

**FINAL
ORDINANCE NO. 104**

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
MODIFYING ADMINISTRATIVE APPEAL PROCESSES**

FINDINGS

1. The Monterey Peninsula Water Management District is a public entity, formed by the California Legislature pursuant to the Statutes of 1977, chapter 527, as amended. The Monterey Peninsula Water Management District Law can be found at West's Water Code Appendix, Chapter 118, et seq.
2. The Monterey Peninsula Water Management District has general and specific power to adopt reasonable rules and regulations to carry out its powers and duties consistent with State law. The Water Management District established a process under Rule 70, duly enacted and amended by prior ordinance, by which final discretionary decisions of its General Manager or its District Engineer may be appealed, in writing, within fourteen (14) days of the date of any such determination. Rule 70 enables an appeal to be filed by an applicant, the General Manager, or any other person. Rule 70 was first added by Ordinance No. 1 (2/11/80), was later amended by Ordinance No. 2 (3/11/80); and was most recently amended by Ordinance No. 63 (6/15/92). Rule 70 was formerly numbered Rule 600, was renumbered by Ordinance No. 3 as Rule 700, and was renumbered as Rule 70 by Ordinance No. 6 (5/11/81).
3. This ordinance is intended to amend the existing administrative appeal process of the Monterey Peninsula Water Management District to amend circumstances and processes through which a member of the board of directors of the Monterey Peninsula Water Management District may refer a subordinate decision to the board of directors for review.
4. The Monterey Peninsula Water Management District also established a process under Rule 71, enacted and amended by prior ordinance, to govern benefit assessment appeals. Rule 71 was first added by Ordinance No. 9 (2/14/83), later amended by Ordinance No. 11 (11/14/83), and most recently amended by Ordinance No. 22 (3/11/85). The Water Management District no longer imposes a benefit assessment on any property within the District. Therefore, the need for Rule 71 has lapsed. The existing Rule 71 no longer serves any purpose and can be deleted.
5. This ordinance shall delete the existing text of Rule No. 71 (Assessment Appeals) of the Rules and Regulations of the Monterey Peninsula Water Management District in its entirety.
6. This ordinance shall add a new provision as Rule No. 71 (Board Member Policy Review and/or Appeal) of the Rules and Regulations of the Monterey Peninsula Water Management District.

NOW THEREFORE be it ordained as follows:

ORDINANCE

Section One: Short Title

This ordinance shall be known as the Administrative Appeal Modification Ordinance of the Monterey Peninsula Water Management District.

Section Two: Purpose

This ordinance modifies Rule No. 70 (Appeals) and deletes the entirety of the existing text of Rule No. 71 (Assessment Appeals) from the Rules and Regulations of the Monterey Peninsula Water Management District. This ordinance allows a refund of processing fees for appeals when an appeal provides a significant benefit to the public and/or environment and adopts and enacts a new administrative review process as Rule No. 71 (Board Member Policy Review and/or Appeal) of the Rules and Regulations of the Monterey Peninsula Water Management District.

Section Three: Amendment of Rule 70 (Appeals)

Monterey Peninsula Water Management District Rule 70 (Appeals) shall be amended as shown below. The amended portions are set forth in ~~strikeout~~ and ***bold italics***, as follows:

RULE 70. APPEALS

Determinations of the General Manager or the District Engineer may be appealed to the District Board, in writing, within ~~fourteen (14) days~~ ***twenty-one (21) days*** after any such determination. Such appeal shall specify in writing the grounds upon which it is taken, and shall reference the provision of these Rules and Regulations which have been violated, and shall be accompanied by the fee prescribed in Rule 63, ***except where the issues raised in the appeal concern issues of public interest or environmental protection. Applicability of fee exemptions shall be determined solely by the General Manager.*** Within thirty (30) days of receipt of such appeal, the General Manager shall set a hearing on the appeal before the District Board and notify the appellant and/or applicant in writing of the time and place of the hearing at least ten (10) days prior to the hearing and give public notice of the hearing date. An appeal may be filed by the applicant, the General Manager, or any other person. At said hearing the appellant and/or applicant and other persons may present evidence concerning the appeal. The Board may deny, approve or continue any appeal. The General Manager shall notify the appellant and/or applicant within ten (10) days in writing by mail of the Board action taken; namely continuance, approval, conditional approval, or denial. Notice of the action taken shall be deemed to have been given when the written notification has been deposited in the mail, postpaid, addressed to the address shown on the application. Unless the Board otherwise determines, any permit held by a applicant for which an appeal has been filed pursuant to these rules and regulations shall be deemed suspended until the appeal has been resolved. Upon hearing the appeal, the Board shall also have the discretion to reduce and rebate in full or in part the fee for appeal otherwise set by Rule 63 (1) ***if the Board finds that the appeal has provided a significant benefit to the public and/or the environment or in unusual matters.***

