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# Th13c

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Staff: Kevin Kahn - SC  
Staff Report: 12/23/2016  
Hearing Date: 1/12/2017

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

**Application Number:** A-3-MCO-06-044 (Mayr Subdivision)

**Applicants:** Robert and Linda Mayr

**Appellants:** Commissioners Shallenberger and Reilly

**Local Government:** Monterey County

**Local Decision:** Monterey County Coastal Development Permit Application Number PLN000260, approved by the Monterey County Minor Subdivision Committee on May 25, 2006

**Project Location:** 16323 Castroville Boulevard, Prunedale, North Monterey County (APN 129-071-047)

**Project Description:** Subdivision of a 5.52-acre parcel into two lots (one 2.85 acres and one 2.67 acres), development of a mutual water system, construction of septic systems and driveway infrastructure, and related improvements.

**Staff Recommendation:** Substantial Issue Exists; Denial

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**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 Applicants, 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. (14 CCR § 13115(c).) 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. (*Id.* § 13117.) Others may submit comments in writing. (*Id.*) 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. (*Id.* § 13115(b).)

## SUMMARY OF STAFF RECOMMENDATION

Monterey County approved a coastal development permit (CDP) authorizing the subdivision of a 5.52-acre parcel into two lots, both of which would be available for future residential development (i.e., each future residence would need a separate CDP approval) in the unincorporated Prunedale area of North Monterey County. Prunedale is a rural area of rolling hills consisting of open space, agriculture, and very low density residential development. The entire project site is undeveloped land consisting of significant coast live oak woodland and central maritime chaparral habitat, both of which the LCP designates as environmentally sensitive habitat (ESHA). The County's approval also authorizes development of a mutual water system, construction of septic systems and driveway infrastructure, and related improvements.

The Appellants contend that the County-approved project is inconsistent with the LCP's water supply, groundwater resources, and ESHA protection 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 future residential development 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 LCP 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 project is inconsistent with the LCP's ESHA protection policies, including because it impermissibly authorizes the removal of roughly an acre of central maritime chaparral ESHA and 130 coast live oak and Monterey pine trees for non-resource-dependent residential infrastructure.

**Staff recommends that the Commission find that the appeal raises a substantial issue and that the Commission take 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 two future residences that would demand 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 two-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 a subdivision 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 build residential infrastructure, including roads, utilities, and septic systems, into central maritime chaparral ESHA and coast live oak woodland. The LCP does not allow these uses in ESHA, and further requires that the removal of coast live oak woodland and other vegetation be minimized.

Beyond the issues raised by the appellants that were the subject of the Substantial Issue determination, the project would also authorize extensive grading and landform alteration to convert the area's scenic natural habitats and rural landscape into engineered, structural elements, inconsistent with LCP requirements to protect North County's scenic rolling hills and water quality.

Finally, it is worth noting that the proposed project is not consistent with the terms and conditions governing this property pursuant to CDP MS88-10. That CDP, approved by Monterey County in 1991, authorized the subdivision of a larger 16.724-acre parcel into three parcels, including the subject parcel. That approval was subject to numerous conditions to protect ESHA, visual resources, and water quality. Building an additional new access road/driveway at the northwestern property boundary along Desmond Road is inconsistent with that CDP's requirement to solely allow access within the existing utility easement on the southeast portion of the property from Castroville Boulevard. The additional proposed vegetation removal and land disturbance (including 0.87 acres of ESHA removal) to accommodate the additional residence is inconsistent with conditions requiring all natural vegetation to be left intact (but for the construction of the one authorized residence on the existing parcel). As such, approval of the proposed project would likely result in violation of the 1991 CDP.

In short, the project proposes a residential subdivision in a predominantly rural area with severe water supply deficiencies, and on a parcel that contains significant sensitive habitats. 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

|                                                       |          |
|-------------------------------------------------------|----------|
| <b>I. MOTIONS AND RESOLUTIONS.....</b>                | <b>5</b> |
| <b>II. FINDINGS AND DECLARATIONS .....</b>            | <b>6</b> |
| A. PROJECT LOCATION .....                             | 6        |
| B. PROJECT DESCRIPTION.....                           | 6        |
| C. MONTEREY COUNTY APPROVAL AND PROJECT HISTORY ..... | 7        |
| D. APPEAL PROCEDURES .....                            | 7        |
| E. SUMMARY OF APPEAL CONTENTIONS .....                | 8        |
| F. SUBSTANTIAL ISSUE DETERMINATION .....              | 9        |
| 1. Water Supply .....                                 | 9        |
| 2. The Five “Substantial Issue” Factors .....         | 12       |
| G. SUBSTANTIAL ISSUE DETERMINATION CONCLUSION .....   | 14       |
| H. COASTAL DEVELOPMENT PERMIT DETERMINATION .....     | 15       |
| 1. Water Supply and Groundwater Resources .....       | 16       |
| 2. Environmentally Sensitive Habitat Areas .....      | 25       |
| 3. Water Quality.....                                 | 29       |
| 4. Visual Resources and Community Character .....     | 31       |
| 5. Takings.....                                       | 32       |
| I. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) .....  | 36       |

### APPENDICES

Appendix A – Substantive File Documents

Appendix B – Staff Contacts with Agencies and Groups

### EXHIBITS

Exhibit 1: Location Map

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: Monterey County 1991 CDP MS88-10

Exhibit 8: Map of Department of Water Resources-designated Critically Overdrafted  
Groundwater Basins



## 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-06-044 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-06-044 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-06-044 for the development proposed by the applicants, and I recommend a no vote.*

***Resolution to Deny CDP:** The Commission hereby denies Coastal Development Permit Number A-3-MCO-06-044 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 County-approved project is located on a vacant 5.52-acre parcel at 16323 Castroville Boulevard, near the intersection with Paradise Road and Desmond Road, in the unincorporated Prunedale area of North Monterey County. Prunedale, along with the rest of North Monterey County, 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. The parcel is unimproved and consists of sloping hills, some at over 25% grade, covered with central maritime chaparral and coast live oak woodland habitat. The property is zoned Low Density Residential (LDR), potentially allowing for residential development at a maximum of 2.5 units per acre.

The parcel was previously part of a larger 16.724-acre parcel (APN 129-071-043) that was subdivided into three parcels of roughly five acres each in 1991<sup>1</sup> (Monterey County CDP MS88-10). That approval was subject to numerous conditions, including that all future building sites and driveways/access roads be located where slopes are less than 25 percent, where there shall be minimal impact on ESHA, and off of ridgelines (Condition 37). To implement such requirements, that CDP included conditions requiring access to the three parcels to be limited to the southeastern portion of the site where an existing utility easement is located (Condition 24), that natural vegetation be left intact and undisturbed, but for normal construction of future residences and their ancillary development (Condition 26), and that a scenic easement be conveyed to the County over those portions of the property where the slope exceeds 25% and where maritime chaparral exists (Condition 19). As such, 1.54 acres of the subject parcel is currently protected by a scenic and conservation easement held by the County. The other two parcels have since been developed with one residence each<sup>2</sup>.

See **Exhibit 1** for a project location map, **Exhibit 2** for aerial photos of the project site, and **Exhibit 7** for Monterey County CDP MS88-10.

### B. PROJECT DESCRIPTION

The County's approval authorized the subdivision of a 5.52-acre parcel into two parcels, both of which would be available for future residential development (i.e. both future residences would need separate CDP approval). The subdivided parcels would be 2.85 acres (Parcel A) and 2.67 acres (Parcel B). The County's approval also authorized the construction of driveways, building sites, septic systems, and water supply infrastructure on both parcels. A new driveway would access Parcel A's building site from Desmond Road, located on the parcel's northern boundary, while access to Parcel B would be from a new driveway extended from an existing road along the parcel's southeastern boundary (see **Exhibits 2 and 3**).

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<sup>1</sup> APNs 129-071-047 (the parcel subject to this appeal), 129-071-048, and 129-071-049.

<sup>2</sup> While the Applicants for the project subject to this appeal were not the owners of the original parcel and therefore were not the Applicants for the original subdivision, the Applicants now own all three parcels.

The County's approval also required numerous measures to address habitat and other impacts, including requiring some of the area identified as central maritime chaparral to be placed in a scenic easement and conveyed to the County, requiring 1.3 acres on the adjacent parcel (APN 129-071-048, which the Applicant also owns) to be replanted with central maritime chaparral, and requiring a \$13,790 Traffic Impact Mitigation fee for the project's vehicular impacts.

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

### **C. MONTEREY COUNTY APPROVAL AND PROJECT HISTORY**

On May 25, 2006, the Monterey County Minor Subdivision Committee approved Coastal Development Permit application number PLN000260. Notice of the County's action on the CDP was received in the Coastal Commission's Central Coast District Office on August 1, 2006 (see **Exhibit 4**). The Coastal Commission's ten working-day appeal period for this action began on August 2, 2006 and concluded at 5 p.m. on August 15, 2006. One valid appeal was received during the appeal period. See **Exhibit 5** for the full text of the appeal.

At the time the CDP appeal was filed, the County was processing other similar North County residential subdivision projects. Thus, Commission staff concluded it would be prudent to work with the County on the subdivision projects moving through the local process, with the goal of coming to resolution with County staff on how the LCP's policies relate to the residential development potential in North County given common factual circumstances (so as to avoid further similar appeals). Commission staff reviewed and commented 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 North Monterey County's water resources and groundwater supply. 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 North Monterey County's water situation, and after informing the Applicants of the LCP inconsistencies the County-approved project engendered, staff did not hear from the Applicants for many years, including after staff sent a letter to the Applicants in 2011 asking whether they still intended to move forward with the project. Commission staff received no response from the Applicants. In 2016, staff sent the Applicants another letter asking about project status, and the Applicants responded that they were still interested in pursuing the project, despite the project's potential coastal resource impacts. Since then, staff has worked with the Applicants extensively in identifying project issues and potential LCP inconsistencies.

### **D. APPEAL PROCEDURES**

Coastal Act Section 30603(a) 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, or (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 currently under consideration is appealable because subdivision is not a principal permitted use under the LCP.

The grounds for appeal under Section 30603(b) 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 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 Applicants (or their representatives), persons opposed to the project who made their views known before the local government (or their representatives), and the local government. (14 CCR § 13117.) Testimony from other persons regarding substantial issue must be submitted in writing. (*Id.*) 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) groundwater resources and 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, if the safe yield is already exceeded, only allow new development to proceed once additional water supplies are secured to bring the basin into its safe yield state (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 the County-approved project is inconsistent with the LCP's ESHA protection policies, including those that: prohibit all development, with the exception of resource dependent uses, in sites of known rare and endangered species of plants (LUP Policy

2.3.2.1); require new development adjacent to locations of environmentally sensitive habitats to be compatible with the long-term maintenance of the resource, and requires new subdivisions to be approved only where significant impacts to sensitive habitats will not occur (LUP Policy 2.3.2.3); prohibit subdivisions when they will adversely impact ESHA and/or when they are located completely within ESHA (Implementation Plan (IP) Sections 20.144.040(B)(3) and 20.144.040(B)(4), respectively); and require development within oak woodland habitat to be sited to minimize disruption of vegetation and habitat loss (LUP Policy 2.3.3.A.4).

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<sup>3</sup> and IP. The subject property is located within the North County LCP segment. The North County LCP 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.

Specifically, the North County LCP includes policies and standards that require all new development to be served by an identifiable, available, and long-term water supply (LUP Policy 2.5.1), specifically requires new subdivisions dependent on groundwater to have an adequate, long-term water supply (LUP Policy 4.3.5.7), and only authorizes an amount of development that can be served by the safe yield groundwater extraction level (LUP Policies 2.5.2.3 and 2.5.3.A.2). The LCP defines "safe yield" as the amount of extraction that the resource can

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

produce over the long-term without impairment of the resource and other associated resources (North County IP Section 20.144.020.VVVV). The North County LCP does not contain a specific numeric safe yield amount for each groundwater basin, but instead requires definitive water studies, hydrologic reports, and the most updated resource information to determine appropriate safe yields and the amount of new development such a yield can support (LUP Policy 2.5.3.A.2 and IP Section 20.144.070.E.11).

Consistent with the above-discussed policies and standards, the North County LCP also requires development to be phased so that water supplies are not committed beyond their safe yield and, if the safe yield is already exceeded, only allows additional development to proceed once additional water supplies are secured that will bring the basin back into LCP-required safe yield state (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. Should the available resource information show that the underlying groundwater basin is being extracted in a manner exceeding its safe, long-term yield, then the LCP affirmatively requires denial of a proposed project, particularly low-LCP priority residential subdivisions, unless and until additional water supplies are secured and the safe yield level is reached (IP Sections 20.144.070.E.11, 20.144.140.A.1, and Policy 2.5.2.3).

Overall, these policies and IP sections (see Section H below for full text) 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 North County LCP groundwater resources and water supply policies and IP sections. 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 new residential development 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 (with coastal-dependent uses being the highest LCP land use priority).

#### *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 LCP 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 Highlands South sub-basin of the Salinas River Groundwater Basin (see **Exhibit 6** for a location map of the area's groundwater basin geography).

As previously described, keeping groundwater usage within the basins' safe yield extraction level is a key LCP requirement. 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, hydrologic reports, and new information sources. Since the time that the LCP was certified in 1988, 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 was conducted in 1995<sup>4</sup> and calculated the total groundwater overdraft for all of North County's five groundwater sub-basins on the order of 11,700 acre-feet per year (AFY),<sup>5</sup> based off a defined safe yield<sup>6</sup> of 14,410 AFY and an actual extraction level of 26,110 AFY. Subsequently, the 2002 *North Monterey County Comprehensive Water Resources Management Plan* (CWRMP)<sup>7</sup> updated the 1995 analysis and calculated the North County groundwater basin overdraft to be as much as 16,340 AFY due to an increase in estimated water usage (see **Exhibit 6**).<sup>8</sup> The CWRMP calculated the Highlands South sub-basin's overdraft at 1,705 AFY.<sup>9</sup> Finally, in 2015, the Monterey County Resource Management Agency prepared its *State of the Salinas River Groundwater Basin*, which estimated the basin's overdraft to be between 17,000 to 24,000 AFY.<sup>1011</sup>

Thus, all three sources which constitute the best available information regarding overdraft in the North County LCP area conclude that North County's groundwater basins, including the sub-basin where the approved project is located and from which it will receive its potable water

<sup>4</sup> Fugro West, Inc., 1995. *North Monterey County Hydrogeologic Study, Vol. 1: Water Resources*. Prepared for Monterey County Water Resources Agency, October 1995.

<sup>5</sup> Id. Table 11, page 77. An acre-foot is equivalent to 326,700 gallons of water.

<sup>6</sup> The *North Monterey County Comprehensive Water Resources Management Plan* defines safe yield/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."

<sup>7</sup> Monterey County Water Resources Agency and EDAW, Inc., 2002. *North Monterey County Comprehensive Water Resources Management Plan*, January 2002.

<sup>8</sup> Table 1, Pages 2-7. The 2002 *North Monterey County 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.

<sup>9</sup> Based on a demand of 6,095 AFY and safe yield of 4,390.

<sup>10</sup> Based on a safe yield of roughly 499,000 to 506,000 AFY and a withdrawal of roughly 523,000 AFY.

<sup>11</sup> The *State of the Salinas River Groundwater Basin* quantified the overdraft condition of the entire Salinas River Groundwater Basin, which extends beyond the North County coastal zone. The *North Monterey County Hydrogeologic Study* and the *North Monterey County Comprehensive Water Resources Management Plan*, the two previous studies on groundwater overdraft, quantified overdraft solely within the portions of the two groundwater basins (Salinas River and Pajaro Valley) located within the North County LCP area. Thus, the three reports share different geographic scopes, but all quantify overdraft within the project area.

supply (i.e. Highlands South sub-basin) are overdrafted and supplying water to existing land uses at an amount exceeding the aquifers' safe yields.

The County-approved project authorizes a residential subdivision that will eventually result in additional residential development, which will increase water demand from groundwater aquifers that are already being pumped beyond their safe yield level. Therefore, the County's approval raises significant LCP conformance issues with respect to LUP Policies 2.5.2.3 and 2.5.3.A.2, which both only authorize an amount of development commensurate with what the underlying groundwater basin's safe yield can support. Thus, the County-approved project raises substantial LCP conformance issues with respect to groundwater extraction levels and the amount of development such extraction 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 found that there would be a long-term water supply based on Highlands South sub-basin's estimated groundwater storage of 1,614,714 AF and the project's estimated water usage of 0.8 AFY, or an additional demand of 0.00010%, which the County found to be an insignificant water demand increase. However, there are numerous LCP conformance issues with the County's reasoning and analysis.

The County's finding does not account for the LCP's "safe yield" definition (and the concept of safe/long-term yield in general) and the policies and standards 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). By contrast, the County's analysis compared the project's estimated water usage relative to total estimated groundwater for the Highlands South sub-basin. This analytic approach does not amount to a "safe yield" approach, and thus raises substantial LCP conformance issues in this regard.

As previously described, the County's approval would commit water from an already overdrafted groundwater basin for additional residential development. 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 raises significant conformity issues with respect LUP Policy 2.5.1's overarching requirement that development be served by a long-term water supply, as well as with LUP Policy 4.3.5.7, which only allows new subdivisions when they too can be supplied by an adequate, long-term groundwater source. The County-approved project therefore raises substantial LCP conformance issues in this regard.

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 additional residential development demanding water from an already severely overdrafted groundwater basin. The approved subdivision thus raises significant LCP conformance issues with respect to having a long-term water supply from a groundwater basin in



its safe yield state. For these reasons, the County's approval raises a substantial LCP conformance issue with respect to groundwater resources and water supply.

## 2. Environmentally Sensitive Habitat Areas

### *Applicable LCP Policies*

The North County LCP includes numerous policies and standards protecting ESHA and other habitats, including those that: prohibit all development, with the exception of resource dependent uses, in sites of known rare and endangered species of plants (LUP Policy 2.3.2.1); require new development adjacent to locations of environmentally sensitive habitats to be compatible with the long-term maintenance of the resource, and require new subdivisions to be approved only where significant impacts to sensitive habitats will not occur (LUP Policy 2.3.2.3); prohibit subdivisions when they will adversely impact ESHA and/or when they are completely within ESHA (IP Sections 20.144.040(B)(3) and 20.144.040(B)(4), respectively); and those that require development within oak woodland habitat to be sited to minimize disruption of vegetation and habitat loss (LUP Policy 2.3.3.A.4).

