

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV

**F12a**

Appeal Filed: 4/25/2005
49th Day: Waived
Staff: Kevin Kahn - SC
Staff Report: 11/20/2015
Hearing Date: 12/11/2015

**APPEAL STAFF REPORT: SUBSTANTIAL ISSUE
DETERMINATION & DE NOVO HEARING**

Application Number: A-3-MCO-05-027 (Rancho Roberto Subdivision)

Applicant: Robert Bugalski

Appellants: Commissioners Shallenberger and Wan; and Friends, Artists and Neighbors of Elkhorn Slough

Local Government: Monterey County

Local Decision: Monterey County Coastal Development Permit Application Number PLN980685, approved by the Monterey County Board of Supervisors on March 1, 2005

Project Location: 66 Fruitland Avenue (south of Salinas Road), Royal Oaks, North Monterey County (APN 117-131-032-000)

Project Description: Subdivision of a 13.3-acre parcel into 27 lots (26 residential lots ranging in size from 6,649 square feet to 10,765 square feet, plus one open space parcel of 6.61 acres placed in conservation easement); construction of a stormwater detention basin within a wetland in the open space parcel; 2,400 cubic yards of grading; demolition of a single-family dwelling, barn, and several accessory buildings.

Staff Recommendation: Substantial Issue Exists; Denial

IMPORTANT HEARING PROCEDURE NOTE

The Commission will not take testimony on this “substantial issue” recommendation unless at least three Commissioners request it. The Commission may ask questions of the Applicant, any aggrieved person, the Attorney General, or the Executive Director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally (and at the discretion of the Chair) limited to three minutes total per side. Only the Applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will follow, unless it has been postponed, during which the Commission will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

Monterey County approved a coastal development permit (CDP) authorizing the subdivision of a 13.3-acre parcel into 27 lots, 26 of which would be available for future residential development (i.e., each future residence would need a separate CDP approval), and one parcel left predominantly in open space, in the unincorporated Royal Oaks area of North Monterey County. Royal Oaks is a rural area of rolling hills consisting of open space, agriculture, and very low density residential development. Most of the project site is undeveloped land that has historically been used for grazing and other agricultural uses. The residential lots would all be located within 6.69 acres on the northern portion of the existing parcel, and would range in size from 6,649 square feet to 10,765 square feet. The County’s approval also authorizes the construction of a circular loop road, requires the abandonment of an existing well and connection to new infrastructure providing a potable water supply, new sanitary sewer connections, and demolition of an existing single-family dwelling, barn, and accessory structures. Per the County’s conditions of approval, the 6.61-acre open space parcel, which contains a riparian drainage swale, spring, and wetland, would occupy the southern half of the project site. The wetland would be converted into a stormwater detention basin, and the entire open space parcel would be placed in a conservation easement with restrictions on the types of allowed development.

Two appeals were filed with the Commission, contending that the County-approved project is inconsistent with the LCP’s water supply and groundwater resources policies. Specifically, the Appellants contend that the approved project cannot be served by an identifiable, available, and long-term water supply, including because the underlying groundwater basin from which the project is slated to receive water is already overdrafted and extracted at a level that exceeds its LCP-required safe yield amount. Therefore, a subdivision that will necessitate an additional permanent demand of water for 26 new residences from an already overdrafted groundwater source is both inconsistent with LCP policies that only authorize a level of development that can be served by the groundwater basin’s safe yield amount, and with policies that dictate residential subdivision to be the lowest priority land use to receive water when supplies are scarce (coastal-dependent uses being the highest priority). Furthermore, the Appellants contend that the assumptions made in the County’s findings are inadequate, including that the County arbitrarily

used 20 years as a standard to define “long-term water supply,” which is not supported by the LCP, and calculated there to be 162 years of water supply based on how long it would take to extract *all* of the water within the basin at the existing water extraction level, which is precisely the scenario the LCP’s policies are meant to prevent, including by ensuring that groundwater resources and the development it supports are not adversely impaired.

Staff recommends that the Commission find that the appeals raise a substantial issue and that the Commission takes jurisdiction over the CDP application. Staff further recommends that the Commission, on de novo review, deny the CDP.

North Monterey County has had severe groundwater overdraft problems for decades. Virtually all of the agricultural, commercial, and residential development in North Monterey County relies on groundwater pumped from local wells. The LCP requires development in North County to be served by a long-term water supply, and only allows new development, particularly residential subdivisions, when the groundwater basin is in its safe yield extraction state. The proposed project would authorize a subdivision allowing for 26 future residences demanding water from an already severely overdrafted groundwater basin. The project cannot be found to have a long-term water supply, and cannot be found to be served by water from a groundwater basin in a safe yield state. Furthermore, the proposed 26-lot residential subdivision represents a low LCP-priority land use within an area with known water supply deficiencies. When such a combination results, the LCP affirmatively requires the proposed development to be denied. Therefore, because the project proposes 26 new residential lots within a groundwater basin that is severely overdrafted, the proposed project is inconsistent with the LCP’s water supply and priority land use policies, and must be denied.

Furthermore, the project proposes to convert an existing riparian drainage swale into an underground culvert, and replace an existing wetland with an engineered stormwater detention basin with a headwall and weir. Neither use is allowed in riparian corridors and wetlands per the LCP. The project would also authorize extensive grading and landform alteration to convert the area’s scenic natural wetland and riparian habitats into engineered, structural elements, and would replace the site’s existing grazing lands with future residential development, inconsistent with LCP requirements to protect North County’s bucolic agricultural landscape consisting of scenic rolling hills.

In short, the project proposes a large suburban-style residential subdivision in a predominantly rural, agricultural area with severe water supply deficiencies. Thus, staff recommends that the Commission deny a CDP for the proposed residential subdivision project. The motions are found on page 5, below.

TABLE OF CONTENTS

I. MOTIONS AND RESOLUTIONS.....	5
II. FINDINGS AND DECLARATIONS	6
A. PROJECT LOCATION	6
B. PROJECT DESCRIPTION.....	6
C. MONTEREY COUNTY APPROVAL AND PROJECT HISTORY	7
D. APPEAL PROCEDURES	8
E. SUMMARY OF APPEAL CONTENTIONS	9
F. SUBSTANTIAL ISSUE DETERMINATION	9
1. Water Supply	10
2. The Five “Substantial Issue” Factors	13
G. SUBSTANTIAL ISSUE DETERMINATION CONCLUSION	14
H. COASTAL DEVELOPMENT PERMIT DETERMINATION	14
1. Water Supply and Groundwater Resources	14
2. Environmentally Sensitive Habitat Areas	21
3. Water Quality.....	25
4. Visual Resources and Community Character	27
5. Takings.....	28
I. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)	31

APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1 – Location Maps

Exhibit 2 – Site Photos

Exhibit 3 – County’s Conditions of Approval and Approved Project Plans

Exhibit 4 – County’s Final Local Action Notice

Exhibit 5 – Appeal Contentions

Exhibit 6 – North Monterey County Groundwater Sub-basins and Overdraft Amounts

Exhibit 7 – Applicant’s Proposed Site Plan and Lot Configuration

Exhibit 8 – Governor’s Executive Order B-29-15

I. MOTIONS AND RESOLUTIONS

A. Substantial Issue Determination

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the CDP application for the proposed project under the jurisdiction of the Commission for de novo hearing and action. To implement this recommendation, staff recommends a **NO** vote on the following motion. Failure of this motion will result in a de novo hearing on the CDP application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission determine that Appeal Number A-3-MCO-05-027 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and I recommend a no vote.*

***Resolution to Find Substantial Issue:** The Commission hereby finds that Appeal Number A-3-MCO-05-027 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified County of Monterey Local Coastal Program.*

B. CDP Determination

Staff recommends that the Commission, after public hearing, **deny** a coastal development permit for the proposed development. To implement this recommendation, staff recommends a **NO** vote on the following motion. Failure of this motion will result in denial of the CDP and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission approve Coastal Development Permit Number A-3-MCO-05-027 for the development proposed by the applicant, and I recommend a no vote.*

***Resolution to Deny CDP:** The Commission hereby denies Coastal Development Permit Number A-3-MCO-05-027 on the grounds that the development will not be in conformity with the Monterey County Local Coastal Program. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures and/or alternatives that would substantially lessen the significant adverse effects of the development on the environment.*

II. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. PROJECT LOCATION

The proposed project is located on a 13.3-acre parcel in the unincorporated Royal Oaks area of North Monterey County at 66 Fruitland Avenue, south of Salinas Road between State Highway 1 and Elkhorn Road. West of the project site is the Pajaro Valley Golf Course and one mile south is the northern stretch of Elkhorn Slough, a significant coastal resource and one of the largest coastal wetlands in California. Royal Oaks is a rural area of rolling hills consisting of open space covered by grasslands, maritime chaparral, and oak forest habitat; agricultural uses, including for both grazing and row crops; and very low density residential development. Most of the project site is undeveloped land that has historically been used for grazing and other agricultural uses. A single-family dwelling constructed in the 1930s and accessory structures occupy the parcel's northwestern edge. Access to the house is gained by use of a gravel driveway from Fruitland Avenue. The project site slopes from north to south with up to 20 percent slopes. The undeveloped portions of the project site are covered primarily with grassland, with the exception of a drainage swale running north-south through the property and emptying into a wetland at the property's southern boundary, with a spring located adjacent to the wetland. The northern 6.69 acres of the project site is zoned Medium Density Residential (MDR), allowing for residential development at a maximum of four units per acre. The southern 6.61 acres is designated for Low Density Residential (LDR), allowing for residential development at a maximum of 2.5 units per acre.

See **Exhibit 1** for a project location map and **Exhibit 2** for an aerial photo of the project site.

B. PROJECT DESCRIPTION

The County's approval authorized the subdivision of a 13.3-acre parcel into 27 lots, 26 of which would be available for future residential development (i.e., each future residence would need separate CDP approval), and one parcel left predominantly in open space. The residential lots would all be located within 6.69 acres on the northern portion of the existing parcel, and would range in size from 6,649 square feet to 10,765 square feet. While no residential development is authorized by the County's approval, the County conditioned its approval to require that future development on the parcels be built in two phases. Phase I would be limited to 20 units, four of which must be affordable to moderate income households earning no more than 120% of the County's median income. Phase II would consist of the final six units, two of which must be reserved as Workforce Housing units affordable to households earning up to 180% of the County's median income. Per the County's condition, Phase II would only be authorized after the completion of a water audit showing that the remaining six units could be developed within the water use limits for the entire project (when built out) identified in the project's Environmental Impact Report (EIR) (i.e., 11.51 acre-feet per year (AFY) for 26 total residences). The County's approval also authorizes the construction of a circular loop road extending from the existing terminus of Fruitland Avenue into the project site, requires the abandonment of an existing well and connection to new infrastructure providing a potable water supply, new sanitary sewer connections, and demolition of the existing single-family dwelling, barn, and accessory structures.

The 6.61-acre open space parcel would occupy the southern half of the project site. As described above, this southern portion of the property contains a riparian drainage swale, spring, and wetland. The wetland would be converted into a stormwater detention basin designed to catch and treat the stormwater flow produced from the adjacent residential development during a 100-year storm event. The County's approval requires the entire open space parcel to be placed in a conservation easement with restrictions on the types of allowed development.

See the County's conditions of approval and approved project plans in **Exhibit 3**.

C. MONTEREY COUNTY APPROVAL AND PROJECT HISTORY

On August 30, 2000, the Monterey County Planning Commission adopted a resolution (Planning Commission Resolution No. 000047) recommending the Board of Supervisors (Board) deny the proposed project (CDP Application No. PLN980685) based on LCP inconsistencies with respect to water quantity and quality, groundwater resources, priority land uses, and traffic. On March 1, 2005, the Board ultimately approved a CDP for the proposed project. Notice of the County's action on the CDP was received in the Coastal Commission's Central Coast District Office on April 11, 2005 (see **Exhibit 4**). The Coastal Commission's ten working-day appeal period for this action began on April 12, 2005 and concluded at 5 p.m. on April 25, 2005. Two valid appeals were received during the appeal period. See **Exhibit 5** for the full text of the appeals.

At the time of CDP appeal, the County was processing other similar North County residential subdivision projects. Commission staff was reviewing and commenting on all of these projects, including voicing concern with the County's interpretations on various LCP policies and the assumptions being made with respect to available water supplies. Additionally, numerous water supply projects and programs were either being proposed or under construction that could have affected the area's water resources and groundwater supply. Thus, Commission staff felt it prudent to work with the County on the subdivision projects moving through the local process, including to come to resolution with County staff on how the LCP's policies relate to the development potential in North County. Furthermore, Commission staff felt it necessary to understand the efficacy of the various water supply projects, and whether those projects would abate the area's groundwater overdraft. While undertaking this outreach with the County and monitoring the area's water situation, staff did not hear from the Applicant for many years, and the project went into suspended status. Staff sent a letter to the Applicant in 2011 asking whether he still intended to move forward with the project. The Applicant responded that he was still interested in pursuing the project, and staff informed him of the information needs that would be necessary to bring the project forward to hearing, including informing the Applicant of the various LCP inconsistencies with the project as approved by the County. Staff did not hear from the Applicant until 2015, where Commission staff again contacted the Applicant and asked whether he still intended to move forward with this project. The Applicant indicated he still desired to do so, despite the project's potential coastal resource issues, and Commission staff informed him that it would be tentatively scheduled for the Commission's December hearing in nearby Monterey.

Staff believes this is an opportune time to bring this project forward to hearing, including because the Applicant has indicated a continued interest in doing so, and also because of the

current issues regarding water supply and groundwater resources, both at the local level within North Monterey County as described subsequently in this report, and also statewide, including because of the State's new legislation affecting groundwater resources,¹ and also because of the current severe drought.²

D. APPEAL PROCEDURES

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (4) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. The County's approval of this project is appealable because the proposed development is located within 100 feet of a wetland (the wetland at the property's southern boundary) and the subdivision is not the principal permitted use under the LCP.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct the de novo portion of the hearing on an appealed project unless a majority of the Commissioners present finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission considers the CDP de novo and ultimately approves a CDP for a project, the Commission must find that the proposed development is in conformity with the certified LCP. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. This project is not located between the nearest public road and the sea (or the shoreline of a body of water located within the coastal zone), and thus

¹ The Sustainable Groundwater Management Act (SGMA), new State legislation signed into law by the Governor on September 16, 2014. The SGMA establishes a new structure for groundwater management in California, requiring all overdrafted groundwater basins to be managed under the purview of a Department of Water Resources-approved Groundwater Sustainability Plan (GSP). The legislation's intent is to provide for sustainable management of groundwater basins, to enhance local management of groundwater, to establish minimum standards for sustainable groundwater management, and to provide local groundwater agencies with the authority and the technical and feasible assistance necessary to manage groundwater.

² In the past four years, the entirety of the State has been in a severe, extended drought. The current drought surpasses the 1976-1978 drought in terms of dryness; indeed, the period from 2012-2014 is the driest three-year span in the State's recorded history. Due to these severe drought conditions, on January 17, 2014 Governor Brown proclaimed a State of Emergency throughout the State. On April 25, 2014, the Governor proclaimed a Continued State of Emergency. Then, on April 1, 2015, the Governor issued Executive Order B-29-15 (see **Exhibit 8**), which mandates water use restrictions designed to achieve a 25% reduction in potable water usage.

this additional finding would not need to be made if the Commission were to approve the project following a de novo hearing.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant (or his representatives), persons opposed to the project who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo CDP determination stage of an appeal.

E. SUMMARY OF APPEAL CONTENTIONS

The Appellants contend that the County-approved project is inconsistent with numerous Monterey County Local Coastal Program (LCP) water supply policies, including those that require an identifiable, available, and long-term water supply (Land Use Plan (LUP) Policy 2.5.1); require development to be phased so that water supplies are not committed beyond their safe yield, and only allows development to exceed the safe yield once additional water supplies are secured (LUP Policy 2.5.2.3); require development to be limited to an amount that can be supported by the safe yield level of the underlying groundwater basin (LUP Policy 2.5.3.A.2); and require that where there is limited water supply to support development, coastal-dependent uses (i.e., coastal-dependent agriculture, recreation, commercial, and industrial uses) shall have priority over residential and other non-coastal-dependent uses (LUP Policy 4.3.5.4). Furthermore, the Appellants contend that the County's findings of consistency with the above-cited policies are not supportable because they are based on the amount of time it would take for the entire groundwater sub-basin to be depleted.

See **Exhibit 5** for the Appellants' contentions. See Section H below for the text of the above-cited LUP policies.

F. SUBSTANTIAL ISSUE DETERMINATION

The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (California Code of Regulations, Title 14, Section 13115(b)). In previous decisions on appeals, the Commission has been guided by the following factors in making such determinations: (1) the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act; (2) the extent and scope of the development as approved or denied by the local government; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the local government's decision for future interpretation of its LCP; and (5) whether the appeal raises only local issues, or those of regional or statewide significance. Even where the Commission chooses not to hear an appeal, Appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

In this case, for the reasons discussed further below, the Commission determines that the County's approval of a CDP for the project presents a substantial issue.

1. Water Supply

Applicable LCP Policies

The Monterey County LCP is divided into four segments, each with its own LUP.³ The subject property is located within the North County LUP segment. The North County LUP includes an extensive policy framework meant to protect the area's rich coastal resources, including through policies that protect groundwater, require an adequate water supply to serve new development, protect and prioritize agriculture, and direct development to existing developed areas best able to accommodate it.

The LUP includes policies that require all new development to be served by an identifiable, available, and long-term water supply (LUP Policy 2.5.1), including by only authorizing an amount of development that can be served by the safe yield groundwater extraction level (LUP Policy 2.5.3.A.2). The LCP defines "safe yield" as the amount of extraction that the resource can produce over the long-term without impairment of the resource and other associated resources (North County IP Section 20.144.020.VVVV). The LCP does not contain a specific numeric safe yield amount for each groundwater basin, but instead requires definitive water studies and new information sources to determine appropriate safe yields and the amount of new development such a yield can support (LUP Policy 2.5.3.A.2).

Consistent with the above-discussed policies, the LUP also requires development to be phased so that water supplies are not committed beyond their safe yield and only allows development to exceed the safe yield once additional water supplies are secured (LUP Policy 2.5.2.3). The LUP further requires that where there is limited water supply to support development, coastal-dependent uses (such as coastal-dependent agriculture, recreation, commercial, and industrial uses) shall have priority over residential and other non-coastal-dependent uses (LUP Policy 4.3.5.4). Finally, LUP Policy 4.3.5.7 requires new subdivisions and development dependent upon groundwater to be limited and phased over time until an adequate supply of water to meet long-term needs can be assured.

Overall, these policies are meant to implement applicable Coastal Act policies that require new development to be served by adequate public services (Section 30250), and in a manner that does not impact groundwater and other coastal resources (Sections 30231 and 30250).

Appellants' Contentions

The Appellants contend the County-approved project is inconsistent with these aforementioned LCP water supply policies. Specifically, they contend that the approved project cannot be served by an identifiable, available, and long-term water supply, including because the underlying groundwater basin from which the project will receive water is already overdrafted and extracted at a level that exceeds its safe yield amount. Therefore, a subdivision that will necessitate an additional permanent demand of water for 26 new residences from an already overdrafted groundwater source is both inconsistent with LCP policies that only authorize a level of development that can be served by the groundwater basin's safe yield amount, and with policies that dictate residential subdivision to be the lowest priority land use to receive water when supplies are scarce (coastal-dependent uses being the highest priority). These findings are

³ The County's four LUP areas are: North County, Del Monte Forest, Carmel Area, and Big Sur.

articulated in the project's EIR, which found that "the north Monterey County hydrogeologic area is in a state of significant overdraft, and the proposed project would generate a water demand for which a long-term sustainable supply of water cannot be assured without a regional program to address groundwater balance problems,"⁴ and therefore concluded that "the proposed project's impact on groundwater would be a significant and unavoidable impact"⁵. Furthermore, the Appellants contend that the assumptions made in the County's findings are inadequate, including that the County arbitrarily used 20 years as a standard to define "long-term water supply," which is not supported by the LCP, and calculated there to be 162 years of water supply based on how long it would take to extract *all* of the water within the basin at the existing water extraction level, which is precisely the scenario the LCP's policies are meant to prevent, including by ensuring that groundwater resources and the development it supports are not adversely impaired.

Analysis

The subject site is located in North Monterey County, which has severe groundwater overdraft problems. Virtually all of the agricultural, commercial, and residential development in North Monterey County relies on groundwater pumped from local wells, with agriculture accounting for approximately 85 percent of the water demand. The North County LUP area is divided into two groundwater basins: the Salinas River Groundwater Basin and the Pajaro Valley Groundwater Basin. Within these two basins are five sub-basins, two of which are part of the Salinas River Basin: Highlands South and Granite Ridge; and three of which are part of the Pajaro Valley Basin: Springfield Terrace, Highlands North, and Pajaro. The approved project is located within the Springfield Terrace sub-basin of the Pajaro Valley Groundwater Basin; however, it proposes to receive water from a well extracting water from the Highlands North sub-basin (see **Exhibit 6** for a location map of the area's groundwater basin geography).

As previously described, the LCP does not include a numeric safe yield amount for each groundwater basin, but instead requires that safe yield be understood based on definitive water studies and new information sources. Since the time that the LUP was certified, the County has sponsored studies to determine the safe yield levels of groundwater extraction in the North County basins. The first study commissioned by the County, conducted in 1995 by Fugro West,⁶ calculated the groundwater overdraft for North County's five groundwater sub-basins on the order of 11,700 acre-feet per year (AFY),⁷ based off a defined sustainable groundwater withdrawal yield⁸ of 14,410 AFY and an actual extraction level of 26,110 AFY. Subsequently, the 2002 *North Monterey County Comprehensive Water Resources Management Plan*

⁴ Rancho Roberto Subdivision Final Environmental Impact Report, State Clearinghouse Number 2000051086 (the "Rancho Roberto Subdivision EIR"), page 2-49.

⁵ Rancho Roberto Subdivision EIR, page S-10.

⁶ Fugro West, Inc., 1995. *North Monterey County Hydrogeologic Study, Vol. 1: Water Resources*. Prepared for Monterey County Water Resources Agency, October 1995.

⁷ Table 11, page 77. An acre-foot is equivalent to 326,700 gallons of water.

⁸ The *North Monterey County Comprehensive Water Resources Management Plan* defines "sustainable yield" as "the available groundwater supply that may be pumped without inducing additional groundwater declines or causing seawater intrusion (vertical migration from the slough or horizontal migration from the ocean) beyond conditions that existed in 1992."

(CWRMP), prepared by the Monterey County Water Resources Agency and EDAW,⁹ updated the 1995 analysis and calculated the overdraft to be as much as 16,340 AFY due to an increase in estimated water usage (see **Exhibit 6**).¹⁰ The CWRMP calculated the Springfield Terrace sub-basin's overdraft at 7,594 AFY, and documented significant seawater intrusion problems affecting the area's water quality, including the failure of numerous wells. The Highlands North sub-basin overdraft was calculated at 2,701 AFY. Finally, in 2014, the Pajaro Valley Water Management Agency updated its *Basin Management Plan*, which applies to the entire Pajaro Valley groundwater basin, and estimated the basin's overdraft at 12,100 AFY.¹¹

Thus, all three sources which constitute the best available information regarding overdraft in the North County LUP area conclude that North County's groundwater basins, including the sub-basins where the approved project is located and where it will receive its potable water supply (Springfield Terrace and Highlands North, respectively) are overdrafted and supplying water to existing land uses at an amount exceeding the aquifers' safe yields. In contrast, the County approved the project based on an 11.51 AFY water usage limit, finding that the subdivision would be served by an identifiable, available, and long-term water supply using a 20 year threshold for determining long-term, and further finding that the Highlands North sub-basin provided an available water supply for 162 total years.

The County-approved project authorizes a residential subdivision that will increase water demand for 26 new residences from groundwater aquifers that are already being pumped beyond their safe yield level. Therefore, the County's approval is inconsistent with LUP Policy 2.5.2.3, because the approval commits to new development an amount of water in exceedance of the groundwater basin's safe yield level. Furthermore, when existing development generates water demand in exceedance of the safe yield level, which is the case in North County, the policy only allows additional development when additional water supplies are secured to bring the basin into its safe yield state. In essence, the policy stands for the premise that the amount of allowed development must be commensurate with the amount that the groundwater basin's safe yield can accommodate. The groundwater basin is already overdrafted, meaning that the demand generated from existing development is already greater than the available water supply, and thus the County's approval exacerbates that imbalance. The County's approval is also inconsistent with Policy 2.5.3.A.2, which similarly limits groundwater use to its safe yield level, and only authorizes an amount of development commensurate with what the underlying groundwater basin's safe yield can support.

With respect to Policy 2.5.1, which requires development to be served by an identifiable, available, and long-term water supply, the County used a 20-year period to define long-term water supply, making reference to State laws SB610 and SB221, which require new large residential developments to provide proof of an available water supply for at least 20 years. Furthermore, the County found that there would be an adequate water supply for 162 years,

⁹ Monterey County Water Resources Agency and EDAW, Inc., 2002. *North Monterey County Comprehensive Water Resources Management Plan*, January 2002.

¹⁰ Table 1, Page 2-7. The 2002 *Comprehensive Water Resources Management Plan* identified the same sustainable yield of about 14,410 AFY as the 1995 Fugro West study, but estimated extraction at 30,750 AFY, resulting in an overdraft in North Monterey County of 16,340 AFY.

¹¹ Based on a safe yield of roughly 48,000 AFY and a withdrawal of roughly 61,000 AFY.

based on the total amount of stored groundwater in the Highlands North sub-basin of 912,247 AF, and an annual average usage of 5,612 AF. However, there are numerous LCP inconsistencies with the County's reasoning and analysis.

First, using 20 years as the threshold for determining whether a residential subdivision consisting of 26 new residences can be served "long-term" by a resource as fundamental as water sets a potentially dangerous precedent for establishing whether adequate long-term public services exist. Furthermore, the County's 162-year water supply finding is based on *completely draining* the entire groundwater aquifer, which directly contradicts the LCP's "safe yield" definition (and the concept of safe/long-term yield in general) and the policies that seek to maintain groundwater basins in their safe yield state. Specifically, North County IP Section 20.144.020.VVVV defines "safe yield/sustained yield" or "long term sustained yield" as "the yield that a renewable resource can produce continuously over the long-term at a given intensity of management *without impairment of the resource* and other associated resources" (emphasis added), and many of the aforementioned LUP policies limit development to protect groundwater supplies at a "safe/long-term yield" (e.g., LUP Policies 2.5.1, 2.5.2.3, 2.5.3.A.2, and 4.3.5.7).

In essence, the LCP's policies stand for precisely the opposite of complete drainage of the groundwater aquifer, in that they limit groundwater usage to its safe yield level in order to ensure the protection of public health, safety, and the environment by ensuring that water supplies are not committed to a level that will result in the complete exhaustion of water resources and leave existing development without basic public services. As previously described, the County's approval would commit water from an already overdrafted groundwater basin for 26 new residences. The groundwater basin's overdraft status establishes that, in its current state, the basin cannot supply water over the long term in a manner that would not impair the basin and the resources that depend on it, and thus a project that would exacerbate that overdraft cannot be found to have a long-term water supply. Therefore, the County's approval is inconsistent with LUP Policy 2.5.1's overarching requirement that development be served by a long-term water supply, and is also inconsistent with LUP Policy 4.3.5.7, which only allows new subdivisions when they too can be supplied by a long-term groundwater source.

In sum, the LCP requires development in North County to be served by a long-term water supply, and only allows new development, particularly residential subdivisions, when the groundwater basin is in its safe yield extraction state. The County's approval authorizes a subdivision allowing for 26 future residences demanding water from an already severely overdrafted groundwater basin. The project cannot be found to have a long-term water supply, and cannot be found to be served by water from a groundwater basin in its safe yield state, and thus is inconsistent with LCP policies in this regard. The County's approval raises a substantial LCP conformance issue with respect to water supply.

2. The Five "Substantial Issue" Factors

As explained above, the Commission is guided in its decision of whether the issues raised in a given case are "substantial" by the following five factors: the degree of factual and legal support for the local government's decision; the extent and scope of the development as approved or denied by the County; the significance of the coastal resources affected by the decision; the precedential value of the County's decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance.

In this case, these five factors, considered together, support a conclusion that this project does raise a substantial issue of LCP conformance. Most importantly for making the substantial issue determination in this case, regarding the first (and second) factor, the County found the development consistent with applicable LCP water supply and groundwater resources policies based on assumptions that the entire groundwater basin would be depleted in 162 years, which is not supportable nor consistent with LCP policies that seek to preserve groundwater basins at their safe yield extraction level. Thus, the County has not provided adequate factual or legal support for its decision to allow this residential subdivision in an area of known severe groundwater overdraft.

Regarding the third factor, the proposed project is located in an area where the depletion of groundwater adversely affects significant coastal resources such as agriculture. Regarding the fourth factor, because the project raises such coastal resource protection concerns, including the County's finding that 20 years is an adequate timeframe by which to find adequate water supply exists to serve residential development, a finding of no substantial issue would create an adverse precedent for future interpretation of the LCP. Finally, regarding the fifth factor, the project raises issues of regional or statewide significance due to the statewide drought and the importance of groundwater resources. In short, the County-approved project does not adequately address LCP coastal resource protection issues, and the five factors on the whole support a finding of substantial issue.

G. SUBSTANTIAL ISSUE DETERMINATION CONCLUSION

When considering a project that has been appealed to it, the Commission must first determine whether the project raises a substantial issue of LCP conformity, which will determine whether the Commission should assert jurisdiction over a de novo CDP for such development. At this stage, the Commission has the discretion to find that the project does or does not raise a substantial issue of LCP conformance, including when evaluated in light of the five factors discussed above.

For the reasons stated above, the Commission finds that Appeal Number A-3-MCO-05-027 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and therefore the Commission finds that a substantial issue exists with respect to the County-approved project's conformance with the certified Monterey County LCP, and takes de novo jurisdiction over the CDP application for the proposed project.

H. COASTAL DEVELOPMENT PERMIT DETERMINATION

The standard of review for this CDP determination is the Monterey County certified LCP. All Substantial Issue Determination findings above are incorporated herein by reference.

1. Water Supply and Groundwater Resources

Applicable Policies

As described in the Substantial Issue portion of this report, the Monterey County LCP includes an extensive policy framework meant to protect the area's rich coastal resources, including through policies that protect groundwater and the related basins' safe yield, require an adequate and long-term water supply to serve new development, and protect and prioritize agriculture and

other coastal-dependent development. Specifically, the North County LUP and its associated Implementation Plan (IP) contain numerous policies and standards that protect North County's groundwater resources, including (where text in **bold** format means emphasis added):

***North County LUP Policy 2.5.1 - Key Policy.** The water quality of the North County groundwater aquifers shall be protected, and **new development shall be controlled to a level that can be served by identifiable, available, long term-water supplies.** The estuaries and wetlands of North County shall be protected from excessive sedimentation resulting from land use and development practices in the watershed areas.*

North County LUP Policy 2.5.2.3.** New development shall be phased so that the existing water supplies are not committed beyond their safe long-term yields. Development levels that generate water demand exceeding safe yield of local aquifers **shall only be allowed once additional water supplies are secured.

***North County IP Section 20.144.020.VVVV.** Safe Yield/Sustained Yield or Long-Term Sustained Yield is the yield that a renewable resource can produce continuously over the long-term at a given intensity of management without impairment of the resource and other associated resources.*

***North County LUP Policy 2.5.3.A.1.** The County's policy shall be to protect groundwater supplies for coastal priority agricultural uses with emphasis on agricultural lands located in areas designated in the plan for exclusive agricultural use.*

***North County LUP Policy 2.5.3.A.2.** The County's long-term policy shall be to limit ground water use to the safe-yield level. The first phase of new development shall be limited to a level not exceeding 50% of the remaining build-out as specified in the LUP. This maximum may be further reduced by the County if such reductions appear necessary based on new information or if required in order to protect agricultural water supplies. Additional development beyond the first phase shall be permitted only after safe-yields have been established or other water supplies are determined to be available by an approved LCP amendment. Any amendment request shall be based upon definitive water studies, and shall include appropriate water management programs.*

***North County IP Section 20.144.140.B.3.a...** That remaining build-out figure is 1,351 new lots or units. This figure shall include senior citizen units, caretaker units, multiple family dwellings, employee housing, and lots created through subdivision approved after County assumption of permitting authority, but shall exclude development of a single-family dwelling on a vacant lot of record.*

***North County IP Section 20.144.070.E.11.** Development shall not be permitted if it has been determined, through preparation of a hydrologic report, or other resource information, that: a) the development will generate a water demand exceeding or adversely impacting the safe, long-term yield of the local aquifer; and, b.) there are no project alternatives and/or mitigation measures available that will reduce the development's water use to a level at which it will not exceed or adversely impact the safe, long-term yield of the local aquifer.*

North County LUP Policy 4.3.5.4. *Where there is limited land, water, or public facilities to support development, coastal-dependent agriculture, recreation, commercial and industrial uses shall have priority over residential and other non-coastal-dependent uses.*

North County IP Section 20.144.140.A.1. *Development of non-coastal dependent uses shall require availability of adequate sewer, water, and transportation services. Prior to the application being deemed determined complete, the applicant shall demonstrate adequacy of water, sewer, and transportation services.... Where services are determined not to be adequate for the proposed non-coastal dependent use, only coastal dependent uses shall be permitted.*

North County LUP Policy 4.3.5.7. *New subdivision and development dependent upon groundwater shall be limited and phased over time until an adequate supply of water to meet long-term needs can be assured. In order to minimize the additional overdraft of groundwater accompanying new development, water conservation and on-site recharge methods shall be incorporated into site and structure design.*

North County LUP Policy 4.3.6.D.1. *Land divisions for residential purposes shall be approved at a density determined by evaluation of site and cumulative impact criteria set forth in this plan. These include geologic, flood, and fire hazard, slope, vegetation, environmentally sensitive habitat, water quality, water availability, erosion, septic tank suitability, adjacent land use compatibility, public service and facility, and where appropriate, coastal access and visual resource opportunities and constraints.*

North County LUP Policy 4.3.6.D.5. *Where public facilities or water supply necessary to support residential development are limited, residential growth should be phased to allow sufficient time for these essential elements to be provided.*

North County LUP Policy 7.3.1. *A growth management program phasing residential and, where appropriate, commercial and industrial development may be instituted in the North County coastal zone (and in other parts of the County) based upon natural resource protection, water availability, and public facility capacities and constraints. A phased residential allocation system may be developed. Development and subdivision proposals could be processed at set periods during the year. If there are large numbers of applications, those not accepted in a particular process could be considered the following period. During evaluation of applications, priority should be given to coastal-dependent or related uses and development of existing parcels.*

In essence, these policies and standards only authorize a level of development that can be supported by the safe yield extraction level of the underlying groundwater basin, and do not allow non-coastal dependent uses, particularly residential subdivisions, when such uses cannot be served by water within the safe yield level.

