

***Before the Board of Supervisors
County of Monterey, State of California***

Resolution No. 23-213

- a. Find that the foregoing recitals and findings are true and correct; and
- b. Find that the project, amendment of Chapter 15.20 of the Monterey County Code, is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15307 and 15308; and
- c. Find that the exceptions to these categorical exemptions do not apply.

WHEREAS, the Board of Supervisors of the County of Monterey is considering adoption of an ordinance to amend Chapter 15.20 of the Monterey County Code; and

WHEREAS, on May 23, 2023, the Board of Supervisors introduced the ordinance, waived reading, and set June 6, 2023 at 1:30 p.m. as the date and time to consider the ordinance; and

WHEREAS, on June 6 and 13, 2023, the Board of Supervisors considered the ordinance and the proposed categorical exemption from the California Environmental Quality Act; and

WHEREAS, the Board of Supervisors finds that the project, amendment of Chapter 15.20 of the Monterey County Code, is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15307 and 15308 because the amendment to Chapter 15.20 consists of regulatory procedures to assure the maintenance, enhancement, and protection of natural resources and the environment. The exceptions to these categorical exemptions do not apply. The amendment of Chapter 15.20 involves no unusual circumstances, no reasonable possibility of a significant effect on the environment due to unusual circumstances, and no cumulative impact. This determination is supported by the following findings and evidence:

Project Description:

The project is the County's adoption of an amendment of Chapter 15.20 of the Monterey County Code (MCC), to update the current Chapter 15.20 to conform to and implement the Monterey County Local Agency Management Program for Onsite Wastewater Treatment Systems (LAMP). The LAMP was approved by the Central Coast Regional Water Quality Control Board on May 10, 2018 and has been in effect in the County since May 11, 2018.

The proposed amendment of Chapter 15.20 (the "Sewage Ordinance Amendment" or "SOA") allows for continued use of onsite wastewater treatment systems while enhancing protection of water quality and public health through setting standards for the proper design, placement, installation, maintenance, and evaluation of individual onsite wastewater treatment systems in unincorporated Monterey County. The SOA also addresses onsite treated nonpotable water systems (OTNWS) in unincorporated Monterey

County. The ordinance also establishes an annual registration program for qualified professionals who design, install, inspect, maintain, repair, or replace OWTS in unincorporated Monterey County and an annual operating permit program for property owners with non-standard OWTS that utilize supplemental treatment. These regulations implement the County's LAMP.

Evidence and Analysis:

Onsite Wastewater Treatment Systems (OWTS, also referred to as septic systems) are currently used on properties throughout Monterey County that were unable to connect to a municipal or regional sewer system at the time of development. There are two types of OWTS: conventional and alternative.

- ✓ “Conventional OWTS” means an OWTS consisting of a septic tank with the effluent discharging into a subsurface leachfield.
- ✓ “Alternative OWTS” means a type of onsite wastewater treatment system that utilizes either supplemental treatment and/or a method of wastewater dispersal other than a conventional leachfield for the purpose of producing a higher quality wastewater effluent and improved performance of and siting options for effluent dispersal.

On June 19, 2012, the California Water Resources Control Board (State Water Board) adopted the Water Quality Control Policy for Siting, Design, Operation and Maintenance of Onsite Wastewater Treatment Systems (“OWTS Policy”, State Water Board Resolution No. 2012-0032) and approved the Substitute Environmental Document (“SED”) for the Onsite Wastewater Treatment System Policy. The County of Monterey prepared the Monterey County Local Agency Management Program for Onsite Wastewater Treatment Systems (LAMP) in accordance with Tier 2 of the OWTS Policy. The LAMP was approved by the Monterey County Board of Supervisors on April 3, 2018 and subsequently approved by the Central Coast Regional Water Quality Control Board on May 10, 2018. The requirements and specifications of the LAMP became effectively immediately following approval by the Central Coast Regional Quality Control Board on May 11, 2018. The Monterey County Health Department, Environmental Health Bureau (EHB) has implemented the requirements of the LAMP since that date.

As stated in the LAMP, the purpose of the state's OWTS Policy “is to allow for the continued use of OWTS while protecting water quality and public health.” (LAMP, sec. 1.1.) In implementing the state's OWTS Policy, the LAMP “develops standards for all new, replacement and expansion OWTS and for OWTS demolition within Monterey County.” (*Id.*) The LAMP protects natural resources and the environment by strengthening the requirements for OWTS in order to prevent groundwater and well water contamination. The LAMP has the following primary program goals:

- Allow for the long-term, effective treatment of household and domestic wastewater by means of conventional and alternative OWTS in those areas that are geographically removed from centralized wastewater collection and treatment systems.