### *Appellants' Contentions*

The Appellants contend the County-approved project is inconsistent with the above described policies. Specifically, they contend that the project does not protect central maritime chaparral on the site, which the LCP categorically considers to be ESHA, but rather results in 0.87 acres of its destruction through construction of roads and other infrastructure and future residential development. Furthermore, the project would require the removal of 126 coast live oak trees, inconsistent with LCP policies that seek to minimize oak woodland loss. As such, the Appellants contend that the proposed subdivision is inconsistent with LCP policies that protect ESHA and oak woodlands, and do not allow subdivisions when doing so would result in adverse impacts to those sensitive habitats.

### *Analysis*

The project site is a rural, vacant lot, which the project's Initial Study characterized as consisting of "predominantly oak woodland and chaparral with rare or uncommon plants such as Eastwood's golden fleece, Monterey ceanothus, Pajaro manzanita, and the Monterey spine flower."<sup>12</sup> The Initial Study found that the project's approved access roads, utilities, and building envelopes would result in removal of 121 coast live oaks<sup>13</sup>, nine Monterey pines, and 0.87 acres of central maritime chaparral ESHA. Thus, the proposed project raises significant questions about its consistency with the LCP's ESHA protection policies and standards, including those that only allow resource dependent uses within ESHA and that prohibit subdivisions when they will adversely impact ESHA (LUP Policies 2.3.2.1 and 2.3.2.3 and IP Sections 20.144.040(B)(3) and (B)(4)). Furthermore, while LUP Policy 2.3.2.3 requires development adjacent to ESHA to be compatible with the long-term maintenance of the resource, which typically consists of requisite buffers that serve to separate the development from the resource itself, the County's approval did not address, quantify, nor require any buffer between the approved development and the identified sensitive habitats. The project thus raises significant questions with respect to LCP ESHA buffer requirements. Finally, the removal of 121 coast live oak trees raises questions

<sup>12</sup> Mayr-Desmond Subdivision Initial Study-PLN000260-April 3, 2006, page 15.

<sup>13</sup> While the appeal claims that 126 coast live oaks will be removed, the project's Initial Study determined that 121 will be removed.

about its conformance with LCP policies that seek to minimize such tree loss. In sum, the County-approved project raises substantial LCP ESHA and sensitive habitat protection conformance issues.

### **3. 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. Regarding the first factor, the County found the development consistent with applicable LCP water supply and groundwater resources policies based on conclusions that the project’s resultant water extraction was insignificant, which is not consistent with LCP policies that seek to preserve groundwater basins at their safe yield extraction level. Regarding the second factor, the County’s approval authorizes residential subdivision in ESHA, inconsistent with LCP requirements that prohibit same. 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 and with significant sensitive habitat resources.

Regarding the third factor, the proposed project is located in an area known to have groundwater overdraft issues where the depletion of groundwater adversely affects significant coastal resources such as agriculture. Regarding the fourth factor, the County’s approval of a residential subdivision on a parcel that contains ESHA and is located in an area with severe water constraints would create an adverse precedent for future interpretation of the LCP in terms of protecting groundwater and ESHA resources, particularly with respect to other proposed residential subdivisions in Northern Monterey County. Finally, regarding the fifth factor, the project raises issues of regional or statewide significance due to the statewide drought, and the particular importance of groundwater resources in this region. 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 as to conformity with the certified LCP.

## **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 find jurisdiction for de novo review of the 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-06-044 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.

### *North Monterey County Background*

North Monterey County is a predominantly rural area with significant coastal resources, including open space covered by grasslands, maritime chaparral, and oak forest habitat, and agricultural uses, including for both grazing and row crops, all flanking Elkhorn Slough, one of the largest coastal wetlands and estuaries remaining in California. Because of the area's rich coastal resources, longstanding public policy has been to retain North Monterey County as a rural, agricultural buffer along the mid-Monterey Bay area, in between urban Santa Cruz County to the north and the Monterey Peninsula to the south. In other words, the region's land use planning goal has been to direct urban development to existing urban centers along the north and south ends of Monterey Bay, and not to sprawl within the ecologically and agriculturally productive North County area. This broad goal was articulated in the findings of the 1975 California Coastal Plan (Plan), prepared for the Governor and Legislature by the California Coastal Zone Conservation Commission per the requirements of the 1972 Proposition 20, which helped inform and shape the Coastal Act. Specifically, the Plan found that the area contained incredibly rich coastal resources, including at Elkhorn Slough and the adjacent agricultural lands, but that these resources were at risk from numerous sources, including urban growth and sprawl, water quality impairment, and groundwater overdraft and seawater intrusion. Specifically, the Plan found:

*The Pajaro Valley, covering 120 square miles, is one of the richest agricultural regions in California...but **increasing drafts of groundwater, for urban and agricultural use, have had adverse effects**; the water supply for 50 square miles of agricultural land between the Pajaro Valley and Marina is **currently threatened by saltwater intrusion**. The urban center of the valley, Watsonville (population 17,000), has grown rapidly, sprawling into surrounding farmlands. The healthy economy of the area, based on food production and processing, encourages expansion of Watsonville and its suburbs, Freedom and Pajaro. **Substantial growth of these communities would involve the loss of valuable agricultural lands** designated for protection under county plans and the Coastal Plan, and would necessitate expensive solutions to the water supply problem. **Plan policies call for concentrating development in existing urban areas, such as Watsonville, Pajaro, Castroville, and Moss Landing, rather than allowing continued conversion of agricultural land...[Elkhorn Slough] is threatened by locally planned expansion of existing industrial and harbor developments, and by residential development of the critical watershed....Although the major part of Elkhorn Slough is in public ownership, neither the critical watershed nor the wetland resource itself is adequately protected.**<sup>14</sup> (bold means emphasis added)*

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<sup>14</sup> California Coastal Plan Central Coast Subregion 5: Pajaro-Elkhorn (Part IV: Plan Maps and Regional Summaries, page 230)

Thus, the Coastal Plan found that strong growth control protections were needed to preserve North County, including policies addressing water quality, groundwater overdraft and resultant seawater intrusion, and agricultural protections, all with the overarching goal of preserving the area's rural nature. These recommendations were largely ultimately adopted in both the Coastal Act (including as evidenced by the inland extent of the coastal zone boundary that encompasses this area so as to comprehensively plan for and protect it) and in the North County LCP's policies and standards, as described below.

## 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 LCP contains 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 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.***

***IP Section 20.64.180.D. Density of Development Standards. The maximum density established under this Section shall be utilized as the basis to begin consideration of the density appropriate for development of a specific parcel. Such established maximum density is not a guarantee of possible development potential of any given property. Density of development shall ultimately be determined through the permit process, consideration of site conditions on the specific property and of the details of the specific development proposal without imposing undue restrictions on private property. Such considerations may include but are not limited to: ... 2. Available supply and priorities for water....***

***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.***

Specifically, the LCP includes policies and standards 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 Policies 2.5.2.3 and 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, hydrologic reports, and the most updated resource information to determine appropriate safe yields and the amount of new development such a yield can support (LUP Policy 2.5.3.A.2 and IP Section 20.144.070.E.11).

Consistent with the above-discussed policies and standards, the LCP also requires development to be phased so that water supplies are not committed beyond their safe yield and, if the safe yield is already exceeded, only allows additional development to proceed once additional water supplies are secured that will bring the basin back into LCP-required safe yield state (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. Should the resource information find that the underlying groundwater basin is being extracted in a manner exceeding its safe, long-term yield, then the LCP affirmatively requires denial of a proposed project, particularly low-LCP priority residential subdivisions, unless and until additional water supplies are secured and the safe yield level is reached (IP Sections 20.144.070.E.11, 20.144.140.A.1, and Policy 2.5.2.3).

In sum, 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.

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).

### *Analysis*

#### *Groundwater Overdraft and Safe Yield Calculations*

The subject site is located in North Monterey County, which has severe groundwater overdraft and resultant seawater intrusion 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)*

In this context, the certified LCP was therefore subsequently developed with a policy framework that allowed development, but in a cautious, phased manner commensurate with the area's safe yield and subject to a buildout cap that could only be exceeded once definitive water studies were developed and the safe yield was established. In other words, while there was no consensus on the precise quantification of the problem or on how to quantify the safe yield at the time the LUP was certified, the LUP was developed to manage the demand for water by establishing policies that phased development relative to safe yield, to be understood using the best available science.

The LUP also limited the total amount of residential development in North County (beyond one home per legal parcel) by placing a maximum threshold on residential buildout until that safe yield level could be determined. Because the overdraft situation was not precisely known at time of LUP adoption, to be cautious, LUP Policy 2.5.3.A.2 establishes that no more than 50% of the maximum<sup>15</sup> residential buildout based on parcel size and subdivision potential (i.e., 1,351 units

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<sup>15</sup> The 50% buildout density figures were derived from multiplying plan densities by area acreage. These buildout numbers do not account for potential resource constraints that might be identified when additional units or subdivision are proposed, and that might dictate a lower density (e.g., significant wetland areas and water resource

or lots) may be allowed while the County pursued efforts to quantify the overdraft problem and arrive at a solution. The policy establishes this maximum as a cap until a new water supply is secured or once safe yield is achieved, at which time this cap could be increased via LCP amendment.<sup>16</sup> However, that is a maximum threshold, and LUP policy 2.5.3.A.2 includes a caveat that allows this cap to be reduced to limit groundwater use to the safe-yield level once it was determined, or if required in order to protect agricultural water supplies. Thus, while the 50% build-out level may have been an optimistic threshold to use, the LCP did have the foresight to establish this threshold not as an absolute threshold, but rather as a maximum that could be further reduced in order to protect groundwater resources once more was known about their status. Other LCP policies similarly state that development and density allowances are maximums, not entitlements, with new development limited by resource constraints and LCP requirements (e.g., LUP Policy 4.3.6.D.1 and IP Section 20.64.180.D).<sup>17</sup>

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 (due to increased water usage) 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 South sub-basin, which would provide water to the proposed project, the 1995 Fugro West study calculated a sustainable yield of 4,390 AFY and historical groundwater demand of 5,020 AFY, resulting in a deficit of 630 AFY. Updated values provided in the 2002 CWRMP identified the same sustainable yield of 4,390 AFY, but updated the water demand estimates for the sub-area to be 6,095 AFY, for a total overdraft of 1,705 AFY. Therefore, between the 1995 and 2002 studies, the annual amount of overdraft was calculated to have increased over an alarming 171%.

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constraints that could not be developed). The LUP is clear that actual development potential is contingent on natural resource constraints and the availability of public services (e.g., LUP Policy 4.3.6.D.1 and IP Section 20.64.180.D).

<sup>16</sup> This policy applies to new lots and second units on existing lots; one home per vacant parcel is allowed independent of the 50% buildout number. However, second units are no longer allowable in the North County coastal zone due to water supply inadequacies per LCP amendment No. LCP-3-MCO-15-0022-1, approved by the Commission in October 2015.

<sup>17</sup> The Commission has found that North County's buildout and density numbers are maximums, whereby actual allowable buildout and density must be understood based on resource constraints and LCP requirements (see CDP A-3-MCO-04-054, LCP amendment MCO-MAJ-1-06, and CDP extension A-3-MCO-04-054-E3).



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 South 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 contour<sup>18</sup> 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.

In 2015, the Monterey County Resource Management Agency prepared its *State of the Salinas River Groundwater Basin* (report). The purpose of the report is to provide an assessment of the current health and status of the groundwater basin<sup>19</sup>, including in terms of water supply and seawater intrusion, including due to drought conditions. The report calculated the entire groundwater basin’s overdraft at between 17,000 to 24,000 AFY, based on a safe yield of roughly 499,000 to 506,000 AFY and a historic withdrawal (annual average extraction between 1959 and 2013) of roughly 523,000 AFY. The report concluded<sup>20</sup>:

*Based on the analyses discussed above, the Basin appears to be out of hydrologic balance....Sustainable use of groundwater can only be achieved by aggressive and cooperative water resources planning to mitigate seawater intrusion and groundwater head declines. The consequences of no-action under continued drought conditions will be the imminent advancement of seawater intrusion within the next few years and the continued decline of groundwater head. [bold is emphasis added]*

<sup>18</sup> A concentration of 500-mg/l of chloride is the Secondary Drinking Water Standard upper limit and is used as a measure of impairment of water, and is therefore also the basis for determining seawater intrusion in wells.

<sup>19</sup> The *State of the Salinas River Groundwater Basin* quantified the overdraft condition of the entire Salinas River Groundwater Basin, which extends beyond the North County coastal zone. The *North Monterey County Hydrogeologic Study* and the *North Monterey County Comprehensive Water Resources Management Plan*, the two previous studies on groundwater overdraft, quantified overdraft solely within the portions of the two groundwater basins (Salinas River and Pajaro Valley) located within the North County LCP area. Thus, the three reports share different geographic scopes, but all quantify overdraft within the project area.

<sup>20</sup> State of the Salinas River Groundwater Basin, page ES-16.

Furthermore, although not a groundwater study commissioned by the County, implementation to date of the Sustainable Groundwater Management Act (SGMA) represents additional best available scientific information supporting the conclusion that groundwater in the Highlands South sub-basin (where the property at issue is located) is being over-extracted in exceedance of its safe yield. The SGMA was signed into law by the Governor on September 16, 2014. The 2014 SGMA establishes a new structure for groundwater management in California, requiring all overdrafted groundwater basins to be managed by local groundwater sustainability agencies (GSA) under the purview of a Department of Water Resources (DWR)-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. SGMA defines "sustainable groundwater management" as the "management and use of groundwater in a manner that can be maintained during the planning and implementation horizon without causing undesirable results,"<sup>21</sup> and defines "undesirable results"<sup>22</sup> as any of the following effects caused by groundwater conditions occurring throughout the basin:

- Chronic lowering of groundwater levels indicating a significant and unreasonable depletion of supply
- Significant and unreasonable reduction of groundwater storage
- Significant and unreasonable seawater intrusion
- Significant and unreasonable degraded water quality
- Significant and unreasonable land subsidence
- Surface water depletions that have significant and unreasonable adverse impacts on beneficial uses of the surface water

SGMA defines "sustainable yield" as "the maximum quantity of water, calculated over a base period representative of long-term conditions in the basin and including any temporary surplus, that can be withdrawn annually from a groundwater supply without causing an undesirable result."<sup>23</sup>

Under the law, DWR is required to identify groundwater basins in "critical conditions of overdraft," defined as when "continuation of present water management practices would probably result in significant adverse overdraft-related environmental, social, or economic impacts." All groundwater basins currently designated as High or Medium Priority per DWR's 2003 Bulletin 118<sup>24</sup> and designated as "critically overdrafted" by DWR would be

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<sup>21</sup> California Water Code Section 10721(v).

<sup>22</sup> California Water Code Section 10721(x)(1-6).

<sup>23</sup> California Water Code Section 10721(w).

<sup>24</sup> Bulletin 118 is DWR's primary inventory of the state of groundwater basins in California, including the names and boundaries of basins and sub-basins, yield data, water budgets, and water quality.

designated as basins in “critical conditions of overdraft” and would be required to be managed under a GSP by January 31, 2020. All other High or Medium Priority basins must have an approved GSP by January 31, 2022.<sup>25</sup>

In January 2016, DWR officially designated portions of the Salinas River Groundwater Basin, including the area in which the proposed project is located, as “critically overdrafted” (see map of DWR-designated “critically overdrafted” groundwater basins in **Exhibit 8**). Since the Salinas River Groundwater Basin has been deemed a “High Priority” basin in Bulletin 118 since 1980, the basin will be deemed in “critical conditions of overdraft” and required to have an approved GSP by 2020.

Thus, all four comprehensive information sources (i.e., the 1995 Fugro West study, the 2002 CWRMP, the 2015 State of the Salinas River Groundwater Basin report, and the SGMA) conclude that North County’s groundwater basins, including the Highlands South sub-basin from which the proposed project would 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. As such, the proposed project is inconsistent with LUP Policy 2.5.2.3, which does not allow development when water supplies are committed beyond their safe yield, and only allows development once additional water supplies are secured to bring the basin into its LCP-required safe yield state.

#### *Long-term, Adequate Water Supply*

As described previously, the LCP requires all new development to be served by an identifiable, available, long-term, and adequate water supply (LUP Policy 2.5.1 and IP Section 20.144.140.A.1), and specifically requires new subdivisions dependent on groundwater to have an adequate, long-term water supply (LUP Policy 4.3.5.7). If water supplies are found not to be adequate, then IP Section 20.144.140.A.1 does not allow non-coastal dependent uses, thereby affirmatively requiring denial of low LCP (and Coastal Act) priority residential subdivisions. In essence, 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 divert scarce water supplies at the expense of priority uses. Indeed, IP Section 20.144.140.A.1 instructs that, “where services 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.

The proposed project would authorize a residential subdivision that will increase water demand by an estimated 0.8 AFY for new residential development from groundwater

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<sup>25</sup> All other non-High and non-Medium priority groundwater basins are encouraged, but not required, to prepare a GSP.

aquifers that are already being pumped beyond their safe yield level. With respect to whether there is a long-term and adequate supply, the groundwater basin's overdraft status indicates 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 be served by it cannot be found to have a long-term, adequate water supply. 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) and 4.3.5.7 (which limits new subdivisions and development until adequate long-term water supplies are assured).

Furthermore, the proposed project, with its resultant 0.8 AFY water usage for new residential lots, cannot be found to have an adequate water supply, and is thus inconsistent with IP Section 20.144.140A.1, which requires that adequate water be available to serve non-coastal dependent uses. There is not adequate water available for the proposed subdivision, which is a non-coastal-dependent use, and thus the proposed subdivision must be denied. Moreover, the proposed subdivision cannot be found consistent with other LUP policies, including LUP Policy 2.5.3.A.1 (which sets a County-wide policy of protecting groundwater supplies for coastal priority agricultural uses), Policy 4.3.5.4 (which prioritizes coastal-dependent uses over residential and non-coastal-dependent uses when there is limited water to support development), Policy 4.3.6.D.1 (which only allows land divisions for residential purposes to be approved by evaluating LCP criteria), Policy 4.3.6.D.5 (which limits residential growth until a water supply adequate to support residential development is provided), and Policy 7.3.1 (which prioritizes applications for coastal-dependent or related uses). Thus, the proposed subdivision must be denied due to its numerous inconsistencies with LCP groundwater management policies.