Analysis

The subject site is located in North Monterey County, which has severe groundwater overdraft problems. Virtually all of the agricultural, commercial, and residential development in North Monterey County relies on groundwater pumped from local wells, with agriculture using

approximately 85 percent of the water demand. When the North County LUP was adopted in 1988, it acknowledged that the area had been experiencing overdraft problems for some time, but was not able to quantify the amount of overdraft or determine what the safe yield was at the time. Rather, the LUP notes that:

*A study for the State Department of Water Resources in 1977 indicated a general groundwater overdraft of about 15,500 acre-feet annually in the North County area. A more detailed study by the U.S. Geological Survey in 1980 confirmed the overdraft of the Aromas Sand Aquifer. The report estimated a study area annual overdraft in the North County area of about 1,500 to 8,000 acre-feet. However, due to the depth of the water-bearing Aromas Sands, its high storage capacity, and the overall complexity of geologic and hydrologic considerations, **the long-term safe yield of the aquifer is difficult to estimate...***

*It is evident that continued overdraft in the North County will lead to increasing saltwater intrusion and lower water tables. In some areas, water shortages may occur. Managing the demand for water generated by agricultural use and residential and commercial development within the limits of attainable long-term water supply sources will be a major challenge for the area in the coming years. **Additional information is urgently needed to help determine the long-term safe yield of North County aquifers.** The opportunities for obtaining a surface water supply should also be investigated. (emphasis added)*

Since the time that the LUP was certified, the County has sponsored more definitive studies to determine the safe yield. As discussed and cited in the Substantial Issue findings above, the first study commissioned by the County, conducted in 1995 by Fugro West, calculated the groundwater overdraft for the area's five groundwater sub-basins on the order of 11,700 AFY, based off a defined safe groundwater withdrawal yield of 14,410 AFY and an actual extraction of 26,110 AFY. Subsequently, the 2002 *North Monterey County Comprehensive Water Resources Management Plan* (CWRMP), prepared by the Monterey County Water Resources Agency and EDAW, updated the 1995 analysis and calculated the overdraft to be as much as 16,340 AFY due to an increase in estimated water usage (while finding the safe groundwater withdrawal yield to be the same at 14,410 AFY).

Thus, these studies not only quantified the estimated safe yield for the collective groundwater basins, but the 2002 study also showed that the overdraft was more than what was first estimated and that as a result of continued overdraft, the extent and severity of the resultant problems (e.g., extent of seawater intrusion, increased water contamination problems, number of abandoned wells, adverse effects on coastal agriculture, etc.) have increased over time. For example, in the Highlands North sub-basin, from which the approved project will be served by water, the 1995 Fugro West study calculated a sustainable yield of 2,920 AFY and historical groundwater demand of 4,780 AFY, resulting in a deficit of 1,860 AFY. Updated values provided in the 2002 CWRMP identified the same sustainable yield of 2,920 AFY, but updated the water demand estimates for the sub-area to be 5,621 AFY, for a total overdraft of 2,701 AFY.

The 2002 CWRMP also showed that long-term over-commitment of the aquifer threatens water supplies and other existing users due to the risk of lowered groundwater levels and seawater intrusion. The Fugro West study identified a general long-term trend of declining water levels in the area over the preceding 20 years, with 1994 water levels in some portions of the Highlands area being more than 40 feet below mean sea level (near Prunedale). Seawater intrusion results

when wells pumped near the coast cause the water table elevation (or groundwater level) to drop below sea level. Once the water table elevation drops below sea level, seawater can migrate into the aquifer (from the ocean as well as from the tidally-influenced Elkhorn Slough system) and mix with freshwater, which increases the chloride concentrations in the groundwater pumped from these wells. The CWRMP maps entitled “Seawater Intrusion in North Monterey County” show that the 500-mg/l-chloride contour¹² has moved landward over time, from between 1,650 feet inland of the coast to 3,300 feet inland of the coast over the period between 1979 and 1993. Seawater intrusion threatens both agricultural and residential water uses. According to the CWRMP, the Springfield Terrace area (in the northwestern portion of North Monterey County) and other areas near Elkhorn Slough have been the most impacted by elevated chloride ion concentrations as a result of seawater intrusion, and many agricultural producers have had to abandon their water supply wells, mix salty well water with fresher water to reduce the chloride concentrations, or purchase reclaimed water for irrigating agricultural lands. Other agricultural and residential wells have had to be abandoned or drilled to deeper depths to reach unaffected portions of the aquifer.

Finally, in 2014, the Pajaro Valley Water Management Agency (PVWMA, or Agency) updated its *Basin Management Plan* (Basin Plan). The purpose of the Basin Plan is to serve as the principal document guiding all of the Agency’s major projects and programs, with the goals of reducing overdraft, halting seawater intrusion, and improving and protecting water quality within the entire Pajaro Valley Groundwater Basin. The 2014 Basin Plan updated the previously adopted version from 2002. The 2002 Basin Plan found that sustainable yield¹³ was roughly 48,000 AFY, and, with a then-current demand of 69,000 AFY, the Basin’s groundwater supply was being overdrafted by roughly 21,000 AFY. The 2002 Basin Plan then described various programs intended to address this overdraft, including projects that reduced water demand as well as projects that increased water supply. One such identified water supply project was 13,400 AFY of new imported water from the United States Bureau of Reclamation-controlled Central Valley Project. However, due to funding issues and other project constraints, in early 2010, the Agency took formal action to remove this import pipeline from project consideration.

Thus, the 2014 Basin Plan update included new projects and programs to make up for the loss of imported water and balance the water budget. The updated Basin Plan calculated the entire Basin’s 2013 total water usage to be roughly 61,000 AFY, and calculated its overdraft at 12,100 AFY (assuming sustainable yield of roughly 48,000 AFY). These numbers reflected the 2002 Plan’s initial partial successes in reducing water consumption and in providing new water supplies, including through water recycling projects that serve the area’s extensive agricultural operations. To make up the remaining water budget shortfall, the 2014 Basin Plan lists a new set of projects meant to either increase supply, including through increased water recycling, by optimizing existing supplies (including through upgrades at existing facilities), and by reducing water consumption. Specifically, one of the primary differences in the 2014 Basin Plan update is its reliance on conservation programs to reduce

¹² A concentration of 500-mg/l of chloride is the Secondary Drinking Water Standard upper limit and so is used as a measure of impairment of water, and is therefore used as a basis for determining seawater intrusion in wells.

¹³ The 2002 Plan defined “sustainable yield” as “the maximum amount of groundwater that can be extracted from the aquifer without causing adverse effects...i.e. recharge = demand, and seawater intrusion [is] eliminated.”

water demand, eliminate basin overdraft, and halt seawater intrusion. The Basin Plan relies on conservation programs estimated to result in 5,000 AFY of reduced water consumption, or over 40% of the total water consumption reduction necessary to stop basin overdraft. These conservation programs include agricultural irrigation efficiency projects, pricing strategies, and residential groundwater usage metering. In essence, the new Basin Plan provides updated quantification of the basin's overdraft, as well as serves as the blueprint for identifying measures meant to address and solve the Pajaro Valley Groundwater Basin's overdraft and seawater intrusion problems. Unlike the previous 2002 Plan, which relied heavily on new water supplies emanating from imported water from the Federal government, the revised updated Basin Plan eliminates the imported water allowance and instead relies heavily on reducing water demand through conservation strategies. The 2014 Basin Plan, however, acknowledges that it will take decades for these strategies to meet its overdraft reduction objectives.

Thus, all three comprehensive information sources (i.e., the 1995 Fugro West study, the 2002 CWRMP, and the 2014 Basin Plan) conclude that North County's groundwater basins, including the Highlands North sub-basin where the proposed project will receive its potable water supply, are overdrafted and supplying water to existing land uses at an amount exceeding the aquifers' safe yield. Therefore, North County's groundwater basins are not meeting the performance standards and requirements specified in LUP Policies 2.5.2.3 and 2.5.3.A.2, and IP Section 20.144.070.E.11, which require North County's groundwater basins to be within their safe yield extraction level.

The proposed project would authorize a residential subdivision that will increase water demand by an estimated 11.51 AFY for 26 new residences from groundwater aquifers that are already being pumped beyond their safe yield level, without any proposed water supply offset or replenishment. Indeed, as described previously, the project's EIR found that "the north Monterey County hydrogeologic area is in a state of significant overdraft, and the proposed project would generate a water demand for which a long-term sustainable supply of water cannot be assured without a regional program to address groundwater balance problems", and therefore concluded that "the proposed project's impact on groundwater would be a significant and unavoidable impact". Therefore, the proposed project is inconsistent with LUP Policies 2.5.1 (which requires development to be served by identifiable, available, long-term water supplies), 2.5.2.3 (which does not allow development when water supplies are committed beyond their safe yield), 2.5.3.A.2 (which similarly limits groundwater use to its safe yield level), and 4.3.5.7 (which limits new subdivision and development until adequate long-term water supplies are assured).

With respect to IP Section 20.144.070.E.11, this standard prohibits development when it will generate a water demand exceeding or adversely impacting the safe, long-term yield of the local aquifer, and when there are no mitigation measures and/or project alternatives that will reduce the development's water use to a level at which it will not exceed or adversely impact the safe, long-term yield of the local aquifer. In this case, the groundwater basins are already severely overdrafted. Thus, *any* subdivision, even an alternative one with fewer proposed parcels, would commit a permanent water supply from a source that is already overdrafted. Due to the fact that the groundwater basin is already severely overdrafted, there are no mitigation measures or project alternatives available that will reduce the development's water

use to a level that can be served within the aquifer's safe, long-term yield (or, conversely, it is not feasible for a single project to reduce the aquifer's water demand, including through retrofitting requirements, to a level at which the basin would be within its required safe yield state).

In fact, the 2014 Basin Plan recognizes that it will take decades to meet its overdraft reduction objectives, and the primary mechanism to do so (in addition to measures such as water recycling and agricultural irrigation efficiency) is conservation. While some projects have proposed to mitigate their water demands by offsetting their anticipated water usage via retrofitting programs (i.e., requirements to offset a proposed development's water usage through reducing a commensurate amount of water use offsite), there are multiple concerns with this approach, including that they do not address overall requirements associated with ensuring safe yield in the Basin and protection of Basin resources, and because their efficacy and ability to provide bona fide, long-term water savings is not assured.¹⁴ Furthermore, in areas with water supply limitations, simply offsetting a proposed development's estimated water usage may not be an appropriate means to find that it can meet LCP water availability requirements (e.g., if a project is proposed in an overdrafted groundwater basin where the demand is already greater than its supply, it may not be appropriate for the reviewing authority to find that public services are available to serve the development just because the project is required to offset water usage in the area). Instead, a reviewing authority must affirmatively show that long-term and sustainable water supplies are ready and available to serve the proposed development. In other words, retrofitting is an insufficient tool to overcome known existing water deficiencies in North County's groundwater basins. Thus, the proposed project is inconsistent with IP Section 20.144.070.E.11 because it will generate a water demand that exceeds the ability of the aquifer to serve it within its safe yield state, and, as described above, there are no project modifications and/or mitigations available to ensure that the proposed project be served by groundwater at its safe yield level. As such, and because this IP standard makes an affirmative statement that "development *shall not be permitted*" (emphasis added) when these two findings are made, the proposed project must be denied.

Finally, when essential services are limited, including when groundwater basins are overdrafted and not within their safe yield extraction level, as is the case in North County, the LCP prioritizes certain land uses over others. Specifically, the LCP states that agriculture and coastal-dependent development have priority over residential development, particularly residential subdivisions, in order to ensure that non-priority land uses do not usurp scarce water supplies at the expense of priority uses. Indeed, IP Section 20.144.140.A.1 instructs that, "where services

¹⁴ Indeed, in the Commission's 2006 approval of A-3-MCO-04-054, a 10 lot subdivision in North Monterey County's Royal Oaks community, the Commission required the Applicant to completely offset the project's anticipated water usage via retrofitting existing development within North County. However, the Applicant has had difficulty meeting this condition, including because the Pajaro-Sunny Mesa Community Services District (CSD), the entity that would provide the project with potable water from its groundwater rights, has concluded that there are no significant retrofit candidates or opportunities remaining in North Monterey County. Therefore, the CSD and the Commission have not been able to date to approve a retrofit program for that project, and, because of these reasons, and because such an offset program would not address overall Basin safe yield requirements, the Commission finds that a water retrofit/offset program is not an appropriate mitigation approach for the proposed Rancho Roberto project.

are determined not to be adequate for the proposed non-coastal dependent use, *only coastal dependent uses shall be permitted*" (emphasis added). In essence, this IP standard affirmatively requires the reviewing authority to deny a non-priority use (including residential subdivision) when services are found to be inadequate, as it is with respect to water supply in North County.

Therefore, the proposed project, with its resultant 11.51 AFY water usage for 26 new residential lots, is inconsistent with IP Section 20.144.140A.1, and therefore must be denied. Furthermore, denial of the project ensures consistency with LUP Policies 2.5.3.A.1 (which sets a County-wide policy of protecting groundwater supplies for coastal priority agricultural uses), 4.3.5.4 (which prioritizes coastal-dependent uses over residential and non-coastal-dependent uses when there is limited water to support development), 4.3.6.D.1 (which only allows land divisions for residential purposes to be approved by evaluating LCP criteria), 4.3.6.D.5 (which limits residential growth until water supply necessary to support residential development is provided), and 7.3.1 (which prioritizes applications for coastal-dependent or related uses).

Conclusion

The proposed project constitutes a residential subdivision (a low priority use) within an area with known water supply deficiencies, including that the groundwater basin from which the development will receive water is overdrafted and extracted in exceedance of its safe yield state. When such a combination results, the LCP affirmatively requires the proposed development to be denied. Therefore, because the project proposes 26 new residential lots within a groundwater basin that is severely overdrafted, the proposed project is inconsistent with the LCP's water supply and priority land use policies, and must be denied.

2. Environmentally Sensitive Habitat Areas

The LCP broadly defines environmentally sensitive habitat areas (ESHA) to include wetlands and streams, and, with the exception of resource dependent uses (and certain other uses allowed in wetlands and streams per Coastal Act Sections 30233 and 30236, respectively), prohibits development within them. Applicable policies and standards include:

IP Section 20.06.440 Environmentally Sensitive Habitat Area: Any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

North County LUP Policy 2.3.2.1. With the exception of resource dependent uses, ***all development***, including vegetation removal, excavation, grading, filling, and the construction of roads and structures, ***shall be prohibited in the following environmentally sensitive habitat areas: riparian corridors, wetlands, dunes, sites of known rare or endangered species of plants and animals, rookeries, major roosting and haul-out sites, and other wildlife breeding or nursery areas identified as environmentally sensitive.*** Resource dependent uses, including nature education and research, hunting, fishing and aquaculture, where allowed by the plan, shall be allowed within environmentally sensitive habitats only if such uses will not cause significant disruption of habitat values. (emphasis added)

North County LUP Policy 2.3.2.2. Land use adjacent to location of environmentally sensitive habitats shall be compatible with the long-term maintenance of the resource. New land uses shall be considered compatible only where they incorporate all site planning and design features needed to prevent habitat impacts, upon habitat values and where they do not establish a precedent for continued land development which, on a cumulative basis, could degrade the resource.

North County LUP Policy 2.3.2.3. New development adjacent to locations of environmentally sensitive habitats shall be compatible with the long-term maintenance of the resource. New subdivisions shall be approved only where significant impacts to environmentally sensitive habitats from development of proposed parcels will not occur.

North County LUP Policy 2.4.3.6. The County's diking, dredging, filling, and shoreline structures regulations shall incorporate Coastal Act Sections 30233(a) and (c), 30235, 30236, and 30607.1.

North County LUP Policy 2.3.2.B.1. Riparian plant communities shall be protected by establishing setback requirements consisting of 150 feet on each side of the bank of perennial streams, and 50 feet on each side of the bank of intermittent streams, or the extent of riparian vegetation, whichever is greater. In all cases, the setback must be sufficient to prevent significant degradation of the habitat area. The setback requirement may be modified if it can be conclusively demonstrated by a qualified biologist that a narrower corridor is sufficient or a wider corridor is necessary to protect existing riparian vegetation from the impacts of adjacent use.

North County LUP Policy 2.3.2.B.2. All development, including dredging, filling, and grading within stream corridors, shall be limited to activities necessary for flood control purposes, water supply projects, improvement of fish and wildlife habitat, or laying of pipelines when no alternative route is feasible, and continued and future use of utility lines and appurtenant features. These activities shall be carried out in such a manner as to minimize impacts from increased runoff, sedimentation, biochemical degradation, or thermal pollution. When such activities require removal or riparian plant species, re-vegetation with native plants shall be required.

North County LUP Policy 2.3.2.B.4. A setback of 100 feet from the landward edge of vegetation of all coastal wetlands shall be provided and maintained in open space use. No permanent structures except for those necessary for resource-dependent use which cannot be located elsewhere shall be constructed in the setback area. Prior to approval of all proposed structures in the setback area, it must be demonstrated that the development does not significantly disrupt the habitat resource.

North County IP Section 20.144.040.B.3. New land uses and new subdivisions on parcels within 100 feet of environmentally sensitive habitats, as identified on the current North County Environmentally Sensitive Habitat resource map, other resource information, or planner's on-site investigation, shall not be permitted where they will adversely impact the habitat's long-term maintenance, either on a project or cumulative basis. As such, a project shall only be approved where sufficient conditions of approval are available, such as for

siting, location, design, setbacks, and size, which will mitigate adverse impacts to and allow for the long-term maintenance of the habitat, as determined through the biological survey. Also, a project shall only be approved where the decision-making body is able to make a determination that the project will not set a precedent for continued land development which, on a cumulative basis, could degrade the habitat.

Thus, the LCP includes strong protections for ESHA. For wetlands, the LCP only allows a very specific set of uses, including resource dependent uses, restoration, and incidental public services, *and only* when there is no feasible less environmentally damaging alternative, and when feasible mitigation measures are employed to minimize environmental effects. For streams and riparian corridors, the LCP only allows resource dependent uses, necessary water supply projects, flood control projects, and fish and wildlife enhancement projects. The LCP also requires buffers around these habitat types, including 150-foot buffers around perennial streams, and 100-foot buffers for wetlands and other ESHA.

Analysis

The project's Environmental Impact Report concluded that the wetland area on the project site (see **Exhibit 1**) is a sensitive freshwater resource, and further concluded that several special-status animal species could be found within the project site, including: Santa Cruz long-toed salamander, California red-legged frog, California tiger salamander, and foothill yellow-legged frog. Although no individuals of any these species were observed during a June 1999 field survey, the survey determined that any of these species could utilize the seasonal spring, wetland area, and emergent vegetation located in the southern portion of the proposed project site, with the California red-legged frog having the highest potential as it has been known to inhabit the adjacent Pajaro Valley Golf Course. The report concluded that the project site's close proximity to the Elkhorn Slough increases the likelihood of any of these species being identified within the alluvial basin.

The project proposes numerous improvements within and surrounding the project site's environmentally sensitive riparian corridor and wetland (see **Exhibit 7** for the Applicant's proposed project plans¹⁵). First, the riparian drainage corridor that slopes north to south through the project site and drains upland water and discharges it into the wetland would be placed in concrete culverts running underneath the proposed road. The wetland itself would be converted into a stormwater detention pond. A headwall would connect the drainage culvert with the detention pond, and a weir would be constructed along the pond's southern end. The pond would be flooded during and immediately following storms and serve as both flood protection and water quality enhancement.

As described previously, the North County LCP includes numerous policies and standards meant to protect the coastal zone's wetlands, streams, and other ESHA areas, including policies that limit allowable uses and development within such habitat areas, require buffers surrounding the habitat, and specify performance standards requiring that allowed development maintain the habitat values of the resource. The proposed project is inconsistent with these policies and standards for numerous reasons. First, with respect to the riparian drainage swale, while the

¹⁵ The Applicant's proposed project plans (as shown in **Exhibit 7**) are slightly different than the County's previously approved project plans (as shown in **Exhibit 3**).

proposed conversion of the existing swale to an underground culvert beneath the proposed access road could be construed as a flood control project, LUP Policy 2.4.3.6 (vis-a-vis incorporation of Coastal Act Section 30236) only allows such flood control projects to protect *existing* structures and where no other method for protecting those existing structures is feasible. In this case, the proposed culvert would be used to ensure flood control drainage for *new* development, which is not allowed by the LCP. Instead, LUP Policy 2.4.3.6 requires new development to be sited and designed around existing riparian areas. Thus, the project's proposed riparian culvert system is not a use allowed within streams/riparian areas per the LCP.

Second, the project proposes to convert the existing wetland into an engineered stormwater detention basin. However, LUP Policy 2.4.3.6 (vis-a-vis incorporation of Coastal Act Section 30233(a)) only allows limited uses within wetlands, including restoration projects and incidental public service projects. The detention pond's purpose is to capture and treat the increased stormwater generated from the adjacent new residential development that the subdivision would ultimately allow. The pond is not meant to restore the wetland; conversely, its construction would include dredging and filling and conversion to an engineered, dammed detention basin surrounded by structural walls. Therefore, it is not a restoration project as that term is understood in the LCP. Furthermore, the proposed project is not an incidental public service purpose. The Commission has considered what constitutes an incidental public service on a numerous occasions. First and foremost is whether the project is initiated by a public agency or utility for a public purpose, such as replacement of old railroad bridges (CC-059-09); expansion of a railroad line (CC-052-05, CC-086-03) or modifications to an airport (CC-058-02). In this case, the stormwater detention pond would be built, owned, and maintained by a private entity for purposes of capturing stormwater generated from private residential development. The proposed development is not initiated by a public agency for a public purpose, and does not constitute an incidental public service. Nor does the project seek to convert the wetland for any other allowable use under LUP Policy 2.4.3.6. Thus, the project's proposed conversion of the wetland to a private stormwater detention pond is not an LCP-allowed use within a wetland. In sum, the proposed improvements to the existing riparian drainage swale and wetland are not allowable uses within these sensitive habitats, and are therefore inconsistent with the LCP in this regard.

Conclusion

The project proposes to convert an existing riparian drainage swale into an underground culvert, and replace an existing wetland with an engineered stormwater detention basin with a headwall and weir. Neither use is allowed in riparian corridors or wetlands per the LCP. Furthermore, as described in the project's EIR, the project site may serve as habitat for numerous special status species, which could render the site ESHA as that term is defined in IP Section 20.06.440. While some of these inconsistencies could possibly be addressed by siting and design alternatives, including avoidance of structural development within identified habitat areas, the project's inconsistencies with LCP water supply and groundwater resources policies and standards discussed above render such additional analysis and project modifications moot (because the project is still independently inconsistent with LCP water supply and groundwater resource policies).

Even if the project were consistent with other LCP policies and standards with respect to water supply, the Commission would need the Applicant to submit an ESHA/wetland/riparian corridor delineation of the site, which would define the precise locations of ESHA and the required

development buffers to ensure that the project could be approved and conditioned to be consistent with the ESHA protection policies and standards of the LCP. Furthermore, the project would need to be redesigned so as to ensure only LCP-allowable uses within the wetland and riparian corridor. In this case, however, the Commission is denying the project based on the lack of an adequate water supply, and thus an ESHA delineation is not warranted at this time.

3. Water Quality

The North County LUP includes strong protections for water quality. The LUP policies are intended to ensure that new development does not adversely affect marine resources and other waterways, that construction minimizes sedimentation and runoff, and that drainage does not cause increased erosion. Some of the relevant LCP water quality policies include:

***North County LUP Policy 2.5.2.1.** The County shall limit the kinds, locations, and intensities of new developments, including agriculture to minimize further erosion in the watersheds of Elkhorn Slough and Moro Cojo Sloughs and sedimentation of the Sloughs. All development shall incorporate all available mitigation measures to meet these goals, including at a minimum, the measures identified in Policy 2.5.3.C.6.*

***North County LUP Policy 2.5.2.5.** Point and non-point sources of pollution of coastal waters shall be controlled and minimized. Restoration of the quality of degraded surface waters shall be encouraged.*

***North County LUP Policy 2.5.3.C.6.** [in relevant part]*

- a. Existing sources of erosion shall be reduced through diligent enforcement of the County's most current Erosion Control Ordinance. The County shall institute a system of fines sufficiently large or shall take other actions to compel compliance by landowners or farm operators in violation of the ordinance.*
...
- c. Erosion control plans shall be required for all new development as set forth in the Erosion Control Ordinance. These plans shall incorporate measures for on-site reduction of bare ground and maximum retention of storm water runoff resulting from impervious surfaces. The plans shall be reviewed by the Soil Conservation Service, and shall be approved by the Director of Building Inspection or by the Planning or Public Works Director prior to issuance of any permits. In reviewing plans in the Coastal Zone, certification will be made for the following, in addition to other requirements of the Erosion Control Ordinance:*
 - That the amount of bare ground in the proposed development, is zero, or when combined with the bare ground from existing and committed land use, shall not exceed the Land Disturbance Targets shown on Table 1.*
 - That measures incorporated in the site plan to retain storm water runoff shall be designed to contain runoff resulting from a 20 year recurrence interval storm.*

- *That measures designed to reduce the amount of bare ground shall maintain a continuous vegetation cover throughout the year. Other types of ground cover may be used where it can be shown that vegetation is not suitable.*

...

- d. *All land clearing shall be consistent with the provisions of the County's Erosion Control Ordinance. No land clearing or grading shall take place between October 15 and April 15 in Watershed Restoration Areas or Critical Erosion Areas or other high erosion hazard areas unless specifically authorized by the Director of Building Inspection. Such authorizations shall generally be confined to agricultural operations in areas designated in this plan for Agricultural Preservation or Agricultural Conservation uses.*
- e. *Maximum retention of vegetation cover shall be required for all new development. In particular, natural vegetation should be retained to the fullest extent possible through careful siting and construction of new development.*
- f. *Property owners are encouraged to cooperate with the County in establishing Conservation Easements over areas of natural vegetation and on Critical Erosion Areas.*

Analysis

The proposed project's structural modifications to both the existing riparian swale and wetland would fundamentally alter their functional habitat value and ability to infiltrate and treat water flowing on and across the project site. Furthermore, the project, which would result in 27 new parcels, 26 of which could be developed in the future with 26 new residences (under separate CDPs), along with commensurate urban infrastructure including roads, driveways, and other utilities, would eventually lead to the conversion of approximately half of the undeveloped land on the project site into new impervious surfaces. These future construction activities, as well as drainage and runoff from the completed project, could potentially result in increased sedimentation, increased oil and heavy metals from vehicles, and an overall decrease in water quality, including for nearby Elkhorn Slough.

While some of these water quality concerns could probably be addressed by siting and design alternatives, including avoidance of structural development within identified wetland and riparian areas, as well as requirements for water quality protection both during construction (e.g., construction best management practices, prohibiting grading within the wetland, etc.) as well as post-construction (e.g., low-impact development strategies, bioswales, infiltration requirements, and erosion control plans consistent with LUP Policy 2.5.3.C.6), the project's inconsistencies with LCP water supply and groundwater resources policies render such additional analysis and project modifications moot (because the project is still independently inconsistent with LCP water supply and groundwater resource policies).

If the project were consistent with other LCP policies and standards with respect to water supply, the Commission would need the Applicant to submit water quality protection plans and project modifications to protect water quality and avoid sensitive habitat areas to ensure that the project could be approved and conditioned to be consistent with LCP water quality protection policies and standards. In this case, however, the Commission is denying the project based on the lack of an adequate water supply, and thus water quality protection modifications are not warranted at this time.

4. Visual Resources and Community Character

The North County LUP includes numerous policies aimed at protecting visual resources in North County, including specific visual resource protection standards for sites visible from Elkhorn Slough, as well as policies that seek to retain North County's rural, agricultural character. Applicable policies include:

***North County LUP Policy 2.2.1.** In order to protect the visual resources of North County, development should be prohibited to the fullest extent possible in beach, dune, estuary, and wetland areas. Only low intensity development that can be sited, screened, or designed to minimize visual impacts, shall be allowed on scenic hills, slopes, and ridgelines.*

***North County LUP Policy 2.2.2.3.** Property containing land on scenic slopes, hills, and ridgelines when proposed for subdivision, should be subdivided so that the lots are situated to allow the highest potential for screening development and access roads from view. Lots and access roads should also be sited to minimize tree removal and visually intrusive grading during development....*

***North County LUP Policy 2.2.2.6.** Agricultural uses on flat or rolling land should be preserved as a productive and visual resource....*

***North County LUP Policy 2.2.3.4.** New roads providing residential, recreational, or agricultural access should be considered only where it has been demonstrated that common use of neighboring roads is not feasible. Access roads should not be allowed to intrude upon public views of open frontal slopes or ridgelines visible from scenic routes or viewpoints. Roadways shall be designed to conform to the natural topography in order to minimize grading, erosion, and the scarring of hillsides.*

***North County LUP Policy 2.2.4.6.** Elkhorn Slough should be officially designated as a State Scenic Waterway and the visual character of the adjacent scenic corridor should be preserved and where feasible, restored.*

Thus, the LCP seeks to protect the rural, pastoral nature of North County, including by preserving existing agricultural lands, limiting new road and subdivision development, ensuring that grading and landform alteration are minimized and development respects natural topography, and ensuring protection of views from Elkhorn Slough.

Analysis

The proposed project introduces a suburban-style subdivision consisting of 26 new residential lots and associated infrastructure into a predominantly rural, agricultural area (see **Exhibit 2** for area photos). The project proposes over 2,400 cubic yards of grading to convert an existing riparian drainage swale into an underground culvert with an access road on top of it, as well as convert an existing wetland into a dammed stormwater detention pond. Thus, the project would authorize extensive grading and landform alteration to convert the area's scenic habitats into engineered, structural elements, and would replace the site's existing grazing lands with future residential development, inconsistent with LUP Policy 2.2.2.6 (which calls for protection of North County's bucolic agricultural landscape consisting of scenic rolling hills). Furthermore, the project site may be visible from Elkhorn Road and Elkhorn Slough, thereby introducing in

the future suburban-style development into the scenic, open viewshed. In fact, the proposed project is located on a broad, south-facing ridge with expansive views of the entire Elkhorn Slough basin, thus rendering the project inconsistent with LUP Policies 2.2.1 (requiring low intensity development on ridgelines to be sited, screened, and designed to minimize visual impacts); 2.2.2.3 (requiring property on ridgelines to be subdivided so that the highest potential for screening is achieved); and 2.2.4.6 (which seeks to preserve the visual character of the Elkhorn Slough area). Thus, the project would introduce a suburban residential community that would dominate the public viewshed in this area.

Conclusion

While the Applicant did not prepare renderings showing the project's visual resource impacts from various surrounding vantage points, including from Elkhorn Slough, the project's inconsistencies with LCP water supply policies render such additional analysis and project modifications moot (because the project is still independently inconsistent with LCP water supply and groundwater resource policies).

Even if the project were consistent with other LCP policies and standards with respect to water supply, the Commission would need the Applicant to submit renderings and visual simulations to ensure that the future residences fostered by this subdivision could be approved and conditioned to be consistent with LCP visual resource and community character policies and standards. In this case, however, the Commission is denying the project based on the lack of an adequate water supply, and thus a visual impact analysis is not warranted at this time.

5. Takings

In enacting the Coastal Act, the Legislature anticipated that the application of development restrictions could deprive a property owner of the beneficial use of his or her land, thereby potentially resulting in an unconstitutional taking of private property without payment of just compensation. To avoid an unconstitutional taking, the Coastal Act provides a provision that allows a narrow exception to strict compliance with the Act's regulations based on constitutional takings considerations. Coastal Act Section 30010 provides:

The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefore. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.

Although the judiciary would be the final arbiter on constitutional takings issues, the Coastal Act, as well as the State and Federal Constitutions, enable the Commission to assess whether its action might constitute a taking so that the Commission may take steps to avoid doing so. If the Commission concludes that its action does not constitute a taking, then it may deny the project with the confidence that its actions are consistent with Section 30010 and constitutional takings jurisprudence. If the Commission determines that its action could constitute a taking, then the Commission could also find that application of Section 30010 would require it to approve some development. In this latter situation, the Commission could propose modifications to the

development to minimize its Coastal Act inconsistencies while still allowing some reasonable amount of development.

In the remainder of this section, the Commission considers whether, for purposes of compliance with Section 30010, its denial of the proposed development on the Applicant's property could constitute a taking. As discussed further below, the Commission finds that under these circumstances, denial of the proposed project likely would not, because the takings claim is not yet ripe, and because the Applicant already enjoys economic uses on the property.

General Principles of Takings Law

The Takings Clause of the Fifth Amendment of the United States Constitution provides that private property shall not "be taken for public use, without just compensation."¹⁶ Article 1, Section 19 of the California Constitution provides that "[p]rivate property may be taken or damaged for public use only when just compensation...has first been paid to, or into court for, the owner." Despite the slightly different wordings, the two "takings clauses" are construed congruently, and California courts have analyzed takings claims under decisions of both state and federal courts (*San Remo Hotel v. City and County of San Francisco* (2002) 27 Cal. 4th 643, 664.). The "damaging private property" clause in the California Constitution is generally not implicated by takings cases, and is not relevant to the current analysis. Because Section 30010 is a statutory bar against an unconstitutional action, compliance with state and federal constitutional requirements concerning takings necessarily ensures compliance with Section 30010.

