity for a new permit, without any evidence or support for either of these statements. In doing so, the Zoning Administrator was asked to completely ignore the rules and regulations as set out by the Monterey County Board of Supervisors, Environmental Health Bureau and Planning Commission in the "May 21, 2012 Interim Guidelines for Well Permits and Processing of Well Permits," the United States

Constitution, and the California State Constitution, which prohibit the wrongful taking of another's property.

Additionally, the New Owner arguing that due to a the Prior Owner being "unaware of certain permit requirements," especially in the face of those requirements being provided to Prior Owner in writing, exempts the New Owner from complying with the rule of law for the permit process, is an absurdity. The legal axiom "Ignorance of the Law is no excuse not to comply with the law" is a longstanding provision of law, otherwise all laws would be unenforceable. This argument is insulting to our Administrative Process, requires us to ignore common sense, and should not be countenanced.

Appellant, respectfully requests, that the Monterey County Board of Supervisors properly apply the rule of law and reject:

1) The double hearsay from an unidentified and apparently unauthorized employee of the Environmental Health Agency;

2) The unsupported statements made by third parties regarding the understanding, knowledge or conversations of the Prior Owner, especially in light of testimony given by an individual who had direct communication with the Prior Owner contradicting these unsupported statements; and

3) Accept the fact that the Prior Owner chose to effectively thumb his nose at the regulations established to protect all property owners within the County of Monterey.

Appellant further requests that the Monterey County Board of Supervisors take notice that the Monterey County Board of Supervisors already addressed this issue, with the New Owner, who has now attempted to circumvent the Decision of Monterey County Board of Supervisors' by this present action. The Decision of the Monterey County Board of Supervisors to the New Owner's request concluded that the permit process was not followed by the Prior Owner, and therefore, the New Owner would not be allowed to "grand-father"

in with those who did follow the permit process, regulations and ordinance restrictions thereby protecting adjacent property owners and permitting public comment.

Based upon all of the above, it is respectfully requested, that the Monterey County Board of Supervisors:

1) Determine that the action of the New Owner to be exactly what it is, a request by a New Owner for a new well permit;

2) Apply the Environmental Health Bureau May 21, 2012 Interim Guidelines for Well Permits and Processing of Well Permits; and,

3) Overturn the Decision of the Zoning Administrator due to the misrepresentations of the New Owner in attempting to disguise this application for a new well permit to make it appear to be an application to amend permit PLN 070074 which effectively authorizes the use of a well that is not in substantial conformance with the terms and conditions of Permit PLN 070074 and is in violation of County Regulations.

Respectfully submitted,

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Interim Well Construction Guidelines
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INTERIM GUIDELINES FOR WELL PERMTS
AND
PROCESSING WELL PERMITS

PURPOSE:
To clarify what requirements will be applied to wells in the inland area and the coastal zone of Monterey County and the processing of applications for well permits.

BACKGROUND:
Ordinance 5160 was adopted on May 25, 2010 to prohibit drilling new wells on parcels less than 2.5 acres in the unincorporated area California American Water Company-Monterey District Main System service area that is underlain by fractured rock. Interim Urgency Ordinance No. 5160 and its extensions 5163 and 5176 was adopted to limit most new well construction until new regulations could be considered that would address concerns that new wells have on the public health, safety, and welfare of Monterey County Residents. The Interim Urgency Ordinance will expire on May 25, 2012.

In October 2010, General Plan Update 2010 (GPU 2010) was approved by the Monterey County Board of Supervisors. GPU 2010 contains several policies requiring developing regulations specific to wells for the non-coastal (inland) areas. These policies are in effect even though the specific regulations have not yet been adopted by the Board of Supervisors.

Monterey County Health Department Environmental Health Bureau is currently revising Chapter 15.08 of the Monterey County Code to implement the policies of GPU 2010 and to address the concerns in Ordinance 5160. Anticipating that Ordinance 5160 will expire before the revised ordinance is adopted and General Plan policies are in effect, the following guidelines describe what requirements will be applied to well permits and how well applications will be processed and reviewed until the ordinance becomes effective.