#### *Alternatives and Impact Mitigation*

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 would commit a permanent water supply from a source that is already overdrafted. As will be explained below, complete water usage offsets as mitigation are not appropriate nor are they realistically feasible in Northern Monterey County in order to be able to find consistency with IP Section 20.144.070.E.11 here.

While some past projects have proposed and been approved 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 that have subsequently emerged with this approach, including that they do not address nor are they consistent with other LCP requirements that only allow a level of development commensurate with the safe yield groundwater extraction level, and because their efficacy and ability to provide bona fide, long-term water savings have not been borne out.<sup>26</sup> Furthermore, in areas with water supply

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<sup>26</sup> 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 found the project largely inconsistent with numerous LCP

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, including because if the project is no longer able to offset water usage for whatever reason over time, public services have *not* been secured for the development). 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, *particularly* for low LCP-priority uses such as residential subdivisions. 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 can 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.

### *Conclusion*

The proposed project constitutes a residential subdivision (a low priority use) in 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 subdivision which would ultimately allow for additional residential development within a groundwater basin that is severely overdrafted, the proposed project is inconsistent with the above-cited LCP water supply and priority land use policies and standards, and must be denied.

## **2. Environmentally Sensitive Habitat Areas**

The LCP broadly defines environmentally sensitive habitat areas (ESHA) to include maritime chaparral, and, with the exception of resource dependent uses, prohibits development within them. The LCP also requires protection of areas adjacent to ESHA, requiring allowable development in this area to prevent habitat impacts. Applicable policies and standards include:

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requirements, but approved the project to settle a lawsuit and to test the efficacy of a water retrofit program in addressing North County groundwater issues. Thus, the Commission required the Applicant to completely offset the project's anticipated water usage via retrofitting existing development within North County. However, the Applicant was unable to meet this condition, including because the Pajaro-Sunny Mesa Community Services District, a water provider in the North County area, concluded that there are no significant retrofit candidates or opportunities remaining in North Monterey County. Therefore, the District and the Commission were unable to approve a retrofit program for that project, and the Commission ultimately denied an extension of the CDP in October 2016 (CDP Extension No. A-3-MCO-04-054-E3). That denial was based in part on changed circumstances affecting the project's LCP consistency because of the inability to offset its water usage. Given this fact, 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 or feasible mitigation approach for the currently proposed subdivision project.

***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 2.3.1.*** The environmentally sensitive habitats of North County are unique, limited, and fragile resources of statewide significance, important to the enrichment of present and future generations of county residents and visitors; accordingly, they shall be protected, maintained, and, where possible, enhanced and restored.

***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 2.3.2.4.*** To protect environmentally sensitive habitats and the high wildlife values associated with large areas of undisturbed habitat, the County shall maintain significant and, where possible, contiguous areas of undisturbed land for low intensity recreation, education, or resource conservation use. To this end, parcels of land totally within sensitive habitat areas shall not be further subdivided....

***North County LUP Policy 2.3.3.A.2.*** Maritime chaparral is an uncommon, highly localized and variable plant community that has been reduced in North County by residential and agricultural development. Further conversion of maritime chaparral habitat to agricultural uses is highly discouraged. Where new residential development is proposed in chaparral areas, it shall be sited and designed to protect the maximum amount of maritime chaparral. All chaparral on land exceeding 25 percent slope should be left undisturbed to prevent potential erosion impacts as well as to protect the habitat itself.

***North County LUP Policy 2.3.3.A.4.*** Oak woodland on land exceeding 25% slope should be left in its native state to protect this plant community and animal habitat from the impacts of development and erosion. Development within oak woodland on 25% slope or less shall be sited to minimize disruption of vegetation and habitat loss.

***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.

***North County IP Section 20.144.040.B.4.*** Subdivisions which are completely within an environmentally sensitive habitat shall not be permitted.

Thus, the LCP includes strong protections for ESHA, including maritime chaparral, which qualifies as ESHA per LUP Policy 2.3.3.A.2 and IP Section 20.06.440. The LCP allows new subdivisions to be approved only where significant impacts to sensitive habitats will not occur (LUP Policy 2.3.2.3); prohibits subdivisions when they will adversely impact ESHA and/or when they are completely within ESHA (IP Sections 20.144.040(B)(3) and 20.144.040(B)(4), respectively); and requires development within oak woodland habitat to be sited to minimize disruption of vegetation and habitat loss (LUP Policy 2.3.3.A.4). Finally, the LCP requires the maintenance of large areas of continuous and undisturbed ESHA, and only allows low intensity recreation, education, or resource conservation uses within such areas (LUP Policy 2.3.2.4).

#### *Analysis*

The project site is a rural, vacant lot, which the project's Initial Study characterized as consisting of "predominantly oak woodland and chaparral with rare or uncommon plants such as Eastwood's golden fleece, Monterey ceanothus, Pajaro manzanita, and the Monterey spine flower."<sup>27</sup> Of the parcel's 5.52 acres, 4.07 acres constitute oak woodland and 1.07 acres constitute central maritime chaparral habitat. Furthermore, 1.53 acres of the parcel's slopes over 25 percent and chaparral habitat are protected by a recorded scenic and conservation easement. The Initial Study found that the project's approved access roads, utilities, and building envelopes would result in removal of 121 coast live oaks, nine Monterey pines, and 0.87 acres of central maritime chaparral ESHA. Thus, the project as proposed is inconsistent with the LCP's ESHA protection policies, including those that only allow resource dependent uses within ESHA and that prohibit subdivisions when they will adversely impact ESHA (LUP Policies 2.3.2.1 and

<sup>27</sup> Mayr-Desmond Subdivision Initial Study-PLN000260-April 3, 2006, page 15. Central maritime chaparral consists of Pajaro manzanita, Hooker's manzanita, Monterey ceanothus, and black sage. Pajaro manzanita and Hooker's manzanita are listed as rare (List 1B) by the California Native Plant Society (CNPS), and Monterey ceanothus is considered a plant of limited distribution (List 4) by CNPS.

2.3.2.3 and IP Sections 20.144.040(B)(3) and (B)(4)). Furthermore, while LUP Policy 2.3.2.3 requires development adjacent to ESHA to be compatible with the long-term maintenance of the resource, which typically consists of requisite buffers, the proposed project does not address, quantify, nor require any buffer between the approved development and the identified sensitive habitats. The project as proposed is thus inconsistent with LCP ESHA buffer requirements as well. Finally, the removal of 121 coast live oak trees does not conform with LCP policies that seek to minimize such tree loss (LUP Policy 2.3.3.A.4), or with policies that do not allow subdivision and residential development within large areas of continuous undisturbed land, as is the case here (LUP Policies 2.3.2.1, 2.3.2.3, and 2.3.3.A.2; IP Section 20.144.040.B.3).

Finally, it is worth noting that the proposed project is not consistent with the terms and conditions governing this property pursuant to CDP MS88-10, which was approved by Monterey County in 1991 (see **Exhibit 7** for this CDP and its conditions). As previously described, that CDP authorized the subdivision of a larger 16.724-acre parcel to create the subject parcel and two other parcels. That approval was subject to numerous conditions, including that all future building sites and driveways/access roads be located off of ridgelines and where slopes are less than 25 percent, and where there shall be minimal impact on ESHA (Condition 37). To implement such requirements, the CDP included conditions requiring access to the three parcels to be limited to the southeastern portion of the site where an existing utility easement was located (Condition 24), that natural vegetation be left intact and undisturbed, but for normal construction of future residences and their ancillary development (Condition 26), and that a scenic easement be conveyed to the County over those portions of the property where the slope exceeds 25 percent and where maritime chaparral exists (Condition 19). Since this project proposes to further subdivide this parcel and build additional infrastructure to accommodate an additional future residence, doing so would be inconsistent with the previously approved CDP's requirements. For example, building a new access road/driveway at the northwestern property boundary along Desmond Road is inconsistent with Condition 24's requirement to solely allow access within the existing utility easement on the southeast portion of the property from Castroville Boulevard (Condition 24), and the additional proposed vegetation removal and land disturbance (including 0.87 acres of ESHA removal) to accommodate the additional residence is inconsistent with Condition 26's requirement to leave all natural vegetation intact (but for the construction of the one authorized residence on the existing parcel that is the subject of this appeal). As such, although CDP MS88-10 is not the standard of review here, consistency of the proposed development with that CDP is relevant here because approval of the proposed project would result in numerous violations of the conditions and requirements of the 1991 CDP, which was not amended to provide for the proposed project.

### *Conclusion*

The project proposes to remove 121 coast live oak trees and almost an acre of central maritime chaparral habitat, and is thus inconsistent with the LCP's habitat protection policies as proposed. 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 and irreconcilably 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 Applicants would need to submit an ESHA 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 Applicants would need to apply to Monterey County to amend the terms and conditions of CDP M88-10. In this case, however, the Commission is denying the project primarily based on the lack of an adequate water supply, and thus an ESHA delineation and CDP amendment are 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 would result in two parcels (one new parcel) which could be developed in the future with two new residences (under separate CDPs), along with commensurate urban infrastructure including roads, driveways, and other utilities, and would eventually lead to the conversion of portions 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 projects, 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. Furthermore, the project proposes to remove 121 coast live oak trees, nine Monterey pine trees, and 0.87 acres of central maritime chaparral ESHA, inconsistent with LUP Policy 2.5.3.C.6(e)'s requirement to retain the maximum amount of vegetation for all new development in order to address potential erosion concerns.

While some of these water quality concerns could potentially be addressed by siting and design alternatives, including avoidance of structural development within identified oak woodland and chaparral areas, as well as requirements for water quality protection both during construction (e.g., construction best management practices, prohibiting building a new driveway, 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 and irreconcilably 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 Applicants would need 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 primarily 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, 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 2.2.3.4. 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 2.5.3.C.6. [in relevant part]*

*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.*

Thus, the LCP seeks to protect the rural, pastoral nature of North County, including by only allowing low intensity development that minimizes visual impacts on scenic hills, slopes, and ridgelines (LUP Policy 2.2.1), limiting new road and subdivision development to ensure screening and minimizing tree removal (LUP Policy 2.2.2.3), ensuring that grading and landform alteration are minimized and development respects natural topography (LUP Policy 2.2.3.4), and maximizing retention of existing vegetation cover (LUP Policy 2.5.3.C.6(e)).

#### *Analysis*

The proposed project introduces a residential subdivision and associated infrastructure into a rural, vacant lot (see **Exhibit 2** for area photos). The project proposes extensive grading and landform alteration on a highly sloping parcel, including significant removal of coast live oaks and central maritime chaparral, to convert the area's scenic habitats into engineered, structural elements, including new access roads and infrastructure. The proposed project is thus inconsistent with LUP Policy 2.2.1 (which requires screening and visual impact minimization) and LUP Policy 2.2.2.3 (which requires new roads and lots from subdivisions to minimize tree removal and grading). Furthermore, the project does not utilize the existing access road from

Castroville Boulevard, but rather a new access road from Desmond Road, inconsistent with LUP Policy 2.2.3.4 which prioritizes use of existing roads in lieu of building new ones (as well as inconsistent with the terms of the 1991 CDP that required access to solely be from Castroville Boulevard). Finally, the project's significant vegetation removal, including 121 coast live oak trees, nine Monterey pine trees, and 0.87 acres of central maritime chaparral ESHA, is inconsistent with LUP Policy 2.5.3.C.6(e)'s requirement to maximize vegetation cover and retain natural vegetation to the fullest extent possible.

### *Conclusion*

The project's inconsistencies with LCP water supply policies render project modifications (including alternatives that seek to retain vegetation and utilize the existing driveway) moot (because the project is still independently and irreconcilably 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 Applicants would need to submit siting and design alternatives, including with renderings and visual simulations to ensure that the future residences anticipated 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 primarily based on the lack of an adequate water supply, and thus a visual impact analysis is not warranted at this time.

## **5. Takings**

In addition to evaluating the proposed development for consistency with the certified LCP, considering that staff is recommending denial of the proposed project, the Commission must also evaluate the effect of a denial action with respect to takings jurisprudence. 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 conversely find that application of Section 30010 would require it to approve some amount of development in order to avoid an uncompensated taking of private property. 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, staff evaluates whether, for purposes of compliance with Section 30010, denial of the proposed subdivision of the Applicants' 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 Applicants already enjoy 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."<sup>28</sup> Similarly, 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 in California, 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 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 just the direct appropriation of private property (*Pennsylvania Coal Co. v. Mahon* (1922) 260 U.S. 393, 415 ("*Pennsylvania Coal*") [stating "The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking"]). 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, 426). The second category consists of those cases whereby government "merely" regulates the use of property and considerations such as the purpose of the regulation or the extent to which it deprives the owner of economic use of the property suggest that the regulation has unfairly singled out the property owner to bear a burden that should be borne by the public as a whole (*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). Here, because the current development proposal does not involve physical occupation of the applicant's property by the Commission, the Commission's actions are evaluated under the standards for a regulatory taking.

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<sup>28</sup> 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, 239).

The U.S. Supreme 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, 1015. 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 1015). The *Lucas* court suggested, however, that this category of cases is 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” (*Id.* at 1017-1018 (*emphasis in original*); *Riverside Bayview Homes*, (1985) 474 U.S. 121, 126 (regulatory takings occur only under “extreme circumstances.”<sup>29</sup>).

The second circumstance in which a regulatory taking might occur is under the multi-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 at a minimum an examination into the character of the government action, its economic impact, and its interference with reasonable, investment-backed expectations (*Id.* at 124; *Ruckelshaus v. Monsanto Co.* (1984) 467 U.S. 986, 1005). In *Palazzolo v. Rhode Island* (2001) 533 U.S. 606, 617, 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.* at 632 (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 U.S. Supreme Court’s precedence “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 determining whether denial of the proposed project here would result in an uncompensated regulatory taking.

***The Commission’s denial of the proposed project would not result in a regulatory taking.*** As analyzed above, application of the LCP’s water supply and groundwater resources policies and standards requires denial of the proposed subdivision on the grounds that the project cannot be served by an identifiable, available, and long-term water supply at the present time, and it is likely the case that, even for a revised project proposing a residential subdivision for this property, staff would still recommend denial for the same LCP inconsistencies with respect to water supply and groundwater policies. 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

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<sup>29</sup> 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. 1029).

case because under the LCP the Applicants may make beneficial economic use of their property (by building a primary single-family residence on the property) and because the Applicants have not yet submitted an alternative/revised project application for such a project for consideration by the County (so a takings claim is not yet ripe).

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 Applicants own the existing legal lot of record as well as two adjacent parcels (which were all created through a previous 1991 subdivision and which are both developed with single-family residences), and may potentially be able to build a single-family residence on this parcel as well.<sup>30</sup> Therefore, under a *Lucas* standard, denial of the Applicants' proposed project will not deny the owner of all 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 the Applicants in relation to the property at issue considering the potential economic uses on the property. Regarding the character of the governmental action, denial of the project ensures consistency with LCP policies (which itself is a valid local implementation of Coastal Act requirements) that strictly limit new residential development in North Monterey County based on County concerns over water supplies and groundwater resources. Regarding the Applicants' reasonable investment-backed expectations, the Applicants cannot have reasonably expected to subdivide this parcel further for residential purposes as proposed here given the numerous conditions and requirements of CDP MS88-10 restricting this parcel upon its creation in 1991, as well as the LCP policies governing land use in effect at the time of purchase.

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*) is also instructive here. In *Pratt*, the plaintiff argued that the Coastal Commission's decision to deny a CDP for the plaintiff's proposed project based on inconsistencies with LCP water requirements was an unconstitutional taking. (*Id.* at 1081.) 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. (*Id.*) 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.*). Finally, the court noted that the plaintiff "is not entitled to whatever project it desires" and "has yet to submit proposals that contemplate a reduction in the size, scope, configuration or density of the project." (*Id.* at 1082.) The court's reasoning in *Pratt* is reflective of the reasons why denial here would not constitute a taking: (1) denial does not foreclose the possibility that a project proposal of reduced size, scope, configuration, and density may be approved as LCP consistent (*i.e.*, primary single-family

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<sup>30</sup> Even assuming that the so-called "unitary theory" does not apply here such that all three contiguous parcels commonly held by the Applicants should be considered a single parcel for purposes of takings analysis (*see generally District Intown Properties v. District of Columbia* (1999) 198 F.3d 874), the Applicants may still be able to enjoy beneficial economic use of the property at issue without subdividing it because the certified LCP would potentially allow for a primary single-family residence to be built.

residence without a subdivision component); and (2) the Applicants have not yet submitted such a proposal, so any takings claim would be premature until the County considers such a proposal.

In sum, 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 not result in an unconstitutional taking. Although the regulations require denial of the proposed new residential subdivision at this time, the Applicants own two adjacent parcels, both which have existing single-family residences, and may apply to the County to build a single-family residence on the current parcel under consideration, thereby affording an economic use of the property. Any takings claim is therefore premature.

## **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.*

14 CCR Section 13096(a) 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 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 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.



