

AN INTERIM URGENCY ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, TEMPORARILY PROHIBITING THE ACCEPTANCE AND PROCESSING OF WATER WELL APPLICATIONS AND ISSUANCE OF WATER WELL PERMITS, WITH LIMITED EXCEPTIONS, ON PARCELS LESS THAN 2.5 ACRES WITHIN A PORTION OF THE CALIFORNIA AMERICAN WATER COMPANY-MONTEREY DISTRICT MAIN SYSTEM SERVICE AREA WITHIN THE UNINCORPORATED COUNTY, PENDING THE COUNTY'S CONSIDERATION OF ADDITIONAL WELL REGULATIONS.

County Counsel Summary

This interim urgency ordinance, adopted pursuant to Government Code Section 65858, takes effect immediately to protect the public safety, health, and welfare by temporarily prohibiting the acceptance and processing of water well applications and issuance of water well permits on parcels that are less than 2.5 acres and underlain by fractured rock within a defined Study Area. The Study Area is the California American Water Company-Monterey District Main System service area in the unincorporated area of the County of Monterey, excluding the Carmel River Alluvial Aquifer and the Carmel Highlands Onsite Wastewater Management Plan area. This ordinance exempts certain types of wells, including emergency wells, replacement wells, well destructions, well repairs, and conversion of existing test wells. The purpose of this ordinance is to temporarily limit the number of wells in the defined Study Area pending the County's consideration of revision of existing County well regulations to address the public health, safety, and welfare impacts of well applications in the Study Area. Based upon the threat to the public health, safety, and welfare of Monterey County residents, this is an interim urgency ordinance requiring a four-fifths vote of the Board of Supervisors for adoption. This interim urgency ordinance will expire 45 days after its adoption unless extended by subsequent action of the Board of Supervisors.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. FINDINGS AND DECLARATIONS

- A. Pursuant to Article XI, section 7, of the California Constitution, the County of Monterey ("County") may adopt and enforce ordinances and regulations to protect and promote the public health, safety, and welfare of its citizens.
- B. Monterey County's General Plan and certified Local Coastal Program contain goals and policies to plan for the development and protection of water resources.
- C. Pursuant to Section 13801 of the California Water Code, the County of Monterey is required to adopt a well drilling and abandonment ordinance that contains

standards that meet or exceed the standards contained in California Department of Water Resources Well Bulletins 74-81 and 74-90. Chapter 15.08 of the Monterey County Code fulfills this requirement.

D. Monterey County Code Chapter 15.08 provides standards for the construction, repair, and reconstruction of all wells to the end that the groundwater of this County will not be polluted or contaminated and that water obtained from such wells will be suitable for the purpose for which used and will not jeopardize the health, safety or welfare of the people of Monterey County. Under Chapter 15.08, no person shall construct, repair, reconstruct or destroy any well unless a written permit has first been obtained from the Health Officer of the County or his or her authorized representative including the Director of Environmental Health.

E. Title 20 (Coastal Implementation Plan) of the Monterey County Code requires discretionary development entitlements, typically a Coastal Administrative Permit, for test wells and permanent production wells located on properties in the coastal unincorporated area of the County. A ministerial permit to construct a well is also required in both the inland and coastal areas of the County pursuant to Chapter 15.08 of the County Code.

F. The existing well regulations are in need of study and revision because they do not fully address specific health, safety, and welfare concerns that have arisen as property owners propose wells on small undeveloped lots underlain by fractured rock. The threat to the public health, safety, and welfare is particularly acute and in need of urgent redress in the service area of the California American Water Company ("Cal Am") Monterey District Main System because of the restrictions on new service connections from Cal-Am. In 1995, the California State Water Resources Control Board found that Cal-Am was diverting water from the Carmel River in excess of its water rights and placed a cap on the amount of water Cal-Am may divert from the Carmel River until its unlawful diversions were terminated. (Order No. WR 95-10, dated July 6, 1995). As a consequence, Cal-Am has been unable to serve some properties within its Monterey District Main System service area, and property owners have turned to constructing wells on their properties to obtain a water supply for development on their property without waiting for a service connection from Cal-Am. In October 2009, the State Water Resources Control Board issued a Cease and Desist Order (Order WR 2009-0060) ("CDO") requiring Cal-Am to implement various actions to terminate its unlawful diversions from the Carmel River. Enforcement of the CDO could increase the number of owners applying for wells as an alternative to waiting for a service connection from Cal-Am. The sustainability of the underlying water supply and minimum adequate lot size for onsite wells were not evaluated when these lots were created, and the health, safety, and welfare impacts of wells on such lots need to be addressed before numerous further wells are constructed.

