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TO: Stephanie Locke

Cc: Dave Stoldt, Dave Laredo

FROM: Fran Farina

RE: California Accessory Dwelling Unit Law Prohibitions on Separate Utility Connections and Connection Fees or Capacity Charges

The Monterey Peninsula Water Management District (MPWMD or District) has requested an opinion on the effect of Senate Bill No. 1069 (Wieckowski) amending certain sections of the Government Code that became effective January 1, 2017. Specifically, the amendments encourage additional rental housing stock in single-family or multifamily residential zones by “prohibiting a local agency from requiring an applicant for this permit to install a new or separate utility connection directly between the unit and the utility or imposing a related connection fee or capacity charge.” MPWMD rules require accessory dwelling units (ADUs) (formerly known as “second units”) to be separately metered and pay a capacity fee for the additional fixture units installed.¹

Does the State Law Pre-empt MPWMD’s Rules?

If it were the State’s intent to pre-empt all providers of water and sewer, they would have broadened the definition to be more inclusive. For example, Government Code² §65589.7 (b) requires public agencies providing water or sewer services to adopt written policies and procedures with objective standards “for provision of services in conformance with this section.” The section deals with housing development projects affordable to very low, low-, or moderate-income households.

What is a Local Agency?

¹ If a Water Use Credit is available on the Site, this could reduce or eliminate the capacity fee.

² All references are to the California Government Code unless otherwise referenced.

EXHIBIT 3-A

In contrast to the text of §65589.7 (b) referring to “public agencies providing water or sewer services,” §65852.2 (j) (2) defines local agency as “*a city, county, or city and county, whether general law or chartered.*” [Emphasis added.] The amending language is within the “Local Planning” sections addressing Housing Elements and providing incentives for affordable housing.

MPWMD does not fall within this “local agency” definition. The plain language of the legislation applies only to those entities specifically identified and is not applicable to MPWMD.

MPWMD Rule 24

District Rule 24 requires residential water use to be calculated using a fixture unit methodology.³ §65852.2 (g) (2) states ADUs “shall not be considered new residential uses for the purposes of calculating local agency connection fees or capacity charges for utilities, including water and sewer service.” Also, §65852.2 (g) (2) (A) specifies that certain ADUs cannot be required to install a new or separate utility connection directly between the ADU and the utility nor impose a related connection fee or capacity charge.

If it were determined that the District should comply, the current water restrictions imposed by the State Water Resources Control Board’s (SWRCB) Cease and Desist Order (CDO) should suffice to argue the deficiency of reliable water sources prevent compliance with additional demand. §65852.2 (a) (1) (A) identifies criteria for designating ADUs and list the “adequacy of water and sewer service.”

Under different circumstances, §65852.2 (g) (2) (B) can require a new or separate utility connection directly between the ADU and the utility which could be subject to a connection fee or capacity charge based on either the ADU size or the number of its plumbing fixtures.

A Sub-Metering Option

The District could carve out an exception in District Rule 23 to allow sub-metering for ADUs and specify what conditions are required for compliance. This approach is less costly than requiring a separate meter from the ADU to the utility, but allows for accurate counting of water use within the structure. The capacity fee for the new fixtures could be at the regular rate, a reduced rate, or even exempt like Rule 24.5.

Conclusion

The District does not fall within the definition of “local agency” as contemplated by the Wieckowski legislation. Even if a broader reading were applied, the restricted nature of the local water supply provides adequate justification to seek exclusion from the requirements. If the District Board wanted to make some accommodation, various options are available by amending the current rules.

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³ MPWMD Rule 24-A.