The United States Supreme Court has held that the taking clause of the Fifth Amendment proscribes more than the direct appropriation of private property (*Pennsylvania Coal Co. v. Mahon* (1922) 260 U.S. 393). Since *Pennsylvania Coal*, most of the takings cases in land use law have fallen into two categories (*Yee v. City of Escondido* (1992) 503 U.S. 519, 522-523). The first category consists of those cases in which government authorizes a physical occupation of property (*Loretto v. Teleprompter Manhattan CATV Corp.* (1982) 458 U.S. 419). The second category consists of those cases whereby government merely regulates the use of property (*Yee*, 503 U.S. at 522-523). Moreover, a taking is less likely to be found when the interference with property is an application of a regulatory program rather than a physical appropriation (*Keystone Bituminous Coal Ass'n. v. DeBenedictis* (1987) 480 U.S. 470, 488-489, fn. 18). The Commission's actions are evaluated under the standards for a regulatory taking.

The Court has identified two circumstances in which a regulatory taking may occur. The first is the "categorical" formulation identified in *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1014. In *Lucas*, the Court found that regulation that denied all economically viable use of property was a taking without a "case specific" inquiry into the public interest involved. (*Id.* at 1014). The *Lucas* court emphasized, however, that this category is extremely narrow, applicable only "in the extraordinary circumstance when *no* productive or economically beneficial use of land is permitted" or the "relatively rare situations where the government has deprived a landowner of all economically beneficial uses" or rendered it "valueless" (*Id.* at 1016-

¹⁶ The Fifth Amendment was made applicable to the States by the Fourteenth Amendment (see *Chicago, B. & Q. R. Co. v. Chicago* (1897) 166 U.S. 226).

1017 (*emphasis in original*); *Riverside Bayview Homes*, 474 U.S. at 126 (regulatory takings occur only under “extreme circumstances.”¹⁷).

The second circumstance in which a regulatory taking might occur is under the three-part, *ad hoc* test identified in *Penn Central Transportation Co. (Penn Central) v. New York* (1978) 438 U.S. 104, 124. This test generally requires an examination into the character of the government action, its economic impact, and its interference with reasonable, investment-backed expectations (*Id.* at p. 134; *Ruckelshaus v. Monsanto Co.* (1984) 467 U.S. 986, 1005). In *Palazzolo v. Rhode Island* (2001) 533 U.S. 606, the Court again acknowledged that the *Lucas* categorical test and the three-part *Penn Central* test were the two basic situations in which a regulatory taking might be found to occur (*see id.* (rejecting *Lucas* categorical test where property retained value following regulation but remanding for further consideration under *Penn Central*)).

However, before a landowner may seek to establish a taking under either the *Lucas* or *Penn Central* formulations, it must demonstrate that the taking claim is “ripe” for review. This means that the takings claimant must show that government has made a “final and authoritative” decision about the use of the property (*MacDonald, Sommer & Frates v. County of Yolo* (1986) 477 U.S. 340, 348). Premature adjudication of a takings claim is highly disfavored, and the Court’s precedent “uniformly reflects an insistence on knowing the nature and extent of permitted development before adjudicating the constitutionality of the regulations that purport to limit it” (*Id.* at 351). Except in the rare instance where reapplication would be futile, the courts generally require that an applicant resubmit at least one application for a modified project before it will find that the taking claim is ripe for review (*Id.*). These general takings principles are reviewed for denial of the proposed project.

The Commission’s denial of the proposed project likely would not result in a regulatory taking

As analyzed above, application of the LCP’s water supply and groundwater resources policies and standards require denial of the proposed development on the grounds that the project cannot be served by an identifiable, available, and long term water supply at the present time. Thus, application of the regulations hypothetically could result in an unconstitutional taking of the Applicant’s private property. However, based on the law and facts analyzed below, it is unlikely that such a denial of development would constitute an unconstitutional taking in this case.

At this time, application of the LCP’s water supply and groundwater resources policies require denial of new residential subdivisions that require a new water supply in North Monterey County. Perhaps most importantly for determining whether denial of the proposed project would result in an unconstitutional taking, the Applicant already has multiple economic uses on the property, including an existing single-family residence, and agricultural development including a barn. The property is currently used for grazing, and has historically been used for row crops. Therefore, under a *Lucas* standard, denial of the Applicant’s proposed project will not deny the owner of the economically viable use of the land. For substantially similar reasons, under a *Penn Central* standard, denial of the proposed project does not result in substantial economic impact to

¹⁷ Even where the challenged regulatory act falls into this category, government may avoid a taking if the restriction inheres in the title of the property itself; that is, background principles of state property and nuisance law would have allowed government to achieve the results sought by the regulation (*Lucas, supra*, 505 U.S. at pp. 1028-1036).

the Applicant in relation to the property at issue considering the multiple existing economic uses on the property. Denial of the project ensures consistency with LCP policies that strictly limit new residential development in North Monterey County based on County concerns over water supplies and groundwater resources.

This position is also consistent with the California Court of Appeal for the Fourth District reasoning in *Charles A. Pratt Construction Co., Inc., v. California Coastal Commission*, (2008) 162 Cal. App. 4th 1068 (*Pratt v. CCC*). In *Pratt*, the plaintiff argued that the Coastal Commission's decision to deny a CDP based on lack of water, due to the requirements of the San Luis Obispo County LCP, was an unconstitutional taking. The Court of Appeal upheld the Commission's denial of the CDP and found that it was not an unconstitutional taking. It stated that the plaintiff-applicant failed to cite any authority that: (1) denial of a development permit because of water supply constitutes a taking; or (2) that the setting of priorities for water use in the face of an insufficient supply constitutes a taking. The court stated, "Even where the lack of water deprives a parcel owner of all economically beneficial use, it is the lack of water, not a regulation that causes the harm" (*Id*). The court also found that an "intent-to-serve letter" from a community water supplier did not change the result because there is no rule that the water company's determination is definitive (*Id*). "It is undisputed," the court continued, "that there is substantial evidence from which the Commission could conclude the groundwater basin from which the water would come is in overdraft" (*Id*). The court further reasoned that the plaintiff-applicant failed to demonstrate with sufficient certainty that his development would have adequate supply of water. As in *Pratt*, in this case it is the lack of water in North County that has delayed the Applicant's ability to subdivide the site.

In sum, it is unlikely that the Commission's decision to deny the proposed development, on the grounds that it is inconsistent with the LCP's water supply and groundwater resources policies, would result in an unconstitutional taking. Although the regulations require denial of the proposed new residential subdivision at this time, this effect of the regulations is temporary in nature and caused by a lack of available water supply for new properties. Furthermore, the Applicant already has economically viable uses on the property, including an existing single-family residence.

I. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Public Resources Code (CEQA) Section 21080(b)(5) and Sections 15270(a) and 15042 (CEQA Guidelines) of Title 14 of the California Code of Regulations (14 CCR) state in applicable part:

CEQA Guidelines (14 CCR) Section 15042. Authority to Disapprove Projects. [Relevant Portion.] A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.

Public Resources Code (CEQA) Section 21080(b)(5). Division Application and Nonapplication. ... (b) This division does not apply to any of the following activities: ... (5) Projects which a public agency rejects or disapproves.

CEQA Guidelines (14 CCR) Section 15270(a). Projects Which are Disapproved. (a) CEQA

does not apply to projects which a public agency rejects or disapproves.

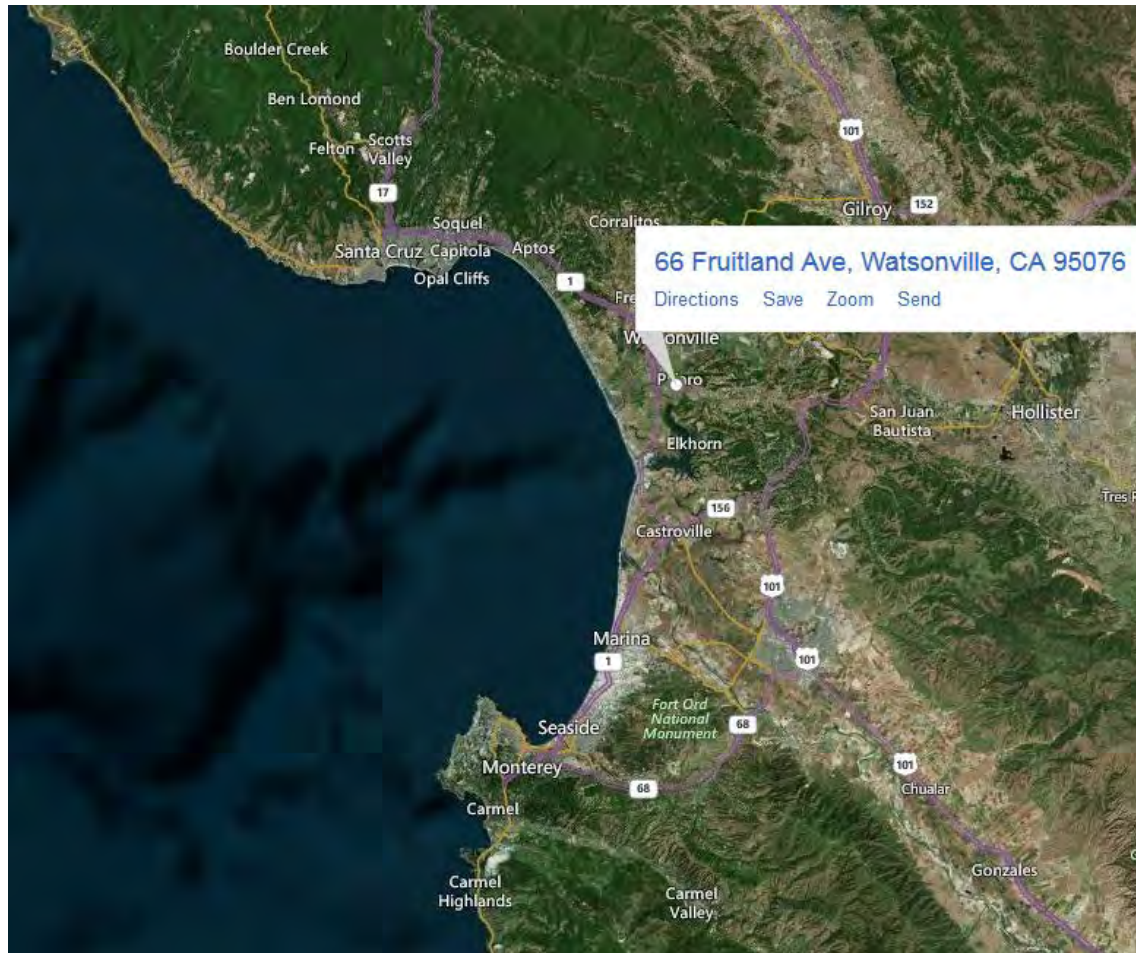
Section 13096(a) (14 CCR) requires that a specific finding be made in conjunction with CDP applications about the consistency of the application with any applicable requirements of CEQA. This report has discussed the relevant coastal resource issues with the proposed project. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference. As detailed in the findings above, the proposed project would have significant adverse effects on the environment as that term is understood in a CEQA context.

Pursuant to CEQA Guidelines (14 CCR) Section 15042 “a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.” Section 21080(b)(5) of the CEQA, as implemented by Section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. The Commission finds that denial, for the reasons stated in these findings, is necessary to avoid the significant effects on coastal resources that would occur if the project was approved as proposed. Accordingly, the Commission’s denial of the project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, do not apply.

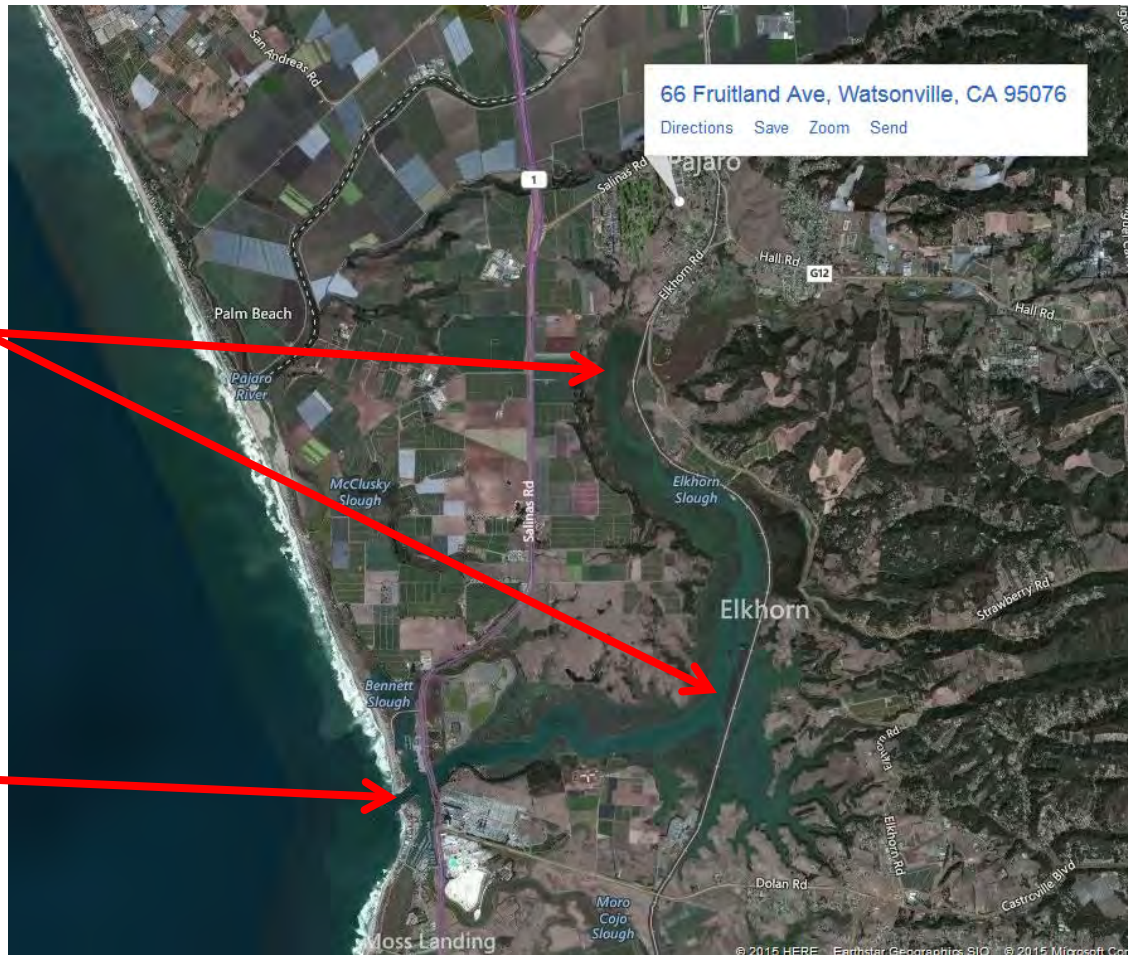
APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

1. Fugro West, Inc., 1995. *North Monterey County Hydrogeologic Study, Vol. 1: Water Resources*. Prepared for Monterey County Water Resources Agency, October 1995.
2. Monterey County Water Resources Agency and EDAW, Inc., 2002. *North Monterey County Comprehensive Water Resources Management Plan*, January 2002.
3. Pajaro Valley Water Management Agency and Carollo Engineers, 2014. *Basin Management Plan Update*, February 2014.
4. Rancho Roberto Subdivision Final Environmental Impact Report, State Clearinghouse Number 2000051086 (the “Rancho Roberto Subdivision EIR”).

Regional Location Map



Regional Location Map



Elkhorn Slough

Moss Landing

Location Map



Project Site

**Elkhorn
Slough**

Aerial Photo



Wetland and Spring Area, Facing North



Project Site, Facing South from Current Fruitland Avenue Terminus



RESOLUTION 05-055; TABLE 1
Planning and Building Inspection Department
Condition Compliance & Mitigation Monitoring and/or
Reporting Plan

Project Name: Rancho Roberto

File No: PLN980685

APNs: 117-131-032-000

Approval by: Board of Supervisors

Date: March 1, 2005

**Monitoring or Reporting refers to projects with an EIR or adopted Mitigated Negative Declaration per Section 21081.6 of the Public Resources Code.*

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
PLANNING AND BUILDING INSPECTION DEPARTMENT (883-7500)						
1		PBD029 - SPECIFIC USES ONLY This Combined Development Permit (PLN980685) consists of 1) a Coastal Development Permit for a Standard Subdivision to allow for the division of a 13.3-acre parcel into 26 residential lots on 6.69 acres plus one 6.61 acre non-developable remainder parcel, and 2) a Coastal Development Permit to allow for the demolition of a single family dwelling, two barns and several accessory buildings. The property is located south of Salinas Road on the west side of Fruitland Avenue (Assessor's Parcel Number: 117-131-032-000), North County Area, Coastal Zone. This permit was approved in accordance with County ordinances and land use regulations subject to the following terms and conditions. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of Planning and Building Inspection. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. (Planning and Building Inspection)	Adhere to conditions and uses specified in the permit.	Owner/ Applicant	Ongoing unless other- wise stated	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
2		PBD025 - NOTICE-PERMIT APPROVAL The applicant shall record a notice which states: "A permit (Resolution _____) was approved by the Monterey County Board of Supervisors for Assessor's Parcel Number 117-131-032-000 on February 8, 2005 . The permit was granted subject to 70 conditions of approval which run with the land. A copy of the permit is on file with the Monterey County Planning and Building Inspection Department." Proof of recordation of this notice shall be furnished to the Director of Planning and Building Inspection prior to issuance of building permits or commencement of the use. (Planning and Building Inspection)	Proof of recordation of this notice shall be furnished to PBI.	Owner/ Applicant	Prior to Issuance of grading and building permits or start of use.	
3	See MM9/ Cond 67	PHASING OF DEVELOPMENT (Non-Standard) Development of the project shall be divided into two phases: Phase I: May consist of a maximum 20 units of which at least four (4) must be deed restricted to meet inclusionary housing requirements for a moderate income family (120% of median income). Phase II: Provided a water audit performed following the completion of Phase I shows additional units could be developed within the water limits identified in the project's EIR, up to six (6) additional units may be developed of which at least two (2) must be deed restricted as Workforce II (180% of median income) housing. Workforce units must be developed prior to market-rate units in Phase II.	The applicant shall record deed restrictions for at least four (4) moderate income units (Condition 52).	Applicant PBI ERP (Housing)	Prior to Occupancy of the first house in Phase I.	
			The applicant shall provide a water audit following completion of Phase I. Said audit shall be subject to review and approval of the Director of Planning and Building Inspection, Director of Environmental Health and the Manager of Water Resource Agency.	Applicant Project Hydrologist PBI EH WRA	Prior to issuance of permits for Phase II.	
			The applicant shall record deed restrictions for at least two (2) Workforce II units (Condition 52).	Applicant PBI ERP (Housing)	Prior to Occupancy of the first house in Phase II.	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
4		<p>NOTE ON MAP - IMPROVEMENTS (Non-Standard)</p> <p>A note shall be placed on the final map or a separate sheet to be recorded with the final map stating that: "On-site and off-site improvements shall be constructed or addressed in a Subdivision Improvement Agreement before a permit or other grant of approval for development may be issued." All additional information, as described in Section 66434.2 of the Government Code, required to be filed or recorded with the final map shall include a statement that the additional information is for informational purposes, describing conditions as of the date of filing, and is not intended to affect record title interest. The note shall be located in a conspicuous location, subject to the approval of the County Surveyor. (Planning and Building Inspection/Public Works)</p>	Final recorded map with notes shall be submitted to PBI and Public Works for review and approval.	Owner/ Applicant	Prior to Record- ation of Final Map	
5		<p>PBD024 - NOTE ON MAP (DRAINAGE AND EROSION CONTROL)</p> <p>A note shall be placed on the final map or a separate sheet to be recorded with the final map stating that: "All development on the parcels shall have a 'Drainage and Erosion Control Plan' prepared by a registered civil engineer to address on-site and off-site impacts." The note shall be located in a conspicuous location, subject to the approval of the County Surveyor. (Planning and Building Inspection)</p>	Final recorded map with notes shall be submitted to PBI and Public Works for review and approval.	Owner/ Applicant	Prior to Record- ation of Final Map	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
6		PBD026 – NOTICE OF REPORT (BIOLOGY) Prior to issuance of building or grading permits, a notice shall be recorded with the Monterey County Recorder which states: "A Biological Assessment has been prepared for this parcel by Rana Creek Habitat Restoration , dated July 1999 and addendum letter dated April 4, 2003 and is on record in the Monterey County Planning and Building Inspection Department Library No. <u>26.07.166</u> . The recommendations contained in said report shall be followed in all further development of this property." The note shall be located in a conspicuous location, subject to the approval of the County Surveyor. (Planning and Building Inspection)	Proof of recordation of this notice shall be furnished to PBI.	Owner/ Applicant	Prior to issuance of grading and building permits	
7		PBD026 – NOTICE OF REPORT (GEOLOGY) Prior to issuance of building or grading permits, a notice shall be recorded with the Monterey County Recorder which states: "A Geologic Investigation report has been prepared for this parcel by Foxx, Nielsen, and Associates , dated October 1999 and is on record in the Monterey County Planning and Building Inspection Department Library No. <u>14.03.258</u> . The recommendations contained in said report shall be followed in all further development of this property." The note shall be located in a conspicuous location, subject to the approval of the County Surveyor. (Planning and Building Inspection)	Proof of recordation of this notice shall be furnished to PBI.	Owner/ Applicant	Prior to issuance of grading and building permits	

<i>Permit Cond. Number</i>	<i>Mitig. Number</i>	<i>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</i>	<i>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</i>	<i>Responsible Party for Compliance</i>	<i>Timing</i>	<i>Verification of Compliance (name/date)</i>
8		PBD026 – NOTICE OF REPORT (DRAINAGE) Prior to issuance of building or grading permits, a notice shall be recorded with the Monterey County Recorder which states: "A Preliminary Drainage Study has been prepared for this parcel by Ifland Engineer, Inc. , dated October 1999 and is on record in the Monterey County Planning and Building Inspection Department. All development shall be in accordance with this report." (Planning and Building Inspection)	Proof of recordation of this notice shall be furnished to PBI.	Owner/ Applicant	Prior to issuance of grading and building permits	
9		PBD026 – NOTICE OF REPORT (GEOTECHNICAL) Prior to issuance of building or grading permits, a notice shall be recorded with the Monterey County Recorder which states: "A Geotechnical Investigation report has been prepared for this parcel by Haro, Kasunich and Associates, Inc. dated February 1997 and response to peer review dated August 25, 2003 and is on record in the Monterey County Planning and Building Inspection Department Library No. 24.07.166 . The recommendations contained in said report shall be followed in all further development of this property." The note shall be located in a conspicuous location, subject to the approval of the County Surveyor. (Planning and Building Inspection)	Proof of recordation of this notice shall be furnished to PBI.	Owner/ Applicant	Prior to issuance of grading and building permits	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
10		PBD026 – NOTICE OF REPORT (TRAFFIC) Prior to issuance of building or grading permits, a notice shall be recorded with the Monterey County Recorder which states: "A Traffic Analysis report has been prepared for this parcel by Higgins Associates dated December 1999 and is on record in the Monterey County Planning and Building Inspection Department Library No. <u>980685</u> . The recommendations contained in said report shall be followed in all further development of this property." The note shall be located in a conspicuous location, subject to the approval of the County Surveyor. (Planning and Building Inspection)	Proof of recordation of this notice shall be furnished to PBI.	Owner/ Applicant	Prior to issuance of grading and building permits	
11		PBD012 - FISH AND GAME FEE-NEG DEC/EIR Pursuant to the State Public Resources Code, State Fish and Game Code, and California Code of Regulations, the applicant shall pay a fee (\$875), to be collected by the County, within five (5) calendar days of project approval – prior to filing of the Notice of Determination. This fee shall be paid on or before the filing of the Notice of Determination. Proof of payment shall be furnished by the applicant to the Director of Planning and Building Inspection prior to the recordation of the tentative map, the commencement of the use, or the issuance of building and/or grading permits, whichever occurs first. The project shall not be operative, vested or final until the filing fees are paid. (Planning and Building Inspection)	Proof of payment shall be furnished by the applicant to the Director of Planning and Building Inspection.	Owner/ Applicant	Prior to recording the final map, the start of the use, or the issuance of building and grading permits.	
12		PBD014 - GRADING-WINTER RESTRICTION No land clearing or grading shall occur on the subject parcel between October 15 and April 15 unless authorized by the Director of Planning and Building Inspection. (Planning and Building Inspection)	None	Owner/ Applicant	Ongoing	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
13		<p>PBD016 - INDEMNIFICATION AGREEMENT</p> <p>The property owner agrees as a condition and in consideration of the approval of this discretionary development permit that it will, pursuant to agreement and/or statutory provisions as applicable, including but not limited to Government Code Section 66474.9, defend, indemnify and hold harmless the County of Monterey or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees to attack, set aside, void or annul this approval, which action is brought within the time period provided for under law, including but not limited to, Government Code Section 66499.37, as applicable. The property owner will reimburse the county for any court costs and attorney's fees which the County may be required by a court to pay as a result of such action. County may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his obligations under this condition. An agreement to this effect shall be recorded upon demand of County Counsel or concurrent with the issuance of building permits, use of the property, filing of the final map, whichever occurs first and as applicable. The County shall promptly notify the property owner of any such claim, action or proceeding and the County shall cooperate fully in the defense thereof. If the County fails to promptly notify the property owner of any such claim, action or proceeding or fails to cooperate fully in the defense thereof, the property owner shall not thereafter be responsible to defend, indemnify or hold the county harmless. (Planning and Building Inspection)</p>	Proof of recordation of the Indemnification Agreement, as outlined, shall be submitted to PBI.	Owner/ Applicant	Upon demand of County Counsel or concurrent with the issuance of building permits, use of the property, filing of the final map, whichever occurs first and as applicable	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
14		PBD020 – LIGHTING - STREET LIGHTS All street lights in the development shall be approved by the Director of Planning and Building Inspection. (Planning and Building Inspection)	Submit three copies of the lighting plans to PBI for review and approval.	Owner/ Applicant	Prior to issuance of grading or building permits for street lights.	
15		PBD022 - MITIGATION MONITORING PROGRAM The applicant shall enter into an agreement with the County to implement a Mitigation Monitoring and/or Reporting Plan in accordance with Section 21081.6 of the California Public Resources Code and Section 15097 of Title 14, Chapter 3 of the California Code of Regulations. Compliance with the fee schedule adopted by the Board of Supervisors for mitigation monitoring shall be required and payment made to the County of Monterey at the time the property owner submits the signed mitigation monitoring agreement. (Planning and Building Inspection)	1) Enter into agreement with the County to implement a Mitigation Monitoring Program. 2) Fees shall be submitted at the time the property owner submits the signed mitigation monitoring agreement.	Owner/ Applicant	Within 60 days after project approval or prior to issuance of grading and building permits, which- ever occurs first.	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed: Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
16		PBD030 - STOP WORK - RESOURCES FOUND If, during the course of construction, cultural, archaeological, historical or paleontological resources are uncovered at the site (surface or subsurface resources) work shall be halted immediately within 50 meters (165 feet) of the find until a qualified professional archaeologist can evaluate it. The Monterey County Planning and Building Inspection Department and a qualified archaeologist (i.e., an archaeologist registered with the Society of Professional Archaeologists) shall be immediately contacted by the responsible individual present on-site. When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for the discovery. (Planning and Building Inspection)	Stop work within 50 meters (165 feet) of uncovered resource and contact the Monterey County Planning and Building Inspection Department and a qualified archaeologist immediately if cultural, archaeological, historical or paleontological resources are uncovered. When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for the discovery.	Owner/ Applicant/ Archaeologist	Ongoing	
17		PBD031 – SUBDIVISION SITE PLAN APPROVAL The property owner shall prepare a site plan for Rancho Roberto to be approved by the Director of Planning and Building Inspection. The site plan shall: (1) define the building site; (2) establish maximum building dimensions; (3) identify natural vegetation that should be retained; (4) identify landscape screening as appropriate. A note shall be placed on the parcel map stating that a site plan has been prepared for this subdivision and that the property may be subject to building and/or use restrictions. (Planning and Building Inspection)	Submit site plan to PBI for review and approval.	Owner/ Applicant	Prior to recording the Final Map.	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
18		PBD033 – UTILITIES – SUBDIVISION A note shall be placed on the final map or a separate sheet to be recorded with the final map indicating that "Underground utilities are required in this subdivision in accordance with Chapter 19.10.095, Title 19 of the Monterey County Code." Such facilities shall be installed or bonded prior to filing the (parcel or final) map. The note shall be located in a conspicuous manner subject to the approval of the Director of Public Works. (Planning and Building Inspection)	Place note on map or a separate sheet and submit to PBI for review and approval.	Applicant/ Owner	Prior to recording the Final Map.	
19		PBD – WATER IMPACT FEE (non-standard) The applicant shall pay the appropriate Water Impact Fee required for development in the North Monterey County Area pursuant to Chapter 18.51 of the Monterey County Codes. (Planning and Building Inspection/Water Resource Agency)	Pay the water impact fee to the PBI Department. Said fee shall be calculated by the Monterey County Water Resource Agency in accordance with Chapter 18.51.	Applicant/ Owner	Prior to recording the Final Map	
WATER RESOURCE AGENCY (755-4860)						
20		WR6 - STORMWATER DETENTION The applicant shall provide the Water Resources Agency a drainage plan prepared by a registered civil engineer addressing on-site and off-site impacts with supporting calculations and construction details. The plan shall include detention facilities to mitigate the impact of impervious surface stormwater runoff. Pond(s) shall be fenced for public safety. Drainage improvements shall be constructed in accordance with plans approved by the Water Resources Agency. (Water Resources Agency)	Submit 3 copies of the engineered drainage plan to the Water Resources Agency for review and approval.	Owner/ Applicant/ Engineer	Prior to filing of the final map	
21		WR7 - DRAINAGE NOTE A note shall be recorded on the final map stating: "Any future development on these parcels will require a drainage plan to be prepared by a registered civil engineer or architect addressing on-site and off-site impacts. The plan shall be submitted to the Water Resources Agency for approval." The applicant shall provide the Water Resources Agency a copy of the map to be recorded. (Water Resources Agency)	Submit a copy of the final map to be recorded, with appropriate note, to the Water Resources Agency for review and approval.	Owner/ Applicant	Prior to recordation of the final map	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
22		WR36 - HOMEOWNERS ASSOCIATION CC&R'S A homeowner's association shall be formed for the maintenance of roads, drainage facilities, and open spaces. The Director of Public Works, the Director of Planning and Building Inspection, and the County Water Resources Agency shall approve documents for formation of association. The covenants, conditions and restrictions (CC&R's) shall include provisions for a yearly report by a registered civil engineer and the monitoring of impacts of drainage and maintenance of drainage facilities. Report shall be approved by the County Water Resources Agency. (Water Resources Agency)	Submit the CC&R's to the Water Resources Agency for review and approval.	Owner/ Applicant	Prior to filing of final map	
23		WR37 - DRAINAGE & FLOOD CONTROL SYSTEMS AGREEMENT If the homeowners' association after notice and hearing fails to properly maintain, repair or operate the drainage and flood control facilities in the project, Monterey County Water Resources Agency shall be granted the right by the property owners to enter any and all portions of the property to perform repairs, maintenance or improvements necessary to properly operate the drainage and flood control facilities in the project. The County Water Resources Agency shall have the right to collect the cost for said repairs, maintenance or improvements from the property owners upon their property tax bills. A hearing shall be provided by the Board of Supervisors as to the appropriateness of the cost. Prior to filing the final map, a copy of a signed and notarized <i>Drainage and Flood Control Systems Agreement</i> shall be provided to the Water Resources Agency for approval. (Water Resources Agency)	Submit the signed and notarized original Agreement to the Water Resources Agency for review and approval prior to recordation. (A copy of the County's standard agreement can be obtained at the Water Resources Agency.)	Owner/ Applicant	The agree- ment shall be recorded concur- rently with the final map	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
24		WR38 - ROAD AND DRAINAGE MAINTENANCE AGREEMENT Developer shall have the sole responsibility for the care, maintenance, and repair of road and drainage improvements installed as a condition of approval of the subdivision. Upon each conveyance of each lot in the subdivision, developer shall be jointly obligated with the succeeding owners to perform such obligation pro rated on the basis of the remaining number of lots still owned by the developer. Developer's obligation shall cease upon the conveyance of the last lot in the subdivision. Prior to filing the final map, a copy of a signed and notarized <i>Road and Drainage Maintenance Agreement</i> shall be provided to the Water Resources Agency for approval. The agreement shall be recorded concurrently with the final map. (Water Resources Agency)	Submit the signed and notarized original Agreement to the Water Resources Agency for review and approval prior to recordation. (A copy of the County's standard agreement can be obtained at the Water Resources Agency.)	Owner/ Applicant	Prior to filing the final map.	
25		WR41 - NOTICE OF WATER CONSERVATION REQUIREMENTS A notice shall be recorded on the deed for each lot stating: "All new construction shall incorporate the use of low water use plumbing fixtures and drought tolerant landscaping, in accordance with County Water Resources Agency Ordinance No. 3932." Prior to recordation of the final map, a copy the completed notice shall be provided to the Water Resources Agency for approval. (Water Resources Agency)	Submit a recorded notice to the Water Resources Agency for review and approval. (A copy of the County's standard notice can be obtained at the Water Resources Agency.)	Owner/ Applicant	Recordation of the notice shall occur concurrently with the final map	
26		WR42 - LANDSCAPING REQUIREMENTS A notice shall be recorded on the deed for each lot stating: "The front yards of all homes shall be landscaped prior to occupancy. Low water use or drought tolerant plants shall be used together with water efficient irrigation systems." Prior to recordation of the final map, a copy the completed notice shall be provided to the Water Resources Agency for approval. (Water Resources Agency)	Submit the recorded notice to the Water Resources Agency for review and approval. (A copy of the County's standard notice can be obtained at the Water Resources Agency.)	Owner/ Applicant	Recordation of the notice shall occur concurrently with the final map	