G. In the absence of additional study and revision of the County's current regulations, construction of an unlimited number of water supply wells on small lots underlain by fractured rock in the densely populated unincorporated area within the Cal-

Am Monterey District Main System service area poses a current and immediate threat to the health, safety, and welfare due to the following factors:

1. Fractured Rock Formations. Except for the Carmel River Alluvial Aquifer, the unincorporated area of the Cal-Am Monterey District Main System is underlain by geological formations referred to as "fractured rock". Water production of wells drilled into fractured rock may decline or fail, which has occurred throughout California as well as in Monterey County. As a result of significant decline of water production from wells constructed in fractured rock, the California Department of Public Health developed a strict pumping protocol, which has been codified, for wells constructed in fractured rock that are the water source for water systems that are regulated by Title 22 of the California Code of Regulations. Wells drilled into fractured rock may decline or fail due to the following factors:
 - a. Limited storage capacity: In fractured hard rock formations, water is stored in the fractures, and wells drilled into these fractures typically only yield a small amount of water in comparison to wells in alluvial material. The volume of water stored in fractured hard rock near the surface is estimated to total less than 2 percent of the rock volume. This percentage decreases with depth as fractures become narrower and farther apart. The volume of water stored in many alluvial soils is much greater and can amount to 10-25 percent of the volume of the alluvium since water is stored in the pore spaces between the grains.
 - b. Competition from other wells and cumulative impact of wells: The continuing inability of Cal-Am to add new service connections increases the likelihood of owners applying for wells within the Cal-Am Monterey District Main System, resulting in the need to analyze the cumulative impact of an increased number of wells in an urbanized area with small lots underlain by fractured rock. Neighboring wells can impact the production of each other and prevent one or both from supplying an adequate quantity of domestic water.
 - c. Variability of Fracturing: The variables that affect the potential amount of water storage and extraction (favorably or unfavorably) in the rock fractures can change significantly for better or worse from one location to another location in a short distance and are as follows:
 - i. Aperture Width: The wider the aperture width, the more potential water storage space. The smaller the aperture width, the less potential for water storage;
 - ii. Density of Fractures: The higher the number of fractures in a given area, the more potential for water storage space. The lower the number of fractures in a given area, the lower potential for water storage;

- iii. **Fracture Interconnectivity:** The higher the number of fractures intersecting each other over a large area, the higher the potential for recharge to the fractures and water storage space. This also allows the well increased access to water storage space for water extraction. The reverse is true if the interconnectivity is low.
 - iv. **Fracture Orientation:** This variable refers to how steeply or gently the fractures are dipping. The more gently the fractures are dipping, the more opportunity for the well to intersect more fractures which increases the potential amount of water extraction. Wells intersect fewer fractures that dip steeply, decreasing the potential for amount of water extraction.
 - v. **Soil Cover:** Soil cover provides additional water storage which in turn helps to recharge the fractures. A deeper soil cover provides more additional storage, whereas a thinner soil cover provides less additional storage.
- d. **Changes in fracture patterns resulting from earthquakes:** An earthquake can change the interconnectivity or size of fractures and therefore, increase or decrease the production of water from these fractures.
2. **Limited Recharge Area.** The primary source of recharge of groundwater in areas underlain by fractured rock in Monterey County is precipitation. The recharge area for properties in densely populated areas is less than on larger lots due to a greater percentage of impervious coverage of the property and surrounding areas as a result of development (i.e., construction of structures, paving of streets and driveways, etc.).
3. **Drought.** Precipitation is the primary source of recharge in Monterey County for areas underlain by fractured rock such as the Study Area. During multiple years of drought, the water production of wells constructed in fractured rock can and have significantly declined or failed in the County multiple drought years. Multiple drought years increase the probability of significant water production decline or failure when combined with the limited storage capability of fractured rock as listed in item 1 and the increased possibility of competition for limited groundwater supplies among wells through interconnecting fractures on small lots in an urbanized area.
4. **Replacement Area.** The ability to locate a well replacement area on small lots becomes quite restricted to the point that no replacement area is possible. If the well fails, which is more likely in fractured rock, the lot needs enough area for a replacement well. In particular, in the Cal-Am Monterey District Main System service area where new service connections to Cal-Am may not be available, failure of a well