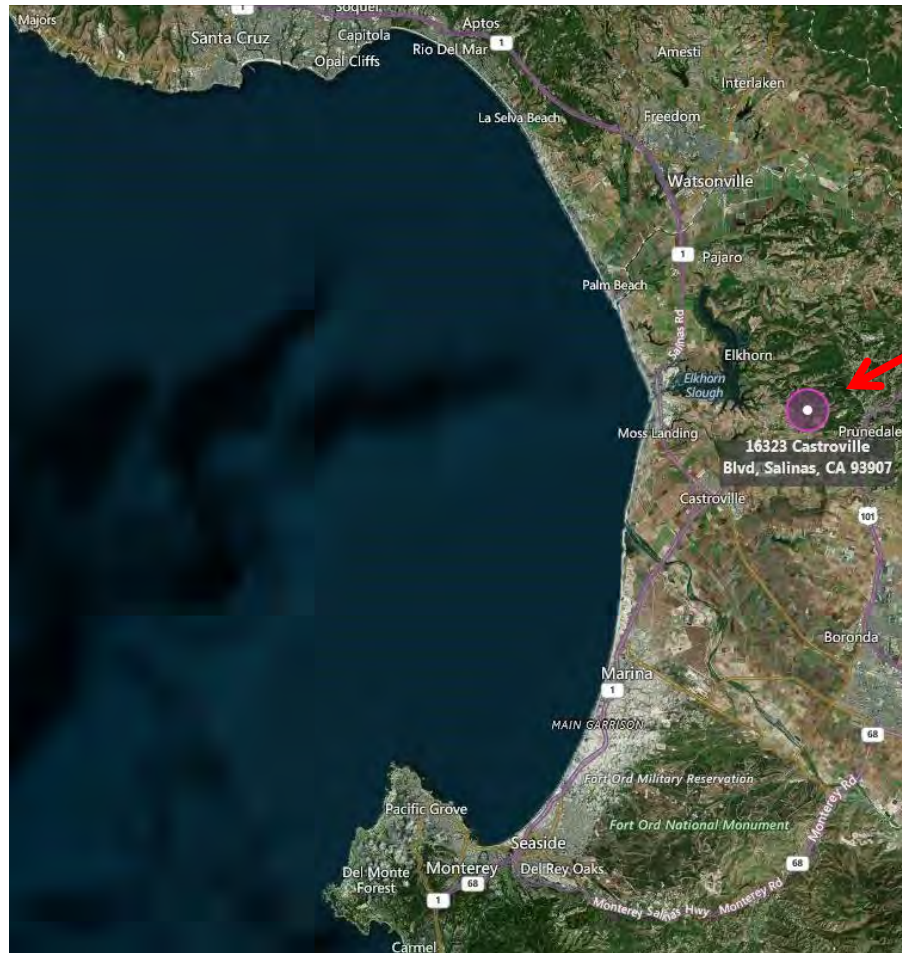
## **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

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. Monterey County Resource Management Agency and Brown and Caldwell. *State of the Salinas River Groundwater Basin*, January 2015.
4. Mayr-Desmond Subdivision Initial Study-PLN000260-April 3, 2006.

**APPENDIX B – STAFF CONTACT WITH AGENCIES AND GROUPS**

1. Applicant
2. Friends, Artists, and Neighbors of Elkhorn Slough
3. Pajaro-Sunny Mesa Community Services District
4. Pajaro Valley Water Management Agency
5. Monterey County Resource Management Agency
6. California Department of Water Resources

# Location Map



Project Location

# Parcel Map

### Adjacent Parcels Created through 1991 CDP (Now Owned By Applicant)

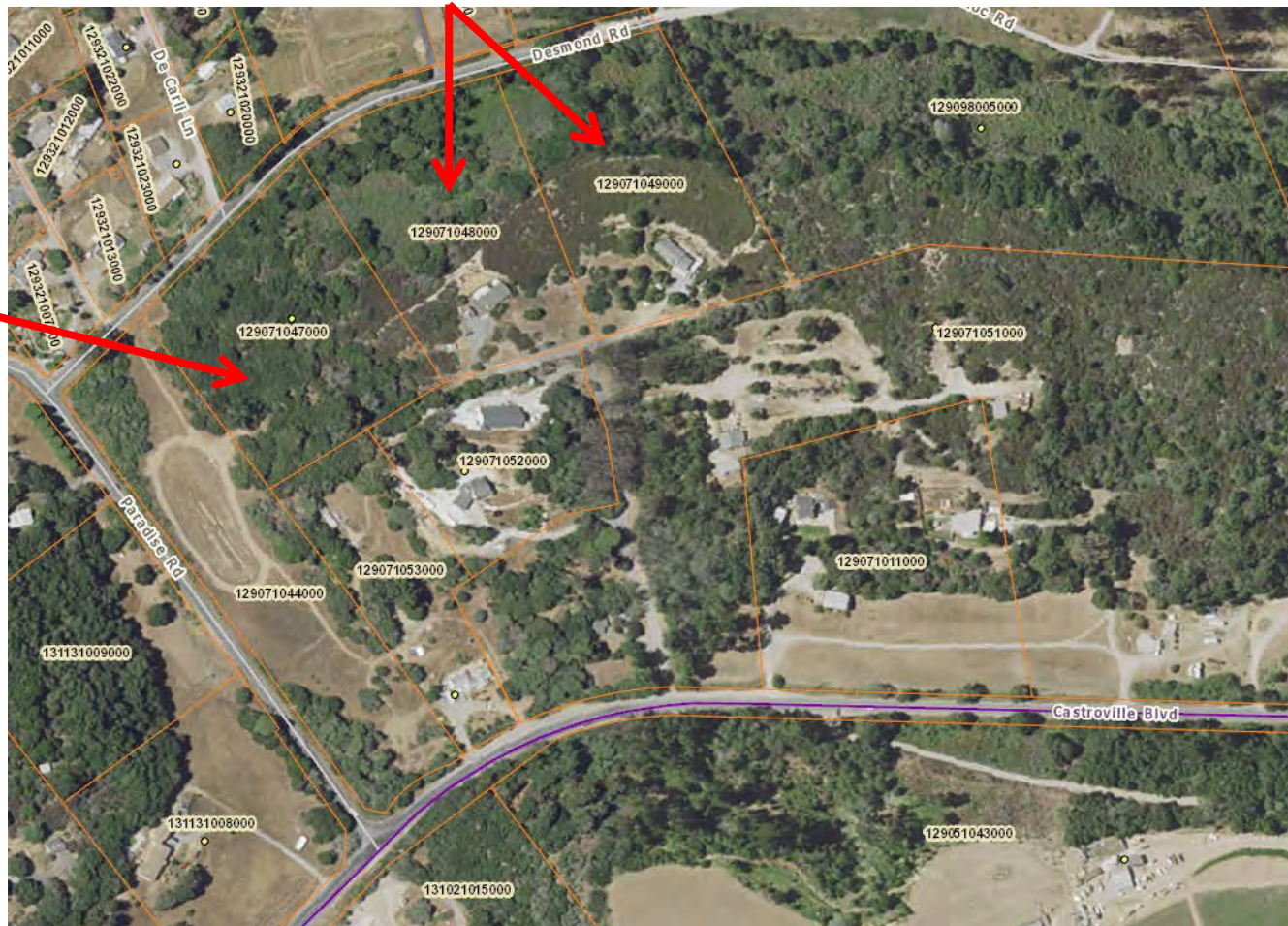


Exhibit 2 (Site Photos)  
A-3-MCO-06-044 (Mayr Subdivision)  
Page 1 of 3



# Site Photo

Central Maritime Chaparral





# Site Photo

Existing Road/Utility Easement



Proposed New Driveway to Parcel "B"

Proposed Building Site for Parcel "B"

# Monterey County Planning and Building Inspection Condition Compliance and/or Mitigation Monitoring Reporting Plan

Project Name: Mayr - Desmond Subdivision

File No: PLN000260

APN: 129-071-047-000

Approval by: Minor Subdivision Com.

Date: May 25, 2006

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

| Permit<br>Cond.<br>Number | Mitig.<br>Num<br>ber | Conditions of Approval and/or Mitigation<br>Measures and Responsible Land Use Department                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Compliance or Monitoring Actions<br>to be performed. Where applicable, a certified<br>professional is required for action to be accepted. | Responsible<br>Party for<br>Compliance | Timing                                  | Verification<br>of<br>Compliance<br>(name/date) |
|---------------------------|----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|-----------------------------------------|-------------------------------------------------|
| 1                         | -                    | <b>PBD029 - SPECIFIC USES ONLY:</b> This Combined Development Permit (PLN000260) allows for a minor subdivision of the 5.52-acre lot into two lots of 2.85 acres (Parcel "A") and 2.67 acres (Parcel "B"); and the establishment of road access and building envelopes that include development on slopes greater than 25%.. The property is located at 16323 Castroville Blvd. (on the south side of Desmond Road, east of Paradise Road and north of Castroville Boulevard; Assessor's Parcel Number 129-071-047-000), Prunedale. 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. Ongoing | Adhere to conditions and uses specified in the permit.                                                                                    | Owner/<br>Applicant                    | Ongoing<br>unless other-<br>wise stated |                                                 |
|                           |                      | Place as a note on the final Map with ongoing conditions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                           | Owner/<br>Applicant                    | Ongoing<br>unless other-                |                                                 |

Robert & Linda Mayr (PLN000260)

Page 9

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|   | conditions that require action after recordation of the final map shall apply and be incorporated to future development applications on the newly created lots. ( <b>Planning and Building Inspection</b> )                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                       | wise stated                                                        |  |
| 2 | <p><b>PBD025 - NOTICE-PERMIT APPROVAL</b></p> <p>The applicant shall record a notice which states: "A permit (Resolution 06011) was approved by the Minor Subdivision Committee for Assessor's Parcel Number 129-071-047-000 on May 25, 2006. The permit was granted subject to 32 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. (<b>Planning and Building Inspection</b>)</p>                                                                                                                                                                                                                | Proof of recordation of this notice shall be furnished to PBI.                                                                                                                                                                                                                                                                                                                                                                                                                  | Owner/<br>Applicant                   | Prior to Issuance of grading and building permits or start of use. |  |
| 3 | <p><b>PBD030 - STOP WORK - RESOURCES FOUND:</b> 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. (<b>Planning and Building Inspection</b>)</p> | 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/<br>Applicant/<br>Archaeologist | Ongoing                                                            |  |

Robert & Linda Mayr (PLN000260)

Page 10



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| 4 | - | <b>PW0031 – PARCEL MAP:</b> File a parcel map delineating all existing and required easements or rights-of-way and monument new lines. <b>(Public Works)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                              | Applicant's surveyor shall prepare parcel map, submit to DPW for review and approval.                                                                                                                                                       | Owner/<br>Applicant/<br>Engineer | Prior to<br>Recordation of<br>Parcel Map |  |
| 5 | - | <b>PW0036 – EXISTING EASEMENTS AND ROW:</b> Provide for all existing and required easements or rights of way. <b>(Public Works)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Subdivider's Surveyor shall include all existing and required easements or rights of way on Parcel Map.                                                                                                                                     | Subdivider/<br>Surveyor          | Prior to<br>Recordation of<br>Parcel Map |  |
| 6 | - | <b>PW0033 – SURVEYOR CHECK-LIST</b><br>Thirty days prior to expiration date of the tentative map, Step A (8-Items) of the County Surveyor's Check Off List for Parcel Map Processing shall be completed. <b>(Public Works)</b>                                                                                                                                                                                                                                                                                                                                                                            | Subdivider shall submit items included in County Surveyors Check Off List to DPW for review and approval.                                                                                                                                   | Subdivider                       | Prior to<br>Recordation of<br>Parcel Map |  |
| 7 | - | <b>PW0022 – FIRE REQUIREMENTS FOR ROADS:</b> Improve roads in accordance with requirements of the local fire jurisdiction. <b>(Public Works)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Subdivider shall submit improvement plans prepared by his Engineer to local fire jurisdiction and to DPW for approval. Roads to be constructed in accordance with approved plans.                                                           | Subdivider                       | Prior to<br>Recordation of<br>Parcel Map |  |
| 8 | - | <b>NON-STANDARD CONDITION-NON ACCESS STRIP:</b> Applicant shall petition the County for a license to cross the non-access strip fronting Desmond Road in order to allow access to Parcel A. In the event that the license to cross the non-access strip is not granted by the Board of Supervisors, the 30' Road and Utilities Easement serving Parcel B may be extended westerly to serve Parcel A subject to approval of a required coastal development permit or permit amendment as appropriate, and required revisions to related environmental review documents where needed. <b>(Public Works)</b> | Provide the Director of Planning and Building Inspection with written verification that this license has been granted. If not granted, alternative access may require environmental review and the approval of an amendment to this permit. | Applicant                        | Prior to<br>Recordation of<br>Parcel Map |  |

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| 9  | - | <b>PKS002 - RECREATION REQUIREMENTS/FEES:</b> The Applicant shall comply with Section 19.12.010 - Recreation Requirements, of the Subdivision Ordinance, Title 19, Monterey County Code, by paying a fee in lieu of land dedication. The Parks Department shall determine the fee in accordance with provisions contained in Section 19.12.010(D) (Parks Department)                                                                                                       | The Applicant shall comply with the Recreation Requirements contained in Section 19.12.010 of the Subdivision Ordinance Title 19, Monterey County Code.                          | Owner/<br>Applicant    | Prior to the<br>Recordation<br>of the Parcel<br>Map                                  |  |
| 10 | - | <b>DRAINAGE NOTE (WR)</b> {non-standard wording} A note shall be recorded on the final map stating that any future development on these parcels will require a drainage plan to be prepared by a registered civil engineer or architect. (Water Resources Agency)                                                                                                                                                                                                          | Subdivider's Surveyor shall include this note on Parcel Map.                                                                                                                     | Applicant/<br>Surveyor | Prior to the<br>Recordation<br>of the Parcel<br>Map                                  |  |
| 11 | - | <b>WR41 - NOTICE OF WATER CONSERVATION REQUIREMENTS:</b> 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.<br><br>(A copy of the County's standard notice can be obtained at the Water Resources Agency.)   | Owner/<br>Applicant    | Recordation<br>of the notice<br>shall occur<br>concurrently<br>with the final<br>map |  |
| 12 | - | <b>WR42 - LANDSCAPING REQUIREMENTS:</b> A notice shall be recorded on the deed for each lot stating: "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." 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.<br><br>(A copy of the County's standard notice can be obtained at the Water Resources Agency.) | Owner/<br>Applicant    | Recordation<br>of the notice<br>shall occur<br>concurrently<br>with the final<br>map |  |

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| 13 | - | <b>WR - WATER USE INFORMATION:</b> The applicant shall provide to the Water Resources Agency a water balance analysis describing the pre-development and post-development water use on the property. Any proposed increase in water use shall require the identification and implementation of mitigation measures, if feasible, by the applicant. (Water Resources Agency)                                                                                                                                                                                                       |                                                                                                                                                                                                              |                                                    |                                                                                                |
| 14 | - | <b>EH1 - WATER SYSTEM PERMIT:</b> Obtain a new or amended water system permit from the Division of Environmental Health. (Environmental Health)                                                                                                                                                                                                                                                                                                                                                                                                                                   | Submit necessary application, reports and testing results to EH for review and approval.                                                                                                                     | CA<br>Licensed<br>Engineer<br>/Owner/<br>Applicant | Prior to<br>issuance of<br>grading/<br>building<br>permits or<br>prior to filing<br>parcel map |
| 15 | - | <b>EH2 - WATER SYSTEM IMPROVEMENTS (CO. PERMITTED SYSTEM):</b> Design the water system improvements to meet the standards as found in Chapter 15.04 of the Monterey County Code, Titles 17 and 22 of the California Code of Regulations and as found in the Residential Subdivision Water Supply Standards. Submit engineered plans for the water system improvements, including plans for secondary treatment, and any associated fees to the Director of Environmental Health for review and approval prior to installing (or bonding) the improvements. (Environmental Health) | Submit engineered plans for the water system improvements, including plans for secondary treatment, and any associated fees to EH for review and approval prior to installing (or bonding) the improvements. | CA<br>Licensed<br>Engineer<br>/Owner/<br>Applicant | Prior to<br>issuance of<br>grading/<br>building permit<br>or Prior to<br>filing final map      |
| 16 | - | <b>EH4 - FIRE FLOW STANDARDS:</b> Design the water system improvements to meet fire flow standards as required and approved by the local fire protection agency. (Environmental Health)                                                                                                                                                                                                                                                                                                                                                                                           | Submit evidence to the Division of Environmental Health that the proposed water system improvements have been approved by the local fire protection agency.                                                  | CA<br>Licensed<br>Engineer<br>/Owner/<br>Applicant | Prior to<br>installing or<br>bonding water<br>system<br>improvements                           |

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| 17 | - | <b>EH5 - INSTALL/BOND WATER SYSTEM IMPROVEMENTS:</b> 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)                                                                                                                                                                                                                                                                                    | 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. | CA<br>Licensed Engineer /Owner/<br>Applicant | Prior to filing parcel map                                                                 |  |
| 18 | - | <b>EH22 - DEED NOTIFICATION - PERC REPORT:</b> A deed notification shall be recorded concurrently with the final/parcel map with the Monterey County Recorder which states: "A soils and percolation report has been prepared for this parcel by Grice Engineering, Inc., dated April 04, 2003 and is on record at the Division of Environmental Health, Monterey County, File Number PLN000260. All proposed development shall be in compliance with this report and the recommendations therein." (Environmental Health)                                                                                                                                               | Submit proposed wording and forms to be recorded to EH and P&BI for review and approval. Record deed notification.                                                                                                                                                                                        | Owner/<br>Applicant                          | Concurrently with filing of parcel map.                                                    |  |
| 19 | - | <b>FIRE001 - ROAD ACCESS</b><br>Access roads shall be required for every building when any portion of the exterior wall of the first story is located more than 150 feet from fire department access. All roads shall be constructed to provide a minimum of two nine-foot traffic lanes with an unobstructed vertical clearance of not less than 15 feet. The roadway surface shall provide unobstructed access to conventional drive vehicles including sedans and fire apparatus and shall be an all-weather surface designed to support the imposed load of fire apparatus (22 tons). Each road shall have an approved name. (North County Fire Protection District) | <i>Applicant shall incorporate specification into design and enumerate as "Fire Dept. Notes" on plans.</i><br><br>Applicant shall schedule fire dept. clearance inspection for each phase of development.                                                                                                 | Applicant or owner<br><br>Applicant or owner | Prior to issuance of grading and/or building permit.<br>Prior to final building inspection |  |

Robert & Linda Mayr (PLN000260)

Page 14

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| 20 | - | <p><b>FIRE002 - ROADWAY ENGINEERING:</b><br/>The grade for all roads shall not exceed 15 percent. Where road grades exceed 8 percent, a minimum structural roadway surface of 0.17 feet of asphaltic concrete on 0.34 feet of aggregate base shall be required. The length of vertical curves in roadways, exclusive of gutters, ditches and drainage structures designed to hold or divert water, shall not be less than 100 feet. No roadway turn shall have a horizontal inside radius of less than 50 feet. A roadway turn radius of 50 to 100 feet is required to have an additional 4 feet of roadway surface. A roadway turn radius of 100 to 200 feet is required to have an additional 2 feet of roadway surface. Roadway turnarounds shall be required on dead-end roads in excess of 150 feet of surface length. The minimum turning radius for a turnaround shall be 40 feet from the center line of the road. If a hammerhead/T is used, the top of the "T" shall be a minimum of 60 feet in length. (North County Fire Protection District)</p> | 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 for each phase of development.             | Applicant or owner | Prior to final building inspection                   |  |
| 21 | - | <p><b>FIRE007 - DRIVEWAYS:</b> Driveways shall not be less than 12 feet wide unobstructed, with an unobstructed vertical clearance of not less than 15 feet. The grade for all driveways shall not exceed 15%. Where the grade exceeds 8 percent, a minimum structural roadway surface of 0.17 feet of asphaltic concrete on 0.34 feet of aggregate base shall be required. The driveway surface shall be capable of supporting the imposed load of fire apparatus (22 tons), and be accessible by conventional-drive vehicles, including sedans. For driveways with turns 90° and less, the minimum horizontal inside radius of curvature shall be 25 feet. For driveways with turns</p>                                                                                                                                                                                                                                                                                                                                                                     | 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.                  |  |