<i>Permit Cond. Number</i>	<i>Mitig. Number</i>	<i>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</i>	<i>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</i>	<i>Responsible Party for Compliance</i>	<i>Timing</i>	<i>Verification of Compliance (name/date)</i>
27		WR44 - WATER USE INFORMATION The applicant shall provide the Water Resources Agency a copy of the Water Use & Nitrate Impact Questionnaire describing the pre-development and post-development water use on the property. (Water Resources Agency)	Submit the WUNIQ to the Water Resources Agency for review and approval.	Owner/ Applicant	Prior to filing the final map	
28		WR46 - C.C.&R. WATER CONSERVATION PROVISIONS The applicant shall provide the Water Resources Agency with a copy of the subdivision Covenants, Conditions and Restrictions containing the following provisions from Monterey County Ordinance No. 3932: "All new construction incorporate the use of low water use plumbing fixtures including, where applicable, hot water recirculation systems; the front yards of all homes shall be landscaped at the time of construction; low water use or drought tolerant plants shall be used together with water efficient irrigation systems; leak repair is the property owner's responsibility; vehicle and building washing shall use hoses equipped with shutoff nozzles; no potable water to be used for sidewalk washing; no water spillage into streets, curbs, and gutters; no emptying or refilling of swimming pools except for structural repairs or if required for public health regulations; no fountains unless water is recycled within the fountain." (Water Resources Agency)	Submit the CC&R's to the Water Resources Agency for review and approval.	Owner/ Applicant	Prior to filing the final map	
29		COMPLETION CERTIFICATION (Non-Standard) The applicant shall provide the Water Resources Agency certification from a registered civil engineer or licensed contractor that stormwater detention/retention facilities have been constructed in accordance with approved plans. (Water Resources Agency)	Submit a letter to the Water Resources Agency, prepared by a registered civil engineer or licensed contractor, certifying compliance with approved drainage plan.	Owner/ Applicant WRA	Prior to issuance of Demolition, Grading and/or Building Permits for the homes:	
PUBLIC WORKS DEPARTMENT (755-4800)						

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
30		PW0015 – UTILITY’S COMMENTS Submit the approved tentative map to impacted utility companies. Subdivider shall submit utility company recommendations, if any, to the Department of Public Works for all required easements. (Public Works)	Subdivider shall provide tentative map to impacted utility companies for review. Subdivider shall submit utility comments to DPW	Owner/ Applicant	Prior to Recordatio n of Map	
31		PW0016 – MAINTENANCE OF SUBDIVISIONS Pay for all maintenance and operation of subdivision improvements from the time of installation until acceptance of the improvements for the Subdivision by the Board of Supervisors as completed in accordance with the subdivision improvement agreement and until a homeowners association or other agency with legal authorization to collect fees sufficient to support the services is formed to assume responsibility for the services. (Public Works)	Subdivider shall be responsible to maintain improvements until maintenance is assumed by another entity.	Subdivider	Ongoing	
32		PW0017 – NATURAL DRAINAGE EASEMENT Designate all natural drainage channels on the final map by easements labeled “Natural Drainage Easement”. (Public Works)	Subdivider’s surveyor shall include labeling as described on Final Map.	Subdivider/ Surveyor	Prior to Recordatio n of Final Map	
33		PW0020 – PRIVATE ROADS Designate all subdivision roads as private roads. (Public Works)	Subdivider’s Surveyor shall designate private roads on final map.	Subdivider	Ongoing	
34		PW0021 – ROAD NAMES Submit all proposed road names to the Department of Public Works for approval by County Communications. (Public Works)	Subdivider shall submit proposed road names to DPW. DPW will submit to County Communications for Approval.	Subdivider	Prior to Recordatio n of Final Map	
35	See MM11/ Cond 69	PW0023 – IMPROVEMENT PLANS Provide improvement plans for approval of the Department of Public Works and that the roads be constructed in accordance with Mitigation Measure #11. (Public Works)	Subdivider shall submit improvement plans prepared by his Engineer to DPW for approval. Improvements to be bonded prior to recordation of final map.	Subdivider	Prior to Recordatio n of Final Map	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
36		PW0030 – HOMEOWNERS ASSOCIATION Form a homeowners association for road and drainage maintenance. Prepare an operation and maintenance plan for all facilities. Implement a fee program to fund operation and maintenance, and have appropriate documentation recorded against each parcel within the subdivision. (Public Works)	Subdivider shall submit documentation to DPW and WRA for formation of homeowners association or other entity to maintain roads and drainage improvements.	Subdivider	Prior to Recordation of Final Map	
37		PW0032 – AS BUILT PLANS A Registered Civil Engineer shall file as built plans (originals) in the Department of Public Works with a letter certifying improvements have been made in conformance to improvement plans and local ordinance. (Public Works)	Subdivider's Engineer shall submit as built plans and stamped notice of completion letter to DPW for review and approval.	Subdivider/ Engineer	Prior to Release of Bonds	
38		PRIVATE ROAD NAME SIGNS (Non-Standard) Show on the improvement plans and install private road name signs within the subdivision. (Public Works)	Submit improvement plans with street names for review and approval of the Public Works Director.	Subdivider	Prior to filing of the final map	
			Install street signs to the satisfaction of the Public Works Director.	Subdivider/ Developer	Prior to expiration of the subdivision improvement agreement	
39		SEWER EASEMENTS (Non-Standard) The subdivider shall provide for easements for all facilities to be maintained by the Pajaro County Sanitation District. (Public Works)	Illustrate location of easements on Final Map to the satisfaction of the Sanitation District.	Subdivider	Prior to filing of the final map	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
40		CURB, GUTTER, SIDEWALK AND PAVEOUT (Non-Standard) Subdivider shall obtain an encroachment permit from the Department of Public Works and construct curb, gutter, sidewalk and paveout along the westerly side of Fruitland Avenue extending from the beginning of the radius return on Salinas Road, through the radius return, to the second driveway south of Salinas Road. Subdivider's engineer shall prepare plans for the approval of the Department of Public Works. If additional right-of-way is required and in the event that the applicant notifies the County that he is unable to timely secure the required right-of-way at fair market value, the County shall, after verifying the landowner's rejection of applicant's bonafide offer to purchase the required property interests at a price established by a County approved appraiser for condemnation appraisals, shall acquire the land or right-of-way through negotiation or eminent domain. Applicant shall fund the cost of the County's acquisition and related court proceedings. (Public Works)	Obtain an Encroachment Permit from Public Works	Subdivider	Prior to commencement of work	
			Construct Improvements to the satisfaction of the Public Works Director.	Subdivider/Developer	Prior to expiration of subdivision improvement agreement	
41		REIMBURSABLE SERVICES AGREEMENT (Non-Standard) Prior to filing the final map, the current owner/developer and/or their successors shall sign a RSA (Reimbursable Services Agreement). The RSA shall include all costs and expenses incurred by Department of Public Works personnel for meetings, reviews, labor, administrative costs, travel, vehicles, travel time, and all costs associated with this project. The current owner/developer and/or their successors shall be billed and 100% pay for all project costs on a monthly basis. (Public Works)	Submit a signed Reimbursable Service Agreement for review and approval by the Public Works Director.	Owner/Developer	Prior to filing of the final map	

<i>Permit Cond. Number</i>	<i>Mitig. Number</i>	<i>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</i>	<i>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</i>	<i>Responsible Party for Compliance</i>	<i>Timing</i>	<i>Verification of Compliance (name/date)</i>
42		FORCE MAIN CONNECTION (Non-Standard) Prior to filing the final map, the Department of Public Works shall designate where the new project force main shall connect to the existing sanitation mains and lines. (Public Works)	Submit plans showing location of the force main for review and approval of the Director of Public Works.	Subdivider/ Developer	Prior to filing of the final map	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
43		<p>IMPROVEMENT PLANS (Non-Standard)</p> <p>Prior to filing the final map, the improvement plans shall show the following improvements. The lift station installation shall require the following components and equipment:</p> <ul style="list-style-type: none"> a) The Department of Public Works shall review and approve the lift station design and configuration prior to approval of the final map. The influent line shall be configured as a "T" fall pipe and approved by the Department of Public Works prior to installation. b) The wetwell shall be sized to accommodate all current and future residential units based upon flow calculations provided and approved by the Department of Public Works. The owner/developer and/or their successors shall provide wetwell configuration design and size to ES for review and approval prior to commencement of any construction. c) The wetwell and valve vault shall be separated by a minimum five feet (5') for personnel safety. The five-foot space shall contain a B48 Christy concrete box with steel cover. The box shall have two 2"-diameter PVC schedule -80 conduits for pulling motor cables directly to the MCC without splicing. The valve vault shall contain check valves with lever indicators, not ball valves. Two 1"-diameter PVC schedule-80 conduits shall be in place for pulling the level probe and standby float alarm cables from the wetwell directly to the MCC without splicing. All covers shall be watertight and spring assisted for ease of opening and closing. The wetwell, valve box, and all installations shall be a minimum of one-foot (1') above the designated 100-year flood plain and any normal 	Submit Improvement Plans for review and approval of the Director of Public Works.	Subdivider/ Developer	Prior to filing of the final map	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
		<p>drainage and flood areas adjacent to the station.</p> <p>d) The lift station shall have two eight-foot (8') gates installed for vehicle access. Total access gate area shall not be less than sixteen feet (16').</p> <p>e) A one-inch (1") water line and spigot shall be installed next to the wetwell at a location to be determined by Department of Public Works personnel.</p> <p>f) The entire wetwell area, including an area three feet (3') beyond the fence line, shall be concreted. The concrete shall be of sufficient thickness to accommodate our Hydroflush vehicle.</p> <p>g) A fixed emergency generator shall be provided of sufficient size and configuration to operate all pumps, motors, and appurtenances necessary to maintain lift station functions. A liquid propane (LP) tank of sufficient size to operate the emergency generator for 36 continuous hours shall also be installed. The emergency generator, tank, and all necessary equipment and components shall be 100% paid for by the current owner/developer and/or their successors. The tank shall be situated for ease of LP delivery.</p> <p>h) The MCC cabinet shall be a Hoffman stainless steel brand, number A-366012FSSLP of appropriate size and configuration to accommodate all necessary connections and appliances. The cabinet shall be made to be watertight and a three-foot (3') overhang roof seven feet (7') high with lighting shall be installed to protect interior components when opening the cabinet during inclement weather.</p> <p>i) All pumps shall be Flygt pumps only. No</p>				

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
		<p>substitutions or equivalents shall be acceptable. The Flygt pump motors shall have extra power cables for direct connections through the conduits from the pumps to the MCC without splicing. All guide rails shall be corrosion-proof stainless steel. Flygt approved stainless chains of sufficient size and strength to remove and replace the pumps shall be installed. Pump size shall be no less than seven and one-half (7.5) HP.</p> <p>j) All pumps shall be wired and of proper voltage according to Flygt specifications and Department of Public Works requirements for our standardized operations and repairs.</p> <p>k) All electrical components shall be quality brand, style, and type acceptable to Environmental. ES shall review and approve all components for final application and installation prior to filing of the map. Triplicate copies of all electrical and controller component schematics shall be given to ES prior to approval of the final map.</p> <p>l) The current owner/developer and/or their successors shall be 100% responsible for the purchase and installation of a Micro-Tell 1000 25-point microprocessor controller with SCADA capability for connection to our current systems. Monty Dill of Water Dynamics shall complete all necessary equipment and programming installations. Battery back-up power supply and power surge protection shall be provided as part of this Micro-Tell installation package and shall also be 100% paid for by the owner/developer.</p> <p>m) The current owner/developer and/or their successors shall be 100% responsible for the</p>				

<i>Permit Cond. Number</i>	<i>Mitig. Number</i>	<i>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</i>	<i>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</i>	<i>Responsible Party for Compliance</i>	<i>Timing</i>	<i>Verification of Compliance (name/date)</i>
		<p>purchase and installation of a Hydro-Ranger sonic level controller and sensor and telephone line. The level probes shall be mounted on stainless steel brackets with extra length cables to allow direct connections from the wetwell to the MCC without splicing. Monty Dill of Water Dynamics shall complete all necessary equipment and programming installations.</p> <p>n) Fuses are not allowable and all components shall be able to be reset from within the MCC. The telephone line shall be provided to a termination point within the MCC and provide accessibility to all installations and necessary components.</p> <p>o) The motor starters shall be Cutler-Hammer "ADVATAGE" brand and style as sized and installed per the Department of Public Works for this particular application.</p> <p>p) ES shall review and approve all electrical components and equipment prior to filing of the final map. No construction shall commence until the Department of Public Works has reviewed and approved the electrical installation plans. (Public Works)</p>				

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
44		LIFT STATIONS (Non-Standard) Prior to filing the final map, submit a deed restriction that states that "ES and CSD 382 (County Sanitation District 382) Pajaro shall not assume lift station ownership and/or utility billings until the first residence has been occupied. The current owner/developer and/or their successors shall maintain 100% responsibility for the lift station upkeep, maintenance, operation, and utility payments until that first occupancy occurs. (Public Works)	Submit a Deed Restriction for review and approval of the Director of Public Works.	Subdivider/ Developer	Prior to filing of the final map	
45		FEE PAYMENT (Non-Standard) Prior to filing the final map, the current owner/developer and/or their successors shall 100% pay for all necessary fees and payments prior to issuance of any connection, inspections or user permits by the Department of Public Works. Should the current owner/developer and/or their successors sell any properties to new owners or developers in the future, the current owner/developer and/or their successors shall advise the new owners or developers, in writing, of any and all fees or payments to be collected by Public Works prior to issuance of any and all the Department of Public Works permits. The Department of Public Works shall furnish copies of all these written notices as they occur. (Public Works)	Submit all applicable fees to the satisfaction of the Director of Public Works.	Subdivider/ Developer	Prior to issuance of any permits	

<i>Permit Cond. Number</i>	<i>Mitig. Number</i>	<i>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</i>	<i>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</i>	<i>Responsible Party for Compliance</i>	<i>Timing</i>	<i>Verification of Compliance (name/date)</i>
46	See MM10/ Cond #68	TRAFFIC MITIGATION FEES (Non-Standard) A. The applicant shall pay a pro-rata share of traffic mitigation fees for County road improvements within the area in the amount of \$9,078 per lot. This fee is based on 2004 dollars and shall be updated annually based on the construction cost index of the Engineering News Record. B. Applicant shall pay the Transportation Agency for Monterey County (TAMC) regional traffic mitigation fee identified in the TAMC nexus study to mitigate impacts to Regional roads and intersections. (Public Works)	Submit traffic fees to the satisfaction of the Public Works Director.	Applicant/ Owner	Prior to issuance of building permits	
ENVIRONMENTAL HEALTH DIVISION (755-4505)						
47		EH3 - WATER SYSTEM IMPROVEMENTS (STATE PERMITTED SYSTEM) Design the water system improvements to meet the standards as found in Titles 17 and 22 of the California Code of Regulations and as found in the Residential Subdivision Water Supply Standards. (Environmental Health)	Submit engineered plans for the water system improvements to the California Department of Health Services for review and approval. Submit evidence to the Director of Environmental Health that the proposed water system improvements have been approved by Pajaro-Sunny Mesa CSD prior to installing or bonding the improvements.	CA Licensed Engineer /Owner/ Applicant	Prior to filing final map	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
48		EH5 - INSTALL/BOND WATER SYSTEM IMPROVEMENTS The developer shall install the water system improvements to and within the subdivision and any appurtenances needed or shall enter into a Subdivision Improvement Agreement with the County to install the water system improvements and provide security guaranteeing the performance of the Agreement. (Environmental Health)	Submit evidence to the Division of Environmental Health that the water system improvement installation has been accepted by the regulating agency or that the developer has entered into a Subdivision Improvement Agreement and has provided security acceptable to the County.	CA Licensed Engineer /Applicant	Prior to filing final map	
49		EH7 - ABANDONED WELLS Destroy the existing well according to the standards found in State of California Bulletin 74 and all its supplements, and Chapter 15.08 of the Monterey County Code. The well shall not be considered abandoned if satisfactory evidence is provided that the well is functional, is used on a regular basis, and does not act as a conduit for contamination of groundwater. (Environmental Health)	Prior to destruction, a permit for the destruction of the well(s) shall be obtained by a CA licensed well contractor from the Division of Environmental Health. After destruction submit the Well Completion Report to the Division of Environmental Health	CA Licensed Engineer /Owner/ Applicant	Prior to filing a final map and/or issuance of a building permit	
50		EH25 - INSTALL/BOND SEWER SYSTEM IMPROVEMENTS The developer shall install the sewer system improvements to and within the subdivision and any appurtenances needed or shall enter into a Subdivision Improvement Agreement with the County to install the sewer system improvements and provide security guaranteeing the performance of the Agreement. (Environmental Health)	Submit evidence to the Division of Environmental Health that the sewer system improvement installation has been accepted by Pajaro Sanitation or that the developer has entered into a Subdivision Improvement Agreement and has provided security acceptable to the County.	CA Licensed Engineer /Applicant	Prior to filing the final parcel map.	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
51		EH27 - SEWER SYSTEM IMPROVEMENTS Engineered plans for the sewage disposal system including all necessary redundancies shall be submitted to and approved by Pajaro Sanitation. (Environmental Health)	Submit written verification to the Division of Environmental Health that plans have been reviewed and approved.	Owner/ Applicant	Prior to filing the final/ parcel map or issuance of a building permit.	
ENVIRONMENTAL RESOURCE POLICY- HOUSING AND REDEVELOPMENT (786-1350)						
52 See Cond #3		ERP – INCLUSIONARY HOUSING (Non-Standard) Prior to the recordation of the Final Map, the applicant shall execute an Inclusionary Housing Developer Agreement (Developer Agreement) with the County, in a form acceptable to the County, which specifies that four (4) Inclusionary Housing ownership units, affordable to moderate-income households, shall be constructed on the project site within Phase I of the development (Phasing described in Condition #3). The Developer Agreement shall specify, but not be limited to, the number of Inclusionary Units, location, type of unit, size of unit, the calculation to be used in setting the initial sales price, the selection of buyers and resale price restrictions, and the phasing of constructing the units in relation to the pace of construction of the market rate units. These provisions shall be consistent with the adopted Inclusionary Housing Manual in effect at the time of the project approval. The Developer Agreement shall be recorded over the entire project site concurrent with the recordation of the Final Map. (Housing and Redevelopment)	The developer shall execute an Inclusionary Housing Developer Agreement with the County, in a form acceptable to the County. This Agreement shall set forth the specific requirements for compliance including, but not limited to, the number of Inclusionary Units, location, type of unit, size of unit, the calculation to be used in setting the initial sales price, the selection of buyers and resale price restrictions, and the phasing of constructing the units in relation to the pace of construction of the market rate units.	Subdivider/ Developer	Prior to recording the Final Map	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
53 See Cond #3		ERP – INCLUSIONARY HOUSING (Non-Standard) Prior to the recordation of the Final Map, the applicant shall execute a Workforce Housing Developer Agreement (Developer Agreement) with the County, in a form acceptable to the County, which specifies that two (2) Workforce Housing ownership units, affordable to households earning up to 180% of the County median income, shall be constructed on the project site within Phase II of the development, provided adequate water is available as specified in Condition #3. The Developer Agreement shall specify, but not be limited to, the number of Workforce Units, location, type of unit, size of unit, the calculation to be used in setting the initial sales price, the selection of buyers and resale price restrictions including equity sharing, and the phasing of constructing the units in relation to the pace of construction of the market rate units. To the extent possible as determined by the Housing Division Program Manager, these provisions shall be consistent with the provisions in the adopted Inclusionary Housing Manual in effect at the time of the project approval. The Developer Agreement shall be recorded over the entire project site concurrent with the recordation of the Final Map. (Housing and Redevelopment)	The developer shall execute a Workforce Housing Developer Agreement with the County, in a form acceptable to the County. This Agreement shall set forth the specific requirements for compliance including, but not limited to, the number of Workforce Units, location, type of unit, size of unit, the calculation to be used in setting the initial sales price, the selection of buyers and resale price restrictions, and the phasing of constructing the units in relation to the pace of construction of the market rate units.	Subdivider/ Developer	Prior to recording the Final Map	
FIRE DEPARTMENT (633-2578)						
54		FIRE010 -ROAD SIGNS All newly constructed or approved roads and streets shall be designated by names or numbers, posted on signs clearly visible and legible from the roadway. Size of letters, numbers and symbols for street and	Applicant shall incorporate specification into design and enumerate as "Fire Dept. Notes" on improvement plans.	Applicant or owner	Prior to filing of final map.	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
		road signs shall be a minimum 4-inch letter height, ½-inch stroke, and shall be a color that is reflective and clearly contrasts with the background color of the sign. All numerals shall be Arabic. Street and road signs shall be non-combustible and shall be visible and legible from both directions of vehicle travel for a distance of at least 100 feet. Height, visibility, legibility, and orientation of street and road signs shall be meet the provisions of Monterey County Ordinance No. 1241. This section does not require any entity to rename or renumber existing roads or streets, nor shall a roadway providing access only to a single commercial or industrial occupancy require naming or numbering. Signs required under this section identifying intersecting roads, streets and private lanes shall be placed at the intersection of those roads, streets and/or private lanes. Signs identifying traffic access or flow limitations (i.e., weight or vertical clearance limitations, dead-end road, one-way road or single lane conditions, etc.) shall be placed: (a) at the intersection preceding the traffic access limitation; and (b) not more than 100 feet before such traffic access limitation. Road, street and private lane signs required by this article shall be installed prior to final acceptance of road improvements by the Reviewing Fire Authority. North County Fire Protection District.	Applicant shall schedule fire dept. clearance inspection for each phase of development.	Applicant or owner	Prior to issuance of building permit(s) for development on individual lots within the phase of the subdivision.	
55		FIRE011 - ADDRESSES FOR BUILDINGS All buildings shall be issued an address in accordance with Monterey County Ordinance No. 1241. Each occupancy, except accessory buildings, shall have its own permanently posted address.	Applicant shall incorporate specification into design and enumerate as "Fire Dept. Notes" on plans.	Applicant or owner	Prior to issuance of building permit.	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
		When multiple occupancies exist within a single building, each individual occupancy shall be separately identified by its own address. Letters, numbers and symbols for addresses shall be a minimum of 4-inch height, 1/2-inch stroke, contrasting with the background color of the sign, and shall be Arabic. The sign and numbers shall be reflective and made of a noncombustible material. Address signs shall be placed at each driveway entrance and at each driveway split. Address signs shall be and visible from both directions of travel along the road. In all cases, the address shall be posted at the beginning of construction and shall be maintained thereafter. Address signs along one-way roads shall be visible from both directions of travel. Where multiple addresses are required at a single driveway, they shall be mounted on a single sign. Where a roadway provides access solely to a single commercial occupancy, the address sign shall be placed at the nearest road intersection providing access to that site. Permanent address numbers shall be posted prior to requesting final clearance. North County Fire Protection District.	Applicant shall schedule fire dept. clearance inspection	Applicant or owner	Prior to final building inspection	
56		FIRE015 - FIRE HYDRANTS/FIRE VALVES A fire hydrant or fire valve is required. The hydrant or fire valve shall be 18 inches above grade, 8 feet from flammable vegetation, no closer than 4 feet nor further than 12 feet from a roadway, and in a location where fire apparatus using it will not block the roadway. The hydrant serving any building shall be not less than 50 feet and not more than 1000 feet by road from the building it is to serve. Minimum hydrant standards shall include a brass head and valve with at least one 2 1/2 inch National Hose outlet supplied by a minimum 4 inch main and riser. More restrictive hydrant requirements may be	Applicant shall incorporate specification into design and enumerate as "Fire Dept. Notes" on plans.	Applicant or owner	Prior to issuance of grading and/or building permit.	
			Applicant shall schedule fire dept. clearance inspection	Applicant or owner	Prior to final building inspection	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
		applied by the Reviewing Authority. Each hydrant/valve shall be identified with a reflectorized blue marker, with minimum dimensions of 3 inches, located on the driveway address sign, non-combustible post or fire hydrant riser. If used, the post shall be within 3 feet of the hydrant/valve, with the blue marker not less than 3 feet or greater than 5 feet above the ground, visible from the driveway. On paved roads or driveways, reflectorized blue markers shall be permitted to be installed in accordance with the State Fire Marshal's Guidelines for Fire Hydrant Markings Along State Highways and Freeways, May 1988. North County Fire Protection District.				
57		ELECTRONIC MEDIA SUBMITTAL (Non-Standard) Prior to the filing of the final parcel map, an electronic copy of the parcel map shall be submitted to the North County Fire District, or local fire jurisdiction. The parcel map shall be drawn using Auto CAD 14 or newer or an approved equal. The submitted map shall, at a minimum, contain the following entities: <ol style="list-style-type: none"> 1. Property lines 2. Parcel numbers 3. Roads, streets and driveways 4. Fire Hydrants 5. Assessors Parcel Numbers 6. Building envelopes North County Fire Protection District.	Submit an electronic version of the final map to the North County Fire Protection District for review and approval. Approved media form shall be either CD or E-mail. Files shall be either *.dwg or *.dxf format only. Electronic mail will be accepted at AA@ncfpd.org	Subdivider/ Developer	Prior to the filing of the final parcel map	
PARKS DEPARTMENT (755-4895)						

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
58		PKS003 – RECREATION REQUIREMENTS/LAND DEDICATION The Applicant shall comply with Section 19.12.010 – Recreation Requirements, of the County Subdivision Ordinance, Title 19, Monterey County Code, by either paying an in-lieu fee or dedicating for an equivalent of at least 0.23 acres of parkland with improvements, in accordance with the provisions contained in Section 19.12.010(D) for park and recreation purposes reasonably serving the residents of the subdivision. The Applicant shall also provide the Parks Department with a recreation plan and cost estimate for the improvements to be made on the dedicated parcel(s). (Parks Department)	The Applicant shall either pay the fee or submit a recreation plan and cost estimate for the improvements to be made on the dedicated parcel(s) as required by the Director of Parks and Recreation Department.	Owner/ Applicant in consultation with the Director of Parks and Recreation	Prior to the recording of the Final Map	
MITIGATION MEASURES						
59	MM #1	(Biological Resources) In order to protect environmentally sensitive wetlands habitat and potential amphibian habitat on the project site, including associated uplands, the final map and related documentation shall include the following: a. A conservation easement over the remainder parcel and the open swale areas. The conservation easement shall prohibit vegetation removal, excavation, grading, filling, and construction of roads and structures within the easement, except for the installation and operation of the detention basin, two road crossings as illustrated in the clustered design alternative in the EIR and to allow infrastructure	1A. The project proponent shall submit a final map and declarations relating to the establishment of the community association for review by the Monterey County Surveyor and a recommendation, based on conformance with the requirements of the mitigation measure, shall be sent by the Surveyor to the Board of Supervisors for its consideration in approval of the final map.	Project Proponent Monterey County Surveyor	Prior to recording of the final map	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
		<p>deemed necessary and appropriate by the Director of Planning and Building Inspection and as may be permitted under Nationwide Permit 43 under Section 404 of the Clean Water Act. Such exceptions may include activities for watershed restoration or other activities that will ensure the long-term maintenance of the habitat (including the drainage basin, which serves as a settling basin);</p> <p>b. Location of the sewer pump station outside the conservation easement;</p>	1B. PBI shall review the plans for conformance with the requirements of the mitigation measure. Final improvement plans shall not be approved until they conform to the requirements of the mitigation measure.	PBI	Prior to approval of the final improvement plans	
		<p>c. Appropriate documentation (such as a statement attached and filed with the final map) for the establishment of a community association to take long-term responsibility and guarantee funding for the long-term protection and maintenance of the conservation easement, including enforcing protective measures, assessing fines for violations, and reporting violations to the County. The following measures shall be established as Covenants, Codes, and Restrictions for each lot in order to ensure the long-term protection and maintenance of the conservation easement:</p> <p>1. Prohibition of motor vehicle and bicycle use,</p>	1C. The community association shall file a report regarding compliance with this measure including a description of any violations and restoration performed as appropriate. The report shall be submitted to the Director of PBI. The community association shall be responsible for enforcing habitat protection and maintenance measures to protect onsite biological resources.	Community Association PBI	Annually	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
		<p>pets, storage, dumping, or any other activities within the conservation easement area that could adversely affect the ecological importance of the easement area;</p> <p>2. Disclosure to lot or home purchasers of the exact area and ecological importance of the easement area including habitat protection measures implemented as part of the development;</p> <p>3. Disclosure to lot or home purchasers of the potential for contamination of the easement area and downstream waters by their use of pesticides, herbicides, fungicides, and fertilizers on residential lots, and their responsibility to use these products sparingly and in accordance with label requirements in order to protect the easement area and downstream waters; and</p> <p>4. Disclosure to lot or home purchasers of North Monterey County landscaping requirements.</p> <p>(PBI)</p>	1D. New property owners shall submit a signed affidavit acknowledging that they have read, understand, and agree to the Covenants, Codes, and Restrictions applying to the property, common areas, and conservation easement areas.	Property Owners	At transfer of property	
60	MM #2	<p>(Biological Resources) In order to protect the wetland areas and buffer areas during construction, the contractor shall install temporary fencing along the conservation easement area boundary prior to commencement of grading and construction activities. Four-foot fencing shall be fastened to t-post stakes placed at eight-foot intervals. Signs shall be installed to clearly designate sensitive habitat boundaries. Erosion control shall be installed to prevent washing of soil or materials into the wetland during construction. Grading shall occur within the easement only as allowed under a Section 404 permit. Soil compaction, parking of vehicles or heavy equipment, stockpiling of construction</p>	2A. The project proponent shall submit written and/or photographic verification to PBI of the appropriate installation of the exclusionary fencing. PBI shall review the evidence for adequacy of the installation and if necessary, visit the project site to verify. If the fencing is not adequate in the determination of PBI, work shall be stopped until the installation is determined satisfactory by PBI.	Responsible Contractor PBI	Prior to commencement of grading activities	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
		materials, and/or dumping of materials shall not be allowed within the conservation easement. The fencing shall remain in place during the entire construction period. If construction is to occur within the 100-foot buffer area, protective fencing shall be placed as near the boundary of the conservation easement as possible, and in no case within the alluvial basin or spring. Permanent open-rail fencing may be installed in lieu of the temporary fencing. (PBI)	2B. The project proponent shall submit a letter report and/or photographs to PBI documenting the ongoing maintenance and condition of the exclusionary fencing and protection of the fenced area. PBI shall review the reports for conformance with the methods outlined in the mitigation measure. Failure to submit a report showing that the proposed project is in conformance with the methods outlined in the mitigation measure shall cause all work to be stopped until conformance is confirmed and the report is received by the PBI. The project proponent shall be responsible for correcting any violations immediately. Frequency of the reporting may be decreased at the discretion of PBI	Responsible Contractor PBI	Weekly during construction activities	Start Date Week 1 Week 2 Week 3 Week 4 Week 5 Week 6 Week 7 Week 8 Week 9 Week 10 Week 11 Week 12
61	MM #3	(Biological Resources) In order to prevent the spread of invasive non-native species, the project proponent shall prepare a landscaping and re-vegetation plan to include the following requirements:	3A. The project proponent shall ensure the landscaping restrictions outlined in the mitigation measure are recorded on the deed..	Project Proponent PBI	Concurrent with recording of the final map	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
		<p>a. An eradication plan for plants listed in the County brochure <i>Invasive Plants in Monterey County</i> and currently growing on the project site.</p> <p>b. Use of plants listed in the County brochure <i>Invasive Plants in Monterey County</i> shall be prohibited;</p> <p>c. For the period between October 15 and the following April 15 each year un-vegetated soil areas and bare soil between newly installed plant materials shall be mulched, covered with jute netting, or seeded with a mix of seeds best suited for the climate and soil conditions, and native to the north Monterey County region; and;</p> <p>d. Plant materials used in landscaping, erosion control, or habitat restoration shall consist of plants that are included on the County brochure <i>Suggested Native Species Landscaping List</i> in the North County Coastal Zone or the County brochure <i>Drought Resistant Plants</i>, or other appropriate native California plants as identified by a qualified biologist or landscape architect,</p>	<p>3B. The project proponent shall submit landscape and re-vegetation plans to PBI for review and approval relative to restrictions outlined in the mitigation measure. The Monterey County Planning and Building Inspection Department shall review the plans, and approve the plans only if they are in conformance with the restrictions outlined in the mitigation measure.</p> <p>3C. The project proponent shall demonstrate that the applicable provisions of the approved landscape, re-vegetation, and erosion control plans have been implemented. PBI shall inspect the landscaping at the first inspection following completion of grading.</p>	<p>Project Proponent PBI</p> <p>Project Proponent PBI</p>	<p>Prior to approval of final improvement plans</p> <p>Prior to sign-off on a grading permit</p>	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
		except that lawns shall be allowed in accordance with Monterey County Code Section 18.44 and vegetable and flower gardens shall be allowed within fenced backyards. (PBI)	3D. The project proponent shall demonstrate that the applicable provisions of the approved landscape and re-vegetation plan have been implemented. PBI shall inspect the landscaping as provided by Monterey County ordinances.	Project Proponent PBI	For common areas prior to issuance of any occupanc y permit for the applicabl e phase For individua l lots prior to issuance of an occupanc y permit for each lot	
			3E. Until invasive plants are determined by PBI to have been eradicated, the community association shall prepare a report summarizing efforts to eradicate invasive plants and showing progress from the initial conditions and previous report.	Community Association PBI	Annually	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name date)
62	MM #4	(Biological Resources) In order to prevent the dumping of potentially harmful materials and to allow a prompt and effective response to any accidental spills occurring during construction, and to protect on-site and downstream water quality and habitat, the project proponent shall prepare a materials disposal and spill abatement plan and hold a pre-construction worker orientation meeting(s) to discuss the plan. Workers shall be informed of the importance of preventing discharge or spills of construction materials, and of the appropriate measures to take should a spill occur. The materials necessary for the initial response to a spill shall be kept at an easily accessible location on the project site. (PBI)	4A. The project proponent shall prepare a discharge and spill abatement plan for review and approval by PBI.	Project Proponent	Prior to issuance of a grading or building permit	
			4B. The contractor(s) shall submit to PBI written verification of the pre-construction worker orientation meeting(s), including the date, a list of attendees, and a summary of topics discussed. The project proponent shall submit written verification that all materials and equipment necessary for implementation of the spill abatement plan are on site and available for immediate use.	Responsible Contractor Project Proponent	Prior to commencement of grading or construction	
63	MM #5	(Biological Resources) In order to reduce contamination of downstream waters from urban pollutants and ensure that off-site flows of storm water do not exceed existing conditions, a registered civil engineer shall design the storm drainage system in accordance with Monterey County Code section 19.10.050, to include the following components: a. detention basin calculated subject to approval by Monterey County Water Resources Agency and the County Building Official, to detain water and	5A. A qualified engineer shall prepare final drainage system plans, including storm water detention calculations. The final drainage plans shall be subject to the review and approval of WRA and the County Building Official, based on conformance with the requirements of the mitigation measure.	Qualified Engineer	Prior to approval of final improvement plans	

