

**HEISLER, STEWART & DANIELS, INC.**  
563 Figueroa Street  
Monterey, CA 93940  
Phone: (831) 372-3361 Fax: (831) 646-9581

**FACSIMILE COVER SHEET**

Date: August 22, 2008

To: Mr. Roger W. Briggs  
CA Regional Water Quality Control Board  
Fax No: (805) 543-0397  
From: William B. Daniels  
File No: 9006

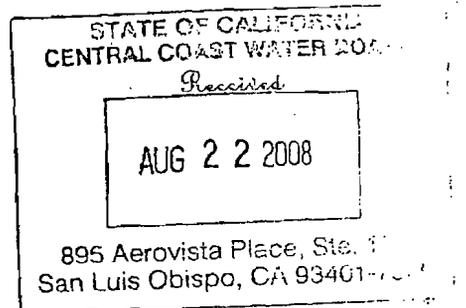
If checked, original will follow by mail.

Number of pages including cover sheet: 12

**Attachment(s): Letter from William B. Daniels regarding 194 San Remo Road, Carmel Highlands (APN: 243-181-006) and 192 San Remo Road, Carmel Highlands (APN: 243-181-005)**

Comment(s):

Please see the attached.



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Item No. 27 Attachment No. 10  
WDR Moeller Residence  
192 San Remo Rd.  
R3-2008-0060  
December 4-5 2008 Meeting

## HEISLER, STEWART &amp; DANIELS, INC.

ATTORNEYS AT LAW

563 FIGUEROA STREET

MONTEREY, CALIFORNIA 93940

TELEPHONE (831) 372-3361

FACSIMILE (831) 646-9581

WILLIAM E. DANIELS

FRANCIS HEISLER  
(1895-1984)CHARLES A. STEWART  
(1922-1966)

August 22, 2008

**VIA FACSIMILE (805) 543-0397**

Mr. Roger W. Briggs

Executive Officer

California Regional Water Quality Control Board

895 Aerovista Place Suite 101

San Luis Obispo, CA 93401-7906

STATE OF CALIFORNIA  
CENTRAL COAST WATER CONTROL DISTRICT*Received*

AUG 22 2008

895 Aerovista Place, Ste. 101  
San Luis Obispo, CA 93401-7906

**Re: 194 San Remo Road, Carmel Highlands (APN: 243-181-006) and 192 San Remo Road, Carmel Highlands (APN: 243-181-005)**

Dear Mr. Briggs:

Please be advised that the undersigned represents Mary De La Roza, the owner of APN 241-291-010, which is northwest of APN 243-181-005 and 243-181-006, owned by the applicants. The latter parcels are the focus of the proposed waivers of waste discharge requirements referred to above. My client objects to those waivers on the grounds set forth below and as set forth in the objection of Leland R. Lewis, dated August 20, 2008 and attached hereto as Exhibit A.

As we interpret your letters of July 21, 2008, your granting of waivers assumes a lot line adjustment of Parcels 005 and 006. Those lot line adjustments cannot be granted as a matter of state law.

Historically, the applicants' lot line adjustment proposals were the focus of proceedings before the California Coastal Commission and were not approved. Subsequently, the applicants submitted revised applications for a lot line adjustment for Parcels 005 and 006 to the Monterey County Subdivisions/Minor Subdivision Committee. Public opposition to the lot line adjustments was fierce and included the following grounds:

1. The lot line adjustments could not be granted under state law: The lot line adjustments sought by the applicants violated Government Code Section 66412(d), a copy of which I attach hereto as Exhibit B. Subsection (d) is one of four exceptions to the Subdivision Map Act. However, it imposes state law criteria for local approval of lot line adjustments involving four or fewer adjoining parcels, as is the case here. You will note that Subsection (d) states in part:

Mr. Roger W. Briggs  
August 22, 2008  
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A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels **resulting from the lot line adjustment will conform to the local general plan, any applicable coastal plan, and zoning and building ordinances.** An advisory agency or local agency shall not impose conditions or exactions on its approval of a lot line adjustment except to conform to the local general plan, any applicable coastal plan, and zoning and building ordinances... [Emphasis added]