Robert & Linda Mayr (PLN000260)

Page 15

|    |   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                     |                    |                                       |  |
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|    |   | greater than 90°, the minimum horizontal inside radius curvature shall be 28 feet. For all driveway turns, an additional surface of 4 ft. shall be added. All driveways exceeding 150 ft. in length, but less than 800 ft. in length, shall provide a turnout near the midpoint of the driveway. Where the driveway exceeds 800 ft., turnouts shall be provided at no greater than 400-ft. intervals. Turnouts shall be a minimum of 12 feet wide and 30 feet long with a minimum of 25-foot taper at both ends. Turnarounds shall be required on driveways in excess of 150 ft. of surface length and shall long with a minimum 25-ft. taper at both ends. Turnarounds shall be required on driveways in excess of 150 ft. of surface length and shall be located within 50 ft. of the primary building. The minimum turning radius for a turnaround shall be 40 ft. from the center line of the driveway. If a hammerhead/T is used, the top of the "T" shall be a minimum of 60 ft. in length. (North County Fire Protection Dist) |                                                                                                     |                    |                                       |  |
| 22 | - | <b>FIRE011 - ADDRESSES FOR BUILDINGS:</b> 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. 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                                                                                                                                                                                                                                                                                       | Applicant shall incorporate specification into design and enumerate as "Fire Dept. Notes" on plans. | Applicant or owner | Prior to issuance of building permit. |  |
|    |   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Applicant shall schedule fire dept. clearance inspection                                            | Applicant or owner | Prior to final building inspection    |  |

Robert & Linda Mayr (PLN000260)  
Page 16

|    |   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                     |                    |                                                      |
|----|---|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|--------------------|------------------------------------------------------|
|    |   | 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) |                                                                                                     |                    |                                                      |
| 23 | - | FIRE016 - SETBACKS: All parcels 1 acre and larger shall provide a minimum 30-foot setback for new buildings and accessory buildings from all property lines and/or the center of the road. For parcels less than 1 acre, alternate fuel modification standards or other requirements may be imposed by the local fire jurisdiction to provide the same practical effect. (North County Fire Protection District)                                                                                                                                                                                                                                                  | 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                   |
| 24 | - | FIRE021 - FIRE PROTECTION EQUIPMENT & SYSTEMS - FIRE SPRINKLER SYSTEM (STANDARD): The building(s) and attached garage(s) shall be fully protected with automatic fire sprinkler system(s). Installation shall be in accordance with the applicable NFPA standard. A minimum of four (4) sets of plans for fire sprinkler systems must be submitted by a California licensed C-16 contractor and                                                                                                                                                                                                                                                                   | Applicant shall enumerate as "Fire Dept. Notes" on plans.                                           | Applicant or owner | Prior to issuance of building permit.                |
|    |   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Applicant shall schedule fire dept. rough sprinkler inspection                                      | Applicant or owner | Prior to framing inspection                          |

|    |   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                |                       |                                                                         |  |
|----|---|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|-------------------------------------------------------------------------|--|
|    |   | approved prior to installation. This requirement is not intended to delay issuance of a building permit. A rough sprinkler inspection must be scheduled by the installing contractor and completed prior to requesting a framing inspection. (North County Fire Protection District)                                                                                                                                                                                                                                                                                                                                                            | Applicant shall schedule fire dept. final sprinkler inspection                                                                                                                                                                                                                                 | Applicant or owner    | Prior to final building inspection                                      |  |
| 25 | - | <b>FIRE026 - ROOF CONSTRUCTION (STANDARD):</b> All new structures, and all existing structures receiving new roofing over 50 percent or more of the existing roof surface within a one-year period, shall require a minimum of ICBO Class B roof construction. (North County Fire Protection District)                                                                                                                                                                                                                                                                                                                                          | Applicant shall enumerate as "Fire Dept. Notes" on plans.                                                                                                                                                                                                                                      | Applicant or owner    | Prior to issuance of building permit.                                   |  |
| 26 | 1 | <b>MITIGATION MEASURE 1 (BIOLOGICAL RESOURCES: CENTRAL MARITIME CHAPARRAL):</b> The applicant and contractor shall minimize disturbance of the Maritime chaparral. This will include using pneumatics hand equipment to dig utility trenches to avoid the impacts of tractors on the adjacent areas. Where it is required to remove Maritime chaparral that will not be part of the trench or road, the shrubs should be trimmed by hand down to soil level. The soil, roots, and burls of the shrubs should not be disturbed. This will allow the shrubs to crown sprout (grow new above ground foliage from living underground root systems). | Submit to the Director of Planning, for his approval, a plan outlining steps to be taken to minimize disturbance of the chaparral. During construction, and prior to final building inspection, the applicant shall submit logs and photographic evidence that this plan has been carried out. | Applicant / Biologist | Prior to the issuance of any building and/or grading permit on Parcel B |  |



|    |   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                   |                                  |                                                                                             |  |
|----|---|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|---------------------------------------------------------------------------------------------|--|
| 27 | 2 | <p><b>MITIGATION MEASURE 2</b><br/> <b>(BIOLOGICAL RESOURCES: CENTRAL MARITIME CHAPARRAL):</b> A scenic easement shall be conveyed to the County over those portions of the property where sensitive habitats, archaeological sites, etc. exist. An easement deed shall be submitted to, and approved by, the Director of Planning and Building Inspection prior to issuance of grading and building permits. Building envelopes shall be delineated on the final map and a note recorded that limits all land disturbance activities outside the building envelopes that will impact ESHA consistent with LUP requirements (<i>PBD008 - EASEMENT - CONSERVATION</i>)</p> | <p>Submit approved and recorded scenic easement to PBI, over those areas identified as Central Maritime Chaparral within the November 10, 2003 "Biological Assessment for the proposed Mayr Property Two Lot Subdivision," prepared by Dale Hameister of Rana Creek Habitat Restoration.</p> <p>Submit evidence of recorded note and final map showing limitations on disturbance outside building envelopes.</p> | Applicant / Biologist / Engineer | Prior to the recording of the parcel map or the issuance of building and/or grading permits |  |
| 28 | 3 | <p><b>MITIGATION MEASURE 3</b><br/> <b>(BIOLOGICAL RESOURCES: CENTRAL MARITIME CHAPARRAL/INVASIVES):</b> Remove invasive non-native Eucalyptus, Acacia, and pampas grass from the property.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <p>Provide a certification from a biologist on the Planning and Building Inspection Department's list of approved biologists that all invasive non-native Eucalyptus, acacia, pampas grass has been removed from the property.</p>                                                                                                                                                                                | Applicant / Biologist /          | Prior to final building inspection on either parcel                                         |  |
| 29 | 4 | <p><b>MITIGATION MEASURE 4 (TREE REMOVAL/CENTRAL MARITIME CHAPARRAL):</b> The applicant shall replant Maritime chaparral, including the listed species of Hooker's manzanita, Pajaro</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <p>Submit an approved (by the Director of Planning &amp; Building Inspection) and recorded scenic easement to PBI, over a minimum of 1.3 acre of the area identified as "recently cleared" on the parcel map attached to the Jud Vandervere "Biological Report" dated August 23, 1988.</p>                                                                                                                        | Applicant / Biologist / Engineer | Prior to the recording of the parcel map                                                    |  |

1.3 acre is equal to a mitigation ration of 1.5 to 1 of the amount of chaparral habitat impacted by the proposed development.

Robert & Linda Mayr (PLN000260)

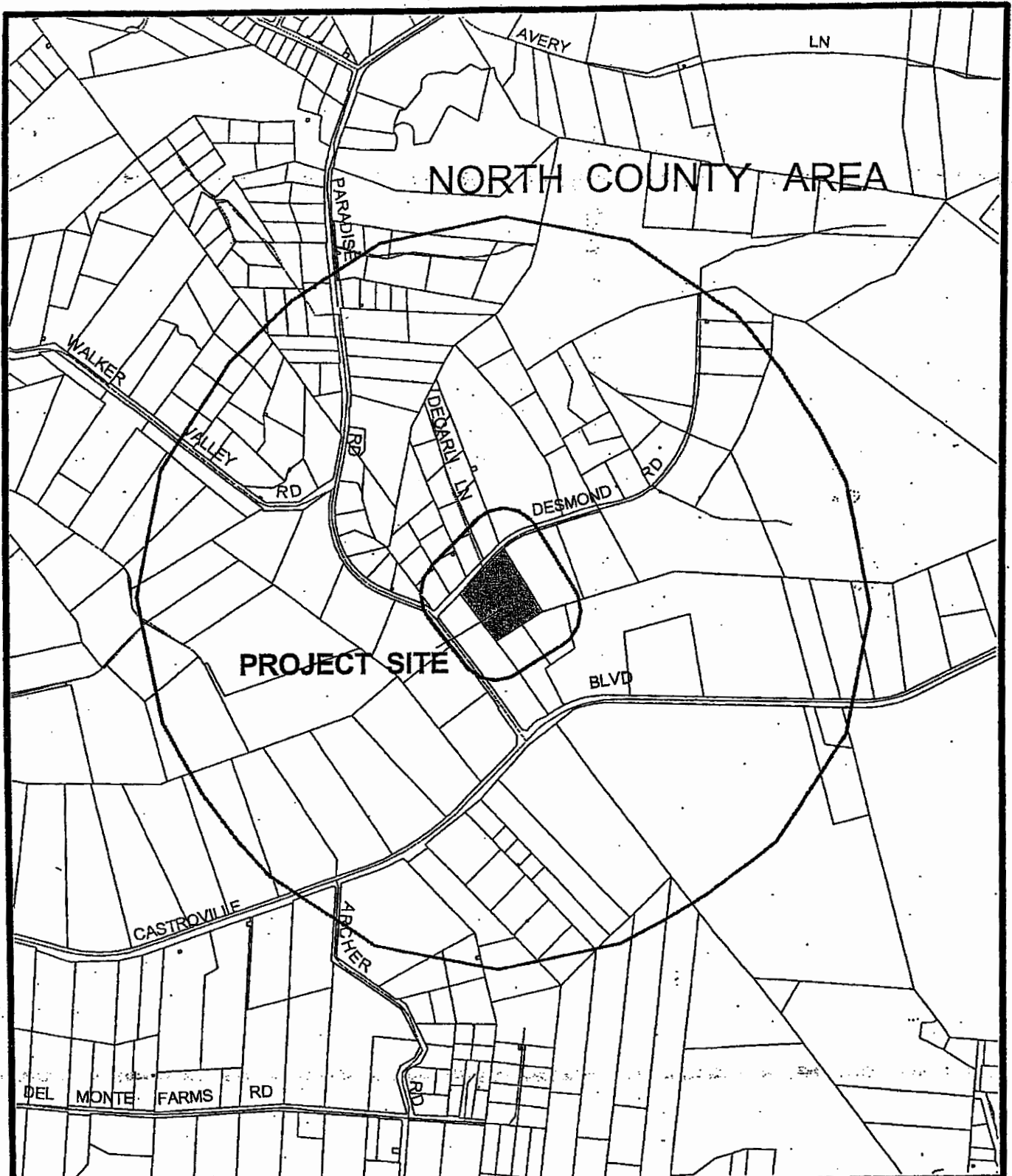
Page 19

|  |                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                       |                                          |  |
|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|------------------------------------------|--|
|  | manzanita, and Monterey ceanothus, on a minimum area of 1.3 acre' on an adjacent parcel, Parcel #2 of MS86034, where chaparral was previously removed and not adequately revegetated. In addition the applicant shall record a scenic easement over this 1.3 acre area, and adequately maintain it in perpetuity. | Provide a planting and enhancement plan prepared by an approved biologist for Parcel 2 of MS86034 to the Director of Planning & Building Inspection, for his review and approval, which identifies the location of a minimum of 1.3 acres where Maritime chaparral can be replanted and/or enhanced. The specific success criteria to be outlined in this plan shall be based on achieving the cover and diversity of healthy Maritime chaparral in the vicinity, with a native plant cover of no less than 70% and the cover of weeds not exceeding 5%. The plan shall also include long term monitoring procedures to include adaptive management protocol and measures to assure the success of the revegetation. | Applicant / Biologist | Prior to the recording of the parcel map |  |
|  |                                                                                                                                                                                                                                                                                                                   | Plant the chaparral shown on the approved planting and enhancement plan and install any required irrigation system.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Applicant / Biologist | Prior to the recording of the parcel map |  |
|  |                                                                                                                                                                                                                                                                                                                   | Submit monitoring reports from a biologist on the County's list of approved biologists on an annual basis for the first five years following the recording of the parcel map, and every two years thereafter, until the habitat is established as agreed to by the Director of Planning & Building Inspection consistent with the performance standards contained in the restoration plan. The applicant shall be responsible for the implementation of adaptive management measures requested by the Director pursuant to recommendations by an approved biologist.                                                                                                                                                 | Applicant / Biologist | Ongoing - for a minimum of five years    |  |

|    |   |                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                       |                                                                            |  |
|----|---|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|----------------------------------------------------------------------------|--|
| 30 | 5 | <p><b>MITIGATION MEASURE 5</b><br/> <b>(BIOLOGICAL RESOURCES: DUSKY FOOTED WOODRAT):</b> Any woodrat nests that could potentially be from a Monterey Dusky-footed woodrat (California Species of Concern) found within the building envelopes should be dismantled by hand before any heavy equipment is used to clear the site in order to allow the woodrats to escape and find new homes outside the building area.</p>                        | <p>A biologist on the Planning and Building Inspection Department's list of approved biologists will survey all areas to be disturbed and determine if any woodrat nests that could potentially be from a Monterey Dusky-footed woodrat would be disturbed. The consultant shall insure that these nests are removed by hand and will report his findings to the Director of Planning &amp; Building Inspection for his review and approval.</p> | Applicant / Biologist | Prior to the issuance of a building and/or grading permit on either parcel |  |
| 31 | 6 | <p><b>MITIGATION MEASURE 6</b><br/> <b>(BIOLOGICAL RESOURCES: NESTING BIRDS):</b> Nesting birds, other than Rock Doves (pigeons), English Sparrows, and European Starlings, will not be disturbed during construction.</p>                                                                                                                                                                                                                        | <p>A biologist on the Planning and Building Inspection Department's list of approved biologists will survey all areas to be disturbed and determine if any bird nests would be disturbed. The consultant shall insure that these nests are removed by hand and will report his findings to the Director of Planning &amp; Building Inspection for his review and approval.</p>                                                                   | Applicant / Biologist | Prior to the issuance of a building and/or grading permit on either parcel |  |
| 32 | 7 | <p><b>MITIGATION MEASURE 7</b><br/> <b>(TRANSPORTATION/TRAFFIC: INCREMENTAL TRAFFIC):</b> In order to address incremental impacts to the North County road network, the applicant shall contribute \$6,895 per single family home (\$13,790 total). Said fee is based on 2001 dollars, the applicant shall pay the applicable Mitigation Fee in effect at the time the building permit is issued as required by the Director of Public Works.</p> | <p>Provide the Director of Planning and Building Inspection with written clearance from Public Works that the required Traffic Impact Fee has paid.</p>                                                                                                                                                                                                                                                                                          | Applicant             | Prior to recording the parcel map                                          |  |

END OF COONDITIONS

Robert & Linda Mayr (PLN000260)  
Page 21



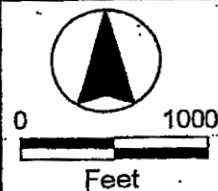
APPLICANT: MAYR

APN: 129-071-047-000

FILE# PLN 000260

300' Limit

2500 Limit

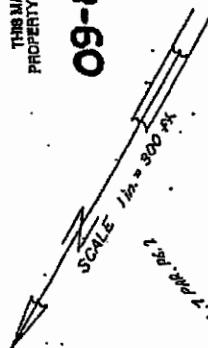


COUNTY OF MONTEREY  
ASSESSOR'S MAP  
BOOK 129 PAGE 07

TAX CODE AREA

THIS MAP IS INTENDED TO BE USED FOR  
PROPERTY TAX ASSESSMENT PURPOSES ONLY

09-8



09-9

09-6

SEE PG. 53

SEE PAGE 32

09-7

131-13

BOLSA NUEVA Y MORO CULO RD.  
ASSESS MAP 6 PAR LOT 32  
ASSESS MAP 8 LOT 30 & POR 181  
ASSESS MAP 9 POR LOT 83 & 226

PA 24 210 2150



# MONTEREY COUNTY

## Resource Management Agency, Alana Knaster, Interim Director

Planning and Building Inspection Department  
168 West Alisal Street, 2<sup>nd</sup> Floor, Salinas, CA 93901  
Fax: (831) 757-9516; Phone (831) 755-5025

# FINAL LOCAL ACTION NOTICE

**Date:**

**To:** California Coastal Commission, Central Coast District Office  
Applicant/Representative:

**From:** Monterey County Planning and Building Inspection Department

**Subject:** Final Local Action on Coastal Permit  
Application /

## FINAL LOCAL ACTION NOTICE

REFERENCE # 3-MCO-06-346

APPEAL PERIOD 8/2-8/15/06

Please note the following **Final Monterey County Action** for the following coastal development permit type:

☒ CDP/CAP   ☐ CDP Amendment   ☐ Extension   ☐ Emergency CDP  
☐ Exemption   ☐ Exclusion   ☐ Other: \_\_\_\_\_

☒ All local appeals processes have been exhausted for this matter

☐ The project includes an amendment to the LCP

## RECEIVED

AUG 01 2006

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

### Project Information

**Application #:** PLN 000260

**Project Applicant:** Robert and Linda Mayr

**Applicant's Rep:** Sue Snow

**Project Location:** 16323 Castroville Blvd, Prunedale, North Monterey County

**Project Description:** Combined Development Permit consisting of a Coastal Development Permit for a minor subdivision to subdivide one 5.52-acre lot into two lots of 2.85 acres (Parcel "A") and 2.67 acres (Parcel "B"); and a Coastal Development Permit to establish road access and building envelopes that include development on slopes greater than 25%. A new access would be created from Desmond Road for Parcel "A" with an existing access to Parcel "B" from Castroville Boulevard.