Permit Cond. Number	Mittg. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
		<p>regulate the off site flow rate of storm water to pre-project rates during the 100-year design storm and to allow emptying within a 24-hour period following the design storm;</p> <p>b. grease/oil water and sediment separation in the farthest downstream catch basin on each line;</p> <p>c. open drainage conveyances incorporating vegetative filter strips or grassed swales to the extent feasible, rather than closed conveyances;</p> <p>d. drainage of roofs and patio areas directly to vegetated pervious areas to the extent feasible, and</p> <p>e. vegetative filter strips within the conservation easement for no less than 50 feet down gradient of the developed areas, including streets and residences, and the outfall of the detention basin.</p> <p>The basin should be designed to blend with the surrounding natural features, and have no or low fencing, open at the bottom to allow movement of amphibians. To the extent feasible, a series of secondary basins shall be designed below the primary basin to increase the potential for settling of contaminants, and allow additional detention capacity to account for previously increased storm flow contributions from the project applicant's up-gradient project. Maintenance of the storm drain system shall be the responsibility of the community association, which shall contract with a registered civil engineer to report on its condition to Monterey County Water Resources Agency annually.</p> <p>(WRA)</p>	<p>5B. The project proponent shall provide written evidence from a qualified engineer to demonstrate that the drainage plan has been implemented as applicable. WRA shall review and approve such evidence.</p>	<p>Qualified Engineer per Project Proponent WRA</p>	<p>Prior to sign-off on the grading permit</p>	
			<p>5C. The project proponent shall provide written evidence from a qualified engineer to demonstrate that the drainage improvements are functioning adequately under winter storm conditions. If the engineer observes less than adequate function of the drainage system, a report shall be prepared outlining the necessary steps to bring the drainage system into an adequate state, and those steps shall be completed within 30 days of the engineer's report.</p>	<p>Qualified Engineer per Project Proponent</p>	<p>In January of the first year following sign-off on the grading permit</p>	
			<p>5D. The project proponent shall provide written evidence from a qualified engineer to demonstrate that the drainage plan has been adequately implemented on each lot and on the remainder parcels and/or common areas. WRA shall review and approve such evidence.</p>	<p>Qualified Engineer per Project Proponent WRA</p>	<p>Prior to issuance of each occupancy permit</p>	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
			5E. The project proponent (or community association as successor) shall provide a report to WRA from a registered civil engineer, describing the condition and functionality of the storm drainage system and recommending any corrective actions. If any corrective actions are required, evidence of their completion shall be provided prior to October 15 of the same year.	Project Proponent or Community Association WRA	Annually , no later than June 30.	
64	MM #6	(Biological Resources) In order to avoid losses of special status species during construction or occupancy, the project proponent shall submit a Special Species Salvage and Protection Plan prepared by a qualified biologist in consultation with the California Department of Fish and Game and/or United States Fish and Wildlife Service subject to the review and approval of the Monterey County Planning and Building Inspection Department. Said Plan shall include the following: a. A qualified biologist shall conduct a pre-construction worker orientation to inform workers of the amphibian's protected status and facilitate identification of the potential presence of Santa Cruz long-toed salamander, California red-legged frog, California tiger salamander, and foothill yellow-legged frog.	6A. PBI shall review the plan for conformance with the requirements of the mitigation measure. Construction details for long-term protection of amphibians shall be included on project improvement plans. Final improvement plans shall not be approved until they conform to the requirements of the mitigation measure.	Qualified Biologist per Project Proponent PBI	Prior to approval of final improvement plans	
			6B. A qualified biologist shall submit written verification of the pre-construction worker orientation, including the date of the meeting, a list of attendees, and a summary of topics discussed, to PBI.	Qualified Biologist per Project Proponent PBI	Prior to commencement of grading	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
		b. Establish work boundaries c. Identify measures to be implemented to avoid loss of these species during construction activities including but not limited to: 1) Who to contact to remove individual amphibians from the project site prior to and during project grading and construction 2) How and where to relocate amphibians to nearby protected habitat or other suitable locations identified in the plan. 3) Appropriate measures to prevent amphibians from entering the site during construction activities. d. Reporting requirements to monitor the effectiveness of the Plan. e. Construction details to prevent entry of amphibians into private yards or onto streets, to reduce the potential for accidental take during occupancy of the proposed project. (PBI)	6C. The project applicant shall consult with a qualified biologist to develop and implement a Special Status Amphibian Salvage and Protection Plan, addressing Santa Cruz long-toed salamander, California red-legged frog, California tiger salamander, and foothill yellow-legged frog, to prevent death or injury to individual amphibians during grading or construction operations. Said Plan shall be completed in consultation with the California Department of Fish and Game and/or United States Fish and Wildlife Service, subject to the review and approval of PBI.	Qualified Biologist per Project Proponent CDFG and/or USFWS PBI	Prior to issuance of a grading permit	
			6D. The biologist shall provide (weekly, bi-weekly, monthly) reports regarding implementation of the Special Status Amphibian Salvage Plan including photographs of the site conditions to the Director of PBI for review and approval.	Qualified Biologist per Project Proponent PBI	Weekly, bi-weekly, or monthly during construction, as deemed appropriate by PBI	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
65	MM #7	(Geology and Soils) To address specific construction requirements for residences and streets in areas of loose surface soils, and in areas subject to seasonal or continuous high groundwater conditions, the applicant shall incorporate specific earthwork, engineering, and construction techniques appropriate for site conditions as presented in the final geologic report prepared by Nielsen and Associates, and the geotechnical investigation prepared by Haro Kasunich and Associates, and any subsequent engineering reports that may be prepared, into the improvement plans for the project. Of particular concern at the project site is the need to identify loose soils and replace them with engineered fill, and the need to identify dewatering requirements and long-term maintenance of the dewatering system. (PBI)	7A. The project proponent shall incorporate the specific earthwork, engineering, and construction recommendations presented in the final geologic report prepared by Nielsen and Associates the geotechnical report by Haro Kasunich and Associates into the project plans subject to review and approval by PBI. Grading and improvement plans shall be prepared by a qualified engineer.	Project Proponent PBI	Prior to approval of a grading permit	
			7B. The contractor shall keep a log of each grading or construction activity performed, including date and photographs, as necessary, noting earthwork and construction techniques employed.	Responsible Contractor	Daily during grading and construction activities	

<i>Permit Cond. Number</i>	<i>Mitig. Number</i>	<i>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</i>	<i>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</i>	<i>Responsible Party for Compliance</i>	<i>Timing</i>	<i>Verification of Compliance (name/date)</i>
			7C. The project proponent who shall submit to PBI a report prepared by a qualified engineer reviewing the implementation of geotechnical recommendations during the previous month. PBI shall review the reports for conformance with the recommendations outlined in the geotechnical report. Failure to submit a report showing that the proposed project is in conformance with the methods outlined in the geotechnical report shall cause all work to be stopped until conformance is confirmed and the report is received by the PBI.	Geotechnical Engineer per Project Proponent PBI	Monthly during grading and construction activities	
			7D. The project proponent shall submit to PBI a certified report from a qualified engineer documenting that each measure has been satisfactorily implemented at the subject lot.	Geotechnical Engineer per Project Proponent PBI	Prior to issuance of each occupancy permit	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
			7E. The community association shall submit a dewatering system maintenance report to the County Building Official. The report shall be prepared by a qualified engineer, and summarize the condition and operability of the system as well as present a short-term (1-year) and long-term (10-year) maintenance and financing program. The County Building Official shall take actions allowed by law against the community association if the report is not prepared or if deficiencies in the report are not promptly remedied.	Community Association Building Official	Annually	
66	MM #8	(Geology and Soils) In order to reduce erosion on the project site and risk of sedimentation downstream, the applicant shall prepare an erosion control plan and Storm Water Pollution Prevention Plan for site preparation, construction, and post-construction periods. The erosion control plan shall incorporate best management practices consistent with the requirements of the National Pollution Discharge Prevention System and Monterey County Ordinance 16.12. The erosion control plan may include, but not necessarily be limited to, the following components: a. Limit grading to between April 16 and October 14 in conformance with Monterey County Code Section 16.12.090; b. Limit disturbance of soils and vegetation removal to the minimum area necessary for access and	8A. The project proponent shall have an erosion control plan prepared by a qualified professional, including but not limited to the erosion control methods outlined in the mitigation measure. The erosion control plan shall be submitted to PBI for review and approval based on conformance with the methods outlined in the mitigation measure. 8B. The project proponent shall submit a letter report and/or photographs from a qualified soils engineer to PBI	Qualified soils engineer, or landscape architect per project proponent PBI Qualified Soils Engineer per Project	Prior to issuance of a grading permit Weekly between October 15 and	Start Date Week 1 Week 2 Week 3

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
		construction; c. Stake or flag grading limits in the field. The stakes or fencing shall remain in place until all construction activities are complete. Grading shall be limited within the conservation easement consistent with the restriction for that easement; d. Install an erosion control fence (i.e., sedimentation control fence) around the conservation easement area and along the southern boundary of the project site; e. Cover disturbed slopes with straw mulch or jute netting after seeding or planting; f. Stockpile topsoil from grading activities to be used at the project site for re-vegetation purposes; g. Cover or otherwise protect stockpiled soils during periods of rainfall; h. Prevent storm water flow directly down unprotected slopes, devoid of vegetation, by utilizing straw bales or diversion fencing; i. Ensure grading operations are observed and evaluated by a qualified soils engineer; j. Re-vegetate disturbed areas, especially slopes and areas where tree removal has occurred, with a mix of seeds best suited for the climate and soil conditions, and native to the north Monterey County region, or with plant materials listed in the	documenting the ongoing maintenance and the condition of the erosion control fencing and other erosion control measures. PBI shall review the reports for conformance with the methods outlined in the mitigation measure. Failure to submit a report showing that the proposed project is in conformance with the methods outlined in the mitigation measure shall cause all work to be stopped until conformance is confirmed and the report is received by PBI. The project proponent shall be responsible for correcting any violations immediately. Frequency of the reporting may be decreased at the discretion of PBI.	Proponent PBI	April 15	Week 4 Week 5 Week 6 Week 7 Week 8 Week 9 Week 10 Week 11 Week 12
			8C. The project proponent shall demonstrate to PBI that the applicable provisions of the approved landscape, re-vegetation, and erosion control plans have been implemented. The report shall briefly explain why measures not employed are not necessary or applicable.	Qualified Soils Engineer per Project Proponent PBI	Prior to sign-off on the grading permit	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
		<p>County brochure <i>Erosion Control Planting</i>, or other appropriate native California plants as identified by a qualified biologist or landscape architect; and</p> <p>k. Any disturbed areas within the conservation easement (i.e.: from placement or removal of the fencing) shall be re-vegetated with native grassland vegetation or other appropriate native vegetation as soon as feasibly possible after completion of construction activities.</p> <p>(PBI)</p>	8D. The project proponent shall submit to PBI a certified report from a qualified soils engineer regarding how each post-construction erosion control measure has been implemented at the subject lot.	Qualified Soils Engineer per Project Proponent PBI	Prior to issuance of each occupancy permit	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
67 See Cond #3'	MM #9	<p>(Hydrology and Water Quality). In order to reduce water use at the project site and interim groundwater overdraft effects, prior to issuance of the last six (6) building permits for the 26-unit project, the project proponent shall have a qualified engineer prepare a water use audit of houses already constructed within the project. The study shall determine the annual amount of water used by the first 20 units for which occupancy permits were issued, based on a 12 month period following issuance of occupancy permits, and adjusted for months when the houses were not actually occupied. The report shall compare actual water use to the projections in the hydrology report for the project (11.51 acre-feet for 26 houses). If actual water use exceeds the proportional amount projected in the hydrology report, an attainment plan shall be prepared to demonstrate how total project water usage will be maintained within projected quantities. The water use attainment plan may utilize the following measures or other effective measures:</p> <ul style="list-style-type: none"> a. provision of water-saving clothes washing machines and dishwashers in existing or remaining project houses; b. limitations on fixture unit counts in remaining houses; c. funding of low water use fixture retrofits in non-project houses within the north Monterey County hydrogeologic area; d. further limitations on landscaping; and e. installation of interior and exterior water meters to allow shut-off of irrigation water supply. <p>No additional building permits shall be issued unless the project proponent first demonstrates that water use for that house along with others built or permitted to date will remain within the water use projected in the hydrology report. (WRA)</p>	<p>Prior to the issuance of each permit that would represent more than the 20th permit if 26 units are approved, the project proponent shall have the water audit, (and if necessary, the attainment plan) prepared by a qualified engineer and submit the audit and report to the Monterey County Planning and Building Inspection Department for review and approval. No additional building permits shall be issued unless the project proponent demonstrates that water use for that house plus all others built or permitted in the project to date will remain within the water use projected in the hydrology report. If attainment measures are required, proof of implementation of those measures shall be submitted with construction plans.</p>	<p>Project Proponent PBI</p>	<p>Prior to approval of each building permit that would represent more than 75 percent of project units (the 20th permit if 26 units are approved)</p>	

68	MM #10	<p>(Transportation) In order to mitigate for impacts to congested roads and intersections, prior to filing the Final Subdivision Map the project proponent shall pay a pro-rata share of improvements necessary to maintain acceptable levels of service at the intersections and roadway segments affected by project traffic as listed below. These pro-rata share costs shall be based on the project's contribution as a share of General Plan build-out traffic volumes using the methodology used for Exhibit 3 of the Rancho Roberto Traffic Study, (Higgins Associates, June 14, 2000). In the event the Board of Supervisors adopts a regional traffic impact fee prior to project approval, the ad hoc fee for projects included in the regional impact fee program shall be counted towards and transferred to the regional traffic fee account. Fees to cover pro-rata shares of the following improvements shall be required:</p> <ul style="list-style-type: none"> a. U.S. Highway 101 and San Juan Road- Upgrade the intersection to an interchange (or the Prunedale U.S. Highway 101 Safety Improvement Program at the discretion of Caltrans. b. State Highway 1 and Salinas Road - Upgrade the intersection to an interchange as identified in the Route 1 Corridor Study – Castroville to Santa Cruz County (MCTC and AMBAG, 1985); c. Salinas Road (or Werner Road) and Elkhorn Road - Install a two-phase traffic signal as identified in the North County Circulation Study (Monterey County Public Works Department, October 1998); d. Elkhorn Road and Werner Road – Signalize intersection and lane improvements; e. Hall Road and Elkhorn Road - Signalize intersection. f. Hall Road and Willow Road - Provide an acceleration lane on the west leg for northbound 	<p>10A. The project proponent shall attach a declaration to the final map relating to the establishment of a traffic impact fee to be paid at building permit issuance.</p> <p>10B. The project proponent shall pay pro rata share traffic development impact fee and/or TAMC regional traffic impact fee to PBI, based on the proposed project's share of General Plan build-out traffic and current cost estimates of PW (See Condition 46).</p>	<p>Project Proponent</p> <p>Project Proponent PBI</p>	<p>Project Proponent Concurrent with the recording of the final map</p> <p>Prior to the issuance of a building permit for each house</p>	
----	--------	--	---	---	--	--

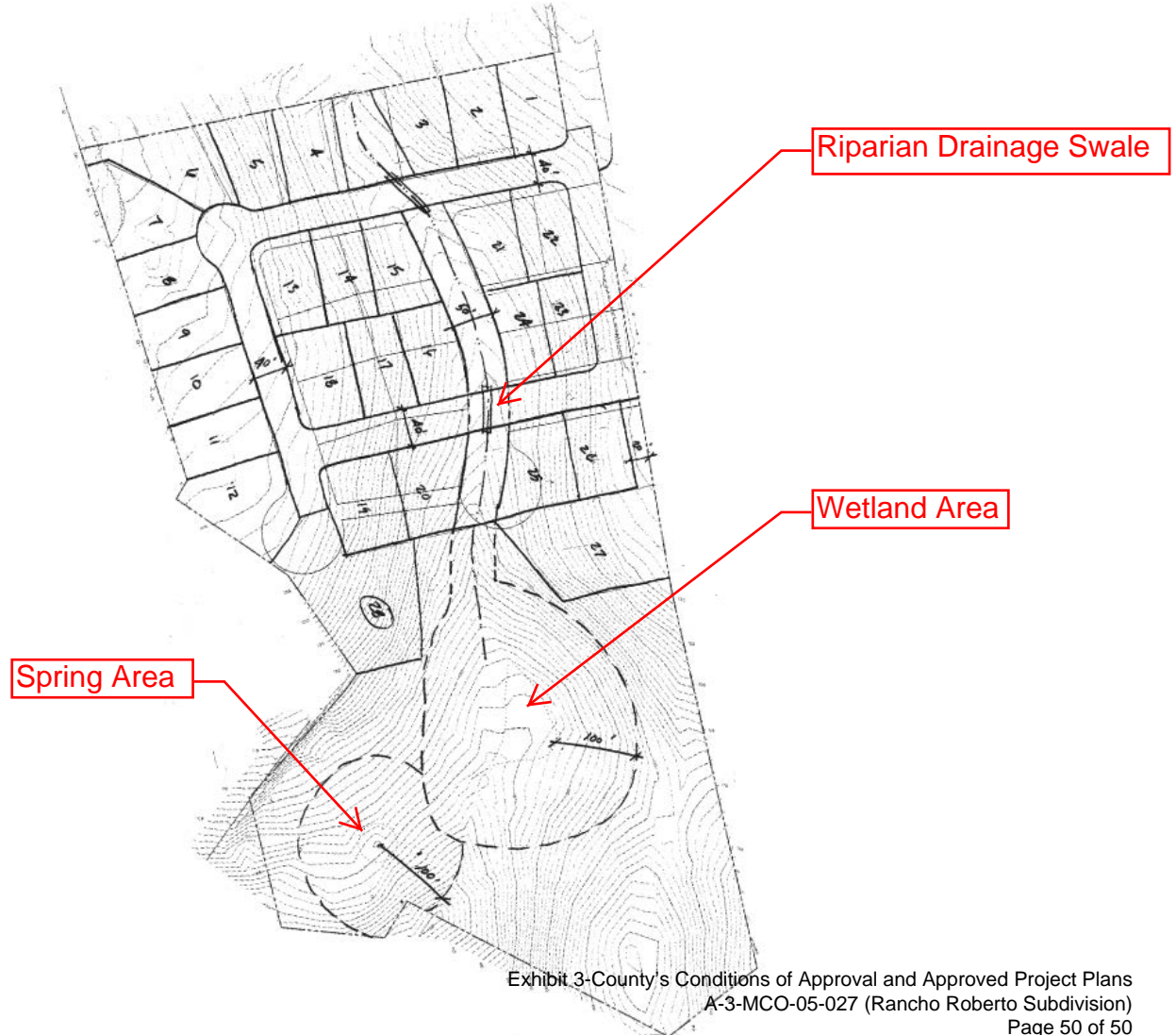
	<p>left-turns from Willow Road;</p> <p>g. Hall Road and Las Lomas Drive – Widen southbound approach to provide one exclusive left-turn lane and one exclusive right-turn lane as identified in the North County Circulation Study. Signalize intersection, as identified as a long-term improvement in the North County Circulation Study;</p> <p>h. Hall Road and Sill Road - Widen the southbound approach to provide two turn lanes as identified the North County Circulation Study. Signalize intersection, as identified as a long-term improvement in the North County Circulation Study;</p> <p>i. Hall Road and San Miguel Canyon Road - Addition of a traffic signal as identified in the North County Circulation Study;</p> <p>j. San Miguel Canyon Road and Echo Valley Road - Addition of an acceleration lane for westbound left-turns;</p> <p>k. San Miguel Canyon Road and Castroville Boulevard - Addition of an acceleration lane for eastbound left-turns. Signalize intersection, as identified as a long-term improvement in the North County Circulation Study;</p> <p>l. San Miguel Canyon Road and Prunedale North Road (or Langely Canyon Road) - Widen and/or channelize and/or signalize;</p> <p>m. San Miguel Canyon Road between U. S. Highway 101 and Hall Road – Widen to four lanes;</p> <p>n. Hall Road between Elkhorn Road and San Miguel Canyon Road – Widen to four lanes;</p> <p>o. Elkhorn Road between Salinas Road and Hall Road – Widen to four lanes;</p> <p>p. Salinas Road between State Highway 1 and Pajaro – Widen to four lanes; and</p>				
--	--	--	--	--	--

		q. State Highway 1 between Salinas Road and State Highway 183 – Widen to four lanes (PW)				
69	MM #11	(Transportation) In order to provide adequate emergency ingress and egress, the final map shall show a minimum 36-foot wide road from Fruitland Avenue to the beginning of the easterly cul-de-sac, and a minimum 20-foot wide roadway with parking prohibited, connecting the end of each cul-de-sac. If a loop street design is used, the loop portion shall have a minimum 30-foot wide roadway. (PW)	The project proponent shall prepare the final map to indicate the necessary emergency access provisions. PW shall review the final map for conformance with the emergency access provisions and forward its determination regarding conformance with the required emergency access to the Planning Commission.	Qualified Engineer per Project Proponent PW	Prior to approval of the final map	

70	MM #12	(Air Quality) In order to reduce construction-related dust emissions, the project proponent shall ensure that the project plans contain a dust control plan subject to review and approval by the Monterey County Planning and Building Inspection Department. The dust control plan shall be submitted prior to issuance of a grading permit, and shall include all or some of the following measures, as necessary to adequately control dust. If the area of grading exceeds 2.2 acres per day during earthmoving efforts (grading and excavation) or 8.1 acres per day with minimal earthmoving (finish grading) the following measure shall be employed, unless direct emissions of PM10 do not exceed MBUAPCD's threshold of significance based on MBUAPCD approved dispersion modeling; (PBI) a. Water all active portions of the construction site at least twice daily. Frequency should be based on the type of operation, soil, and wind exposure; b. Prohibit all grading activities during periods of high wind (over 15 miles per hour);	12A. The project proponent shall submit a dust control plan for review and approval of PBI.	Project Proponent PBI	Prior to issuance of a grading permit	
			12B. The contractor shall appoint a qualified site monitor to ensure that the dust control plan is implemented. Implementation shall be verified by PBI inspectors during grading operations.	Responsible Contractor PBI	Prior to commencement of grading activities	
			12C. The contractor shall keep a certified log of grading activity including date and photographs, as necessary. Monthly reports shall be submitted to PBI. Failure to submit a report, or failure to comply with the requirements of the mitigation measure, shall cause all work to be stopped	Responsible Contractor PBI	Monthly during grading activities	Start Date
						Month 1
						Month 2
						Month 3
						Month 4
						Month 5
						Month 6

	<ul style="list-style-type: none"> c. Apply chemical soil stabilizers on inactive construction areas (disturbed lands within construction projects that are unused for at least four consecutive days); d. Apply non-toxic binders (e.g. latex acrylic co-polymer) to exposed areas after cut and fill operations and hydroseed area; e. Haul trucks shall maintain at least 2'0" of freeboard; f. Cover all trucks hauling dirt, sand, or loose materials; g. Plant tree windbreaks on the windward perimeter of construction project if adjacent to open land; h. Plant vegetative ground cover in disturbed areas as soon as possible; i. Cover inactive storage piles; j. Install wheel washers at the entrance to construction sites for all exiting trucks; k. Pave all roads on construction sites; l. Sweep streets if visible soil material is carried out from the construction site; and m. Post a publicly visible sign that specifies the telephone number of the person to contract regarding dust complaints. This person shall respond to complaints and take corrective action within 48 hours. The phone number of the Monterey Bay Unified Air Pollution Control District shall be visible to ensure compliance with Rule 402 (Nuisance). 	until the report is received and approved by PBI.			Month 7
					Month 8
					Month 9
					Month 10
					Month 11
					Month 12
					Month 13
					Month 14
					Month 15
					Month 16

County-Approved Site Plan/Lot Configuration



RECEIVED

APR 11 2005

Before the Board of Supervisors in and for the
County of Monterey, State of California

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Resolution No. 05-055

Approving a Combined Development Permit consisting of: a Coastal Development Permit and Standard Subdivision to allow for the division of one 13.3-acre parcel into 26 residential lots on plus one non-developable remainder parcel; and a Coastal Development Permit to allow for the demolition of a single family dwelling, a barn and several other accessory buildings. The site is located west of Fruitland Avenue at 66 Fruitland Avenue (Assessor's Parcel Number 117-131-032-000), North County, Coastal Zone.

**FINAL LOCAL
ACTION NOTICE**

REFERENCE # 3-MCO-05-118

APPEAL PERIOD 4/13-4/25/05

The above-captioned matter came on for public hearing before the Board of Supervisors of the County of Monterey on March 1, 2005. Having considered all the written and documentary information submitted, the staff reports, oral testimony, and other evidence presented before the Board of Supervisors, the Board of Supervisors hereby finds and decides as follows:

FINDINGS OF FACT

1. **FINDING – CONSISTENCY:** The subject Combined Development Permit Combined Development Permit (PLN980685/Bugalski), a.k.a. Rancho Roberto Subdivision has been processed in accordance with all applicable requirements.

EVIDENCE:

- (a) On May 15, 1999, the applicant, Robert Bulgalsaki, filed an application for a Combined Development Permit requesting entitlements to subdivide one 13.3-acre parcel into 26 lots ranging in size from 6,649 square feet to 10,765 square feet plus a remainder parcel of 6.61 acres and also to demolish a single family dwelling, a barn and several other accessory buildings.
- (b) The project site is located west of Fruitland Avenue at 66 Fruitland Avenue (Assessor's Parcel Number 117-131-032-000), North County, Coastal Zone, in the County of Monterey (the property).
- (c) **LUAC.** On December 6, 1999, the North County (Coastal) Land Use Advisory Committee reviewed the subject Combined Development Permit (PLN680685) and voted 4-2 to recommend approval.
- (d) **Subdivision Committee.** The Subdivision Committee continued this item from April 27, 2000 in order to resolve traffic issues. On May 25, 2000, the Subdivision Committee held a public hearing and voted 5-0 (with one absent) to recommend that the Planning Commission adopt a Negative Declaration and

approve the Combined Development Permit PLN980685, subject to 61 conditions (Subdivision Committee Resolution No. 2010).

- (e) Planning Commission. The application for Rancho Roberto Combined Development Permit (PLN980685) came for consideration before the Planning Commission at public hearings on July 12 and August 30, 2000. On July 12, 2000, the Planning Commission adopted a resolution of intent to deny the proposed project and on August 30, 2000 adopted a resolution, with findings and evidence recommending denial of this Combined Development Permit to the Board of Supervisors (Planning Commission Resolution No. 000047).
- (f) Board of Supervisors. Pursuant to the provisions of the Local Coastal Program and other applicable laws and regulations, the Monterey County Board of Supervisors heard and considered this application on October 3 and 31, 2000. On October 3, 2000 the Board continued the public hearing at the request of the applicant's representative. This item was continued to October 31, 2000 where the Board, after conducting a public hearing, declined to adopt a Negative Declaration and directed staff to prepare an Environmental Impact Report (EIR). The application was continued until such time as a more thorough level of environmental review has been completed.
- (g) CEQA. A Draft EIR was prepared and released for public review and comment on July 6, 2004. The minimum 45-day comment period was extended through September 3, 2004 in order to allow added time for responsible agencies to comment on the draft document. The proposed project (PLN980685), including all permits and approvals, will not have significant adverse impacts on the environment. An Environmental Impact Report (EIR) and a Mitigation Monitoring Plan have been prepared and are on file in the Department of Planning and Building Inspection. All mitigation measures identified in the EIR and all project changes required to avoid significant effects on the environment have been incorporated into the approved project or are made conditions of approval. Potential environmental effects have been studied, and there is no substantial evidence in the record, as a whole, that supports a fair argument that the project, as designed, may have a significant effect on the environment. Board action to certify the Final EIR was taken in a separate resolution (Resolution #: 05-045) for which the findings therefore are incorporated herein by reference.
- (h) Board of Supervisors. On March 1, 2005, the Board heard and considered analysis as well as responses to comments presented in a Final EIR prepared for the subject project. Having considered all written and documentary information submitted, the staff reports, oral testimony, and other evidence presented before the Board of Supervisors, the Board now renders its decision to approve an alternative version of the Combined Development Permit (PLN980685/Rancho Roberto), that conditions the design to use the clustered development and affordable housing alternatives evaluated in the EIR as a way to better meet policies and reduce potential environmental impacts. The project would be limited to 20 market rate units of which a maximum of 16 (plus at least four deed restricted inclusionary (moderate income units) could be developed in Phase I. Phase II (at least two Workforce II housing units and a maximum of 4 market rate units in that sequence) Phase II could not take place until after Phase I and completing a water audit to evaluate the level of water use compared to the estimated water use in the EIR. The 26 units approved under this permit would be

the maximum allowed for the entire 13.3 acre site so no additional units could be developed on any remainder parcel.

2. **FINDING - COMPLY WITH REGULATIONS** - The Project, as conditioned is consistent with applicable plans and policies of the North County Land Use Plan (LUP), Coastal Implementation Plan, Part 2 (CIP); Monterey County Subdivision Ordinance (Title 19), Monterey County Grading Ordinance (Title 16), and the Monterey County Zoning Ordinance (Title 20/Coastal Implementation Plan, Part 1) which designates this area as appropriate for medium density residential development.

EVIDENCE:

- (a) **Project Site.** The property is located on the east side of Oak Road south of the intersection of Willow Road and Hall Road, which is the North County Coastal area of the Coastal Zone.
- (b) **Regulations.** The Planning and Building Inspection staff reviewed the project, as contained in the application and accompanying materials, for conformity with:
 - North County Coastal Land Use Area Plan.
 - Coastal Implementation Plan (CIP), Part 2 (Chapter 20.144 MCC).
 - Monterey County Coastal Subdivision Ordinance (Title 19).
 - Chapter 20.12 of the Monterey County Zoning Ordinance regulations for development in the Medium Density Residential zone.
 - Chapter 20.70 of the Monterey County Zoning Ordinance regulations for Coastal Development Permits.
 - Chapter 18.40 of the Monterey County Codes relative to Inclusionary Housing (Ordinance 04185).
 - Monterey County Coastal Subdivision Ordinance (Title 19)
 - Chapter 16.08 Monterey County Grading Ordinance
 - Monterey County Water Resources Agency Ordinance No. 3932 pertaining to mandatory water conservation regulations
- (c) **Existing Conditions.** The existing lot has a total of 13.3 acres and one single family residence with accessory structures located along the western side of the property. The existing structures have all necessary public facilities and is served by an on-site well.
- (d) **Land Use Plan.** The North County, Local Coastal Program, Land Use Plan designates the northern 6.69 acres of the project site as Medium Density Residential (1-4 units/acre) and the southern 6.61 acres of the project site is designated as Low Density Residential (2.5-10 acre/unit).
- (e) **Zoning.** The parcel has a split zoning designation with "MDR/4(CZ)" Medium Density Residential (4 units per acre), Coastal Zone on the northern 6.69 acres and "LDR/2.5(CZ)" Low Density Residential (2.5 acres per unit), Coastal Zone on the southern 6.61 acres.
- (f) **Minimum Lot Size.** The minimum building site that may be created in the MDR zone is 6,000 square feet unless otherwise approved as part of a clustered development (Section 20.12.060.A CIP). The minimum building site that may be created in the LDR zone is one acre unless otherwise approved as part of a clustered development (Section 20.14.060.A CIP).
- (g) **Visual Resources.** Chapter 2.2 of the LUP establishes policies to protect views by limiting development of hills, slopes and ridgelines. A visual survey of the area

determined that the northern portion of the project site is not located in an area that is visible from public vantage points (Policies 2.2.2.1 and 2.2.2.4 LUP). This site generally slopes from east to west and west to east with a north-south swale running down the center. As designed, the site would be graded relatively flat with an underground culvert to carry drainage from north to south. The alternative design adopted by the County includes a clustered design that retains the swale and utilizes natural topography for the detention pond in order to minimize grading (Policy 2.2.3.4 LUP).