Moreover, the proposed lot line adjusted lots cannot be considered Legal Nonconforming Building Sites under Monterey County Ordinance 20.68.060, which defines such sites as follows:

...divisions of property into Parcels when said Parcels were shown on the 1964 - 65 county tax roll under separate ownership, or a division of property into 4 or less Parcels shown on a record of survey recorded prior to March 2, 1964, or record of survey of 4 or less Parcels, each of which is over 2 ½ acres, recorded prior to March 7, 1972, or Parcels of two and one-half acres or over when said Parcels were shown under separate ownership prior to March 7, 1972, when shown on a deed or deeds recorded on or before March 7, 1972, when said Parcels comply with applicable zoning ordinances in effect at the time of division, **or when said Parcels are lots on a recorded subdivision map approved by the Board of Supervisors of the County of Monterey.** [Emphasis added]

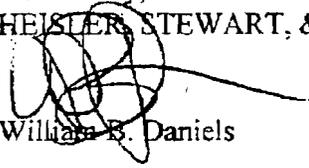
Section 20.68.060 limits nonconforming building sites to those configured by an original subdivision. Currently, both 005 and 006 are legal nonconforming building sites under this ordinance. However, the applicants seek to invoke the power to create a lot line adjustment that will produce a configuration different from that on the approved subdivision map. Therefore, the proposed adjusted lots are **not** legal nonconforming building sites under 20.68.060. When the power to adjust lot lines is invoked, state law requires that the resulting lots conform to the local coastal plan, which these lots cannot do given the one acre minimum for LDR/1 districts. The adjusted Parcel 006 would consist of 0.85 acres, and adjusted Parcel 005 would consist of 0.61 acres.

2. Development, including waste water systems, will likely have a substantial environmental impact: Several neighbors objected to the lot line adjustments on the grounds that Monterey County Planning Department staff had erroneously indicated that the adjustments were categorically exempt under CEQA Section 15305. The objecting neighbors pointed out that Section 15305 applied only to areas having a slope of less than 20%. They included in their objection an engineer's opinion that the flattest portion of the proposed sites had a slope of 25% in some places but that a majority of the sites had a slope of 50%. The expert added that the steepest area had a slope of 100%. As a result of these slope configurations, they demanded an investigation into the significant impact of development on the environment.

Mr. Roger W. Briggs  
August 22, 2008  
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It is our understanding that the application before the California Regional Water Quality Control Board is part of a broader strategy of the applicants to secure a development permit for Parcel 006, as well as a lot line adjustment for Parcel 005. Neither this strategy, the lot line adjustment of substandard lots, nor the slope conditions are mentioned in your communications of July 21, 2008. It is incomprehensible that a waiver of the discharge requirements could be made without consideration and analysis of those variables.

Yours truly,  
HEISTER, STEWART, & DANIELS, INC.

  
William B. Daniels

Attachments

cc: Client  
See Service List

**EXHIBIT A**

**Ieland lewis**

BOX 46, CARMEL, CALIFORNIA 93921

20 August 2008

California Regional Water Quality Control Board  
Central Coast Region  
895 Aerovista Place, Suite 101  
San Luis Obispo, California 93401-0397

Attention: Roger W. Briggs, Executive Officer  
cc: Burton Chadwick  
Matthew Keeling

RE: Michael Moeller – 194 San Remo Road, Carmel Highlands (APN 243-181-006)  
Monterey County, Proposed Waiver of Waste Discharge Requirements for  
Alternative Onsite Wastewater Disposal System (Resolution R3-2008-0061).

In response to the invitation to submit comments by 23 August 2008 concerning the proposed Resolution R3-2008-0061 to grant Michael Moeller a waiver of the Central Coast Water Board's Water Quality Control Plan (Basin Plan) & July 1979 Memorandum of Understanding prohibiting Monterey County from approving alternative or engineered onsite wastewater treatment or disposal systems, please consider carefully the following comments and comprehensive analyses regarding the development now commencing at 194 San Remo Road, Carmel Highlands, AP 243-181-06.