PROTOCOL
Until the proposed revised MCC Chapter 15.08 has been adopted the following guidelines shall be implemented:

1) Well applications in the Inland Area of Monterey County
   Parcels located in the inland area are subject to the GPU 2010 (Policies PS-2.4, PS-2.5, PS-2.8, PS-3.3, PS-3.4, PS-3.5, PS-3.6, CV-3.20, NC-3.8, and NC-5.4).
   - Discretionary Permit. An Administrative Permit is required (Planning Department) for a new well.
   - Technical Regulations. The attached guidelines most closely reflect the County's interpretation of the policies in GPU 2010 regarding wells. Therefore, these guidelines are in response to the policies of GPU 2010 and will be implemented until the Board of Supervisors adopts MCC 15.08. The new ordinance will be in effect 30 days after the final Board action.
2) Well applications in the Coastal Zone of Monterey County
   Parcels located in the Coastal Zone are subject to the Local Coastal Plan.

EXHIBIT 1

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- Discretionary Permit. An Administrative Permit is required (Planning Department) for a new well.
- Technical Regulations. The attached guidelines are consistent with the Local Coastal Plan and therefore the proposed revisions will be implemented until the Board of Supervisors adopts MCC 15.08 and the Coastal Commission certifies the adopted version of MCC 15.08.

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Guidelines Implementing General Plan Policies And Addressing Concerns Of Interim Ordinance 5160 and its extensions Ordinances 5163 and 5176

Wells must comply with existing Monterey County Code 15.08, all required Well Setbacks, as well as federal, state and local regulations, in addition to the following added guidelines.

Fractured Rock Geology

Technical Standards:

1. Minimum well seal shall be 100 feet below ground surface (bgs) unless a clay layer is encountered and must seal 10 feet into the clay layer. The well seal shall not be less than 50 feet bgs.
2. Required minimum 72 hour pump test by a registered professional geologist or hydrogeologist for lots less than 20 acres.

Minimum Lot Size and Well Setbacks:

Lots where the geology is fractured rock:

Those existing lots that were created to have sewage disposal by sewer system and water supplied by a water system shall meet the following:

1. The lot shall have enough room for two well sites and shall be a minimum of 20 feet apart.
2. The well sites shall be a minimum of 25 ft. from property line.
3. The well must maintain all Well setbacks.
4. 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 front, back, and side yard setbacks. If the setback cannot stay within these areas an easement or other written recorded approval of the owner of the adjacent lot must be obtained.
5. 50% of the lot must stay permeable after build out and a deed restriction recorded.
6. A Rainwater Harvesting System shall be required for those wells that have an approved flow rate less than 5 gallons per minute and shall be a minimum of 20 feet from the well. Plans must be submitted for review and approval. A deed restriction shall be recorded on the property regarding required maintenance by the owner.

Those existing lots of record where sewage disposal is by OWTS shall meet the following:

1. No new well permit shall be issued for an existing lot less than 1 acre unless it is a replacement well.

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2. All existing lots within a water system that have an existing connection or can connect to the water system shall be a minimum of 2.5 acres.
3. The lot shall have enough room for two well sites and shall be a minimum of 20 feet apart.

4. If existing legal lot has less than 20 feet soil depth over fractured rock, then an alternative OWTS is required if the site location is between 100 feet and 250 feet. If the site location is greater than 250 feet a conventional OWTS may be used.
5. The well setback may not cross property lines unless the setback stays within a portion of the adjacent lot that has developmental constraints such as steep slopes, easements front, back, and side yard setbacks, or lots in which the primary use is agricultural production.
6. If the well setback of the proposed well cannot stay within those areas of the adjacent lot as listed in requirement 5, then an easement or other written recorded approval of the owner of the adjacent lot must be obtained.