- Ensure that all existing and proposed conventional and alternative OWTS under the jurisdictional authority of the County are properly sited, designed, constructed, and maintained.
- Prevent groundwater and well water contamination due to pathogens, nitrates, and other toxic substances that discharge from OWTS.
- Prevent premature failure of OWTS through the implementation of State prescribed minimum design and operating standards.
- Prevent sewage discharges to the ground surface to avoid direct public contact.
- Minimize risk from reuse of inadequately treated effluent for drinking water, irrigation or other uses.

The LAMP specifies that Monterey County will bring an ordinance to the Board of Supervisors to amend and update MCC, Chapter 15.20 to conform to the LAMP. The proposed amendment of Chapter 15.20 fulfills that requirement of the LAMP and furthers the LAMP's protection of the environment by providing detailed specifications to implement the LAMP.

The current iteration of MCC, Chapter 15.20 was adopted in 1981 (Board of Supervisors Ordinance No. 2731, with amendment to several sections approved in 2000 (Board of Supervisors Ordinance No. 4055)). Existing Chapter 15.20 specifies the situations when the use of an OWTS is permissible and includes standards and specifications for OWTS. The standards of existing Chapter 15.20 have remained in effect since adoption of the LAMP unless the LAMP specified new or updated standards and/or regulation, in which case the LAMP has controlled.

The Sewage Ordinance Amendment will conform Chapter 15.20 to the LAMP, remove any potential inconsistencies between the LAMP and Chapter 15.20, and provide detailed instruction for implementing the LAMP, thereby further protecting the environment. The proposed ordinance includes permitting requirements and standards for installation and operation of onsite wastewater treatment systems (OWTS), alternative OWTS, and onsite treated nonpotable water systems (OTNWS) in unincorporated Monterey County. The proposed regulations are more protective of the groundwater, surface water and public health than existing Chapter 15.20, as discussed more completely in the sections below:

Site-specific site and soil evaluation. Monterey County is comprised of a wide range of soil types and textures, ranging from very fast percolating gravels to very slow percolating fatty clay. The existing Chapter 15.20 does not require site-specific soil evaluation for existing lots of record, and requirements are applied broadly to all properties without consideration for the subsurface soils into which the system would be installed. In accordance with the LAMP, the SOA requires site evaluation and soil analysis be conducted prior to issuance of an OWTS dispersal system permit. Requirements are presented in a range that ensure adequate protection of groundwater and public health.

OWTS density and nitrogen loading. Domestic wastewater includes nitrogen-based compounds that naturally degrade into nitrate during the onsite wastewater dispersal process. This hydrophilic compound attaches to water naturally

percolating through the soil, slowly making its way toward the groundwater table. High density of OWTS in a given area is known to contribute to nitrate contamination in groundwater. The existing Chapter 15.20 specifies that onsite wastewater discharge should not exceed forty grams (40g) per day total nitrogen per acre of total development. In accordance with the LAMP, the SOA specifies allowable nitrogen loading based on lot size and requires that a proposed OWTS, which may include an alternative OWTS with supplemental treatment, will not exceed that determined value.

The Substitute Environmental Document (SED) approved with the OWTS Policy in 2012 by the State Water Board identified three significant and unavoidable impacts for which potential mitigation measures were proposed. One of these potential mitigations specified that all new, expansion and replacement OWTS be designed to meet nitrogen removal performance requirements, regardless of site-specific conditions or lot size but was not adopted by the state because it was considered infeasible because it would remove too much local flexibility. The County's proposed SOA incorporates the measures necessary to avoid or substantially lessen this impact. The SOA requires the installation and use of supplemental treatment systems with nitrogen reduction when a new or expansion OWTS is unable to conform with the nitrogen loading limitation with respect to lot size, or necessitates the use of alternative OWTS because the minimum vertical separation to groundwater for conventional OWTS cannot be met. Therefore, the SOA is more protective of the environment than Tiers 1, 2 and 3 of the OWTS Policy. The potential mitigation in the SED would have also applied to Tier 4 OWTS (OWTS in failure that require corrective action). Replacement OWTS that will serve existing development are not required to conform with nitrogen loading standards because no additional development is proposed, i.e. no increase in wastewater volume or strength, but are still subject to site evaluation and design criteria that meet or exceed OWTS Policy standards. These criteria encourage passive nitrogen reduction through plant uptake of wastewater dispersed into shallow dispersal systems, so the potential impact from nitrogen is reduced compared to existing Chapter 15.20. The SOA incorporates OWTS density requirements based on annual average precipitation rates for new subdivisions of land that will utilize OWTS for sewage disposal and the SED found that the allowable densities are expected to result in less than 10 parts per million (ppm) nitrate as nitrogen in groundwater, which is the drinking water standard.