The design documents of an engineered system for on-site wastewater disposal presented by Andrew Brownstone of BioSphere Consulting and a geo-technical investigation report prepared by Richard Dante of Soil Surveys, Inc. appears to offer a valuable alternative approach to conventional rock-filled disposal trenches heretofore employed in permitted septic systems in Monterey County. The application of such an engineered system, if successfully proven over the tentative waiver period of five years, would be a boon to building projects currently held in abeyance due to unsuitable sites and environmentally destructive conventional septic systems operation heretofore permitted for residential development. The major question presented in the consideration of granting or not granting this waiver is the success or failure of this engineered system to perform as anticipated in worst case conditions potentially causing unexpected pollution and nuisance to adjoining properties. Default, backup, conventional rock-filled trenches with sufficient dimension must be provided to insure adequate effluent odor-free dispersal. Sufficient square footage of suitable permeable soil must be available on the building site to accommodate this default reservation. The Moeller building site APN 243-181-06 containing .86 acre is less than the zoning requirement of one acre, a standard building site area determined to be necessary for adequate conventional septic drain field

dispersal. However, the current configuration of the property (without the proposed lot line re-configuration being concurrently applied for), despite its 20 degree slope toward neighboring property, would provide adequate area for sufficient rock-filled backup dispersal trenches. Re-configuration of the building site through a lot line adjustment as proposed by the applicant if simultaneously or subsequently granted would nullify the possibility of providing sufficient area for this septic system default backup and must be fundamentally considered in any conditionally granted waver contemplated.

The findings and conclusions as presented in the proposed waver have been comprehensively annotated with questions and comments that need to be substantively addressed to adequately balance all of the contingencies that may effect the successful operation of the engineered septic dispersal system being considered. To focus on only one contingency unmentioned anywhere in the waver proposal is the influence of heavy surface rain inundating the 20-degree slope of the building site and simply that gravity trumps ordinances, requirements and compliance, jeopardizing adjacent properties with effluent escaping, under adverse conditions, the best engineered intention.

Respectfully submitted.



Leland R. Lewis,

A concerned neighbor.

**EXHIBIT B**

termination or cancellation of the contract.

*The applicants for a parcel map or final map* subject to this section shall be personally liable for performance of obligations deferred under this section at the time they become due. Added Stats 1988 ch 494 § 1.

See Miller & Starr, California Real Estate 3d, §§ 12:15, 25:8, 25:197.

§ 66412. **Applicability of division.** This division shall be inapplicable to:

(a) The financing or leasing of apartments, offices, stores, or similar space within apartment buildings, industrial buildings, commercial buildings, mobilehome parks, or trailer parks.

(b) Mineral, oil, or gas leases.

(c) Land dedicated for cemetery purposes under the Health and Safety Code.

(d) A lot line adjustment between *four or fewer* existing *adjoining* parcels, where the land taken from one parcel is added to an *adjoining* parcel, and where a greater number of parcels than originally existed is not thereby created, *if* the lot line adjustment is approved by the local agency, or advisory agency. A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to *the local general plan, any applicable coastal plan, and zoning and building ordinances.* An advisory agency or local agency shall not impose conditions or exactions on its approval of a lot line adjustment except to conform to *the local general plan, any applicable coastal plan, and zoning and building ordinances,* to require the prepayment of real property taxes prior to the approval of the lot line adjustment, or to facilitate the relocation of existing utilities, infrastructure, or easements. No tentative map, parcel map, or final map shall be required as a condition to the approval of a lot line adjustment. The lot line adjustment shall be reflected in a deed, which shall be recorded. No record of survey shall be required for a lot line adjustment unless required by Section 8762 of the Business and Professions Code.

(e) Boundary line or exchange agreements to which the State Lands Commission or a local agency holding a trust grant of tide and submerged lands is a party.