- (h) Environmentally Sensitive Habitat Areas (ESHA). Policies in Chapter 2.3 of the LUP are directed at maintaining, protecting, and where possible enhancing sensitive habitats. A biological assessment prepared for this project identified a coastal wetland within the southern portion of the project site (Policy 2.3.2.5 LUP). This wetland is fed by a nearby spring and a swale that carries waters received from agricultural and residential development north of the site to the Elkhorn Slough a short distance south of the site. As designed, the proposed project alternative develops the northern portion and retains the southern portion as a remainder lot. A detention pond is designed to use existing topography and dam the swale below the existing wetland. Although this constitutes development within 100 feet of ESHA (Policy 2.3.3.B.4 LUP), retaining the swale and creating a detention pond (Policies 2.3.2.8 and 2.3.3.B.2 LUP) would enhance the biological value of this resource (Policies 2.3.2.2, 2.3.2.3, and 2.3.2.4 LUP). As conditioned, the area around the wetland will remain in open space with a conservation easement recorded (Policies 2.3.2.2, 2.3.2.3, and 2.3.2.6 LUP) over the southern portion of the site to ensure protection of this habitat and to help filter out pollutants before water is released downstream into Elkhorn Slough (Policies, 2.3.3.B.5, 2.3.3.B.8, and 2.3.3.C.1&2 LUP). The proposed project alternative incorporates a design that addresses non-point discharge and erosion before runoff reaches sensitive habitat (e.g. Elkhorn Slough).
- (i) Water Resources. The North County Coastal LUP establishes a building limit based on a known overdraft of aquifers in the North County area. Policies are designed to limit development in order to avoid impact to the already over-drafted conditions. As of December 2003, the County determined that deducting the development potential of this project from the total remaining balance would not exceed the maximum buildout for the North County coastal area. The County selects an EIR alternative that limits development of market rate units to 20 and phases the project based on water balance limits identified in the EIR. An additional six (6) affordable units would be allowed above this balance since State Law for Housing elements identifies affordable housing as the highest priority. See **Finding 7**.
- (j) Agriculture. Agriculture is a priority use in the Coastal Act and Chapter 2.6 establishes policies that address this resource. Although the project site was historically used for limited grazing operations, grazing is not a coastal dependant agricultural use (requires mild coastal climate) and development of the surrounding area has limited the potential for such continued agricultural use. In addition, the slopes of the property would restrict potential use for crop production (Policies 2.6.2.4 and 2.6.3.8 LUP). The Medium Density Residential land use designation of the area proposed for development is an indication that the certified Coastal Plan for North County determined that this land is not suitable for agricultural uses (Policy 2.6.3.1 LUP).

- (k) Land Use. A Land Use Map was included as part of the LUP (Chapter 4.3) adopted to establish allowed land uses. The intent is for new development to be consistent with the protection of the area's agricultural, natural, and water resources (Key Policy 4.3.4 LUP). The northern portion of the property is designated for medium density residential development, four units per acre and the Pajaro/Sunny Mesa Community Services District has issued a "can and will" serve letter for both water and sewer services (Policies 4.3.5.2 and 4.3.6.D.2 LUP, Sections 19.03.015.L and 19.07.020.K Monterey County Codes). The County approves a clustered design including an open swale with the proposed detention pond system in order to balance the site with current hydrological conditions (Policies 4.3.5.7 and 4.3.6.D.1 LUP and Section 20.144.070.E.11.b CIP). Also see **Finding 10**.
- (l) Traffic/Services. Many of the major roads in North County are experiencing significant congestion problems (below LOS C) and the proposed project would generate an estimated 300 vehicle trips including 30 peak hour trips on North County roads. The Transportation Agency of Monterey County (TAMC) in conjunction with the State Department of Transportation (Caltrans) and the County Department of Public Works has established a program to address the deficiencies (Key Policy 3.1.1 LUP). However, the cost for improvements far exceeds available financing. CEQA guidelines Section 15130(a)(3) allow for an applicant to pay a fair share fee towards projects that will address the potential project impacts and help fund necessary road improvements.
- (m) Circulation. The proposed design consists of extending Fruitland Avenue into two long cul-de-sacs. One of the cul-de-sacs would be built over the existing swale and would contain a culvert under the entire length of road. The County's adopted alternative for clustered development includes creating a circular design for better traffic flow and emergency access (Policy 3.1.2.6 LUP). This design also allows retaining an open swale with short segments of culverts where the road crosses the swale allowing for less infrastructure maintenance.
- (n) Public Access. See **Finding 5**.
- (o) Inclusionary Housing. See **Finding 10**.
- (p) LUAC. On December 6, 1999, the North County Coastal Land Use Advisory Committee voted 5 to 0 to recommend approval of the project as proposed. This Committee generally found that the project meets the minimum requirements.
- (q) Public Testimony. From December 1999 to October 2000 this project was processed through the North County Coastal Land Use Advisory Committee, Subdivision Committee, Planning Commission and Board of Supervisors. A Draft EIR was circulated for comment from July 6 to September 3, 2004. All comments received have been considered in the evaluation and recommendation presented at a public hearing before the Board of Supervisors on March 1, 2005.
- (r) The application, plans, and support materials submitted by the project applicant to the Monterey County Planning and Building Inspection Department for the proposed development, found in Project File PLN980685.

3. **FINDING - SITE SUITABILITY**. The site is suitable for the use proposed.

EVIDENCE:

- (a) Agency Review. The project has been reviewed for suitability by staff from Planning and Building Inspection, Public Works Department, Water Resources Agency, Environmental Health Division, Parks and Recreation Department, and

North County Fire Protection District. There has been no indication from these agencies that the site is not suitable for the proposed development. Recommended conditions have been incorporated.

- (b) Professional Reports. Technical reports by outside archaeology, biology, traffic, geology and geotechnical consultants indicate that there are no physical or environmental constraints that would indicate the site is not suitable for the use proposed (Policy 4.3.6.D.1 LUP). Findings and recommendations from the reports prepared by these professionals have been incorporated into the analysis and conditions for restoration and impact mitigation. All technical reports are in Project File PLN980685.
- (c) Site Inspection. Project planners conducted on-site inspections. The proposed improvements will not present an unsightly appearance, impair the desirability of residences in the same area, limit the opportunity to obtain the optimum use and value of land improvements or impair the desirability of living conditions of the same or adjacent area.
- (d) Public Facilities. Necessary public facilities are available and will be provided. The Pajaro/Sunny Mesa Community Services District provided a letter that the District can and will serve the site with water and sewer service.
- (e) Project File. The application, plans, photographs and support materials submitted by the project applicant to the Monterey county Planning and Building Inspection Department for the proposed development, found in the project file (PLN980685).

4. **FINDING - NO VIOLATIONS.** The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision and any other applicable provisions of the County's zoning ordinance. No violations exist on the property.

EVIDENCE:

- (a) Staff verification of the Monterey County Planning and Building Inspection Department records indicates that no violations exist on the subject property.
- (b) Zoning violation abatement cost, if any, have been paid.

5. **FINDING - PUBLIC ACCESS.** The project is in conformance with the public access and public recreation policies of the Coastal Act and Local Coastal Program, and does not interfere with any form of historic public use or trust rights (see 20.70.050.B.4). No access is required as part of the project as no substantial adverse impact on access, either individually or cumulatively, as described in Section 20.70.050.B.4.c of the Monterey County Coastal Implementation Plan, can be demonstrated.

EVIDENCE:

- (a) Figure 6 in the North County Land Use Plan shows Salinas Road to Hall Road to be part of a proposed trail system. The subject property is not described as an area where the Local Coastal Program requires public access.
- (b) No evidence or documentation has been submitted or found showing the existence of historic public use or trust rights over this property.
- (c) The project is in conformance with the public access and public recreation policies of the Coastal Act and Local Coastal Program, and does not interfere with any form of historic public use or trust rights (Section 20.144.150 CIP). No access is required as part of the project as no substantial adverse impact on access, either individually or cumulatively, as described in Section 20.144.150.B of the Monterey County Coastal Implementation Plan, can be demonstrated.

- (d) An on-site inspection of the subject parcel by the project planner pursuant to Section 20.144.030 of the North County Coastal Implementation Plan determined that the area of the proposed subdivision would not be visible from the public view shed, nor result in any potential for ridgeline development.

6. **FINDING - HEALTH AND SAFETY.** The establishment, maintenance or operation of the project applied for will not under the circumstances of this particular case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.

EVIDENCE:

- (a) **Agency Review.** The project as described in the application and accompanying materials was reviewed by the Department of Planning and Building Inspection, Environmental Health Division, Public Works Department, applicable Fire Department, and Water Resources Agency. The respective departments have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood; or the County in general. There has been no indication from these agencies that the site is not suitable for the proposed development.
- (b) **Professional Reports.** Technical reports have been provided by consulting geotechnical engineers and geologists with recommended conditions and modifications that provide additional assurances regarding project safety. These reports are in the Project File PLN980685.

7. **FINDING - WATER IMPACT/NORTH COUNTY:** There presently exists in the North Monterey County area a serious overdraft in the aquifers, together with seawater intrusion problems in the North County Coastal Zone and nitrate pollution problems throughout the area. The North County Land Use Plan, Coastal Implementation Plan, and Area Plan recognize the existence of these problems and direct that studies be made to determine the safe-yield of the North Monterey County aquifers and that procedures thereafter be adopted to manage development in the area so as to minimize adverse effects on the aquifers and preserve them as viable sources of water for human consumption.

EVIDENCE:

- (a) The project site is currently served by an on-site well located within the Springfield Terrace sub-basin that is part of the larger Pajaro basin. Springfield Terrace is a sub-basin that has experienced significant seawater intrusion that has affected water quality in the area. This project would remove the well from Springfield Terrace and obtain water from a public utility (Pajaro Sunny Mesa) that draws water from the Highlands North sub-basin.
- (b) The North Monterey County Comprehensive Water Resources Management Plan (January 2002) identifies that there is 912,247 acre feet of water in storage in the Highlands North sub-basin. There currently is no seawater intrusion in this subbasin and it is unlikely that seawater intrusion will occur in the future. With a current demand of 5,612 acre feet of water per year, there would be an available supply for 162.3 years. If the worst-case scenario of total buildout were reached, there would be a supply available for 119 years. State laws (SB610 and SB221) that apply to larger residential development projects require proof of an available

supply of water for at least 20 years. Using this basis as a standard to define long-term supply, the County finds that there is a long-term supply of water available for this project.

- (c) Chapter 2.5 of the North County LUP establishes policies to address water availability, water quality, erosion and sediment in order to protect water quality and to preserve a sustainable water supply (Key Policy 2.5.1 LUP). Since the property is currently designated for residential use under the certified LUP and the proposed alternative would not increase water use, there would be no impact to agricultural land/uses (Policies 2.5.3.A.1 and 4.3.5.4 LUP). Each lot except the remainder lot will have one residential unit with one water connection. As proposed, the remainder lot has potential for future subdivision into two lots. Consideration of new uses that demand water will be required to provide proof of a long-term water supply for review and consideration of the County.
- (d) A hydrologic report was prepared by Todd Engineers in order to evaluate the project impacts on the North County water supply (Section 20.144.070.D CIP). The Todd Engineers study (completed December 3, 2002) concludes that the proposed 26-lot project would result in an increase in groundwater withdrawal and a decrease in net recharge ranging from 5.18 acre feet per year (current project conditions) to 1.66 acre feet per year (based upon wastewater recycling). This increase in the overdraft equates to about 0.0013 percent of the total usable supply. Water calculations for this project are based on an estimated product size that may vary at the time it is developed depending on the housing market. The EIR indicates that the proposed project (26 market rate lots) would result in a net intensification between 1.5-4.5 AFY.
- (e) The North County LUP acknowledges an overdraft condition of the groundwater basin. As a result, Policy 2.5.3.A.2 LUP establishes a safe-yield limit of 50% of the potential buildout remaining at the time the LUP was adopted/certified (2,043 unit/lots). As of December 2003, County records accounted for a total of 583 units/lots remaining that could potentially be developed in the North County area. All of the pending projects known at this time account for an additional 328 units (including "pipeline" projects such as Sunridge Views, Rancho Roberto, Rancho Los Robles, Pajaro Valley Golf Course), leaving a maximum of 255 units before reaching the buildout limit. Although Policy 2.5.3.A.2 allows for reducing this limit based on new information (defined in the LUP as "definitive water studies"), a LUP amendment would be required in order to adjust this limit.
- (f) The EIR prepared for this project establishes 20 lots as the limit at which point the project is in balance for water used and water returned (Policy 4.3.3 LUP). This limit is based on implementation of a recycling program, and is reduced to 17 units without said program. A letter from the Pajaro Valley Water Management Agency (PVWMA) dated January 21, 2005 as part of EIR process concludes that recycling can be counted as a benefit for this project. The project selected by the County phases the project and reduces the number of market rate units to within a level that would balance existing and proposed water use levels (Policies 2.5.2.3, 4.3.5.7 and 4.3.6.D.5 LUP). **Mitigation Measure 9/Condition 67 and Condition 3** require phasing the project to evaluate the amount of water use in relation to what is forecast for this project.
- (g) CEQA guidelines Section 15130(a)(3) allow for an applicant to pay a fair share fee towards projects that will address the potential project impacts (Policy 2.5.4.1

LUP). Although the Pajaro Valley Water Management District also has plans for projects to improve the water supply, they have not secured all the necessary approvals to be considered a viable project under CEQA. Therefore, the County is implementing a phasing strategy that limits initial development to 20 units to retain a hydrologic balance of the site (Policies 2.5.3.B.6 and 2.5.4.2 LUP, Section 20.144.070.E.11 CIP). In addition, studies have shown that affordable units use less water than market rate units. A water audit required following completion of Phase I will evaluate these conditions (**Conditions 3 and 67**).

- (h) Monterey County Codes (MCC) include a North Monterey County Water Impact Fee (Chapter 18.51 MCC) that would apply to the proposed project. Under the ordinances in effect at the time the proposed project application was deemed complete, a fee is required based on the total number of new lots/units created in order to off-set potential water supply impacts. Credit may be allowed for costs associated with completing a hydrologic study. This fee cannot be utilized in the coastal zone to address long-term sustainable supply since this requirement was not included in the LCP (as amended). However, such a fee can be required separately by the County, as applicable, and is consistent with CEQA.
- (i) This project would remove one septic system and operate using connections to a sanitary sewer (Policies 2.5.2.5, 2.5.3.B.3 and 2.5.3.B.5 LUP). The County's adopted alternative to retain an open swale feeding into the detention pond reduces potential for pollutants and sediment from the project site as well as agricultural uses north of the site to reach the Elkhorn Slough (Policies 2.5.2.1, 2.5.2.2, and 2.5.3.B.2 LUP). Table 1 in the North County LUP indicates that Sub-watershed 20 where the project is located is not a critical erosion area (Policy 2.5.3.C LUP).
- (j) **Conditions 25-28** have been incorporated to meet Ordinance 3932 of Monterey County Water Resource Agency's Mandatory Water Conservation Regulations.
- (k) Materials in project file PLN980685.

8. **FINDING –SUBDIVISION.** Section 66474 of the California Government Code (Subdivision Map Act) and Section 19.03.025 (Title 19-Subdivision Ordinance, Coastal Zone) of the Monterey County Codes requires that a request for subdivision be denied if any of the following findings are made:

- That the proposed map is not consistent with the applicable general plan, area plan, coastal land use plan or specific plan.
- That the design or improvement of the proposed subdivision is not consistent with general plan, area plan, coastal land use plan or specific plan.
- That the site is not physically suitable for the type of development.
- That the site is not physically suitable for the proposed density of development.
- That the design of the subdivision or the proposed improvements is likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- That the design of the subdivision or type of improvements is likely to cause serious public health problems.
- That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision.

Planning staff has analyzed the project against the findings for denial outlined in this section.

EVIDENCE:

- (a) The map and its design and improvements are consistent with the North County Land Use Plan and Coastal Implementation Plan. No specific plan has been prepared for this area.
- (b) The site has been determined to be physically suitable for the type and density of development (**Finding 3**). The property provides for adequate building sites as evidenced by the application materials submitted for the site. The maximum number of lots is limited to 26 taking into account the entire 13.3 acre site and depending on a water use audit for any development above 20 units (**Condition 3**). A remainder lot for the southern portion of the property would have no further development potential.
- (c) The design and improvements are not likely to cause substantial environmental damage, substantially and avoidably injure fish or wildlife or their habitat, or cause serious public health problems as demonstrated in the EIR certified and adopted for this project by separate Board resolution. An EIR was prepared for Monterey County Planning and Building Inspection Department by EMC Planning Group, Inc. dated June 28, 2004. **Mitigation Measure 10** as well as **Conditions 45 and 46** have been developed and incorporated requiring the applicant to pay a fee to cover project and cumulative traffic improvements. According to CEQA Guidelines section 15130(a)(3), payment of a fair share fee towards measures necessary to mitigate cumulative impact is considered to reduce the project's contribution to the cumulative impact a less than significant level.
- (d) Conditions have been incorporated to meet Section 20.144.030.B.9 (underground utilities) of the Coastal Implementation Plan to ensure that the public health, safety, and welfare is preserved and protected. The project is in a very high fire hazard zone as found in the resource maps of the North County Land Use Plan. The North Monterey County Fire Protection District has recommended conditions, which have been incorporated, for development in the very high fire hazard area, which will reduce potential fire risks associated with development of the project. The project will connect to a sanitary sewer system and conditions have been incorporated to meet Environmental Health Division's requirements for sanitary sewer. The Monterey County Coastal Implementation Plan designates this site as a "critical" erosion area. **Condition 20** has been incorporated requiring a drainage plan, subject to the approval of the Water Resources Agency. See also **Finding 6**.
- (e) The design and improvements will not conflict with easements for access through or use of the property within the proposed subdivision. Planning staff reviewed the Title Report and applicable recorded documents to identify all easements and ensure that the project does not conflict with existing easements. Conditions have been incorporated to meet Section 19.12.010 (Recreation Ordinance) of the Monterey County Code to meet recreation requirements. Also see **Finding 5**.
- (f) The application, plans, and support materials submitted by the project applicant to the Monterey County Planning and Building Inspection Department for the proposed development, found in the project file.

9. **FINDING - GRADING PERMIT.** The proposed grading is in conformance with Section 16.08.060 of Chapter 16.08 of the Monterey Code.

EVIDENCE:

- (a) The application, plans, and support materials submitted by the project applicant to the Monterey County Planning and Building Inspection Department for the proposed development, found in Project File PLN980685.
- (b) DEIR prepared for Monterey County Planning and Building Inspection Department by EMC Planning Group dated June 28, 2004.

10. **FINDING -HOUSING NEEDS.** That in recommending approval of the tentative map, the decision-making body has balanced the housing needs of the County against the public service needs of its residents and available fiscal and environmental resources.

EVIDENCE:

- (a) There is one existing residence located on the subject property. The proposed project consists of dividing one existing lot of record into 26 lots that could be developed with one market rate unit on each new lot plus one remainder lot that could later develop up to two additional market rate units. The medium density residential designation requires developing residential units with a range of prices (Policy 4.3.6.D.2 LUP). Although the timing when the project was deemed complete allows the applicant to pay an in-lieu fee rather than build affordable units on site (Chapter 18.40 Monterey County Codes), affordable housing is a priority of the highest order both at the State and local level (Government Code Section 65580.a). As such, the County determines that any units above the baseline 20 units identified as the hydrologic balance should be deed restricted as affordable units and that said increase should not exceed the 26 units evaluated as part of the EIR. The alternative project adopted by the County includes at least four units in Phase I that qualify as moderate income units under the County's Inclusionary Housing Ordinance (120% of median income). Phase II, if allowed following a water audit, would include at least two Workforce II housing units as defined in the 2003-2008 Housing Element (180% of median income).
- (b) The applicant will be required to comply with the Inclusionary Housing Ordinance (Ordinance 04185, Chapter 18.40 MCC) as a condition of approval. Based on the ordinances in effect on the date that the application was deemed complete (January 10, 2000), the applicant will be allowed to pay an in-lieu fee to address inclusionary housing requirements. However, applicant has agreed to construct four (4) inclusionary units on site instead of paying the fee.
- (c) Chapter 18.40 of the Monterey County Code (Inclusionary Housing Ordinance)

11. **FINDING – CONDITIONS OF APPROVAL:** The conditions of approval comply with the provisions of Title 20, Chapter 20.144.

EVIDENCE:

- (a) The conditions are based on the recommendations of the local fire district, the Monterey County Water Resources Agency, Monterey County Parks Department, Monterey County Environmental Health Division, and Monterey County Department of Public Works. Additional conditions are required for approval in order to assure that the proposed use and site amenities are compatible with other developments in the area.
- (b) Materials in project file PLN980685.

12. **FINDING – APPEALABILITY.** The decision on this project may be appealed to the California Coastal Commission.

EVIDENCE:

- (a) Section 20.86.080.A.3 of the Monterey County Coastal Implementation Plan, Part 1.
A subdivision is permitted in the underlying zone as a conditional use.

DECISION

IN VIEW OF THE ABOVE FINDINGS AND EVIDENCE the Monterey County Board of Supervisors hereby incorporates project changes presented by staff and approves the Combined Development Permit for the Rancho Roberto Subdivision (PLN980685), based on the Findings and Evidence and subject to Conditions of Approval attached hereto as **Table 1** and incorporated herein by reference.

PASSED AND ADOPTED on this 1st day of March, 2005, upon motion of Supervisor Smith, seconded by Supervisor Armenta, by the following vote, to-wit:

AYES: Armenta, Lindley, Smith

NOES: Calcagno, Potter

ABSENT: None

I, Lew Bauman, 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 Minute Book 72, on March 1, 2005.

Dated: March 11, 2005

Lew C. Bauman, Clerk of the Board of Supervisors,
County of Monterey, State of California.

By Ann D. Anderson
Deputy

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

Please review attached appeal information sheet prior to completing this form.

SECTION I. Appellant(s):

Name, mailing address and telephone number of appellant(s):

Commissioner Wan	Commissioner Shallenberger
California Coastal Commission	California Coastal Commission
45 Fremont Street, Suite 2000	45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219	San Francisco, CA 94105-2219
(415) 904-5200	(415) 904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government:

Monterey County

2. Brief description of development being appealed:

PLN980685 - Standard Subdivision of 13.3-acre parcel into 26 residential lots, ranging in size from 6,649 sf to 10,765 sf, and a non-developable remainder parcel of 6.61 acres, and 2,400 cy of grading; demolition of single family dwelling, barn and several accessory buildings.

3. Development's location (street address, assessor's parcel number, cross street, etc.):

66 Fruitland Avenue (APN 117-131-032), Royal Oaks area, North Monterey County.

4. Description of decision being appealed:

- a. Approval; no special conditions: _____
b. Approval with special conditions: xx
c. Denial: _____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-MCO-05-027
DATE FILED: April 25, 2005
DISTRICT: Central Coast District

RECEIVED

APR 25 2005

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (PAGE 2)

5. Decision being appealed was made by (check one):

a. ☐ Planning Director/Zoning
Administrator

c. ☐ Planning Commission

b. ☒ City Council/Board of
Supervisors

d. ☐ Other: _____

6. Date of local government's decision: March 1, 2005

7. Local government's file number: PLN980685 (Resolution No. 05-055)

SECTION III Identification of Other Interested Persons

Give the names and addresses of the following parties: (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Robert Bugalski

185 Lynette Drive

Aptos, CA 95003

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearings (s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Jeff Main / Carl Holm

Monterey County Planning & Building Inspection

2620 First Avenue, Marina, CA 93933

(2) Alana Knaster, Chief Assistant Director

Monterey County Planning & Building Inspection

2620 First Avenue, Marina, CA 93933

(3) Friends, Artists, and Neighbors of Elkhorn Slough (FANS)

Mary U. Akens, Attorney c/o Law Office of J. William Yeates

3400 Cottage Way, Suite K, Sacramento, CA 95825

(4) (see attached for additional list of interested persons)

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

SECTION IIIb. Identification of Other Interested Parties

b. Names and mailing addresses as available of those who testified (either verbally or in writing at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) Mari Kloeppel
P.O. Box 180
Moss Landing, CA 95039
- (2) Marjorie Kay
P.O. Box 2371
Watsonville, CA 95077
- (3) Ronni Heinrich
50 Spring Road
Royal Oaks, CA 95076
- (4) Julie Moran
89 Spring Road
Royal Oaks, CA 95076
- (5) David Fried
14671 Tumbleweed Lane
Royal Oaks, CA 95076
- (6) Bob Stein
90 Fruitland
Royal Oaks, CA 95076
- (7) Elayne Stein
90 Fruitland
Royal Oaks, CA 95076
- (8) Marit Evans
296 Corral de Tierra Rd.
Salinas, CA 93908
- (9) Carolyn Anderson
17A Maher Rd.
Royal Oaks, CA 95076
- (10) Diann Russell
14671 Tumbleweed Lane
Royal Oaks, CA 95076

- (22) David Evans
360 Hudson Landing Road
Royal Oaks, CA 95076
- (23) Julie Moran
89 Spring Road
Royal Oaks, CA 95076
- (24) Diana Collins
97 Spring Road
Royal Oaks, CA 95076
- (25) Alex Solano
Patricia Solano
333 Elkhorn Road
Watsonville, CA 95076
- (26) Eli de los Santos
Pat de los Santos
13255 Heritage Circle
Watsonville, CA 95076
- (27) Ronni Heinrich
Jeffrey Heinrich
50 Spring Road
Royal Oaks, CA 95076
- (28) Holly Myers
83 Fruitland Avenue
Royal Oaks, CA 95076
- (29) Larry Henley
30 Sunny Way
Royal Oaks, CA 95076
- (30) Louis Paul Arbanas
35 Sunny Way
Watsonville, CA 95076-541
- (31) Anne Nowassa Hozier
30 Sunny Way
Watsonville, CA 95076

- (11) Donald R. Cerio
81 Fruitland Avenue
Royal Oaks, CA 95076
- (12) Josue Lomeli
13245 Heritage Circle
Royal Oaks, CA 95076
- (13) Tara Koda
Dwight Koda
13225 Heritage Circle
Royal Oaks, CA 95076
- (14) Sue Wong
13215 Heritage Circle
Royal Oaks, CA 95076
- (15) Manual Solano
Megan Solano
75 Fruitland Avenue
Watsonville, CA 95076
- (16) Kathy Begley
13210 Heritage Circle
Royal Oaks, CA 95076
- (17) Paul Begley
13210 Heritage Circle
Royal Oaks, CA 95076
- (18) Louis Arbanas
35 Sunny Way
Watsonville, CA 95076
- (19) Mabel Cole
17 Secondo Way
Royal Oaks, CA 95076
- (20) Angela & David Tavaréz
53 Fruitland Ave
Royal Oaks, CA 95076
- (21) Robert & Stacy Messing
12980 Rose Court
Watsonville, CA 95076

- (32) Harry Wiggins
Clarice Wiggins
35 Secondo Way
Watsonville, CA 95076
- (33) Julie Engell, Conservation Committee
Sierra Club
Ventana Chapter
P.O. Box 5667
Carmel, CA 93921
- (34) Elayne Stein
90 Fruitland Avenue
Royal Oaks, CA 95076
- (35) David Murray, Chief
Development Review
District Five
STATE OF CALIFORNIA
Department of Transportation
50 Higuera Street
San Luis Obispo, CA 93401-5415
- (36) Charles McNiesh, General Manager
Pajaro Valley Water Management Agency
36 Brennan Street
Watsonville, CA 95076
- (37) Nicolas Papadakis, Executive Director
AMBAG
445 Reservation Road, Suite G
P.O. Box 809
Marina, Ca 93933-0809
- (38) Rick Hyman, Deputy Chief Planner
Central Coast District California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060
- (39) Wm. Reichmuth, P.E, Executive Director
TRANSPORTATION AGENCY FOR MONTEREY COUNTY
55-B Plaza Circle
Salinas, CA 93901-2902

(40) John S. Bridges
FENTON & KELLER
P.O. Box 791
Monterey, CA 93942

(41) Robert Bugalski, Applicant
185 Lynette Drive
Aptos, CA 95003

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 3

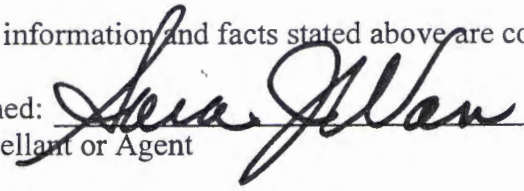
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attached.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: 
Appellant or Agent

Date: April 25, 2005

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

(Document2)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attached.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: Mary K. Hallenberg
Appellant or Agent

Date: April 25, 2005

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

(Document2)

**Reasons for Appeal of Monterey County Coastal Development Permit
PLN980685 Bugalski - Rancho Roberto Subdivision**

Monterey County Board of Supervisors approval of PLN980685, Coastal Development Permit and Standard Subdivision of 13.3-acre parcel into 26 residential lots, ranging in size from 6,649 square feet to 10,765 square feet, and a non-developable remainder parcel of 6.61 acres, and 2,400 cy of grading; demolition of single family dwelling, barn and several accessory buildings, at 66 Fruitland Avenue, Royal Oaks area of North Monterey County (APN 117-131-032), is inconsistent with the Monterey County certified Local Coastal Program, which includes the North County LUP and Regulations for Development in North Monterey County, for the following reasons:

1. Land Use.

The County's Final Local Action Notice (FLAN) approving the subdivision of the 13.3 acre parcel is not internally consistent with regards to the number of potentially developable lots. Findings 2d and 2e note that the northern 6.69 acres of the site is designated Medium Density Residential, and zoned MDR/4 (CZ), 4 units per acre. The southern 6.61 acres is designated Low Density Residential, and zoned LDR/2.5 (CZ), 2.5 acres per unit. However, the County's resolution is inconsistent in regards to the number of units allowed on the southern parcel. The Resolution summary notes that the project will result in subdivision of a 13.3-acre parcel into 26 residential lots plus one non-developable remainder parcel. Finding 1h notes that the project would be limited to 20 market units in a Phase I and 4 additional market units and 2 workforce units in Phase 2, and no additional units could be developed on the remainder parcel. But Finding 10a notes that the proposed project consists of dividing one existing lot of record into 26 lots that could be developed with one market rate unit on each new lot plus one remainder lot that could later develop up to two additional market rate units. With such inconsistency it is hard to determine if the project is consistent with land use and zoning requirements.

2. Groundwater Resources**Long-term Water Supply**

The North County LUP requires, among other things, 1) that new developments be controlled to a level that can be served by an identifiable, available, and long-term water supply (Key No Co LUP Policy 2.5.1); that development levels that generate water demand exceeding safe yield of local aquifers are only allowed once additional water supplies are secured (No Co LUP Policy 2.5.2.3); that new development be phased so that existing water supplies are not committed beyond their safe long-term yields (ibid.); and that the County may reduce the remaining build-out below 50% to limit groundwater use to the safe-yield level or if required in order to protect agricultural water supplies (No Co LUP policy 2.5.3.A.2).

Approval of this subdivision is not consistent with LCP policies that require new developments be served by an identifiable, available and long-term water supply (Policy 2.5.1).

Approval of this subdivision is not consistent with LCP policies that require development be phased so that existing water supplies are not committed beyond their safe long-term yield (Policy 2.5.2.3).

Finding 7a of the County's approval notes that the project would remove an on-site water supply well, which draws groundwater from Springfield Terrace sub-basin, and instead obtain water from a public utility (the Pajaro-Sunny Mesa Community Services District), which the County says draws groundwater from wells located in the Highlands-North sub-basin. Information submitted by concerned North County residents conflicts with the County's statement of where the water supply wells are located and indicates that the Pajaro-Sunny Mesa CSD wells intended to serve the project are actually located in the Springfield Terrace. Both the Springfield Terrace and Highlands-North sub-basins are in serious overdraft (i.e., they are being pumped for water supply at a faster rate than they are being recharged). The Springfield Terrace sub-basin has a current deficit of 7,594 acre feet per year (afy), and has experienced significant seawater intrusion problems that have affected water quality in the area and caused numerous wells to fail. The Highlands North sub-basin has a current deficit of 2,701 afy. Thus, whether the water supply wells are actually located in the Springfield Terrace or North Highlands sub-basins, any new development (including that already allowed on existing lots of record) that increases water demand above existing uses will result in increased groundwater withdrawals from groundwater aquifers that are already being pumped beyond their safe yield. Without a water supply that does not cause continued overdraft, the project cannot be found to have an available, long-term water supply. Thus the County approval of the Rancho Roberto subdivision is inconsistent with policy 2.5.1, which requires that development be controlled to a level that can be served by an identifiable, available, long-term water supply. The County approval is also inconsistent with LUP policy 2.5.2.3, which does not allow groundwater resources to be committed beyond their safe yield.

The County approval tries to skirt the problem of committing groundwater beyond its safe yield by noting that the volume of water in the aquifers is quite large and could last more than 20 years. The County, in an ad-hoc manner, uses a 20-year period to define long-term water supply, making reference to SB610 and SB221, which "require proof of an available water supply for at least 20 years." However, no such definition is given in the County's LCP for "long-term water supply," and indeed would be a poor definition as most homes are occupied longer than 20 years. Finding 7 also states that according to the North County Comprehensive Water Resources Management Plan, the North Highlands sub basin has a total volume of 912,247 acre-feet of groundwater in storage, which could last for between 119 and 162 years (based on estimated current and future demand of 5,621 and 7,636 afy, respectively). The County's reasoning, however, relies upon using the entire volume of the aquifer, rather than limit development to a rate that would avoid further continued overdraft and so protect safe yield of the aquifer, as required by policy 2.5.2.3. While Finding 7b notes that current demand is 5,612 afy, it fails to mention that sustainable yield for the aquifer is only 2,920 afy, and it is being pumped currently at a rate of 5,621 annually, i.e., 2,701 afy more is being pumped than is being recharged to the aquifer. Future overdraft of the aquifer is predicted to be 4,716 afy. Thus the County's approval allows groundwater withdrawals to continue to be pumped at a higher rate than the aquifers are being recharged, which will continue to overdraft the aquifers, and thus commits groundwater use beyond its safe yield, inconsistent with LUP policy 2.5.2.3. If the rate of groundwater withdrawals continues to exceed the rate of recharge, there is a risk that the groundwater table may drop to a depth from which it could not recover, which would put the water source for the entire sub-basin at risk of failure.

Furthermore, Finding 7d notes that the project will result in an increase in groundwater withdrawal and a decrease in net recharge ranging from 5.18 afy (under current project conditions) to 1.66 afy (based on wastewater recycling), and notes that the project will result in a net water use intensification of between 1.5 and 4.5 afy. Residential subdivision of the parcel will thus require a commitment to a permanent long-term water supply that currently cannot be assured without continuing to overdraft the groundwater basin. Therefore, the project is not consistent with LCP policies that require new developments be controlled to a level that can be served by identifiable, available and long-term water supply (Key Policy 2.5.1).