Alternative OWTS required when site conditions preclude use of conventional OWTS, for existing lots of record. The SED identified that the presence of pathogens and nitrates in wastewater, combined with certain soil types and hydrogeologic conditions, raises the potential for public health risks for owners of private on-site drinking water wells. The document concluded that a requirement for disinfection and nitrogen-removal in all cases would be infeasible, resulting in a significant, unavoidable impact, again because the state chose to preserve local control. The SOA and LAMP include standards that avoid

or substantially lessen this impact by specifying circumstances when disinfection and/or nitrogen-removal systems must be incorporated into an OWTS to prevent groundwater contamination. Additionally, water quality monitoring is required when an OWTS dispersal system will be installed within 250 feet of an on-site water well or surface water supply.

Oxygen-transfer into dispersal systems. Aerobic (oxygen-loving) soil microbes that breakdown or utilize wastewater effluent are more numerous at shallow soil depth, in the same horizons that nitrogen in the effluent is available for uptake by plants. The LAMP and SOA encourage installation of shallow systems by limiting the infiltrative area of new conventional systems to four square feet per linear foot or less. OWTS dispersal systems cannot be covered by an impermeable surface, installed beyond 10' total depth or have infiltrative area more than four square feet per linear foot unless supplemental treatment is incorporated into the system to pre-treat the wastewater before dispersal in the soil, addressing the reduction in aerobic soil microbes those configurations may cause.

Seepage pits prohibited without supplemental treatment. Seepage pits are a rock-filled, vertical leach field that are installed to a depth of 50-60 feet below ground surface and are generally limited for use when shallower soils are not conducive to onsite wastewater dispersal. Despite minimum vertical groundwater setback requirements, wastewater is discharged closer to the groundwater table than wastewater discharged to a leach field trench would, resulting in an increased potential for pathogen contamination from domestic wastewater. Additionally, the oxygen-transfer concerns expressed above also apply to seepage pits. The LAMP and SOA specify that seepage pits shall only be used as the last dispersal system option, i.e. at-grade and shallow soils preclude the use of other types of dispersal systems, and must be preceded by supplemental treatment with nitrogen reduction to pre-treat the wastewater before dispersal. The SED identified a two-part potential mitigation measure for this potential water quality impact that would 1) prohibit the use of seepage pits when the bottom of the pit is closer than ten feet from groundwater and does not incorporate supplemental treatment, and 2) prohibit a soil application rate greater than 0.4 gallons per square foot per day where the groundwater is less than three feet from the bottom of the dispersal trench where the OWTS is using standard treatment. The state deemed the second part of the potential mitigation measure infeasible due to reduced local agency flexibility and cost, and therefore deemed the impact significant and unavoidable. The SOA avoids or substantially lessens this impact because it includes standards that incorporate both parts of the potential mitigation measure. The standards further reduce potential for pathogen contamination by specifying the minimum soil depth above groundwater based on soil type and percolation rate, and indicate when supplemental treatment +/-disinfection is required.

Performance evaluations for existing OWTS. The LAMP and the SOA require a performance evaluation to be completed in a variety of circumstances to confirm

an existing OWTS is in acceptable condition, including when an existing OWTS is proposed to be expanded to accommodate additional development. Existing OWTS are not impacted by the LAMP or SOA unless a property owner proposes to increase wastewater demands on the property. Existing functioning OWTS that would otherwise be expected to continue functioning properly may become overtaxed when remodels or changes in use increase the wastewater flow or change the characteristics of the wastewater generated. For residential structures, bedrooms are used to estimate the daily volume of wastewater while for commercial operations, the type of use and number of employees and visitors are used to estimate volumes.

Septic tank pumper reporting program. The LAMP and SOA specify that a licensed liquid waste hauler is required to submit a report for each septic tank pump out, which summarizes the structural condition of the tank, whether there are signs of system failure, the volume of wastewater pumped and where it was disposed of. The EHB logs each pump-out in an electronic database for reference during construction permit review or sewage complaint investigation. Overtime, EHB anticipates the data can be used to identify areas of the County that experience increased pumping in wet weather conditions, which is indicative of seasonally high groundwater. Existing and new conventional OWTS do not and will not have ongoing monitoring requirements, other than septic tank pumper reports.

Qualified professional registration program. OWTS must be sited, designed and constructed properly. Once an OWTS is placed into operation, regular inspections and maintenance are necessary to keep the system functioning as designed and to prolong its useful life. Therefore, specific qualifications and licenses are required to design, construct, maintain, repair and/or replace an OWTS in Monterey County. The SOA establishes an annual registration requirement for qualified professionals and specifies when/how a registration could be revoked for failure to comply with LAMP and/or MCC Chapter 15.20.

Annual operating permit program. Alternative OWTS with supplemental treatment are typically reserved for use on constrained sites where standard setbacks from groundwater or a water course could not be met, and are therefore more dependent on periodic inspections, proper maintenance and servicing to ensure they continue to operate as designed. The SOA specifies the application process and provides monitoring and reporting requirements.