(f) *Any separate assessment under Section 2186.7 of the Revenue and Taxation Code.*

(g) Unless a parcel or final map was approved by the legislative body of a local agency, the conversion of a community apartment project, as defined in Section 1351 of the Civil Code, to a condominium, as defined in Section 783 of the Civil Code, but only if all of the following requirements are met:

(1) At least 75 percent of the units in the project were occupied by record owners of the project on March 31, 1982.

(2) A final or parcel map of the project was properly recorded, if the property was subdivided, as defined in Section 66424, after January 1, 1964, with all of the conditions of that map remaining in effect after the conversion.

(3) The local agency certifies that the above requirements were satisfied if the local agency, by ordinance, provides for that certification.

(4) Subject to compliance with subdivision (e) of Section 1351 of the Civil Code, all conveyances and other documents necessary to effectuate the conversion shall be executed by the required number of owners in the project as specified in the bylaws or other organizational documents. If the bylaws or other organizational documents do not expressly specify the number of owners necessary to execute the conveyances and other documents, a majority of owners in the project shall be required to execute the conveyances or other documents. Conveyances and other documents executed under the foregoing provisions shall be binding upon and affect the interests of all parties in the project.

(h) Unless a parcel or final map was approved by the legislative body of a local agency, the conversion of a stock cooperative, as defined in Section 1351 of the Civil Code, to a condominium, as defined in Section 783 of the Civil Code, but only if all of the following requirements are met:

(1) At least 51 percent of the units in the cooperative were occupied by stockholders of the cooperative on January 1, 1981, or individually owned by stockholders of the cooperative on January 1, 1981. As used in this paragraph, a cooperative unit is "individually owned" if and only if the stockholder of that unit owns or partially owns an interest in no more than one

## Gov § 66412.1

## CALIFORNIA REAL ESTATE LAWS

unit in the cooperative.

(2) No more than 25 percent of the shares of the cooperative were owned by any one person, as defined in Section 17, including an incorporator or director of the cooperative, on January 1, 1981.

(3) A person renting a unit in a cooperative shall be entitled at the time of conversion to all tenant rights in state or local law, including, but not limited to, rights respecting first refusal, notice, and displacement and relocation benefits.

(4) The local agency certifies that the above requirements were satisfied if the local agency, by ordinance, provides for that certification.

(5) Subject to compliance with subdivision (e) of Section 1351 of the Civil Code, all conveyances and other documents necessary to effectuate the conversion shall be executed by the required number of owners in the cooperative as specified in the bylaws or other organizational documents. If the bylaws or other organizational documents do not expressly specify the number of owners necessary to execute the conveyances and other documents, a majority of owners in the cooperative shall be required to execute the conveyances or other documents. Conveyances and other documents executed under the foregoing provisions shall be binding upon and affect the interests of all parties in the cooperative.

(i) The leasing of, or the granting of an easement to, a parcel of land, or any portion or portions thereof, in conjunction with the financing, erection, and sale or lease of a windpowered electrical generation device on the land, if the project is subject to discretionary action by the advisory agency or legislative body.

(j) The leasing or licensing of a portion of a parcel, or the granting of an easement, use permit, or similar right on a portion of a parcel, to a telephone corporation as defined in Section 234 of the Public Utilities Code, exclusively for the placement and operation of cellular radio transmission facilities, including, but not limited to, antennae support structures, microwave dishes, structures to house cellular communications transmission equipment, power sources, and other equipment incidental to the transmission of cellular communications, if the project is subject to discre-

tionary action by the advisory agency or legislative body.

(k) Leases of agricultural land for agricultural purposes. As used in this subdivision, "agricultural purposes" means the cultivation of food or fiber, or the grazing or pasturing of livestock. Added Stats 1974 ch 1536 § 4, operative March 1, 1975. Amended Stats 1976 ch 92 § 1; Stats 1977 ch 234 § 2, effective July 7, 1977; Stats 1980 ch 767 § 1, ch 774 § 1; Stats 1982 ch 1426 § 2; Stats 1983 ch 101 § 87 (ch 1288 prevails), ch 1288 § 3, effective September 30, 1983; Stats 1984 ch 306 § 1; Stats 1985 ch 1504 § 1. Amended Stats 1989 ch 847 § 4; Stats 1990 ch 1001 § 1 (AB 3107); Stats 1992 ch 523 § 5.5 (SB 1683), ch 1003 § 2 (AB 3100); Stats 1994 ch 458 § 2 (AB 1414); Stats 2000 ch 26 § 2 (SB 453), effective May 24, 2000, ch 506 § 28. Amended Stats 2001 ch 873 § 2 (SB 497).