and lack of a replacement site could leave a residence without an on-site water supply. Given the vulnerability of wells in fractured rock formations and the need to have an area for a replacement well for a new domestic source, the minimum appropriate lot size on which a well can be allowed without creating a health hazard needs to be evaluated.

5. Impact on Neighbors. To protect the public health and prevent contamination of groundwater, state law requires certain minimum setbacks from wells to waste water disposal systems and from wells to sewer laterals. If wells are drilled on small lots, the required setbacks may extend onto neighboring parcels. The smaller the lot, the greater the likelihood of setbacks crossing property lines. In permitting wells in urbanized areas with small lots within the Cal-Am Monterey District Main System service area, the County has received complaints from adjacent parcel owners that the setbacks infringe upon their property rights. Further study of possible regulations to address this issue is needed.
6. Relationship of Wells to Wastewater Disposal: On lots smaller than 2.5 acres which rely on an onsite wastewater treatment system for wastewater disposal, the construction and use of a well increases the risk of groundwater contamination.
7. Impacts to urbanized area: Wells on small lots in a densely populated urbanized area raises unique public health, safety and welfare impacts related to the construction and operation of wells, requiring study of possible regulations to address the following needs:
 - a. Ensure adequate area for access for the well drilling rig and equipment for well construction activity and ongoing routine maintenance to keep the well functioning properly (e.g., pulling and replacing a pump);
 - b. Ensure runoff resulting from required source capacity tests does not impact neighboring parcels;
 - c. Ensure adequate area for the installation of a storage and pressure tank system; and
 - d. Address hauling of water to supply the sanitary needs of the residence in the event of well failure.

H. As a result of all of the above factors, limits on issuance of permits to construct new wells are needed on lots of less than 2.5 acres in areas of fractured rock in the Cal-Am Monterey District Main System service area within the unincorporated area of the County to protect the public health, safety, and welfare pending study and consideration of additional well regulations.

I. This ordinance contains certain exclusions. By its terms, this ordinance applies to wells only within the Cal-Am Monterey District Main System where the likelihood of property owners requesting wells on small lots in fractured rock is increased because of present constraints on service by Cal-Am. Therefore, the ordinance is not intended to apply to parcels greater than 2.5 acres or parcels within the Carmel River Alluvial Aquifer within the Cal-Am Monterey District Main System. This ordinance also is not intended to apply to properties subject to the Carmel Highlands Onsite Wastewater Management Plan (OWMP), adopted by the Board of Supervisors on December 15, 2009, because, per direction already given by the Board of Supervisors, staff is drafting regulations to be considered by the Board separately to govern drilling of wells in the area governed by the OWMP. Compliance with the OWMP and any new regulations separately adopted by the Board will address the threat to public health, safety, and welfare that has given rise to this ordinance.

J. It is also the intent of the County to exempt from this ordinance test wells which have already been constructed prior to May 25, 2010, replacement wells, emergency wells, well destruction, well repairs, and wells that have an active, unexpired well construction permit prior to May 25, 2010. The intent of these limited exceptions is to allow owners who have already constructed a well or already obtained a well construction permit prior to May 25, 2010 to proceed, while limiting the cumulative number of new wells in the affected area until the County is able to study and consider regulations to address the issuance of future well permits in the areas affected by this ordinance.