Adoption of the SOA is not expected to induce population growth. First, the SOA codifies site evaluation and design standards from the approved LAMP that Monterey County staff have already been implementing since the LAMP was adopted in May 2018. The SOA fills in details but does not alter the regulatory structure already put in place by the LAMP.

Second, the SOA and LAMP allow for installation and use of an alternative OWTS with supplemental treatment but only when it is not possible to site or design a conventional OWTS on an existing lot of record. When the use of an alternative OWTS is required for an existing lot of record, the SOA includes requirements protective of the environment, including requiring an annual operating permit with ongoing maintenance, monitoring and reporting requirements. The SOA provides that alternative OWTS with supplemental treatment may not be used to demonstrate OWTS feasibility for a new subdivision. Proposed subdivisions of land proposing to use OWTS for wastewater disposal must demonstrate that the standards for a conventional OWTS can be met.

A review of Monterey County records in July 2021 indicates approximately 11,300 parcels have been developed using OWTS since the 1960s. The number of OWTS permits issued annually by the EHB remained fairly constant between 2012 and 2022, averaging 185 permits issued each year, but that value has declined since adoption of the LAMP in 2018. Monterey County experienced a surge in OWTS replacement applications in the years leading up to LAMP adoption, presumably due to the public's anticipation of more rigorous OWTS standards, followed by a marked drop in permit activity in 2019 during which time the onsite wastewater industry adjusted to the new regulations. The number of OWTS permits issued for alternative OWTS with supplemental treatment jumped in 2021-2022. One reason for this change is that OWTS qualified professionals must consider the results of site-specific soil evaluation that was not required prior to the LAMP to identify conditions that warrant the use of alternative OWTS. The SOA and LAMP include additional standards that are more protective of groundwater, surface water and the public health than the OWTS Policy and previous regulations by requiring the installation and use of an alternative OWTS when a conventional OWTS is determined unsuitable for the site. Another reason for the increase in alternative OWTS permits issued in 2021-2022 can be attributed to an uptick in development of accessory dwelling units (ADUs), which increase is due to state housing law, not the LAMP which serves to protect the environment from potential impacts associated with proposed ADUs. The nitrogen loading limitations based on lot size specified by the SOA and LAMP necessitate the use of alternative OWTS including nitrogen reduction when the minimum standards cannot be met. For example, a three-bedroom dwelling on a one acre parcel served by OWTS is not eligible to construct an ADU unless an alternative OWTS with nitrogen reduction is installed to conform with the nitrogen loading standards in the LAMP. The EHB processed numerous alternative OWTS permits that achieved compliance with the nitrogen standard and were protective of the environment to accommodate the proposed ADUs. The SOA, in implementing the LAMP, will not change this regulatory structure already put in place by the LAMP. None of the exceptions to the categorical exemption apply. The SOA is implementing the LAMP which is already adopted and being implemented.

The SOA does not involve unusual circumstances, and there is no evidence of a reasonable possibility that the SOA will have a significant effect on the environment due to an unusual circumstance. The SOA does not involve potential cumulative impacts. The one potential significant unavoidable cumulative impact identified by the State Water Board in adopting the state OWTS policy is not applicable to Monterey County

because there are no impaired water bodies currently identified in Monterey County where OWTS have been determined to be contributing to impairment. The nitrogen loading standard, vertical groundwater separation requirements and specification that OWTS proposed in very fast percolation soils use alternative OWTS with nitrogen reduction prevent water quality impacts from nutrients and pathogen contamination.

DECISION

NOW, THEREFORE, BE IT RESOLVED, based on all of the above findings and evidence and the administrative record as a whole, that the Board of Supervisors of the County of Monterey does hereby:

1. Find that the foregoing recitals and findings are true and correct; and
2. Find that the project, amendment of Chapter 15.20 of the Monterey County Code, is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15307 and 15308 because the amendment to Chapter 15.20 consists of regulatory procedures to assure the maintenance, enhancement, and protection of natural resources and the environment; and
3. Find that the exceptions to these categorical exemptions do not apply. The amendment of Chapter 15.20 involves no unusual circumstances, no reasonable possibility of a significant effect on the environment due to unusual circumstances, and no cumulative impact.

PASSED AND ADOPTED on this 13th day of June 2023, by roll call vote:

AYES: Supervisors Alejo, Church, Lopez, Askew, and Adams

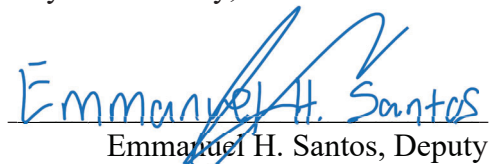
NOES: None

ABSENT: None

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting on June 13, 2023.

Dated: June 14, 2023
File ID: RES 23-101
Agenda Item No. 10

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California


Emmanuel H. Santos, Deputy