Section Four: Deletion of Rule 71 (Assessment Appeals)

Monterey Peninsula Water Management District Rule 71 (Assessment Appeals) shall be deleted in its entirety, as shown below. The portion set forth in ~~strikeout type (strikeout)~~ is hereby deleted:

~~Any determination concerning the calculation of a benefit assessment, or concerning the calculation of an assessment credit may be appealed to the Board of Directors. Such an appeal shall specify in writing the grounds upon which it is taken, reference the provision of these Rules and Regulations violated, shall be submitted in typewritten form, shall be accompanied by the fee prescribed in Rule 63, and shall be initiated within (14) days after the property owner has received notice pursuant to Rule 120 B (4) of the final assessment. Within thirty (30) days of receipt of such appeal, the General Manager shall set a hearing on the appeal before the District Board and notify the appellant and/or applicant in writing of the time and place of the hearing at least ten (10) days prior to the hearing and give public notice of the hearing date. An appeal may be filed by the applicant, the General Manager, or any other person. At said hearing the appellant and/or applicant and other persons may present evidence concerning the appeal. The Carmel River Advisory Committee may forward its recommendation regarding this matter. The Board may deny, approve or continue any appeal. Should the Board grant an appeal which seeks an assessment credit for prior works, the Board shall adopt findings consistent with Rule 121 B (3). The General Manager shall notify the appellant and/or applicant within ten (10) days in writing by mail of the Board action taken. Notice of the action taken shall be deemed to have been given when the written notification has been deposited in the mail, postpaid, addressed to the address on the application. Upon approval of an appeal by the Board of Directors, the fee submitted with the appeal shall be returned to the appellant and/or applicant within thirty (30) days of this action.~~

Section Five: Addition of Rule 71 (Board Member Policy Review and/or Appeal)

Monterey Peninsula Water Management District Rule 71 (Board Member Policy Review and/or Appeal) shall be added, as follows:

RULE 71 (BOARD MEMBER POLICY REVIEW AND/OR APPEAL)

A. Any member of the board of directors of the Monterey Peninsula Water Management District, may refer an appealable subordinate decision to the board of directors for review on the basis that the determination affects, impacts, or deals with matters of general policy of the Monterey Peninsula Water Management District, or may have a significant environmental, economic, or physical impact on a District facility or service. The general procedures of Rule 70 shall apply, insofar as practical. However, there shall be no fee for such a review.

B. The board of directors of the Monterey Peninsula Water Management District may elect to take no action, making the subordinate decision final, or, upon the request of any board member, the Chair shall set the matter for hearing as an appeal, which shall be heard and determined in the same manner as other appeals taken pursuant to Rule 70. No board member shall be deemed to have a conflict of interest or a disabling bias solely by making a request for an appeal. There shall be no fee for such an appeal.

C. Upon hearing the appeal, the board of directors of the Monterey Peninsula Water Management District shall consider the record and such additional evidence as may be offered and shall find whether, in its opinion, error was made. The board of directors may affirm, reverse, or modify the action appealed

as it deems just and equitable, and may exercise all rights of any other officer or commission. The board of directors shall transmit a copy of its decision to the applicant and the appellant.

Section Six: **Publication and Application**

The provisions of this ordinance shall cause the republication and amendment of the permanent Rules and Regulations of the Monterey Peninsula Water Management District.

Section Seven: **Effective Date and Sunset**

A. This ordinance shall take effect at 12:01 a.m. on the 30th day after it has been enacted on second reading.

B. This ordinance shall be reviewed in February 2003 and August 2003 by the Board of Directors.

Section Eight: **Severability**

If any subdivision, paragraph, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or enforcement of the remaining portions of this ordinance, or of any other provisions of the Monterey Peninsula Water Management District Rules and Regulations. It is the District's express intent that each remaining portion would have been adopted irrespective of the fact that one or more subdivisions, paragraphs, sentences, clauses, or phrases be declared invalid or unenforceable.

On motion by Director Henson, and second by Director Lehman, the foregoing ordinance is adopted upon this 15th day of July 2002, by the following vote:

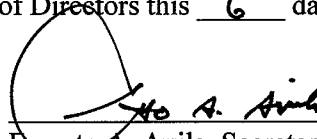
AYES: Directors Erickson, Henson, Lehman and Lindstrom

NAYS: Directors Edwards and Pendergrass

ABSENT: Director Potter

I, Ernesto A. Avila, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify the foregoing is a full, true and correct copy of an ordinance duly adopted on the 15th day of July 2002.

Witness my hand and seal of the Board of Directors this 6th day of August 2002.



Ernesto A. Avila, Secretary to the Board