The project site is located within the Pajaro Valley Water Management Agency boundaries, and so could, over the long-term, potentially benefit from implementation of the Pajaro Water Management Agency's Revised Basin Management Plan projects and Salinas Valley Water Project at some point in the future. However, these potential additional water supplies have not yet been secured, nor are they intended to supply potable water for residential development. Neither the PVWMD nor SVWP projects have completed the permitting process, let alone construction and monitoring to determine if the projects have been successful at halting groundwater overdraft and restoring groundwater reserves to safe long-term yields, so it would be premature to rely on these projects as an assured, available long-term water supply¹. The only identifiable, available water supply at the present time is the overdrafted Springfield Terrace and Highlands North aquifers, which are both severely overdrafted and so can not serve as a long-term water supply. The project is thus inconsistent with LUP policy 2.5.2.3 since it would result in development levels that exceed the safe yield of the existing aquifer before additional water supplies have been secured.

50% Buildout

Approval of this subdivision is not consistent with LUP policy 2.5.3.A.2 that allows the County to reduce the remaining build-out below 50% to limit groundwater use to safe-yields, "if such reductions appear necessary based on new information or if required in order to protect agricultural water supplies."

Finding 7e notes that LUP policy 2.5.3.A.2 establishes a safe-yield limit of 50% of the potential buildout remaining at the time the LUP was adopted, which equated to 2,043

¹ The PVWMA has plans to address saltwater intrusion, by reducing agricultural water withdrawals in the lower portion of the watershed and substituting that water with supplemental water taken from the upper Pajaro Valley watershed and water imported from the Central Valley. The PVWMA, as designed, is for agricultural use only, and is in no way designed to provide any type of domestic water supplies.

The SVWP is currently only in design phase, has had approvals for tax assessments, but the design is not complete, and so is not permitted or constructed yet. Based on discussions with County Water Resources Agency staff, the SVWP is currently in 8-10 month design phase and the regulatory process has not yet begun, thus construction is not expected to be complete before at least the year 2008. Monitoring would then need to be conducted for some period of time to determine if either of the projects actually stops groundwater overdraft, and builds up groundwater levels to a point where there is more water available than is being withdrawn, before allowing additional, non-priority development to depend on this water as an assured long-term water supply.

units². Finding 7e also notes that County records show that 583 units/lots remain that could potentially be developed in North County under the existing 50% buildout. It also notes that the pending projects known at this time account for an additional 328 units (including “pipeline projects” such as Sunridge Views – which was also appealed to the Coastal Commission, Rancho Roberto, and the Pajaro Valley golf Course) leaving a maximum of 255 units before reaching the buildout limit. The county approval notes that policy 2.5.3.A.2 allows for reducing the 50% limit based on new information, but erroneously notes that an LUP amendment would be required in order to adjust this limit. The actual language in Policy 2.5.3.A.2 states that “...The first phase of new development shall be limited to a level **not exceeding** 50% of the remaining buildout...this maximum may be further reduced by the County if such reductions appear necessary based on new information or if required to protect agricultural water supplies. **Additional development beyond the first phase shall be permitted only after safe-yields have been established or other water supplies are determined to be available by an approved LCP amendment.**” (Emphasis added.)

Since these policies were certified in 1988, consultants hired by the County have conducted new studies and provided new information to quantify the severity of the current overdraft situation in the various North County sub-basins. The Comprehensive Water Management Plan notes that both the Springfield Terrace and North Highlands sub-basins are in severe overdraft situations. A complete reading of the North County LUP policy 2.5.3.A.2 requires the County to reduce the remaining build-out level, since new information has been provided that shows that approval of any additional subdivisions that require additional water would increase the overdraft situation.

Additionally, Finding 7f notes that the EIR prepared for the project established 20 lots as the limit at which point the project is in balance for water used and water returned, based on reliance on a wastewater recycling program. However, if the project actually allows for up to 26 residential units to be developed plus two developable lots on the southern portion of the parcel, it would not be consistent with the water balance described in the EIR. Whether the project results in 20 new units or 26 new units, the project will still result in water withdrawals from aquifers that are currently in overdraft conditions.

Coastal-Dependent Priority Use.

LCP policies require that where there is limited land, water, or public facilities to support development, coastal dependent uses (coastal dependent agriculture, recreation, commercial and industrial uses) shall have priority over residential and other non-coastal dependent uses. Additionally, existing lots of record have priority over new residential lots created through subdivision of legal lots of record. Based on assessors parcel information obtained as of 2000, there are approximately 555 vacant parcels remaining in the North County planning area, of which approximately 480 are residential parcels. The law provides that legal lots of record are entitled to some reasonable economic use (which presumably would be at least one residential parcel), thus at least 480 additional

² At the time of LUP certification in June 1982, the LUP established a 50% buildout level of 2,043 units. By the time of CIP certification in June 1987, the remaining buildout number had been reduced to 1,351 units. The remaining buildout number includes senior citizen units, caretaker units, multiple family dwellings, employee housing, and lots created through subdivision approved after County assumption of permitting authority, but shall exclude development of a single-family dwelling on a vacant lot of record.

units can potentially be developed, in addition to the buildout described above, based on constitutional property ownership rights, and each of the 480 residential units would also draw water from overdrafted aquifers in the North County.

Additionally, since the groundwater basins are already over drafted, any water savings developed by reductions in water use by converting land from a higher water demand to a lesser water demand should be used toward priority uses and development on existing legal lots of record, rather than on new, non-priority residential lots. Furthermore, conversion of agricultural (grazing) use to residential use will commit the site to a fixed minimum water use on a continual basis,⁹ as opposed to existing agricultural grazing use, for which water use can vary overtime depending on the amount of water available, the amount of grazing required, and methods (such as field rotation, fallowing, etc) that can dramatically reduce water use during certain periods.

As described above, the North County LUP Policy 2.5.3.A.2 allows the County to reduce the remaining build-out below 50% "...if required in order to protect agricultural water supplies." Coastal agriculture is considered a priority use, relative to new residential subdivision. Water supplies in the Springfield Terrace are already at risk due to seawater intrusion, thus the County is actively searching for new agricultural water supplies (e.g., the SVWP and PVWMABMP). Residential subdivision of the property will remove agricultural (grazing) use on the site, and replace it with residential water use, which draws from the same aquifers as do agricultural wells, and so does nothing to protect agricultural water supplies. Furthermore, the project hasn't been analyzed in conjunction with other priority uses, (like coastal dependent uses) let alone with other non-priority uses (i.e., should any extra water that might be gained from any potential future water savings be provided for new non-priority rural development, or should it go to urban infill projects?). Therefore, by not limiting groundwater to safe-yield levels, the County's approval of the proposed subdivision does not protect agricultural water supplies, inconsistent with policy 2.3.5.A.2.

3. Mitigation Measures are Incomplete.

Condition #3 (Mitigation measure #9) allows up to 20 units in phase I of development, and requires that following completion of phase I, additional development of 6 more units can occur provided a water audit is conducted and shows that the water limits identified in the EIR can be met. However, as water supplies for the project already rely upon overdrafted groundwater resources, the water audit alone is not sufficient to mitigate for continued overdrafting caused by the project.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060-4508
VOICE (831) 427-4863 FAX (831) 427-4877

APR 06 2005

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Friends, Artists and Neighbors of Elkhorn Slough

Mailing Address: c/o Law Office of J. William Yeates, 3400 Cottage Way, Suite K

City: Sacramento

Zip Code: 95825

Phone: 916-609-5000

SECTION II. Decision Being Appealed

1. Name of local/port government:

County of Monterey

2. Brief description of development being appealed:

Approval of the Rancho Roberto Combined Development Permit consisting of: a Coastal Development Permit and Standard Subdivision to allow for the division of one 13.3-acre parcel into 26 lots ranging in size from 6,649 square feet to 10,765 square feet, a remainder parcel of 6.61 acres and grading (2,400 cubic yards); and a Coastal Development Permit to allow for the demolition of a single family dwelling, a barn and several other accessory buildings.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

The site is located west of Fruitland Avenue at 66 Fruitland Avenue (Assessor's Parcel Number 117-131-032-000), North County, Coastal Zone.

4. Description of decision being appealed (check one.):

- ☐ Approval; no special conditions
☒ Approval with special conditions:
☐ Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:APPEAL NO: A-3-MCO-05-027DATE FILED: April 25, 2005DISTRICT: Central Coast

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- ☐ Planning Director/Zoning Administrator
☒ City Council/Board of Supervisors
☐ Planning Commission
☐ Other

6. Date of local government's decision: March 1, 2005

7. Local government's file number (if any): PLN980685

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Robert Bugalski, Applicant, 185 Lynette Drive, Aptos, CA 95003

John Bridges, Fenton & Keller, Attorneys for Applicant, P.O. Box 791, Monterey, CA 93942-0791

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) See Attached List

(2) See Attached List

(3) See Attached List

(4) See Attached List

SECTION IIIb. Identification of Other Interested Parties

b. Names and mailing addresses as available of those who testified (either verbally or in writing at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) Mari Kloeppel
P.O. Box 180
Moss Landing, CA 95039
- (2) Marjorie Kay
P.O. Box 2371
Watsonville, CA 95077
- (3) Ronni Heinrich
50 Spring Road
Royal Oaks, CA 95076
- (4) Julie Moran
89 Spring Road
Royal Oaks, CA 95076
- (5) David Fried
14671 Tumbleweed Lane
Royal Oaks, CA 95076
- (6) Bob Stein
90 Fruitland
Royal Oaks, CA 95076
- (7) Elayne Stein
90 Fruitland
Royal Oaks, CA 95076
- (8) Marit Evans
296 Corral de Tierra Rd.
Salinas, CA 93908
- (9) Carolyn Anderson
17A Maher Rd.
Royal Oaks, CA 95076
- (10) Diann Russell
14671 Tumbleweed Lane
Royal Oaks, CA 95076

- (11) Donald R. Cerio
81 Fruitland Avenue
Royal Oaks, CA 95076
- (12) Josue Lomeli
13245 Heritage Circle
Royal Oaks, CA 95076
- (13) Tara Koda
Dwight Koda
13225 Heritage Circle
Royal Oaks, CA 95076
- (14) Sue Wong
13215 Heritage Circle
Royal Oaks, CA 95076
- (15) Manual Solano
Megan Solano
75 Fruitland Avenue
Watsonville, CA 95076
- (16) Kathy Begley
13210 Heritage Circle
Royal Oaks, CA 95076
- (17) Paul Begley
13210 Heritage Circle
Royal Oaks, CA 95076
- (18) Louis Arbanas
35 Sunny Way
Watsonville, CA 95076
- (19) Mabel Cole
17 Secondo Way
Royal Oaks, CA 95076
- (20) Angela & David Tavarez
53 Fruitland Ave
Royal Oaks, CA 95076
- (21) Robert & Stacy Messing
12980 Rose Court
Watsonville, CA 95076

- (22) David Evans
360 Hudson Landing Road
Royal Oaks, CA 95076
- (23) Julie Moran
89 Spring Road
Royal Oaks, CA 95076
- (24) Diana Collins
97 Spring Road
Royal Oaks, CA 95076
- (25) Alex Solano
Patricia Solano
333 Elkhorn Road
Watsonville, CA 95076
- (26) Eli de los Santos
Pat de los Santos
13255 Heritage Circle
Watsonville, CA 95076
- (27) Ronni Heinrich
Jeffrey Heinrich
50 Spring Road
Royal Oaks, CA 95076
- (28) Holly Myers
83 Fruitland Avenue
Royal Oaks, CA 95076
- (29) Larry Henley
30 Sunny Way
Royal Oaks, CA 95076
- (30) Louis Paul Arbanas
35 Sunny Way
Watsonville, CA 95076-541
- (31) Anne Nowassa Hozier
30 Sunny Way
Watsonville, CA 95076

- (32) Harry Wiggins
Clarice Wiggins
35 Secondo Way
Watsonville, CA 95076
- (33) Julie Engell, Conservation Committee
Sierra Club
Ventana Chapter
P.O. Box 5667
Carmel, CA 93921
- (34) Elayne Stein
90 Fruitland Avenue
Royal Oaks, CA 95076
- (35) David Murray, Chief
Development Review
District Five
STATE OF CALIFORNIA
Department of Transportation
50 Higuera Street
San Luis Obispo, CA 93401-5415
- (36) Charles McNiesh, General Manager
Pajaro Valley Water Management Agency
36 Brennan Street
Watsonville, CA 95076
- (37) Nicolas Papadakis, Executive Director
AMBAG
445 Reservation Road, Suite G
P.O. Box 809
Marina, Ca 93933-0809
- (38) Rick Hyman, Deputy Chief Planner
Central Coast District California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060
- (39) Wm. Reichmuth, P.E, Executive Director
TRANSPORTATION AGENCY FOR MONTEREY COUNTY
55-B Plaza Circle
Salinas, CA 93901-2902

- (40) John S. Bridges
FENTON & KELLER
P.O. Box 791
Monterey, CA 93942
- (41) Robert Bugalski, Applicant
185 Lynette Drive
Aptos, CA 95003

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

FANS brings this appeal, as is allowed by law under subdivision (4) of section 30603 of the Public Resources Code (the Coastal Act). The Rancho Roberto project is a combined development project approved by the Monterey County Board of Supervisors located within North Monterey County and within the Coastal Zone. This project is governed by the North County Land Use Plan/Local Coastal Program ("North County LUP/LCP") and the certified North Monterey County Subdivision Ordinance, a component of the Coastal Implementation Plan ("CIP").

FANS hereby states the reasons for this appeal.

The Monterey County Board of Supervisors made its final determination approving the Rancho Roberto project and certifying the Final Environmental Impact Report on March 1, 2005. The Rancho Roberto subdivision project is a combined development permit to allow the subdivision of a 13.3-acre parcel into 26 lots ranging in size from 6,649 square feet to 10,765 square feet, a remainder parcel of 6.61 acres and grading (2,400 cubic yards); and a Coastal Development Permit to allow for the demolition of a single family dwelling, a barn and several other accessory buildings.

The proposed project is located within the Springfield Terrace sub-basin and water will be obtained from the Highlands North sub-basin through the Pajaro Sunny Mesa Public Utility.

The Monterey County Board of Supervisors' approvals are inconsistent with the North Monterey County Land Use Plan/Local Coastal Program ("North County LUP/LCP") and the CIP for the following reasons:

I. THERE IS NO LONG TERM SUPPLY OF WATER TO ACCOMMODATE THE SUBDIVISION IN VIOLATION OF NORTH COUNTY LUP/LCP POLICY 2.5.1 AND CIP, TITLE 19, 19.03.15(L).

The proposed project is located in an area that is in a state of severe groundwater overdraft and salt-water intrusion. The North County LUP/LCP states at Policy 2.5.1:

"The water quality of the North County groundwater aquifers shall be protected, and new development shall be controlled to a level that can be served by identifiable, available, long-term water supplies."

(Continued at pages 3A-3O attached hereto)

SECTION IV. APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (CONTINUED)

According to the certified North County LUP/LCP, proof of assured long-term water supply must be made prior to the project application being deemed complete. This policy is also found within the certified CIP, Title 19, 19.03.15(L).

The County Health Department has also stated in the past that "it is *not* possible to support a finding of a long-term water supply for development in an area of significant, chronic overdraft."¹ The Environmental Health Division's comments were directed clearly at the problems with North County. In its prior warning, the Division publicly stated: "it is not prudent to place additional citizens at risk by allowing residential development in an overdraft area even when the development demonstrates water savings over previous use."²

A. THE COUNTY INAPPROPRIATELY RELIES UPON AUGMENTATION FEES EXACTED BY THE PAJARO VALLEY WATER MANAGEMENT AGENCY FOR THE REVISED BASIN MANAGEMENT PLAN

Augmentation fees for the Revised Basin Management Plan were adopted January 19, 2005, by the Board of Directors of the Pajaro Valley Water Management Agency ("PVWMA") within an agreement between PVWMA and the project applicant.³ According to the Memorandum dated January 14, 2005, once implemented by ordinance, "potential groundwater impacts from the project could be mitigated by payment of impact fees to fund a portion of the Agency's BMP implementation, thereby off-setting increased demands on groundwater by providing supplemental supplies."

Any water supplied by the augmentation fee for the unproven and incomplete Revised Basin Management Plan, is nothing more than "paper water."⁴ The Agreement between the parties may not come to fruition should an ordinance not be adopted by the PVWMA within the next three years.⁵ The Revised Basin Management Plan may not be implemented, if at all until 2010, according to the PVWMA's "80 percent plan."⁶ The Revised Basin Management Plan, at least at this stage is "nothing more than hopes [or] expectations. . . ."⁷ The County cannot rely on fees as

¹ See attached hereto as **Exhibit A**, copy of the October 26, 2000, Memorandum from Walter Wong, County of Monterey Health Department, Environmental Health Division to Monterey County Planning Commission. (Emphasis in Original.)

² Ibid.

³ See attached hereto as **Exhibit B** copy of the January 14, 2005 Memorandum from the General Manager to the Board of Directors of the Pajaro Valley Water Management Agency ("Memorandum") and the attached Agreement Creating Covenants Running With The Land between Robert Bugalski and Pajaro Valley Water Management Agency ("Agreement").

⁴ *Planning and Conservation League v. Department of Water Resources* ("PCL") (2000) 83 Cal.App.4th 892, 908, fn. 5.

⁵ See **Exhibit B**, at p. 1 of Memorandum and p. 4 of Agreement.

⁶ See attached hereto as **Exhibit C**, January 22, 2005 Article of the Register-Pajaronian.

⁷ *PCL*, *supra*, 83 Cal.App.4th at p. 908, fn. 5.

a means to reduce or avoid significant groundwater impacts, because "money does not constitute water recharge. . . . Money will not solve the problem."⁸ Additionally, according to the County Staff's February 8, 2005, recommended findings and evidence, PVWMA "[has] not secured all the necessary approvals to be considered a viable project under CEQA."⁹

B. RELIANCE ON EXACTED FEES ON EXPIRED ORDINANCE 4005.

The County may not rely on a study as mitigation unless "there is a definite commitment both to produce the study and to take such mitigation measures as are recommended by it."¹⁰

According to the County's Response to Comments:

Ordinance 4005 established four purposes to which the fee could be applied. Some of these purposes have been achieved (such as the groundwater management plan), but the fee could be applied to remaining authorized purposes.¹¹ The fee purposes are listed on Pages 2-37 and 2-38 of the Draft EIR, and include actions to study, monitor, and improve north Monterey County groundwater conditions.¹²

The study or plan referred to in this passage, is the North Monterey County Comprehensive Water Resources Management Plan. However, the County in the FEIR admits that the North Monterey County Comprehensive Water Resources Management Plan "does not specifically address the proposed project or the project site, but rather regional approaches. The project site is actually within the Pajaro Valley Water Management Agency's jurisdiction and measures in the Revised Basin Management Plan relate to the project site more directly, but still at a regional level."¹³ Additionally, the County admits in its Recommended Findings and Evidence attached as Exhibit C to its February 8, 2005, Staff Report, at page 8 that "[t]he fee cannot be utilized in the coastal zone to address long-term sustainable supply, since this requirement was not included in the amended LCP."

Therefore, according to the Response to Comments, no proposed mitigation measures from the past study will be applied to the proposed project because the proposed project is located within the jurisdiction of the PVWMA. Additionally, according to the County's recommended findings, the fee cannot be used in the coastal zone.

⁸ *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 728.

⁹ See attached hereto as **Exhibit D**, Exhibit C to the February 8, 2005, Recommended Findings and Evidence, at p. 8.

¹⁰ *Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 92 Cal.App.4th 342, 366, citing *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261-1262.)

¹¹ The DEIR and FEIR fail to identify what those "authorized purposes" are.

¹² FEIR, p. 2-54 in response to comment 70.

¹³ FEIR, p. 2-54 in response to comment 72.

The measures within the Revised Basin Management Plan, however, are not identified or analyzed with the current proposed project in mind. Additionally, because the Revised Basin Management Plan is within the jurisdiction of another agency, the County cannot make any definite commitment to a plan that it does not control or implement.¹⁴

C. RELIANCE ON THE REVISED BASIN MANAGEMENT PLAN AS A SOURCE FOR LONG-TERM SUSTAINABLE WATER SUPPLY FOR RESIDENTIAL DEVELOPMENT.

The County's reliance on the Revised Basin Management Plan as evidence of a long-term sustainable water supply for residential or urban development is inconsistent with North County LUP/LCP section 2.5.3.A.1, which requires the County to protect groundwater supplies for coastal priority agricultural uses.

According to an article in the *Register-Pajaronian* on February 23, 2005, the California Coastal Commission approved the PVWMA Revised Basin Management Plan.¹⁵ In the article, Mr. Charles McNiesh, PVWMA General Manager, is attributed as stating that "the commission was concerned about the water being used for residential or industrial growth. Since the water is for agricultural use, the project was approved. . . ." Despite the restriction to agriculture use, the County appears to be relying upon the Revised Basin Management Plan to satisfy the requirement of a long-term sustained source of water for this proposed residential subdivision project.

Additionally, as reported in the article, Mr. McNiesh commented further that "[t]he Coastal Commission still needs to approve a permit to cross the Pajaro River."¹⁶ This decision "could be made within the next two months."¹⁷

The public was informed in the DEIR that the Revised Basin Management Plan would be relied upon by Monterey County as a long-term supply of water for the proposed project, when, in fact, the Revised Basin Management Plan has not been developed, has not been proven, will be limited to agricultural purposes, not for urban or residential purposes, and has not been entirely approved by the Coastal Commission. Additionally, the County admits in its proposed findings that Pajaro Valley Water Management District has "not secured all the necessary approvals to be considered a viable project under CEQA."¹⁸ Thus, the information in the DEIR was fundamentally inadequate, because it inaccurately described the Revised Basin Management Plan's purpose.

Because the County is inappropriately relying on the Revised Basin Management Plan, the Project is inconsistent with policy 2.5.3.A.1 of the North County LUP/LCP as well as Policy 2.5.1. and CIP, Title 19, 19.03.15(L) concerning proof of assured long-term water availability.

¹⁴ *Napa Citizens for Honest Government v. Napa County Board of Supervisors*, *supra*, 92 Cal.App.4th at p. 366.

¹⁵ See attached hereto as **Exhibit E**, February 23, 2005 Article of the *Register-Pajaronian*.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ **Exhibit D**, p. 8.

D. MITIGATION MEASURE 9 IS INADEQUATE MITIGATION FOR IMPACTS TO WATER SUPPLY.

North County LUP/LCP Specific Policy 2.5.3.A.2 states:

The County's long-term policy shall be to limit ground water use to the safe-yield level. The first phase of new development shall be limited to a level not exceeding 50% of the remaining buildout as specified in the LP. This maximum may be further reduced by the County if such reductions appear necessary based on new information or if required in order to protect agricultural water supplies. Additional development beyond the first phase shall be permitted only after safe-yields have been established or other water supplies are determined to be available by an approved LCP amendment. Any amendment request shall be based upon definitive water studies, and shall include appropriate water management programs.

The County attempts to reduce the project's impacts on groundwater by requiring that "prior to the issuance of the last 25 percent of building permits for the project, the project proponent shall have a qualified engineer prepare a water use audit of houses already constructed within the project."¹⁹ Stated in the converse this means that 75% of the proposed subdivision project will be developed and will draw on the existing over drafted aquifer. This is no mitigation at all.

In response to FANS' question, "What assurance does the County have for water supply for the first five years of the project?" the County cites to mitigation measures at pages 2-60 and 2-61 of the DEIR. These mitigation measures include: a) water conserving landscaping and low water use fixtures; b) infiltration of water due to application of water for irrigation;²⁰ c) implementation of the recycled water and coastal distribution components of the Revised Basin Management Plan; d) completion of the CVP import pipeline (with implementation of the Revised Basin Management Plan; and, e) implementation of the Salinas Valley Water Project.

These mitigation measures, however, do not provide any assurance of a short-term or long-term water supply. For instance, the Revised Basin Management Plan is not proposed to be implemented until possibly 2010, and even then, may not provide long-term safe yield. Additionally, the CVP import pipeline as well as the Salinas Valley Water Project have not yet been implemented and like the Revised Basin Management Plan have not been proven to provide long-term safe yield. Finally, infiltration is not reliable since the County admits in the text of the mitigation measure that the clay layer will prevent any infiltration. Instead, any runoff, and contaminants contained therein, will simply flow to Elkhorn Slough.

¹⁹ DEIR, p. 2-62.

²⁰ Note that this mitigation measure may cause additional biological impacts to the Elkhorn Slough as it has been qualified as follows: "... [A]lthough the low-permeability clay layer may limit on-site percolation to groundwater, and much of the water entering project site soils may eventually flow into Elkhorn Slough." DEIR, p. 2-61.

The County's *faux* mitigation simply allows 20 additional residential draws on the over-drafted aquifer with nothing more than a hope that in the future the impacts on the existing groundwater supply will be mitigated. Mitigation Measure 9 fails to satisfy North County LUP/LCP Specific Policy 2.5.3.A.2 as well as Policy 2.5.1. of the North County LUP/LCP and CIP, Title 19, 19.03.15(L).

E. NO URBAN WATER MANAGEMENT PLAN WAS PREPARED.

The Findings relied upon by the Board of Supervisors states: "State laws (SB610 and SB221) that apply to larger residential development projects require proof of an available supply of water for at least 20 years. Using this basis as a standard to define long-term supply, the County finds that there is a long-term supply of water available for this project."

This information is also supplied by Mr. Curtis Weeks in his March 1, 2005 letter to FANS.²¹

However, no reference is made in the County's environmental documents or findings as to whether an Urban Water Management Plan has been adopted by the County with: 1) a description of the service area of the supplier, including current and projected population, climate, and other demographic factors affecting the supplier's water management planning; 2) an identification and quantification, to the extent practicable of the existing and planned sources of water available to the supplier; 3) a description of the reliability of the water supply and vulnerability to seasonal or climatic shortage; 4) a description of the opportunities for exchanges or transfers of water on a short-term or long-term basis; 5) a quantification of past and current water use; 6) an evaluation of each water demand management measure; 7) a description of all water supply projects and water supply programs that may be undertaken by the urban water supplier to meet the total projected water use; and, 8) a list of urban water suppliers that rely upon a wholesale agency for a source of water.²²

The County's misuse of SB 610 to make the claim that there is a "long-term" water supply for the proposed project is not only a comparison of "apples to oranges", but it also simply ignores applicable LCP policies. Policy 2.5.2 states,

New development shall be phased so that the existing water supplies are not committed beyond their safe long term yields. Development levels that generate water demand exceeding safe yield of local aquifers shall only be allowed once additional water supplies are secured.

Policy 2.5.3.A.2 states, "The County's long-term policy shall be to limit ground water use to the safe-yield level." The certified LCP for North County defines "safe yield" as "sustained yield or long term sustained yield," to mean, "[t]he yield that a renewable resource can produce

²¹ See attached hereto as **Exhibit F**, March 1, 2005 letter from Curtis Weeks, Monterey County Resources Agency to FANS.

²² See Wat. Code, §§ 10630 and 10631, subds. (a)-(j).

continuously over the long-term at a given intensity of management without impairment of the resource and other associated resources.”²³

The 2002 North County Comprehensive Water Resources Management Plan defines “sustained yield” as “the available groundwater supply that may be pumped without inducing additional groundwater declines or causing seawater intrusion . . . beyond conditions that existed in 1992.”²⁴

Additionally, the staff of the California Coastal Commission noted the following in its staff report on the Sunridge Views project,

*The 2002 Comprehensive Water Resource Management Plan shows that current water demand already exceeds safe yield throughout North County by more than 16,000 afy. While policy 2.5.3.A.2. requires that build-out not exceed the interim threshold of 50%, even that number is beyond what the groundwater resources can support, thus the proposed project should no longer be eligible to take advantage of the 50% build-out accommodation. Further residential development would commit to long-term withdrawals, which, without a concomitant reduction in groundwater pumping and comprehensive water conservation program, will continue to increase groundwater overdraft, and exacerbate the saltwater intrusion problems that adversely affects priority agricultural use.*²⁵

The Rancho Roberto project fails to comply with the County’s LCP policies that require the County to limit ground water use to the safe-yield level. The County’s approval of the project is inconsistent with North County LUP/LCP General Policy 2.5.2.3 and Specific Policy 2.5.3.A.2, as well as Key Policy 2.5.1 and CIP, Title 19, 19.03.15(L).

II. AT THE PUBLIC HEARING, THE COUNTY INAPPROPRIATELY RELIES UPON INFORMATION REGARDING SEAWATER INTRUSION AND WATER STORAGE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND INCONSISTENT WITH NORTH COUNTY LUP/LCP SPECIFIC POLICY 2.5.3.A.2.

At the March 1, 2005, public hearing on this matter, the County relied on incorrect information about the North County hydrogeologic area.

According to County staff statements at the March 1, 2005, hearing, the North Monterey County Comprehensive Water Resources Management Plan (January 2002) identifies that there is an available supply of water for 162.3 years. Additionally, according to staff statements, there is currently no seawater intrusion in the Highlands North sub-basin and that it is unlikely that seawater intrusion will occur in the future. These statements appear to be the basis for

²³ North County LUP/LCP Appendix B Glossary of Terms, pp. B-8 & B-10.

²⁴ North County Comprehensive Water Resource Management Plan, § 2.2.2.

²⁵ November 23, 2004, staff report of California Coastal Commission on Sunridge Views Subdivision Appeal number A-3-MCO-04-054, p. 15 (emphasis added).

determining that there is a long-term supply of water for the proposed project. These statements inexplicably contradict the County's brochure on subdivision applications, which states, "[a]ll areas in North Monterey County are in severe overdraft – more water is already being pumped from the ground than is being replaced."²⁶

The Coastal Commission may remember that during the Sunridge Views Coastal Commission Hearing on Request for Re-hearing County staff made similar assertions that contradicted evidence that was in the record about North County groundwater supplies. On February 22, 2005, FANS sought clarification of the County's position and asked for the documentation that supported these new claims about the adequacy of groundwater supplies.²⁷

In response to FANS' request, Curtis V. Weeks, General Manager of Monterey County Water Resources Agency, on March 1, 2005, replied as follows:

The documentation you seek was developed as part of the Sunridge Views staff report to the Board of Supervisors, and is also cited in the Rancho Roberto staff report in the Recommendation Findings and Evidence.²⁸

"7(b) The North Monterey County Comprehensive Water Resources Management Plan (January 2002) identifies that there is 912,247 acre feet of water in storage in the Highlands North sub-basin. There currently is no seawater intrusion in this sub-basin and it is unlikely that seawater intrusion will occur in the future. With a current demand of 5,612 acre feet of water per year, there would be an available supply for 162.3 years. If the worst-case scenario of total build-out were reached, there would be a supply available for 119 years. State laws (SB610 and SB221) that apply to larger residential development projects require proof of an available supply of water for at least 20 years. Using this basis as a standard to define long-term supply, the County finds that there is a long-term supply of water available for this project."²⁹

This information, however, was not contained in the draft February 8, 2005, Recommended Findings and Evidence on significant adverse environmental impacts, including but not limited to Water Impacts.³⁰ Furthermore, none of this information or any evaluation of the project's effect on groundwater based on this information was included in the DEIR or FEIR prepared on the proposed project. Basically, the interested public has been left without any meaningful opportunity to review or comment on County staff's statements, which are contradicted by

²⁶ Attached hereto as **Exhibit G**, a copy of Monterey County's brochure titled "Subdivisions in North Monterey County." The brochure lacks page numbers, however, the referenced text may be found on the second page of the brochure at the fifth bullet.

²⁷ See attached hereto as **Exhibit H**, February 22, 2005, Letter from FANS to Curtis Weeks, Monterey County Resources Agency.

²⁸ No documentation was included.

²⁹ See **Exhibit F**.

³⁰ See **Exhibit D**, pp. 7-9.

overwhelming documentary evidence about North County groundwater supply problems within the County's record of proceeding.

Later, on March 16, 2005, Mr. Weeks responded to a similar letter from Ms. Julie Engel, a Prunedale resident, and enclosed documentation including page 79 of the 1995 Fugro Report and page 2-7 of the 2002 North Monterey County Comprehensive Water Resources Management Plan.³¹

On page 79 of the 1995 Fugro Report is Table 12 - Ground Water in Storage. According to Table 12, there is a storage capacity of 912,247 acre-feet for the Highlands North Sub basin. However, note that within the same table, under "Usable Storage," there is only 13,169 acre-feet usable storage capacity in 1995. Additionally, if you read the accompanying text immediately following Table 12, it states:

The volume of ground water in storage presented in Table 12 is all the ground water contained in the sediments. *This volume can be misleading since the majority of this water is located below sea level. Alternatively, useable ground water in storage is defined as the volume of ground water above sea level. This definition is useful in a coastal basin. When water levels decline below sea level, depleted ground water storage is replaced with sea water.* By this definition, Springfield and Pajaro sub areas have little useable storage capacity, while some useable storage remains in the Highlands sub areas.

(Emphasis added.)

The DEIR for the proposed project states at pages 2-43 and 2-44 that "The Highlands North sub area is considered to have a sustainable yield of 2,920 acre-feet per year, *which would require a reduction of at least 39 percent from 1995 pumping levels to achieve sustainable levels.*"

(Emphasis added.) Furthermore, the DEIR states at page 2-60 that:

The north Monterey County hydrogeologic area is currently in overdraft, and reductions in groundwater pumping are necessary to restore balance. Withdrawals of groundwater for the proposed project would further exceed groundwater recharge and result in a continued decline in the groundwater balance and continued seawater intrusion. With the proposed project, net recharge of the north Monterey County hydrologic area would decline between 4.54 and 5.21 acre feet per year. This would be a significant impact.

In the short-term, the proposed project would aggravate groundwater declines in north Monterey County, due to increased pumping from the North Highlands subarea, and diversion of most of the water used on the project site to discharge to the Watsonville wastewater treatment plant.