Lot where geology is other than fractured rock:

A. Existing lots within a water system that have an existing connection or can be provided with an existing system and sewage disposal is by OWTS must comply with requirements 1, 2, 3, 4, and 6 below.
B. Existing lots within a water system that does not have an existing connection and the water system cannot provide a connection, and sewage disposal is by OWTS must comply with requirements 2, 3, 4 or 5, and 6 below.
C. Existing lots not within a water system that does not have an existing connection and the water system cannot provide a connection and sewage disposal is by OWTS must comply with requirements 2, 4 or 5, and 6 below.
D. Well for a new domestic water system must comply with requirements 6, 7, and 9 below.
E. Well for an existing domestic water system must comply with requirements 8, 9, below.
F. Agricultural Wells must comply with 10, 11 below.

1. The lot must be a minimum of 2.5 acres if the lot is being served by an existing water connection or the water system has the capacity to provide a connection to serve the lot.
2. The lot shall have sufficient area for 2 well sites and the well sites shall be a minimum of 20 feet apart.
3. The well is for individual use and not part of the water system.
4. The well setback may not cross property lines unless the setback stays within a portion of the adjacent lot that has developmental constraints such as steep slopes, easements front, back, and side yard setbacks, or lots in which the primary use is agricultural production.
5. If the well setback of the proposed well cannot stay within those areas of the adjacent lot as listed in requirement 4, then an easement or other written recorded approval of the owner of the adjacent lot must be obtained.
6. Well sites, well setbacks, OWTS and repair increment shall be shown on a map and submitted to EHB for approval.

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7. Wells for new domestic water systems shall be in a well lot.
8. Wells for existing domestic water systems shall be in a well lot or easement and described in the water system's agreement and submitted for approval by EHB.
9. Well setbacks of proposed wells for domestic water systems may cross property lines if there is minimal impact to potential development of the adjacent lot(s) for those lots that lie within the water system's service area. Well setbacks shall not cross property lines of lots not served by the domestic water system unless it complies with requirements 4 or 5.
10. Well setbacks may encroach upon lots in which the main use is agricultural production, but not lots whose primary use is domestic or commercial unless requirements 4 or 5 is met.
11. The well shall be a minimum of 20 feet from property line.

Replacement Well:

A proposed well is considered a replacement if it meets the following criteria

1. The type of use will be similar in use to the well being replaced; and
2. The well being replaced will be destroyed within 90 days following completion of the replacement well.
3. The replacement well shall be designed so that intensification of use beyond that of the original well's intended use cannot occur; and
4. The Replacement well meets one of the following descriptions:
   a. The Replacement well is to replace the water production of an existing well on an existing legal lot of record for that lot's use, the primary use of the lot is residential and/or commercial, replacement well will be on the same lot of record as the existing well, and the existing well will be destroyed in accordance of the requirements of this MCC 15.08; or
   b.. The replacement well is to replace the water production of an existing well of an existing domestic water system that cannot supply sufficient water to the domestic water system either because of water quality or quantity problems, and the existing well will be destroyed in accordance with the requirements of MCC 15.08; or
   c. The replacement well is an agricultural well that is replacing the water production of an existing agricultural well; the replacement well is located on an existing legal lot of record in a location such that the replacement well's water supply will serve a similar geographic area to that of the existing agricultural well.

Impact assessment of new domestic and high capacity wells (>1,000 gpm):

The following shall apply to new domestic well or a high capacity wells, replacement wells are exempt:

1. Determine whether there are streams or wells nearby. If there are then refer the application to WRA for an initial assessment for potential impacts the in-stream flows or interference with nearby domestic wells.
2. If WRA determines a potential impact, then a hydrogeological report will be required to be prepared by a qualified professional. The report shall include any mitigations that may minimize the impact (i.e. move well, well design, etc.)

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3. If the hydrogeological report indicates potential impact, then EHB must consult with Planning Dept. for the requirement of a biological report to analyze the impact to the biota of the stream.

Water quality test for new individual domestic wells:

Upon completion of a new well, the following tests shall be required:

1. Total Coliform including *E. coli.*
2. Primary and Secondary constituents per Title 22 of CCR.
3. If the well is not vulnerable then tests for asbestos, methyl-tert-butyl ether (MTBE) may be waived.
4. If the well is vulnerable then Organic Chemicals per Title 22 as determined by EHB.

Saltwater intruded areas:

New wells are prohibited in saltwater intruded areas as identified by Monterey County Water Resources Agency or other water management agency.