## Final Action Information

**Final Action Date:** May 25, 2006

**Final Action:** XX Approved w/conditions ☐ Approved w/o conditions ☐ Denied

**Final Action Body:** ☐ Zoning Administrator ☐ Planning Commission ☐ Board of Supervisors ☐ Staff (ministerial)

XX Subdivision Committee

*For Coastal Commission Use Only*

# MCO

**Reference #:**

**FLAN received:**

**Appeal period:**

## Final Local Action Notice Attachments Included

| Required Materials<br>Supporting the Final Action   | Enclosed | Previously<br>Sent (date) | Notes/Comments |
|-----------------------------------------------------|----------|---------------------------|----------------|
| Adopted Staff Report                                | XX       |                           |                |
| Adopted Findings                                    | XX       |                           |                |
| Adopted Conditions                                  | XX       |                           |                |
| Site Plans                                          | XX       |                           |                |
| Elevations                                          |          |                           |                |
| Location/Vicinity Map                               | XX       |                           |                |
| Additional Materials<br>Supporting the Final Action | Enclosed | Previously<br>Sent (date) | Notes/Comments |
| CEQA Document(s)                                    | XX       |                           |                |
| Geotechnical Report(s)                              |          |                           |                |
| Biotic Report(s)                                    | XX       |                           |                |
| Forest Management Plan(s)                           | XX       |                           |                |
| Other: Archaeological Report                        |          |                           |                |



Other \_\_\_\_\_

## **Coastal Commission Appeal Information**

Monterey County has determined that this Final Local Action is:

☐ **NOT APPEALABLE** to the California Coastal Commission. The Final Monterey County Action is now effective.

**XX APPEALABLE** to the California Coastal Commission. The Coastal Commission's 10-working day appeal period begins the first working day after the Coastal Commission receives adequate notice of this Final Monterey County Action. The Final Monterey County Action is not effective until after the Coastal Commission's appeal period has expired and no appeal has been filed. Any such appeal must be made directly to the California Coastal Commission Central Coast District Office in Santa Cruz; there is no fee for such an appeal. Should you have any questions regarding the Coastal Commission appeal period or process, please contact the Central Coast District Office at 725 Front Street, Suite 300, Santa Cruz, CA 95060, (831) 427-4863.

### **Submitted by**

Signature: \_\_\_\_\_

Project Planner: \_\_\_\_\_

Title: \_\_\_\_\_

Phone/Fax: \_\_\_\_\_

email: \_\_\_\_\_

MINOR SUBDIVISION COMMITTEE  
COUNTY OF MONTEREY, STATE OF CALIFORNIA

**RECEIVED**

RESOLUTION NO. 06011

AUG 01 2006

A.P.# 129-071-047-000

In the matter of the request of  
**Robert & Linda Mayr (PLN000260)**

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

**FINDINGS AND DECISION**

for a **Combined Development Permit** pursuant to regulations established by local ordinance and state law, allows for a minor subdivision of the 5.52-acre lot into two lots of 2.85 acres (Parcel "A") and 2.67 acres (Parcel "B"); and the establishment of road access and building envelopes that include development on slopes greater than 25%. The property is located at 16323 Castroville Blvd. (on the south side of Desmond Road, east of Paradise Road and north of Castroville Boulevard, Prunedale, Coastal Zone; and came on regularly for hearing before the Minor Subdivision Committee on May 25, 2006.

Said Minor Subdivision Committee, having considered the application and the evidence presented relating thereto,

**FINDINGS AND EVIDENCE**

- 1. FINDING: CONSISTENCY** – The Mayr Combined Development Permit (PLN000260 – Desmond Subdivision), as described in Condition #1, and as conditioned, is consistent with the plans, policies, requirements, and standards of the Local Coastal Program (LCP). The LCP for this site consists of the Monterey County Subdivision Ordinance (Title 19 Coastal Zone), North County Land Use Plan, North County Coastal Implementation Plan (Part 2), Part 6 of the Coastal Implementation Plan, and Part 1 of the Coastal Implementation Plan (Title 20 Zoning Ordinance), which designates this area as appropriate for the subject development.

**EVIDENCE: (a) Plans/Regulations** – The Planning and Building Inspection staff reviewed the project, as contained in the application and accompanying materials, for consistency with:

- 1) Monterey County Subdivision Ordinance (Title 19 Coastal Zone)
- 2) North County Land Use Plan
- 3) North County Coastal Implementation Plan (Part 2)
- 4) Part 6 of the Coastal Implementation Plan
- 5) Part 1 of the Coastal Implementation Plan (Title 20 Zoning Ordinance)

There would be no conflict or inconsistencies with these policies or regulations. Staff's record of review is provided in project file PLN000260.

**(b) Site and Land Use Description** – The project is located at 16323 Castroville Boulevard, Prunedale (on the south side of Desmond Road, east of Paradise Road and north of Castroville Boulevard), (Assessor's Parcel Number 129-071-047-000), Castroville, Coastal Zone. The parcel is zoned Low Density Residential, 2½ acres per unit, Coastal Zone ("LDR/2.5 (CZ)"). Subdivision is an allowed activity in accordance with Section 20.14.040.AA. The project is in compliance with the Site Development Standards for Watershed and Scenic Conservation Districts in accordance with Section 20.14.060.

**(c) Subdivision Ordinance** - The subdivision of the subject 5.52-acre parcel results in two (2) parcels: Parcel A (2.86 acres) and Parcel B (2.67 acres). The property is currently undeveloped. Water for the proposed parcels would be provided by a mutual water system, the Castroville Boulevard Mutual Water System #14. Septic system will be installed on each of the newly created parcels. Covered parking will be provided for all the residences. Access would be provided through driveways connecting to Desmond Road and an existing access way to

Castroville Blvd. None of the findings pursuant to Section 19.04.025.I (Title 19/Coastal) that would be grounds for denial are applicable to this project. The project, as designed and conditioned, is in compliance with all the rules and regulations of the Monterey County Subdivision Ordinance, Coastal Zone (Title 19).

(d) **Inclusionary Housing** - The project was reviewed by Office of Housing and Redevelopment, which determined that the project and determined that it was exempt from the Inclusionary Housing Ordinance.

(e) **25% Slopes** - The property contains slopes in excess of 25 percent. A condition of approval will require that a conservation and scenic easement to include areas over 25 percent slopes, pursuant to CIP Section 20.144.040.C.1(c), except for those areas for which a 25% slope waiver has been requested. (See Finding #2 below)

(f) **North County Buildout** - The North County Coastal Implementation Plan (Section 20.144.140.B.3[a]) limits the number of new lots that may be created in the North County Land Use Plan Area to 2,043 lots. As of April 2006, County records accounted for a total of 251 units/lots remaining that could potentially be developed in the North County area. All of the pending projects known at this time are included in the above number. The proposed subdivision creates one (1) new lot and therefore does not exceed the North County buildout.

(h) **Visual Resources** - The project is consistent with the visual resource policies of the North County Land Use Plan (Chapter 2.2). The subdivision is not located in a sensitive scenic area and will not be visible from major public viewing areas. Therefore, the project, as designed, will be consistent with the North County Land Use Plan's visual resource policies.

(i) **Archaeological Resources** - The project is consistent with the archaeological resource policies of the North County Land Use Plan (Chapter 2.9). A *Preliminary Cultural Resources Reconnaissance* was prepared by Archaeological Consulting (Charles R. Smith and Gary S. Breschini, SOPA) on July 29, 1988 for a previous subdivision. According to the report, the project area does not contain surface evidence of potentially significant archaeological resources. An ongoing condition of approval will require that land disturbance be halted in the event that archaeological resources are found.

(j) **Hazards** - The project is consistent with the hazard policies of the North County Land Use Plan (Chapter 2.8). A *Geotechnical Soils-Foundation and Geologic Hazards Report* was prepared by Grice Engineering and Geology Inc. (April 2003). This report concludes that the chosen building sites may be developed as proposed provided that the report recommendations are included in the design and construction. The North County Fire Protection District reviewed the project and placed conditions of approval which will minimize the potential for fire hazards.

(k) **Water Resources / Water Supply** - The project is consistent with the water resource policies of the North County Land Use Plan (Chapter 2.5). The proposed subdivision will be served from a mutual water system, the Castroville Blvd. Mutual Water System #14. The project would not generate a water demand exceeding or adversely impacting the safe, long term yield of the local aquifer. The amount of water use which would be generated by this one new residential lot has been estimated as 0.4 acre feet a year (afy), based on standard water use estimates for North County in the amount of 125 gallons per person per day and 3.15 persons per the average dwelling. A more conservative estimate was included within the Fugro West Hydrogeologic Report commissioned by the County which estimates that a single-family dwelling in the area would demand 0.8 afy. The Highlands South hydrogeologic area has an estimated 1,614,714 acre feet of water in storage so that this additional demand equals 0.00010% of the amount of water in storage. This project is also located within the area of benefit of the Salinas Valley Water Project (Zone 2C). Due to the

benefit of this project, which is currently being implemented, staff has concluded that those projects which minimally increase water use would be consistent with County policy and ordinances and are a less than significant environmental impact. The County anticipates that the Salinas Valley Water Project can be relied upon as additional assurance of a long-term sustainable water supply.

**(l) Water Resources / Runoff and Erosion** – The development will be sited, designed, and constructed to minimize runoff, erosion, and resulting sedimentation. The project will be required to adhere to Monterey County's Erosion Control and Grading Ordinances, which are contained within Chapters 16.12 and 16.08 of the Monterey County Code. Conditions of approval will require a drainage plan. Additionally, landscaping plans will be required for future Coastal Administrative Permit applications for the construction of single-family homes which will include the planting of native trees and vegetation for those areas disturbed by construction in order to minimize erosion.

**(m) Site Visit** – The project planner conducted a site visit on September 1, 2005 to verify that the proposed project complies with the LCP. Staff's memo regarding the site visit is in project file PLN000260.

**(n) Land Use Advisory Committee** – The North County Coastal Land Use Advisory Committee voted to recommend approval of this subdivision on a seven-to-zero vote on May 19, 2003. Their recommended conditions of approval have substantially been incorporated into the approved conditions of approval.

**(o) Application Materials** – The application and plans submitted for the Combined Development Permit in project file PLN000260 at the Monterey County Planning and Building Inspection Department.

**(p) Design Approval** – The applicant provided the Monterey County Planning and Building Inspection Department with a Design Approval Request, drawings, and a statement of materials and colors to be used.

**(q) Testimony** – No testimony, either written or oral, was received during the course of the public hearing process to indicate that there is any inconsistency with these plans or policies.

- 2. FINDING: 25 PERCENT SLOPE WAIVER** – The proposed development originally was submitted to have a portion of the driveway for Parcel B placed on slopes exceeding 25%. During project review it was determined that these slopes could be avoided through realignment of the driveway to the south onto a previously abandoned alignment that would impact less vegetation. Consistent with Section 20.144.070.E.2.a of the "Regulations for Development in the North County Land Use Plan" other alternatives were identified that allow the development to occur on slopes less than 25% therefore the waiver is not needed or justified.

**EVIDENCE:** **(a)** The project proposes dividing a legal parcel of record into two parcels consistent with the parcel size requirements of the North County Land Use Plan and Coastal Implementation Plan. As revised and shown in the January 11, 2006 tentative map-slope map, the project would not impact slopes greater than 25% and would not increase the impact to oak woodlands or maritime chaparral.

**(b)** Revised site plan "Mayr Subdivision 16323 Castroville Blvd – Recommended Driveway Alterations Based On Biological Survey", dated 12/08/06 and letter from Rana Creek, Consulting Biologist, dated 01/06/06 contained in file # PLN000260.

**(c)** The application and plans submitted for the Combined Development Permit, including the 25% Slope Exception Request, in project file PLN000260 at the Monterey County Planning and Building Inspection Department.

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

**EVIDENCE:** (a) The project has been reviewed for suitability by the Monterey County Planning and Building Inspection Department, North County Fire Protection District, Monterey County Water Resources Agency, Monterey County Public Works Department, Monterey County Health Department and Monterey County Parks Department. There has been no indication from these agencies that the site is not suitable. Conditions recommended by these agencies have been incorporated as project conditions.

(b) The project planner conducted a site visit on September 1, 2005 to verify that the site is suitable for this use.

(c) Necessary public facilities are available and will be provided.

- 4. FINDING: PUBLIC ACCESS** – The project is in conformance with the public access and public recreation policies of the Coastal Act and the Local Coastal Program, and does not interfere with any form of historic public use or trust rights. No access is required as part of the project as no substantial adverse impacts 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) The subject property is not described as an area where the Local Coastal Program requires access and is not indicated as part of any designated trails or shoreline access. No evidence or documentation has been submitted or found showing the existence of historic public use or trust rights over this property.

(b) Staff site visit on September 1, 2005.

- 5. FINDING: CEQA** – The project is subject to environmental review pursuant to the requirements of the California Environmental Quality Act (CEQA). On the basis of the whole record before the Planning Commission, there is no substantial evidence that the proposed project as designed, conditioned, and mitigated, will have a significant effect on the environment. The Mitigated Negative Declaration reflects the independent judgment and analysis of the County.

**EVIDENCE:** (a) The proposed project is not exempt from environmental review due to the potential for significant effects pursuant to CEQA Guidelines Section 15300.2 (Exceptions).

(b) Potentially adverse environmental effects were identified during staff review of the development application.

(c) The Planning and Building Inspection Department prepared an Initial Study pursuant to CEQA. The Initial Study identified potentially significant effects relative to biological resources, hydrology/water quality, transportation/traffic, and utilities/service systems. The Initial Study/Mitigated Negative Declaration concluded that impacts will be less than significant with mitigation incorporated for biological resources, and transportation/ traffic, and less than significant for hydrology/water quality and utilities/service systems. Impacts to biological resources will be mitigated to a less than significant level through construction techniques, scenic easements, the removal of invasive plants, the replanting of chaparral, and the avoidance of the nests of Dusky Footed woodrats and birds. Traffic impacts will be mitigated to a less than significant level through the payment of fees to improve impacted roadways. The Initial Study is on file in the office of the Planning and Building Inspection Department and is hereby incorporated by reference (File No. PLN000260). All project changes required to avoid significant effects on the environment have been incorporated into the project and/or are made conditions of approval.

(d) A Mitigation Monitoring and Reporting Program (MMRP) has been prepared in accordance with Monterey County regulations and is designed to ensure compliance with conditions and mitigation measures during project implementation. The applicant must enter

into an "Agreement to Implement a Mitigation Monitoring and Reporting Program" as a condition of project approval.

(e) For purposes of implementing Section 735.5 of Title 14, California Code of Regulations, the amount of grading, site disturbance, and habitat disturbance associated with the project will cause changes to the resources listed under Section 753.5. Therefore, payment of the Fish and Game Document Filing Fee is required.

(f) Evidence that has been received and considered include the application, plans, materials, and technical reports, which are listed under Section IX (References) of the Initial Study and contained in project file PLN000260.

(g) The Initial Study/Mitigated Negative Declaration was circulated for public review from April 10 to May 9, 2006.

(h) During the Initial Study/Mitigated Negative Declaration public review period, County staff received no comment letters. Staff has reviewed these comments and determined that no substantial issue has been raised regarding the adequacy of the information contained in the Initial Study and the mitigation measures proposed under the Mitigated Negative Declaration. Therefore, no revisions to the Initial Study/Mitigated Negative Declaration are required.

(i) The Monterey County Department of Planning and Building Inspection, located at 168 W. Alisal Street, 2<sup>nd</sup> Floor, Salinas, CA, 93901, is the custodian of documents and other materials that constitute the record of proceedings upon which the decision to adopt the Mitigated Negative Declaration is based.

**6. FINDING: WATER RESOURCES/WATERSUPPLY** – The project is consistent with the water resource policies of the North County Land Use Plan (Chapter 2.5) specifically 2.5.1 and 2.5.2.1;3;5 given that the project has assured long-term supply and increased water demand created will be insignificant compared to the supply available in the project area.

**EVIDENCE:** The proposed subdivision will be served from a mutual water system, the Castroville Blvd. Mutual Water System #14. The project would not generate a water demand exceeding or adversely impacting the safe, long term yield of the local aquifer. The amount of water use which would be generated by this one new residential lot has been estimated as 0.4 acre feet a year (afy), based on standard water use estimates for North County in the amount of 125 gallons per person per day and 3.15 persons per the average dwelling. A more conservative estimate was included within the Fugro West Hydrogeologic Report commissioned by the County which estimates that a single-family dwelling in the area would demand 0.8 afy. The Highlands South hydrogeologic area has an estimated 1,614,714 acre feet of water in storage so that this additional demand equals 0.00010% of the amount of water in storage. This project is also located within the area of benefit of the Salinas Valley Water Project (Zone 2C). The Board of Supervisors approved the EIR for the Salinas Valley Water Project (SVWP) in 2002. The voters approved funding for the SVWP in 2003. The SVWP is in final design with construction expected to begin in 2007 and completion in 2008. Due to the benefit of this project, staff has concluded that those projects which minimally increase water use would be consistent with County policy and ordinances and are a less than significant environmental impact. The County anticipates that the Salinas Valley Water Project can be relied upon as additional assurance of a long-term sustainable water supply.

**7. FINDING: ENVIRONMENTALLY SENSITIVE HABITAT AREAS – TREE REMOVAL** The project is consistent with North County Land Use Plan Policies: Policy 2.3.2.1; 2 ;3;4;5;6;7;9; Policy 2.3.3.2; 4 and Policy 2.3.3.A.4 given that there is ample evidence based on recommendations from the biological survey (BA) that creation of the subject subdivision will



largely avoid and not result in significant impacts to environmentally sensitive habitat to include maritime chaparral, the Dusk Footed Wood Rat and sensitive bird species, or harm their habitat's long term maintenance, and will cause the minimum removal of oak woodlands.