K. Nothing in this ordinance is intended to allow a well where a County plan, policy or regulation already disallows a well.

L. Well applications that are exempt from this ordinance or not affected by this ordinance shall continue to be subject to all County plans, policies, and regulations.

M. This Ordinance shall be of no further force and effect after 45 days, unless the Board of Supervisors, following a noticed public hearing, elects to extend the ordinance for up to two years pursuant to law.

SECTION 2. APPLICABILITY

This ordinance applies only to the Cal-Am Monterey District Main System service area within the unincorporated area of the County, excluding properties within the Carmel River Alluvial Aquifer and properties subject to the Carmel Highlands Onsite Wastewater Management Plan. The area to which this ordinance applies, as described above, is denoted as the "Study Area" on the map attached hereto as Exhibit A and incorporated herein by reference.

SECTION 3. DEFINITIONS.

For purposes of this Ordinance, the following terms have the definitions set forth below:

A. **Discretionary Development Entitlement.** "Discretionary Development Entitlement" means any County action, permit, or approval pursuant to an application for a permit for development as that term is defined under the Monterey County Code, which requires the exercise of judgment, deliberation, or a decision, and which contemplates the imposition of revisions or conditions by the County, including by any board, commission, or department of the County and any official or employee of the County, in the process of approving or disapproving any such application, as distinguished from a County action, permit, or approval which merely requires the County, including any board, commission, or department of the County and any official or employee of the County, to determine whether there has been compliance with applicable statutes, ordinances, regulations, or conditions of approval. For the purposes of this Ordinance, the term "discretionary development entitlement" shall include, but is not limited to, conditional use permits, combined development permits, coastal administrative permits, coastal development permits, special use permits, and amendments of any of these permits.

B. **Fractured Rock Formation.** "Fractured Rock Formation" means a water-bearing formation primarily influenced by "secondary porosity" (e.g., water stored in fractures, crack, etc) such as in fractured granitic rocks and shales rather than "primary porosity" (e.g., water stored in pore spaces between the grains) such as in alluvium, dune deposits, and terrace deposits.

C. **Ministerial Permits.** "Ministerial Permit" means any County action, permit, or approval which requires the County, including any board, commission, or department of the County and any official or employee of the County, to determine merely whether there has been compliance with applicable statutes, ordinances, regulations, or conditions of approval.

D. **Parcel.** "Parcel" means a legal lot of record.

E. **Study Area.** "Study Area" means the Cal-Am Monterey District Main System service area within the unincorporated area of the County, excluding properties within the Carmel River Alluvial Aquifer and properties subject to the Carmel Highlands Onsite Wastewater Management Plan, as denoted on the map attached hereto as Exhibit A.

F. **Well.** "Well" means an artificial excavation or structure put down by any method such as digging, driving, boring, or drilling for the purposes of withdrawing water from or injecting water into the underground or for determining the hydrologic conditions at a site. For the purposes of this ordinance, the term "well" includes test wells, production wells, bore holes, heat exchange wells, monitoring wells, observation wells, and cathodic protection wells. "Well" or "water well" does not include:

- a. Oil and gas wells, or geothermal wells constructed under the jurisdiction of the state Department of Conservation, except those wells converted to use as water wells; or

- b. Wells used for the purpose of dewatering excavation during construction, or stabilizing hillsides or earth embankments

SECTION 4. LIMITATIONS ON WELL PERMITS

During the term of this ordinance, unless exempt under Section 5 of this ordinance, the County shall not approve any application for a discretionary development entitlement or ministerial permit to construct a test well, to convert a test well into a production well, or to construct a water well within the defined Study Area, nor shall the County accept any applications for such permits or process applications on file with the County for such permits. This prohibition applies only if the application is for a well on a parcel meeting all of the following criteria:

1. The parcel is less than 2.5 acres in size; and
2. The parcel is located in the Study Area depicted on the map attached hereto as Exhibit A.