→ See Miller & Starr, California Real Estate 3d, §§ 25:1, 25:166.

§ 66412.1. Applicability to commercial or industrial project or buildings. This division shall also be inapplicable to:

(a) The financing or leasing of any parcel of land, or any portion thereof, in conjunction with the construction of commercial or industrial buildings on a single parcel, unless the project is not subject to review under other local agency ordinances regulating design and improvement.

(b) The financing or leasing of existing separate commercial or industrial buildings on a single parcel. Added Stats 1980 ch 1217 § 1, effective September 29, 1980; Amended Stats 1982 ch 87 § 4, effective March 2, 1982.

→ See Miller & Starr, California Real Estate 3d, § 25:1.

§ 66412.2. Applicability to dwelling units or second units. This division shall not apply to the construction, financing, or leasing of dwelling units pursuant to Section 65852.1 or second units pursuant to Section 65852.2, but this division shall be applicable to the sale or transfer, but not leasing, of those units. Added Stats 1983 ch 1013 § 1.5, effective September 22, 1983.

§ 66412.3. Effect of ordinances on housing needs of region. In carrying out the provisions of this division, each local agency

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**CERTIFICATE OF SERVICE**

I, Melissa Montgomery, certify that I am a citizen of the United States over the age of 18 years and not a party to the within action; that my business address is 563 Figueroa Street, Monterey, CA 93940; and that on the date set forth below, I served a true copy of the foregoing **AUGUST 22<sup>ND</sup> 2008 LETTER FROM WILLIAM B. DANIELS, ESQ. TO MR. ROGER W. BRIGGS** to the below listed attorneys or parties in this action by:

(By Overnight Courier) placing a true copy thereof in a sealed envelope addressed as follows and causing each envelope, with delivery fees paid or provided for to be delivered to an authorized driver for Federal Express.

(By Mail) placing a true copy thereof in a sealed envelope addressed as follows and causing each envelope with postage fully prepaid to be placed for collection and mailing that same day following the ordinary business practices of HEISLER, STEWART & DANIELS, INC.

(By Hand In Open Court) placing a true copy thereof in a sealed envelope addressed as follows and causing each envelope to be delivered by hand to the addresses following.

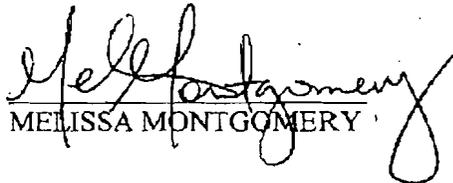
(By Facsimile) causing each document to be sent by facsimile transmission to the following numbers.

The addressees of the documents identified above by the means indicated above are:

See attached service list.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 22, 2008, in Monterey, California.

  
MELISSA MONTGOMERY

**SERVICE LIST****VIA FACSIMILE**

Roger W. Briggs Executive Officer California Regional Water Quality Control Board (805) 543-0397	Leland Lewis (831) 624-3266
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**VIA U.S. MAIL**

Richard LeWarne County of Monterey Division of Environmental Health 1270 Natividad Road Salinas, CA 93906	Andrew Brownstone Biosphere Consulting 1315 King Street Santa Cruz, CA 95060
Liz Gonzalez County of Monterey Planning Department 1668 W. Alisal Street Salinas, CA 93901	Pamela Silkwood Horan Lloyd Law Offices 499 Van Buren Street P.O. Box 3350 Monterey, CA 93942-3350
Miskai Olson P.O. Box 222603 Carmel, CA 93922	Brian Call (Agent for Mary Whitney) 500 Camino El Estero Suite 200 Monterey, CA 96940