**EVIDENCE:** The biological survey and subsequent letters from the consulting biologist confirm that in the past that the site contained a greater coverage of maritime chaparral compared to current conditions and that the lack of fire or disturbance has allowed the oak woodland to overtake and result in a climax succession over the maritime chaparral. It appears that this process would continue if the site remained undeveloped. Although the project will result in .84 acres loss of oak woodland – maritime chaparral understory out of a total 4.07 acres contained on the 5.5 acre site, this is considered degraded Environmentally Sensitive Habitat (ESHA) given the succession that is occurring. The project impact area contains **only .03 acres** of non successional maritime chaparral considered true ESHA out of a total 1.07 acres on the 5.5 acre site. This successional process is described in text and photographs contained in the Biological Assessment (BA) for the site dated 11/10/03 prepared by Rana Creek Habitat Restoration

As identified above the project will minimally disturb central Maritime chaparral habitat through siting, access, and grading for the proposed future single family residences. This habitat includes three rare plant species: Hooker's manzanita, Pajaro manzanita, and Monterey ceanothus. According to the North County Coastal Implementation Plan, this habitat is considered environmentally sensitive habitat (ESHA) since it represents an area in which plant or animal life or their habitats are rare or particularly valuable because of the special nature or role in an ecosystem. Staff has determined that the 0.03 acres of non degraded chaparral disturbance of this habitat is equal to the amount of habitat that would be removed to construct a single-family home on the existing lot of record from the existing roadway access on the south eastern portion of the project as shown on the biological assessment map. Therefore comparing the un-subdivided site to the subdivided site will not cause any increase in impact non-degraded maritime chaparral (Policy 2.3.2.1 Policy 2.3.2.2 and Policy 2.3.3.2).

The project has been assessed in the BA which has determined that the placing of building envelopes and the realignment of roadways has minimized impacts to maritime chaparral (Policy 2.3.2.4 and Policy 2.3.3.2) (Condition #25). In addition, follow-up letters from Rana Creek (12/20/05 and 01/06/06) indicate that opening up the canopy of the oak woods through development of the site most certainly will provide for greater maritime resources on the site in comparison to the successional process that is taking place on the undeveloped property.

Further mitigations include the placement of and use of existing conservation easements over remaining ESHA (Policy 2.3.2.6) (Condition #27 and BA Map) and the revegetation of a previously disturbed 1.3 area contained on an adjacent site with maritime chaparral. Although this area was part of an earlier mitigation effort, the condition requiring the monitoring of the site was fulfilled and a subsequent May 18, 1998 letter from the consulting biologist Jud Vandevere confirmed that the restoration had attained the required 50% revegetation coverage of ESHA consistent with the condition requirements of condition #25 of MS88-10. Given that the requirements were met this condition was signed off as being successfully implemented. Unfortunately this condition was not successful over the longer term. To offset this failure the new owner has agreed to re-restore the site with maritime chaparral and ensure success in perpetuity (Condition 29).

A maximum of 126 Coast live oak trees, in excess of 6 inches in diameter (dbh) would be removed on 0.84 of an acre on this parcel, which is primarily covered by oak woodland. Five of these trees are landmark trees in excess of 24 inches dbh. Less than eleven Monterey pines in excess of 12 inches dbh would be removed. Although pines are not native to this area, two of these trees are categorized as landmarks as they are in excess of 36 inches dbh. Staff has determined that this is the minimum number of trees which can be removed to allow two residential lots at this site based on the forestry report (Tree Survey and Preservation Recommendations) as submitted by Michael L. Bench and revised on December 14, 2003. Approximately half of this number would need to be removed to allow for development of a single residential unit (Policy 2.3.3.A.4).

Additional potential impacts of the subdivision include those to the Dusky Footed woodrat and birds. The disturbance of these habitats will require mitigation that includes site surveys and the relocation of nests if necessary in order to reduce biological impacts to a less than significant level (Policy 2.3.2.2 and Policy 2.3.2.10) (Conditions #30; #31).

Impacts to biological resources will be mitigated to a less than significant level through the minimization of disturbance through hand trenching and other construction methods, scenic easements over portions of the property containing chaparral, the removal of invasive species on the property, the replanting of 1.3 acres of chaparral on an adjacent parcel owned by the applicant, and measures to avoid disturbance to the nests of Dusky Footed woodrats and birds.

**8. FINDING: NO VIOLATIONS** – The subject properties is in compliance with all rules and regulations pertaining to zoning uses, subdivisions and other applicable provisions of Title 20. Zoning violation abatement costs, if any, have been paid.

**EVIDENCE:** Sections 20.17.020, 20.44.020, and 20.64.230 of the Monterey County Zoning Ordinance. Staff verification of the Monterey County Planning and Building Inspection Department records indicates that no violations exist on subject property.

**9. FINDING: HEALTH AND SAFETY** – The establishment, maintenance, and operation of the proposed development applied for will not under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood or to the general welfare of the County.

**EVIDENCE:** Preceding findings and supporting evidence.

**10. FINDING: APPEALABILITY** – The decision on this project is appealable to the Board of Supervisors and the Coastal Commission.

**EVIDENCE:** Sections 20.86.030 and 20.86.080 of the Monterey County Zoning Ordinance (Title 20).

### **DECISION**

It is the decision of the Minor Subdivision Committee of the County of Monterey that the Mitigated Negative Declaration be adopted and said application for a Combined Development Permit be granted as shown on the attached sketch and subject to the attached conditions.



**PASSED AND ADOPTED** this 25th day of May, 2006, by the following vote:

AYES: Mulholland, Mounday, McPharlin, Hori, Treffry  
NOES: None  
ABSENT: Vandevere

  
LYNNE MOUNDAY, SECRETARY

COPY OF THIS DECISION WAS MAILED TO THE APPLICANT ON JUL 11 2006

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS. IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK OF THE BOARD OF SUPERVISORS ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE JUL 21 2006

THIS APPLICATION IS ALSO APPEALABLE TO THE COASTAL COMMISSION. UPON RECEIPT OF NOTIFICATION OF THE DECISION BY THE BOARD OF SUPERVISORS, THE COMMISSION ESTABLISHES A 10 WORKING DAY APPEAL PERIOD. AN APPEAL FORM MUST BE FILED WITH THE COASTAL COMMISSION. FOR FURTHER INFORMATION, CONTACT THE COASTAL COMMISSION AT (831) 427-4863 OR AT 725 FRONT STREET, SUITE 300, SANTA CRUZ, CA

UNLESS EXTENDED AS PROVIDED BY CHAPTER 19.04.040, TITLE 19 (SUBDIVISIONS), MONTEREY COUNTY CODE, THIS APPROVAL EXPIRES ON MAY 25, 2008. EXTENSION REQUESTS MUST BE MADE IN WRITING 30 DAYS PRIOR TO THE AFOREMENTIONED EXPIRATION DATE.

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90<sup>th</sup> day following the date on which this decision becomes final.

#### NOTES

1. You will need a building permit and must comply with the Monterey County Building Ordinance in every respect.

Additionally, the Zoning Ordinance provides that no building permit shall be issued, nor any use conducted, otherwise than in accordance with the conditions and terms of the permit granted or until ten days after the mailing of notice of the granting of the permit by the appropriate authority, or after granting of the permit by the Board of Supervisors in the event of appeal.

Do not start any construction or occupy any building until you have obtained the necessary permits and use clearances from the Monterey County Planning and Building Inspection Department office in Monterey.

2. This permit expires two years after the above date of granting thereof unless construction or use if started within this period.

## 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 Reilly           | 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:

PLN000260 – Subdivision of a 5.52-acre lot into two lots of 2.85 acres (Parcel A) and 2.67 acres (Parcel B) and the establishment of road access and building envelopes that include development in an environmentally sensitive habitat area.

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

APN 129-071-047, located at 16323 Castroville Boulevard, Prunedale, North Monterey County

4. Description of decision being appealed:

- a. Approval; no special conditions: \_\_\_\_\_
- b. Approval with special conditions:   X
- 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-06-044**  
 DATE FILED: **August 15, 2006**  
 DISTRICT: **Central**

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

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

- a. \_\_\_\_ Planning Director/Zoning Administrator      c. \_\_\_\_ Planning Commission
- b. \_\_\_\_ City Council/Board of      d. ☒ Other (**Minor Subdivision Committee**)

6. Date of local government's decision: May 25, 2006

7. Local government's file number: PLN000260 (Resolution No. 06011)

**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 and Linda Mayr

7301 Langle Canyon Road

Salinas, CA 93907

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

Monterey County Planning & Building Inspection

168 W. Alisal St., 2<sup>nd</sup> Floor, Salinas, CA 93902

(2) Ms. Sue Snow (applicant's rep)

c/o Lombardo & Gilles

P.O. Box 2119

Salinas, CA 93902

(3) \_\_\_\_\_

**SECTION IV. Reasons Supporting This Appeal**

**See attached "Reasons for 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.

**Reasons for Appeal of Monterey County Coastal Development Permit PLN000260 (Mayr subdivision, North Monterey County)**

Monterey County Coastal Development Permit PLN000260 authorizes the subdivision of a 5.52-acre lot into two lots of 2.85 acres (Parcel A) and 2.67 acres (Parcel B) and the establishment of road access and building envelopes that include development in an environmentally sensitive habitat area at 16323 Castroville Boulevard, Prunedale, North Monterey County (APN #129-071-047).

The locally approved project is inconsistent with the Monterey County certified Local Coastal Program (LCP) for the following reasons:

**1. The project is inconsistent with LCP ESHA policies protecting central maritime chaparral habitat.**

The 5.52-acre project site is characterized as central maritime chaparral that is undergoing succession to oak woodland. Central maritime chaparral is considered an environmentally sensitive habitat area (ESHA) in the North County LCP. The North County Land Use Plan (LUP) Policy 2.3.3.A.2 describes maritime chaparral as an uncommon, highly localized and variable plant community that has been reduced in North County by residential and agricultural development. This habitat type is also recognized as a sensitive habitat in the California Department of Fish and Game's (CDFG) California Natural Diversity Database (CNDDDB).

The key ESHA policy in the North County LUP states that the environmentally sensitive habitats of North County are unique, limited, and fragile resources of statewide significance, and therefore shall be protected, maintained, and where possible, enhanced and restored. LUP Policy 2.3.2.1 prohibits all development, with the exception of resource dependent uses, in sites of known rare and endangered species of plants. LUP Policy 2.3.2.3 states that new development adjacent to locations of environmentally sensitive habitats shall be compatible with the long-term maintenance of the resource, and that new subdivisions shall be approved only where significant impacts to environmentally sensitive habitats from development of proposed parcels will not occur. In support of this policy, CIP Section 20.144.040.B.4 prohibits subdivisions which are completely within an environmentally sensitive habitat, and CIP Section 20.144.040.B.3 prohibits new land uses and subdivisions on parcels within 100 feet of environmentally sensitive habitats where they will adversely impact the habitat's long term maintenance, either on a project or cumulative basis. Furthermore, LUP Policy 2.3.2.6 and CIP Sections 20.144.040.B.5 and 6 require protection of environmentally sensitive habitats through deed restrictions or dedications of permanent conservation easements.

The County-approved project is inconsistent with these LCP ESHA policies because it does not protect the maritime chaparral on the site. The residential development proposed in conjunction with the subdivision would necessitate the removal of 0.87 acre of maritime chaparral (0.84 acre successional oak woodland/maritime chaparral and 0.03 acre of non-successional maritime chaparral). The County findings describe the 0.84-acre area of successional maritime chaparral as "degraded" ESHA; however, the biological assessment states that the site contains Pajaro manzanita and Hooker's manzanita, both CNPS list 1B species, and Monterey ceanothus, a CNPS list 4 species, all indicative of maritime chaparral. Although succession from maritime chaparral to oak woodland does appear to be occurring on the site, such succession does not preclude the

habitat's characterization as ESHA because of the presence of these rare species. Furthermore, the maritime chaparral seed bank remains at the site, and further development and subsequent fire suppression would permanently hinder protection and re-establishment of true maritime chaparral at the site. A subdivision and development of two single-family residences within this area is therefore not only inconsistent with the above-described policies requiring protection of entire environmentally sensitive habitat areas, but also with LUP Policy 2.3.2.1 which prohibits all development in sites of known rare and endangered species of plants.

Condition #27 of the County approval requires the applicant to place those remaining areas of ESHA on the site in a scenic and conservation easement. The County approval, however, does not characterize the entire site as ESHA, and therefore it appears as though Condition #27 would not protect maritime chaparral consistent with the LCP.

In addition, the County approved project would require the removal of up to 126 Coast live oak trees. The County ESHA findings indicate that the removal of these trees would open the canopy and provide for greater maritime chaparral resources in comparison to the successional process that would continue on the undeveloped site. This is misleading, since succession would continue not if the site remains undeveloped, but if no fire occurs on the site. Furthermore, the removal of one resource should not be justified to save another. In this case, although oak woodland is not specifically designated as ESHA by the LCP, LUP Policy 2.3.3.A.4 requires that development within oak woodland be sited to minimize disruption of vegetation and habitat loss.

The approved subdivision is inconsistent with the North County LCP because it will result in non-resource dependent development within ESHA; it will result in the loss and fragmentation of ESHA and thereby jeopardize its long-term viability; and it does not protect all areas of the site through a deed restriction or conservation easement.

## **2. The project is inconsistent with LCP policies protecting water supply in North County.**

The North County LUP requires, among other things, that 1) new developments be controlled to a level that can be served by an identifiable, available, and long-term water supply (Key LUP Policy 2.5.1); development levels that generate water demand exceeding safe yield of local aquifers are only allowed once additional water supplies are secured (LUP Policy 2.5.2.3); new development be phased so that existing water supplies are not committed beyond their safe long-term yields (ibid.); and 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 (LUP Policy 2.5.3.A.2). In addition, 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.

The site is located in the Highlands South sub-basin. The 1995 Fugro-West North Monterey County Hydrogeologic Study calculated a sustained yield for the Highlands South sub-basin of 4,390 acre feet per year (afy), and historical groundwater demand of 5,020 acre feet (af), resulting in a deficit of 630 afy, or a demand that was 13 percent more than available groundwater supplies. Updated values, provided in the 2002 Comprehensive Water Resources Management Plan, calculated a sustained yield of 4,390 afy and more recent water demand of 9,095 afy, which results in a deficit of 1,705 afy, or

a current demand that is over 100 percent more than available groundwater resources can supply. Overall, North County aquifers are overdrafted by more than 11,000 af. The County approval of the project indicates that the Highlands South sub-area has an estimated 1,614,714 acre feet of water in storage, and that the additional demand from the project equals 0.0001% of the water in storage. However, since all North County aquifers are currently overdrafted, any increase in demand constitutes a significant, cumulative impact.

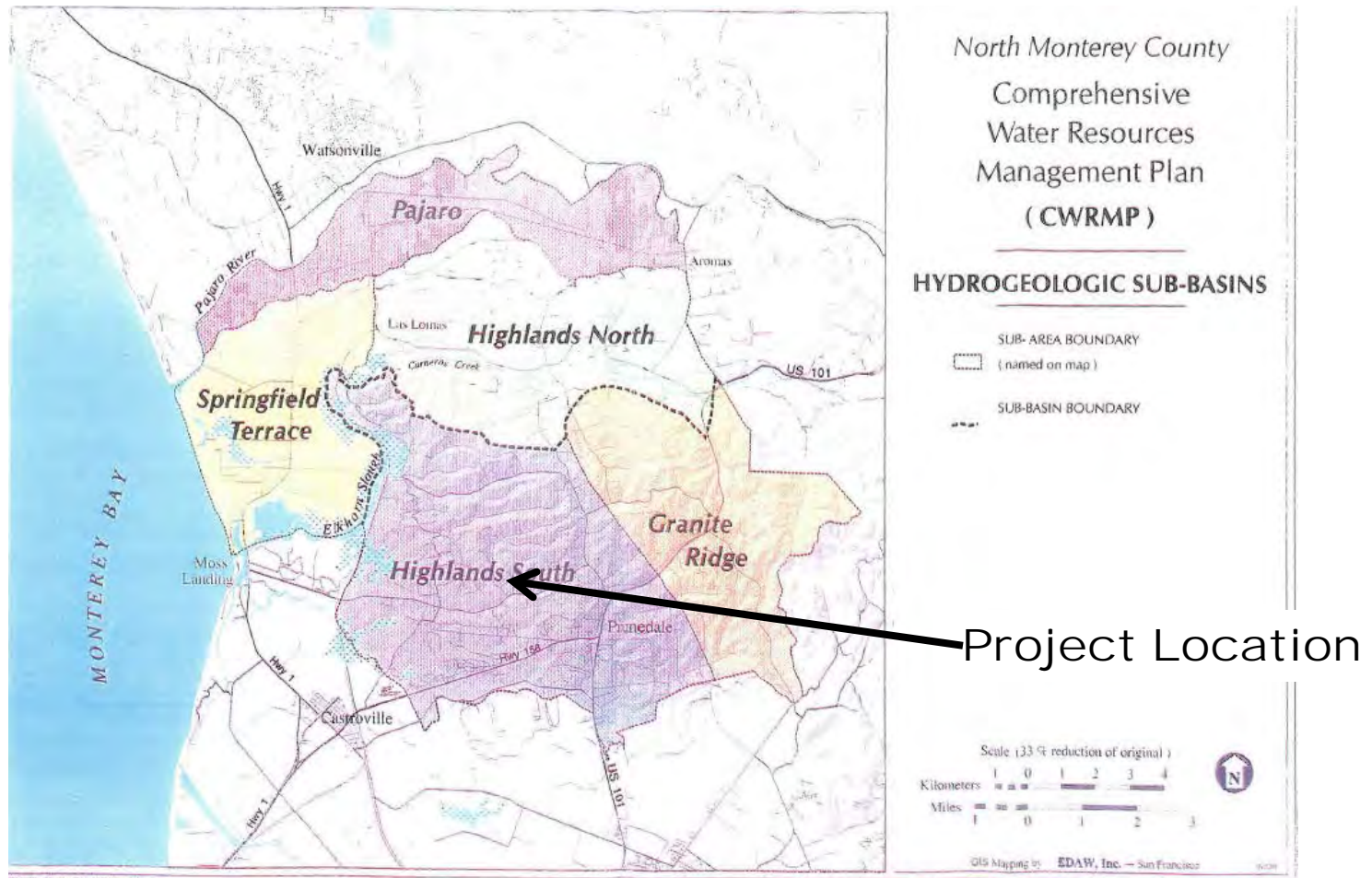
The County approval concludes that “those projects which minimally increase water use would be consistent with County policy and ordinances and are a less than significant environmental impact.” The findings also note that the site is located within the area of benefit of the Salinas Valley Water Project (Zone 2C), and that “the County anticipates that the Salinas Valley Water Project can be relied upon as additional assurance of a long-term sustainable water supply.” However, this potential additional water supply has not yet been secured. The Salinas Valley Water Project has not completed the permitting process, let alone construction and monitoring to determine if it will be successful at halting groundwater overdraft and restoring groundwater reserves to safe long-term yields, so it is premature to rely on this project as an assured, available long-term water supply.<sup>1</sup> The only identifiable, available water supply at the present time is the overdrafted Highlands South aquifer, which is severely overdrafted and so cannot serve as a long-term water supply. 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 is also 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.