SECTION 5. EXEMPTIONS

A. The following categories of well permit applications are exempt from the limitations of this ordinance and may be accepted and processed in accordance with County's plans, policies and regulations and the specifications set forth below:

1. Applications for a drinking water well for an existing permitted water system.
2. Applications for an emergency well permit. An emergency means a sudden loss or decrease in quality or quantity in a water supply well which renders the well unable to meet the property's water needs.
3. Applications for a cathodic protection well
4. Applications for a monitoring well.
5. Applications for repair, reconstruction, or destruction of existing wells.

B. This ordinance does not prohibit owners who have an active, unexpired well construction permit from the Monterey County Health Department prior to May 25, 2010 from proceeding to construct the well as authorized under the permit.

C. This ordinance exempts applicants who have constructed an authorized test well on a parcel in the coastal unincorporated area of the County prior to May 25, 2010. For such applicants, this ordinance does not prohibit the County from accepting and processing applications for a discretionary development entitlement to convert the test well to a production well, provided that the test well was already constructed prior to May 25, 2010 in accordance with all permits issued by the County of Monterey.

D. Exemption from the terms of this ordinance does not guarantee approval of any well applications. All well applications that are exempt from this ordinance or not affected by this ordinance remain subject to all County plans, policies, and regulations.

SECTION 6. ENFORCEMENT.

In the event of a violation of this ordinance or any requirement imposed pursuant to this ordinance, the County may in its discretion, in addition to all other remedies, take such enforcement action as is authorized under the Monterey County Code and any other action authorized by law.

SECTION 7. SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 8. ACTIONS HELD IN ABEYANCE.

Should any person, firm, or corporation violate the terms of this ordinance and any action is authorized either by the Board of Supervisors, County Counsel, or District Attorney, or is in fact filed by said agencies for said violation, no other action shall be taken on any application filed by or on behalf of said person, firm, or corporation, until the litigation has been resolved.

SECTION 9. EFFECTIVE DATE.

In light of the recitals in this ordinance, the Board declares that this ordinance is necessary as an urgency measure for preserving the public health, safety, and welfare. This ordinance shall take effect immediately for the reasons set forth herein and shall expire 45 days thereafter unless extended pursuant to law.

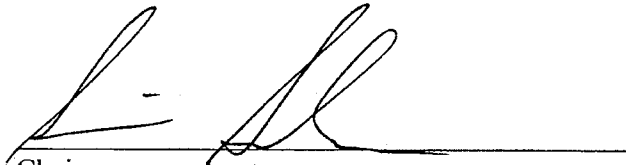
SECTION 10. NO TAKING OF PROPERTY INTENDED.

Nothing in this ordinance shall be interpreted to effect an unconstitutional taking of property of any person. If the Board of Supervisors determines, based on specific

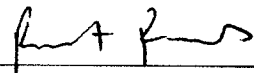
evidence in the administrative record, that the application of one or more of the provisions of this ordinance to a proposed project would effect an unconstitutional taking of private property, the Board shall disregard such provision or provisions to the extent necessary to avoid such unconstitutional taking.

PASSED AND ADOPTED on this 25th day of May, 2010, upon motion of Supervisor Potter, seconded by Supervisor Parker, by the following vote, to-wit:

AYES: Supervisors Armenta, Calcagno, Salinas, Parker, Potter
NOES:
ABSTAIN:
ABSENT:


Chair
Monterey County Board of Supervisors

ATTEST:
GAIL T. BORKOWSKI,
Clerk of the Board of Supervisors

By: 
Deputy


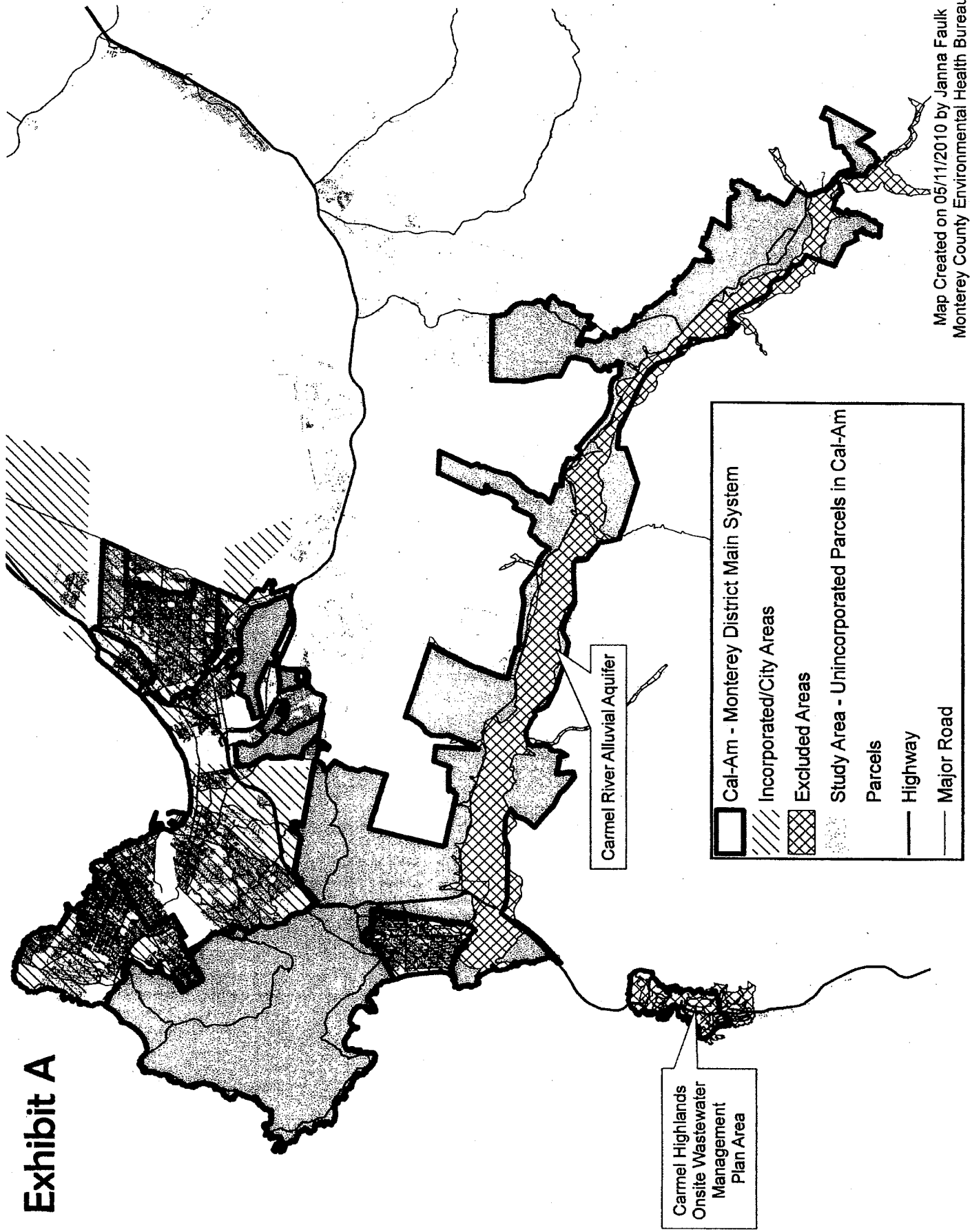
APPROVED AS TO FORM:

LEROY W. BLANKENSHIP
Assistant County Counsel

Exhibit A



Map Created on 05/11/2010 by Janna Faulk
Monterey County Environmental Health Bureau
All other data provided by Monterey County IT.

Cal-Am and Carmel River Alluvial Aquifer Data provided by Monterey Peninsula Water Management District. All other data provided by Monterey County IT.