³¹ Attached as **Exhibit I**, is the March 16, 2005, letter from Curtis Weeks to Julie Engel with attachments.

The information contained in the DEIR and FEIR for the Rancho Roberto project and the statements made by County staff to the Coastal Commission on the Sunridge Views project and similar statements made by staff to the Monterey County Board of Supervisors on March 1, 2005 (and in later correspondence to the public) cannot be reconciled.

The way County staff sought to reconcile the disparate information about the impact of the Rancho Roberto project on the over drafted water supply was to suggest that the two (Sunny Mesa) wells that are to serve the proposed project are connected to wells in Pajaro where there is allegedly adequate water. **This is simply not true.** The two Sunny Mesa wells are actually in the Springfield Terrace sub-basin, which is the most severely over draft sub basin and has the least storage capacity due to seawater intrusion. The false information about the sub basin is highlighted by the following excerpt from the discussion that occurred on March 1, 2005, between County staff and Supervisor Lou Calcagno. Based on what staff was telling the Board, Supervisor Calcagno concluded, as follows:

What you're really telling me though is that because it's hooked to Sunny Mesa, and Sunny Mesa can go up to the Pajaro Valley . . . that there will be water. But to say that there is going to be water in Pajaro Valley at Salinas Road that's not going to be salty- I don't think we can say that we've got a 140 year. And I know, I know where you're coming from but I think we need to face the facts, we don't have that water there.

Supervisor Calcagno is right about the lack of water, because the Sunny Mesa wells are not connected to Pajaro Valley. Furthermore, the Sunny Mesa wells are within the Springfield Terrace Hydrogeologic Sub-basin. FANS has attached at Exhibit J a copy of a Monterey County- prepared map of the North Monterey County hydrogeologic groundwater basin and sub-basins. The location of the Sunny Mesa wells has been blown up to show that the parcel along Hall Road where the wells are located is clearly within the severely over drafted Springfield Terrace Sub-basin.

Unfortunately, the Board of Supervisors was simply misinformed about the location of the wells that serve the proposed project and about the fact that these wells are somehow connected by a pipeline or some other means to wells located in Pajaro. Thus, the Board's decision is not only inconsistent with policy 2.5.3.A.2 of the North County LUP/LCP, the decision is based on staff statements that are simply inaccurate.

III. THE PROJECT APPLICANT FAILED TO PROVIDE THE REQUIRED PROOF OF LONG-TERM WATER SUPPLY PRIOR TO THE APPLICATION BEING DEEMED COMPLETE BY THE COUNTY IN VIOLATION OF NORTH COUNTY LUP/LCP POLICY 2.5.1. AND NORTH COUNTY CIP POLICIES 19.03.15(L) AND 20.144.070.

Section 2.5.1 of the North County LUP/LCP is the key policy for water resources and states:

The water quality of the North County groundwater aquifers shall be protected, and new development shall be controlled to a level that can be served by identifiable,

available, long term water supplies. The estuaries and wetlands of North County shall be protected from excessive sedimentation resulting from land use and development practices in the watershed areas.

A. PROOF OF LONG-TERM WATER SUPPLY IS REQUIRED PRIOR TO AN APPLICATION BEING DEEMED COMPLETE.

The North County LUP/LCP³² and the North County CIP,³³ require proof of long-term water supply prior to an application being deemed complete.³⁴

In response to FANS' Comment 34 about proof of long-term water supply, the FEIR states: "*The proposed project would generate a water demand for which a long-term sustainable supply of water cannot be assured* without a regional program to address groundwater balance problems."³⁵

The County is simply ignoring the information in its own certified EIR. The Rancho Roberto application should not have been deemed complete until such time as the project applicant provided proof of long-term water supply.³⁶ Without a complete application, neither the application nor the environmental review should have been processed.

The FEIR states that "The PVWMA Revised Basin Management Plan, when implemented, will address the regional groundwater balance and assure an adequate groundwater supply for planned growth within the PVWMA, including the proposed project."³⁷ In *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* ("SCOPE") (2003) 106 Cal.App.4th, the Court of Appeal ruled that no reliance should be made on a water system that is not completed.³⁸

³² See Policy 2.5.1

³³ See 19.03.15(L); see also 20.144.070

³⁴ See also **Exhibit G**. The brochure lacks page numbers, however, the cited text may be found on the second page of the brochure at the second bullet. See also California Coastal Commission, Draft Findings on North Monterey County Local Coastal Program, Periodic Review, (December 2003) Chapter 2: Land Use and Public Works Infrastructure, p. 37.

³⁵ FEIR, p. 2-49. Emphasis added.

³⁶ Title 19.03.15.L.5. stating in pertinent part: "After an application has been deemed complete, and prior to circulation of an environmental document, a hydrogeologic report based on a comprehensive hydrological investigation shall be prepared by a registered civil engineer or a certified geologist, hydrogeologist or hydrologist. . . ." Application deemed complete January of 2000. Initial Study released March of 2000. Note Initial Study concludes "No Impact" to 8.b) re substantially depleting groundwater supplies; no citation to a hydrogeologic report is contained in the Initial Study; and, the hydrogeologic assessment contained at Appendix E of the DEIR is dated December 3, 2002.

³⁷ FEIR, p. 2-49 in response to Comment 34.

³⁸ *SCOPE*, *supra*, 106 Cal.App.4th at p. 722.

Furthermore, it was recently reported in the Register-Pajaronian that PVWMA may scale down its pipeline project within the Basin Management Plan. According to the article, Mr. Steve Clary, a consultant for the project management firm working with the agency was attributed as stating, "the Agency would postpone building parts of the coastal distribution system, designed to deliver fresh water in areas where salt water may move into underground water basins because of over pumping, until after 2010."³⁹

Therefore, the Monterey County Board of Supervisors failed to enforce North County LUP/LCP policy 2.5.1 and North County CIP policies 19.03.15(L) and 20.144.070.

B. THE RANCHO ROBERTO PROJECT IS NOT SERVED BY AN IDENTIFIABLE, AVAILABLE, AND LONG-TERM WATER SUPPLY.

The intent of Section 20.144.070 of the CIP is:

... to provide development standards which will protect the water quality of the North County surface water resources and groundwater aquifers, *control new development to a level that can be served by identifiable, available, and long-term water supplies*, and protect North County streams, estuaries, and wetlands from excessive sedimentation resulting from land use and development practices in the watershed areas. (Ref. Policy 2.5.1.)"

The Rancho Roberto project makes a new and committed draw on the over drafted groundwater aquifer and is, therefore, inconsistent with CIP section 20.144.070 as well as the key policy LUP/LCP Key Policy 2.5.1.

IV. THE PROPOSED PROJECT IS INCONSISTENT WITH NORTH COUNTY LUP/LCP POLICY 2.5.2.3.

The Rancho Roberto project is inconsistent with North County LUP/LCP General Policy 2.5.2.3 stating:

New development shall be phased so that the existing water supplies are not committed beyond their safe long term yields. Development levels that generate water demand exceeding safe yield of local aquifers shall only be allowed once additional water supplies are secured.

FANS' comment 38 in its DEIR comment letter states:

Even with the Revised Basin Management Plan in place, the proposed project's recharge is expected to be from 2.18 acre-feet per year to 5.06 acre-feet per year. However, the additional draws on the aquifer from the proposed project will

³⁹ Exhibit C.

continue to exceed this amount. How[] will the remainder of the proposed project's additional draws on the aquifer be mitigated?⁴⁰

In response to this comment, the County states:

With implementation of the *Revised Basin Management Plan* the groundwater basin would be in balance. The *Revised Basin Management Plan* accounts for future growth as allowed by current planning designations. The proposed project is consistent with current planning designations, therefore, [sic] was taken into account when the Revised Basin Management Plan was developed.⁴¹

The Revised Basin Management Plan, however, will not be implemented, if at all, for at least another five (5) years. As noted above, the PVWMA may scale down its pipeline project within the Basin Management Plan.⁴² In the mean time, the proposed project will develop at least 20 homes on the project site without any actual water supply being secured for the area.

V. THE RANCHO ROBERTO PROJECT FAILS TO COMPLY WITH NORTH COUNTY LUP/LCP SECTION 2.3.3.B.4.

Section 2.3.3.B.4 of the North County LUP/LCP states:

A setback of 100 feet from the landward edge of vegetation of all coastal wetlands shall be provided and maintained in open space use. No permanent structures except for those necessary for resource-dependent use which cannot be located elsewhere shall be constructed in the setback area. Prior to approval of all proposed structures in the setback area, it must be demonstrated that the development does not significant disrupt the habitat resource.

The proposed project proposes to place a detention basin, a permanent structure in the wetland area located on the southern portion or remainder parcel of the proposed project.

The DEIR on the proposed project states that the proposed detention basin is not designed to detain the 15.62 AF/yr flows currently passing through the project site from the North (Elena Estates). It is designed to maintain the on-site flows only.⁴³

The DEIR admits that the detention basin on Elena Estates is not sized correctly to maintain the flows that end up in Elkhorn Slough.⁴⁴ Therefore, Elena Estates groundwater will continue to flow through the proposed project and with the current pastureland changed to urban uses,

⁴⁰ FANS September 2, 2004, comment letter, at p. 9, Comment 38, located in Rancho Roberto FEIR.

⁴¹ FEIR, p. 2-50.

⁴² Exhibit C.

⁴³ DEIR, p. 2-59.

⁴⁴ DEIR, pp. 2-54 – 2-55.

“could result in an increase in urban pollutants[]”⁴⁵ that will end up flowing directly to the Elkhorn Slough.

In response to FANS’ comment 87, the FEIR states: “Mitigation Measure 5 requires that the detention basin be designed to maintain off-site flow rates at the current level for storm conditions up to the 100-year design storm.”⁴⁶ Mitigation Measure 5 is located within the Biological Resources Section of the DEIR. However, according to the DEIR within the Hydrology and Water Quality Section, “Storm flows from upstream development that are currently passing through the project site would continue to do so, as the detention basin is not designed to detain those flows.”⁴⁷

VI. COUNTY FAILED TO COMPLY WITH CIP 19.03.010 BY NOT REQUIRING THE PRECISE BOUNDARY OF THE CONSERVATION EASEMENT ON THE TENTATIVE MAP.

The proposed project initially proposed a conservation easement on the Southern portion or remainder portion of the project area. According to CIP section 19.03.010, the conservation easement is required to be included with the tentative subdivision map. The final determination of the Board of Supervisors required a conservation easement on the entire southern portion or remainder parcel, however, the conservation easement is not included in the tentative map for the proposed project.

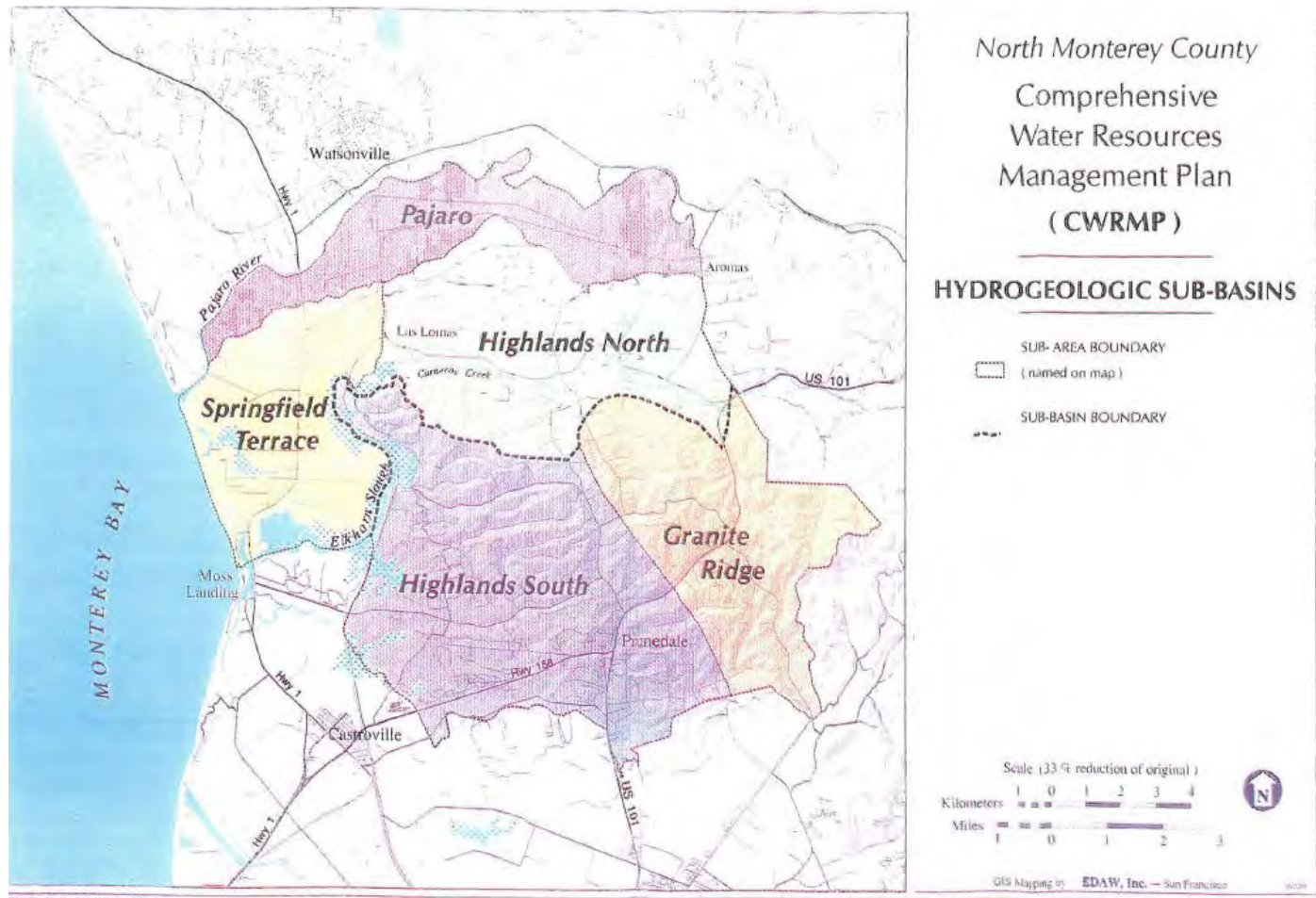
⁴⁵ FEIR, p. 2-55, in response to Comment 89.

⁴⁶ FEIR, p. 2-55.

⁴⁷ DEIR, p. 2-59.

Exhibit A

North Monterey County Groundwater Sub-basins



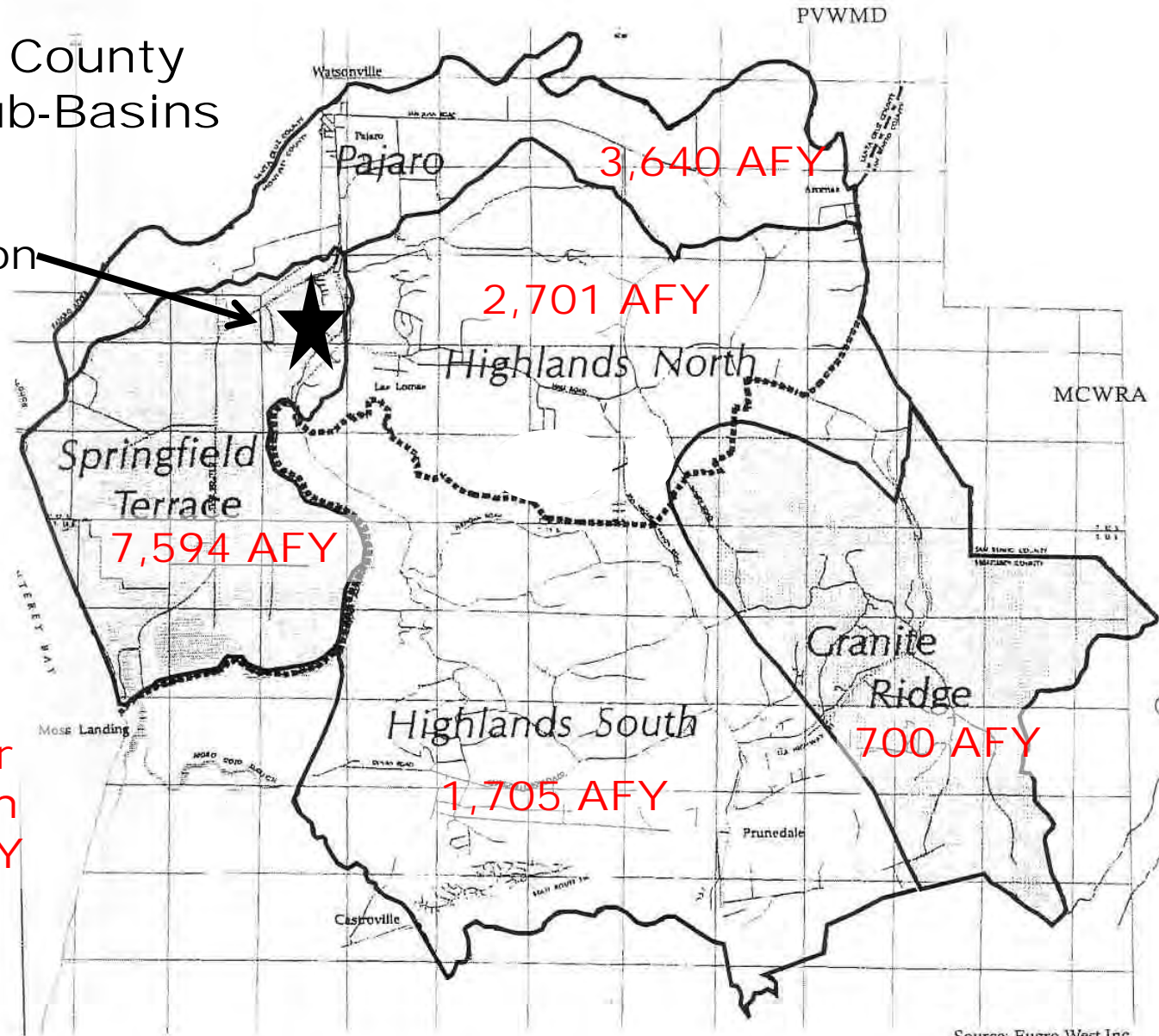
North Monterey County Hydrogeologic Sub-Basins

Project Location

#AFY=

Groundwater
Overdraft in
acre feet per
year, based on
2002 CWRMP

Total Groundwater
Overdraft for North
County=16,340 AFY



Source: Fugro West Inc.



1 inch = 1.5 miles



PVWMD / MCWRA Boundary

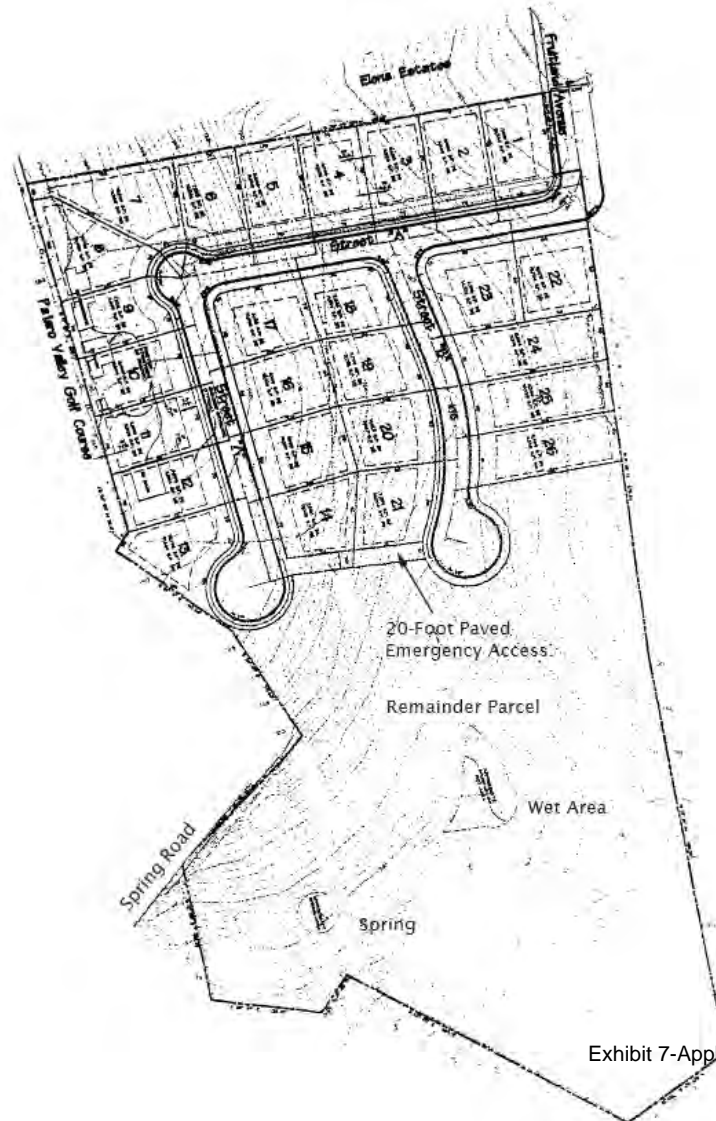


Exhibit 6-North Monterey County Groundwater Sub-basins and Overdraft Amounts

A-3-MCO-05-027 (Rancho Roberto Subdivision)

Page 2 of 2

Applicant's Proposed Site Plan/Lot Configuration



Executive Department
State of California

EXECUTIVE ORDER B-29-15

WHEREAS on January 17, 2014, I proclaimed a State of Emergency to exist throughout the State of California due to severe drought conditions; and

WHEREAS on April 25, 2014, I proclaimed a Continued State of Emergency to exist throughout the State of California due to the ongoing drought; and

WHEREAS California's water supplies continue to be severely depleted despite a limited amount of rain and snowfall this winter, with record low snowpack in the Sierra Nevada mountains, decreased water levels in most of California's reservoirs, reduced flows in the state's rivers and shrinking supplies in underground water basins; and

WHEREAS the severe drought conditions continue to present urgent challenges including: drinking water shortages in communities across the state, diminished water for agricultural production, degraded habitat for many fish and wildlife species, increased wildfire risk, and the threat of saltwater contamination to fresh water supplies in the Sacramento-San Joaquin Bay Delta; and

WHEREAS a distinct possibility exists that the current drought will stretch into a fifth straight year in 2016 and beyond; and

WHEREAS new expedited actions are needed to reduce the harmful impacts from water shortages and other impacts of the drought; and

WHEREAS the magnitude of the severe drought conditions continues to present threats beyond the control of the services, personnel, equipment, and facilities of any single local government and require the combined forces of a mutual aid region or regions to combat; and

WHEREAS under the provisions of section 8558(b) of the Government Code, I find that conditions of extreme peril to the safety of persons and property continue to exist in California due to water shortage and drought conditions with which local authority is unable to cope; and

WHEREAS under the provisions of section 8571 of the California Government Code, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay the mitigation of the effects of the drought.

NOW, THEREFORE, I, EDMUND G. BROWN JR., Governor of the State of California, in accordance with the authority vested in me by the Constitution and statutes of the State of California, in particular Government Code sections 8567 and 8571 of the California Government Code, do hereby issue this Executive Order, effective immediately.



IT IS HEREBY ORDERED THAT:

1. The orders and provisions contained in my January 17, 2014 Proclamation, my April 25, 2014 Proclamation, and Executive Orders B-26-14 and B-28-14 remain in full force and effect except as modified herein.

SAVE WATER

2. The State Water Resources Control Board (Water Board) shall impose restrictions to achieve a statewide 25% reduction in potable urban water usage through February 28, 2016. These restrictions will require water suppliers to California's cities and towns to reduce usage as compared to the amount used in 2013. These restrictions should consider the relative per capita water usage of each water suppliers' service area, and require that those areas with high per capita use achieve proportionally greater reductions than those with low use. The California Public Utilities Commission is requested to take similar action with respect to investor-owned utilities providing water services.
3. The Department of Water Resources (the Department) shall lead a statewide initiative, in partnership with local agencies, to collectively replace 50 million square feet of lawns and ornamental turf with drought tolerant landscapes. The Department shall provide funding to allow for lawn replacement programs in underserved communities, which will complement local programs already underway across the state.
4. The California Energy Commission, jointly with the Department and the Water Board, shall implement a time-limited statewide appliance rebate program to provide monetary incentives for the replacement of inefficient household devices.
5. The Water Board shall impose restrictions to require that commercial, industrial, and institutional properties, such as campuses, golf courses, and cemeteries, immediately implement water efficiency measures to reduce potable water usage in an amount consistent with the reduction targets mandated by Directive 2 of this Executive Order.
6. The Water Board shall prohibit irrigation with potable water of ornamental turf on public street medians.
7. The Water Board shall prohibit irrigation with potable water outside of newly constructed homes and buildings that is not delivered by drip or microspray systems.



8. The Water Board shall direct urban water suppliers to develop rate structures and other pricing mechanisms, including but not limited to surcharges, fees, and penalties, to maximize water conservation consistent with statewide water restrictions. The Water Board is directed to adopt emergency regulations, as it deems necessary, pursuant to Water Code section 1058.5 to implement this directive. The Water Board is further directed to work with state agencies and water suppliers to identify mechanisms that would encourage and facilitate the adoption of rate structures and other pricing mechanisms that promote water conservation. The California Public Utilities Commission is requested to take similar action with respect to investor-owned utilities providing water services.

INCREASE ENFORCEMENT AGAINST WATER WASTE

9. The Water Board shall require urban water suppliers to provide monthly information on water usage, conservation, and enforcement on a permanent basis.
10. The Water Board shall require frequent reporting of water diversion and use by water right holders, conduct inspections to determine whether illegal diversions or wasteful and unreasonable use of water are occurring, and bring enforcement actions against illegal diverters and those engaging in the wasteful and unreasonable use of water. Pursuant to Government Code sections 8570 and 8627, the Water Board is granted authority to inspect property or diversion facilities to ascertain compliance with water rights laws and regulations where there is cause to believe such laws and regulations have been violated. When access is not granted by a property owner, the Water Board may obtain an inspection warrant pursuant to the procedures set forth in Title 13 (commencing with section 1822.50) of Part 3 of the Code of Civil Procedure for the purposes of conducting an inspection pursuant to this directive.
11. The Department shall update the State Model Water Efficient Landscape Ordinance through expedited regulation. This updated Ordinance shall increase water efficiency standards for new and existing landscapes through more efficient irrigation systems, greywater usage, onsite storm water capture, and by limiting the portion of landscapes that can be covered in turf. It will also require reporting on the implementation and enforcement of local ordinances, with required reports due by December 31, 2015. The Department shall provide information on local compliance to the Water Board, which shall consider adopting regulations or taking appropriate enforcement actions to promote compliance. The Department shall provide technical assistance and give priority in grant funding to public agencies for actions necessary to comply with local ordinances.
12. Agricultural water suppliers that supply water to more than 25,000 acres shall include in their required 2015 Agricultural Water Management Plans a detailed drought management plan that describes the actions and measures the supplier will take to manage water demand during drought. The Department shall require those plans to include quantification of water supplies and demands for 2013, 2014, and 2015 to the extent data is available. The Department will provide technical assistance to water suppliers in preparing the plans.



13. Agricultural water suppliers that supply water to 10,000 to 25,000 acres of irrigated lands shall develop Agricultural Water Management Plans and submit the plans to the Department by July 1, 2016. These plans shall include a detailed drought management plan and quantification of water supplies and demands in 2013, 2014, and 2015, to the extent that data is available. The Department shall give priority in grant funding to agricultural water suppliers that supply water to 10,000 to 25,000 acres of land for development and implementation of Agricultural Water Management Plans.
14. The Department shall report to Water Board on the status of the Agricultural Water Management Plan submittals within one month of receipt of those reports.
15. Local water agencies in high and medium priority groundwater basins shall immediately implement all requirements of the California Statewide Groundwater Elevation Monitoring Program pursuant to Water Code section 10933. The Department shall refer noncompliant local water agencies within high and medium priority groundwater basins to the Water Board by December 31, 2015, which shall consider adopting regulations or taking appropriate enforcement to promote compliance.
16. The California Energy Commission shall adopt emergency regulations establishing standards that improve the efficiency of water appliances, including toilets, urinals, and faucets available for sale and installation in new and existing buildings.

INVEST IN NEW TECHNOLOGIES

17. The California Energy Commission, jointly with the Department and the Water Board, shall implement a Water Energy Technology (WET) program to deploy innovative water management technologies for businesses, residents, industries, and agriculture. This program will achieve water and energy savings and greenhouse gas reductions by accelerating use of cutting-edge technologies such as renewable energy-powered desalination, integrated on-site reuse systems, water-use monitoring software, irrigation system timing and precision technology, and on-farm precision technology.

STREAMLINE GOVERNMENT RESPONSE

18. The Office of Emergency Services and the Department of Housing and Community Development shall work jointly with counties to provide temporary assistance for persons moving from housing units due to a lack of potable water who are served by a private well or water utility with less than 15 connections, and where all reasonable attempts to find a potable water source have been exhausted.
19. State permitting agencies shall prioritize review and approval of water infrastructure projects and programs that increase local water supplies, including water recycling facilities, reservoir improvement projects, surface water treatment plants, desalination plants, stormwater capture, and greywater systems. Agencies shall report to the Governor's Office on applications that have been pending for longer than 90 days.



20. The Department shall take actions required to plan and, if necessary, implement Emergency Drought Salinity Barriers in coordination and consultation with the Water Board and the Department of Fish and Wildlife at locations within the Sacramento - San Joaquin delta estuary. These barriers will be designed to conserve water for use later in the year to meet state and federal Endangered Species Act requirements, preserve to the extent possible water quality in the Delta, and retain water supply for essential human health and safety uses in 2015 and in the future.
21. The Water Board and the Department of Fish and Wildlife shall immediately consider any necessary regulatory approvals for the purpose of installation of the Emergency Drought Salinity Barriers.
22. The Department shall immediately consider voluntary crop idling water transfer and water exchange proposals of one year or less in duration that are initiated by local public agencies and approved in 2015 by the Department subject to the criteria set forth in Water Code section 1810.
23. The Water Board will prioritize new and amended safe drinking water permits that enhance water supply and reliability for community water systems facing water shortages or that expand service connections to include existing residences facing water shortages. As the Department of Public Health's drinking water program was transferred to the Water Board, any reference to the Department of Public Health in any prior Proclamation or Executive Order listed in Paragraph 1 is deemed to refer to the Water Board.
24. The California Department of Forestry and Fire Protection shall launch a public information campaign to educate the public on actions they can take to help to prevent wildfires including the proper treatment of dead and dying trees. Pursuant to Government Code section 8645, \$1.2 million from the State Responsibility Area Fire Prevention Fund (Fund 3063) shall be allocated to the California Department of Forestry and Fire Protection to carry out this directive.
25. The Energy Commission shall expedite the processing of all applications or petitions for amendments to power plant certifications issued by the Energy Commission for the purpose of securing alternate water supply necessary for continued power plant operation. Title 20, section 1769 of the California Code of Regulations is hereby waived for any such petition, and the Energy Commission is authorized to create and implement an alternative process to consider such petitions. This process may delegate amendment approval authority, as appropriate, to the Energy Commission Executive Director. The Energy Commission shall give timely notice to all relevant local, regional, and state agencies of any petition subject to this directive, and shall post on its website any such petition.



26. For purposes of carrying out directives 2–9, 11, 16–17, 20–23, and 25, Division 13 (commencing with section 21000) of the Public Resources Code and regulations adopted pursuant to that Division are hereby suspended. This suspension applies to any actions taken by state agencies, and for actions taken by local agencies where the state agency with primary responsibility for implementing the directive concurs that local action is required, as well as for any necessary permits or approvals required to complete these actions. This suspension, and those specified in paragraph 9 of the January 17, 2014 Proclamation, paragraph 19 of the April 25, 2014 proclamation, and paragraph 4 of Executive Order B-26-14, shall remain in effect until May 31, 2016. Drought relief actions taken pursuant to these paragraphs that are started prior to May 31, 2016, but not completed, shall not be subject to Division 13 (commencing with section 21000) of the Public Resources Code for the time required to complete them.
27. For purposes of carrying out directives 20 and 21, section 13247 and Chapter 3 of Part 3 (commencing with section 85225) of the Water Code are suspended.
28. For actions called for in this proclamation in directive 20, the Department shall exercise any authority vested in the Central Valley Flood Protection Board, as codified in Water Code section 8521, et seq., that is necessary to enable these urgent actions to be taken more quickly than otherwise possible. The Director of the Department of Water Resources is specifically authorized, on behalf of the State of California, to request that the Secretary of the Army, on the recommendation of the Chief of Engineers of the Army Corps of Engineers, grant any permission required pursuant to section 14 of the Rivers and Harbors Act of 1899 and codified in section 48 of title 33 of the United States Code.
29. The Department is directed to enter into agreements with landowners for the purposes of planning and installation of the Emergency Drought Barriers in 2015 to the extent necessary to accommodate access to barrier locations, land-side and water-side construction, and materials staging in proximity to barrier locations. Where the Department is unable to reach an agreement with landowners, the Department may exercise the full authority of Government Code section 8572.
30. For purposes of this Executive Order, chapter 3.5 (commencing with section 11340) of part 1 of division 3 of the Government Code and chapter 5 (commencing with section 25400) of division 15 of the Public Resources Code are suspended for the development and adoption of regulations or guidelines needed to carry out the provisions in this Order. Any entity issuing regulations or guidelines pursuant to this directive shall conduct a public meeting on the regulations and guidelines prior to adopting them.



31. In order to ensure that equipment and services necessary for drought response can be procured quickly, the provisions of the Government Code and the Public Contract Code applicable to state contracts, including, but not limited to, advertising and competitive bidding requirements, are hereby suspended for directives 17, 20, and 24. Approval by the Department of Finance is required prior to the execution of any contract entered into pursuant to these directives.

This Executive Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

I FURTHER DIRECT that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given to this Order.

IN WITNESS WHEREOF I have
hereunto set my hand and caused the
Great Seal of the State of California to
be affixed this 1st day of April 2015.

EDMUND G. BROWN JR.
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State