LCP policies require that where there is limited land, water, or public facilities to support development, coastal dependent uses shall have priority over residential and other non-coastal dependent uses. Additionally, North County LUP Policy 2.5.3.A.2 allows the County to 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, which is considered a priority use. The proposed subdivision is not a priority use. The project has not 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 after getting the groundwater table above overdraft conditions 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.

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<sup>1</sup> The EIR and funding for the SVWP have both been approved, but the project itself is currently only in design phase, and so is not permitted or constructed yet. 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 the project 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.

# North Monterey County Groundwater Sub-basins



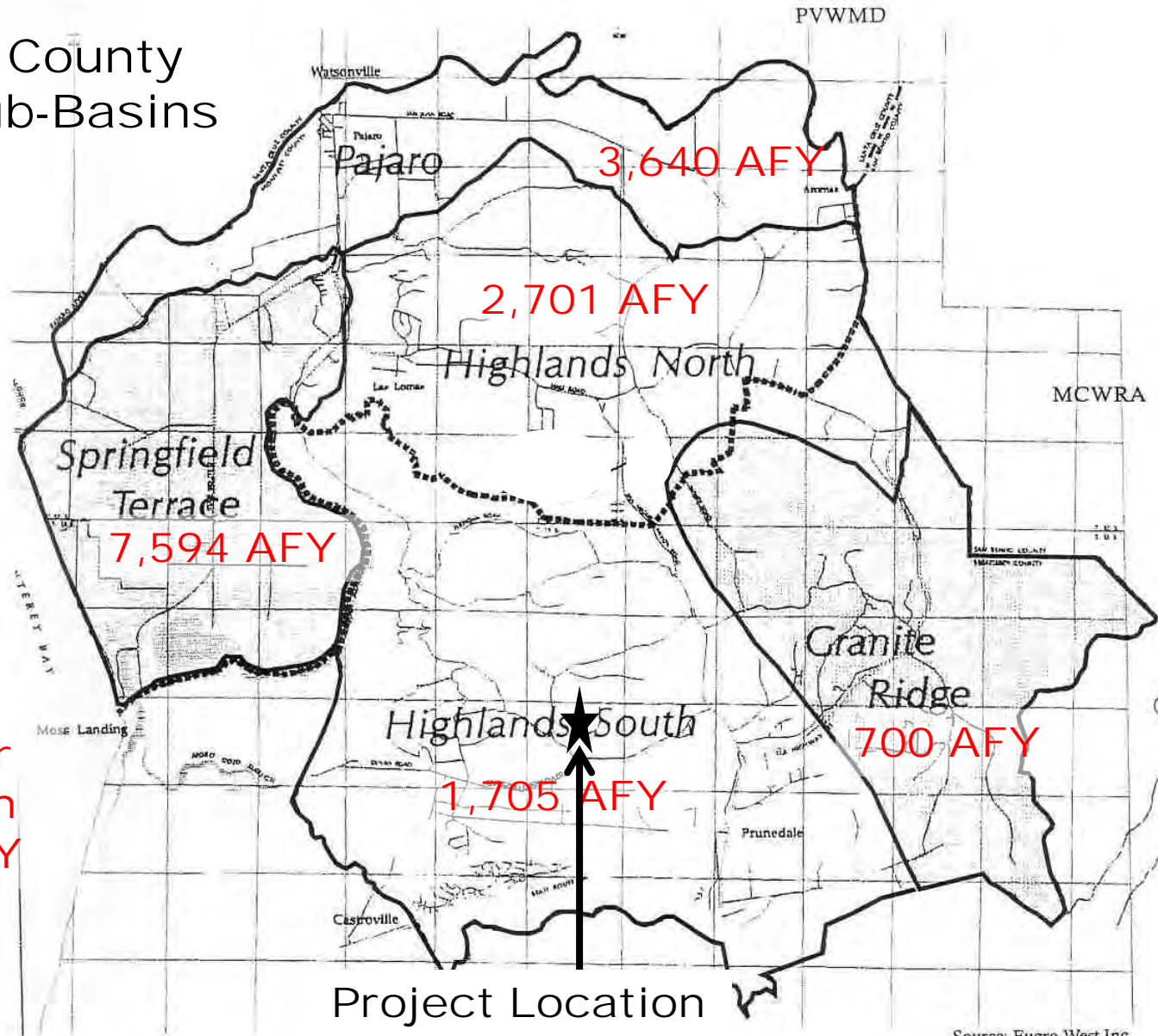


# North Monterey County Hydrogeologic Sub-Basins

#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-06-044 (Mayr Subdivision)

Page 2 of 2



MINOR SUBDIVISION COMMITTEE  
COUNTY OF MONTEREY, STATE OF CALIFORNIA

RESOLUTION NO. 91-034

MINOR SUBDIVISION # MS88-10

A.P.# 129-071-43

## FINDINGS AND DECISION

In the matter of the request of Larry Ash (MS88-10)

for a lot line adjustment in accordance with Chapter 19.09, Title 19 (Subdivisions) of the County of Monterey Code to allow a Combined Development Permit including: division of 3 parcels of 5.4 acres, 5.7 acres and 5.6 acres each; Coastal Development Permit, located on Subdivision B of Lot 30, Assessor's Map 8, Bolsa Nueva y Moro Cojo Rancho, Prunedale Area, fronting on and southerly of Desmond Road, Coastal Zone came on regularly for hearing before the Minor Subdivision Committee on April 25, 1991.

Said Minor Subdivision Committee, having considered the application and the evidence presented relating thereto,

FINDINGS OF FACT

1. FINDING: The proposed project consists of the minor subdivision of a 16.724 acre parcel into 3 lots of (1) 5.4 acres, (2) 5.7 acres, and (3) 5.6 acres, in a Low Density Residential or LDR/2.5 acre zoning district. The subject parcel is located in the Prunedale Area, fronting on and southeasterly of Desmond Road in the North County Coastal Zone. Access would be from the northwest corner of Lot 1 via a proposed 30 foot-wide road off Desmond Road and from the south-central portion of the site via an existing 30 foot-wide road and utility easement. The applicant proposes that water and sewage disposal for the three lots be served by individual wells and septic systems. (See Creegan & D'Angelo Hydrology and Nitrate Leaching Study prepared for the subject parcel.)

The parcel has been cleared of about two-thirds (2/3) of the native plant life--a natural occurrence of Oak Woodland, Maritime Chaparral and pocket meadows. A few specimens of the rare and endangered Eastwood's Golden Fleece (Ericameria fasciculata) are found at two locations. The parcel slopes steeply toward Desmond Road on the north and more gently toward the south. The parcel has been used as "fringe agriculture". Future proposed residential use and road access requires the establishment of building envelopes in accordance with an Erosion Control Plan and Biology Report prepared for the project--a condition of approval for the project (see Finding No. 2 of this report).

- EVIDENCE: (1) Regulation for Development in a Low Density Residential or LDR/2.5 (CZ) District, found in Chapter 20.114 of the Monterey County Coastal Implementation Plan. (2) The application and plans submitted for a Coastal Development Permit, as found in Minor Subdivision File No. MS 88-10. (3) The on-site inspection of the subject parcel by the project planner pursuant to Chapter 20.144.020 of the Monterey County Coastal Implementation Plan.



2. **FINDING:** The project is consistent with Section 20.144.070 of the Coastal Implementation Plan dealing with water resources.

The subject site is located in North County Land Use Plan Subwatershed No. 29, which is not a Watershed Restoration Area. The Aromas Red Sands of the Pleistocene age underlay the entire area--friable loose sands that easily form miniature "badlands" in gullies and road cuts. This can be avoided by proper grading and restoration practices. The high erosion hazard of AKF and Ar soils found on the site according to the Department of Agriculture's Soil Conservation Service soil maps, and the fact that the parcel contains 25% and greater slopes, designated "critical erosion areas" by the Coastal Implementation Plan, are reasons that an erosion control plan is required for the building envelopes by registered consulting engineers--a condition of approval for the project. In addition, a Scenic and Conservation Easement shall be placed over all slopes 25 percent and greater plus areas of the sensitive Maritime Chaparral plant habitat.

**EVIDENCE:** (1) Appendix 2A, North County Resource Maps.  
(2) United States Department of Agriculture, Soil Conservation Service; Soil Survey of Monterey 73.  
(3) Geologic Hazard Report prepared for the subject parcel by Edward Gribi, Jr., registered geologist.

3. **FINDING:** The proposed project is consistent with policies of the Local Coastal Program dealing with development adjacent to environmentally sensitive habitats. The Biological Report prepared for the site by Jud Vandevere states no significant negative impact will result from this development. Mitigation measures contained in the report include protection of the Coast Live Oaks, the establishment of small plant reserves for specimens of the Eastwood's Golden Fleece (see Finding No. 1 of this report), and the preservation of examples of the Maritime Chapparral plant community on the property. A condition has been added which requires the applicant to comply with the mitigations contained in the Biological Report.

**EVIDENCE:** The Biological Report dated August 23, 1988, prepared for the site by Jud Vandevere pursuant to requirements, of the Coastal Implementation Plan.

4. **FINDING:** 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:** Ordinance #3496 of the County of Monterey adds Chapter 18.51 to the Monterey County Code to establish a Water Impact Fee for development in the North Monterey County Area to assist in



financing a study and management plans relating to the safe yield of the North Monterey County aquifers.

5. FINDING: A hydrological study was prepared by Creegan & D'Angelo for the project after Ordinance #3496, the water impact fee required of developments in the North County Land Use Plan area that shall fund a regional hydrologic study. With regards the specific project, the Water Resources Agency makes the following findings:

- (1) The addition of 3 lots and dwellings for the proposed development, would result in an additional water use of approximately 1.233 acre feet per year. This is based on standard water use estimates for North County in the amount of 125 gallons per person per day and 3.15 persons per average dwelling.
- (2) Applicable policies from the North County Land Use Plan and North County Coastal Implementation Plan are listed in the Evidence. These policies deal with the adequacy of water supplies in terms of safe, long term yield rather than overdraft.

The long term yield of the local aquifer has not been determined. Therefore, the District is unable to determine whether the project will generate a water demand exceeding or adversely impacting the safe, long term yield of the local aquifer, and whether any project alternatives and/or mitigation measures would 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, Coastal Implementation Plan, (Section .144.070.E.11). However, in accordance with the North County Land Use Plan (Section 2.5.3.A.2), which allows 50% of buildout to occur pending determination of the safe yield of the aquifer, if this development is within the 50% buildout limitation, the development should not be disapproved on the grounds that it will generate a water demand exceeding or adversely impacting the safe, long term yield of the aquifer. The Monterey County Planning Department has advised that the 50% buildout within the coastal area has not yet been exceeded.

- (3) The development approval should require that water conservation measures be adopted such as low water use fixtures and low water use landscaping in new construction and retrofitting of existing dwellings within the development.
- (4) Development fees in the amount of \$1,000 per new lot, minus the Creegan & D'Angelo hydrological study costs, should be imposed in accordance with Ordinance No. 3496, effective November 16, 1990. (See Condition No. 34)

EVIDENCE: Section 20.144.140.B.3, that in the North County Land Use Plan area, a total of 2,043 new lots or units may be created after certification of the LUP in June, 1982. This figure represents devel-



opment at a level of 50% of the buildout remaining at the time of LUP certification. The figure for buildout in the sub-watershed 'M' has been updated as of April 5, 1991 as follows: total acreage, 5,722; maximum buildout, 3,452; remaining units, 1,765 at 50 percent = 883; units developed between 1981 and 1991 is 145, leaving a balance of 730 available units or 84 percent remaining allowed buildout. The 16 percent buildout to date, less than the 50 percent buildout limitation, is consistent with Section 2.5.3.A.2 of the North County Land Use Plan. The 50% buildout is permitted as the first phase of new development which limits groundwater use to the safe yield level. Additional development beyond this first phase shall require a Local Coastal Program amendment, pursuant to Appendix 13 of this ordinance, and shall only be permitted after safe yields of groundwater use have been established and water supplies are determined to be available, according to definitive water studies.

The remaining buildout figure is 645 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. (Ref. Policy 2.5.3.A.2 and 4.3.3)

**EVIDENCE:** North County Land Use Plan

- (1) Key Policy 2.5.1
- (2) General Policy 2.5.2.3
- (3) Specific Policy 2.5.3.A.1
- (4) Specific Policy 2.5.3.A.2
- (5) General Policy 4.3.5.4
- (6) General Policy 4.3.5.7

**EVIDENCE:** Monterey County Coastal Implementation Plan, Part 2, Regulations for Development in the North County Land Use Plan

- (1) Section 20.144.070.E.10
- (2) Section 20.144.070.E.11
- (3) Section 20.144.070.E.12
- (4) Section 20.144.140.A

6. **FINDING:** Approval of the proposed minor subdivision involves the potential for adverse impact, individually or cumulatively, on plantlife or wildlife resources as defined by Section 711.2 of the State Fish and Game code.

**EVIDENCE:** The Initial Study for the project did identify potential significant environmental impacts to wildlife resources resulting from the project. A Negative Declaration was filed on March 22, 1991.

7. **FINDING:** The project as proposed is consistent with policies of the Local Coastal Program dealing with visual resources and will have no significant impact on the public viewshed. The proposed addition was evaluated in terms of the impact upon the public viewshed from Desmond Road, Paradise Canyon Road, and Castroville Boulevard. a) The building envelopes are conditioned to not result in ridgeline development. b) The project is not located in the public viewshed as defined in Section 20.144.020.SSS of the Coastal Implementation Plan.

**EVIDENCE:** The on-site investigation by the project planner, pursuant to Chapter 20.144.030 of the Monterey County Coastal Implementation Plan.



certifying improvements have been made in conformance to improvement plans and local ordinance. (Public Works)

13. That the off-site road serving this property be approved by the North County Fire District. (Public Works)

14. That thirty days prior to expiration date of the tentative map, Step A (8-items) of the County Surveyor's Check Off List for Parcel Map Processing shall be completed. (Public Works)

15. That all development shall comply with the drainage and erosion control provisions of the Monterey County Coastal Implementation Plan. (Water Resources Agency)

✓ 16. That building and septic envelopes which include the area of the approved development shall be established in accordance with the Erosion Control Plan and Biology Report prepared for the project. Prior to the issuance of building permits, the envelopes shall be approved by the Director of Planning and Building Inspection. (Planning and Building Inspection and Environmental Health)

17. That future owners of lots 1,2, and 3 created by the Minor Subdivision shall be responsible for their individual wells and septic systems, subject to a Coastal Development Permit. A Notice shall be recorded for each lot prior to the filing of a parcel map stating the following: This parcel, APN 129-071-43, created by the Ash Minor Subdivision MS88-10, shall be provided with an on-site well and septic system by the property owner should said party choose to construct a habitable structure on the property. The location of both the well and septic system are subject to Coastal Development Permits and shall be based on soil and percolation tests approved by the Environmental Health Department. (Planning and Building Inspection and Environmental Health)

18. That the approved development shall incorporate the recommendations of the Erosion Control Plan as reviewed by the Soils Conservation Service and the Building Inspection section of the Monterey County Department of Planning Building Inspection. (Planning and Building Inspection)

✓ 19. That a scenic easement be conveyed to the County over those portions of the property where the slope exceeds twenty-five per cent and areas where the Maritime Chapparal plant community exist. Scenic easement deed to be submitted to and approved by Director of Planning and Building Inspection prior to issuance of building permits. (Planning and Building Inspection)

20. That property owner agrees as a condition of the approval of this permit to defend at his sole expense any action brought against the County because of the approval of this permit. 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 any such action; but such participation shall not relieve applicant of his obligations under this condition. Said agreement shall be recorded prior to the issuance of building permits or use of the property. (Planning and Building Inspection)

21. Pursuant to the State Public Resources Code and the State Fish and Game Code, the applicant shall pay a fee to be collected by the County of Monterey in the amount of \$1,275. This fee shall be paid prior to 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 filing of a parcel map. (Planning and Building Inspection)

22. That the applicant pay the appropriate financial contribution in accordance with Ordinance 3496, adopted by the Board of Supervisors to implement an area-wide hydrological study to address groundwater overdraft and water resources in the project area. The fees shall be paid prior to the filing of the final map. (Planning and Building Inspection)
23. That a notice be recorded with the County Recorder stating that a) an erosion control plan is on file with the Monterey County Planning and Building Department; b) a building envelope and access roads are established for the parcel; and c) all development is restricted to the building envelopes and access roads subject to erosion control requirements by a registered soils or civil engineer and to a restoration plan prepared by the consulting biologist. (Planning and Building Inspection)
24. That the access to the three parcels be limited to the south-central portion of the site via the existing 30 foot-wide road and utility easement. (Planning and Building Inspection)
25. That a restoration plan shall be developed by the consulting biologist for the previously graded and cleared areas on the southern slopes of the parcel that are not within established building and septic envelopes and for access roads that are abandoned, if not more than 50 percent of the ground surface has revegetated naturally within two years following approval of the application. (Planning and Building Inspection)
26. That natural vegetation shall be left intact on all portions of the property, except as required for the normal construction of buildings, septic systems, roadways, driveways, parking and landscaping, and complying with fire safety specifications and recommended tests. (Planning and Building Inspection)
27. That no dumping of weeds, brush, or other material cleared from the site shall be permitted within natural or sensitive habitats. (Planning and Building Inspection)
28. That prior to the filing of a parcel map, the applicant shall cause to be removed from the property all junk, including scrap materials, scrap metals, dismantled or wrecked vehicles or machinery, garbage, debris or similar materials. (Planning and Building Inspection)
29. That no dirt moving shall be permitted onto sensitive habitats while doing construction or grading, nor piling dirt permitted against the trunk of oaks. (Planning and Building Inspection)
30. That no topsoil shall be introduced from outside the property, which could contain seeds, roots, rhizomas of bulbs or weeds or other invasive non-native species that could overrun the habitat, except for use in maintained planting spaces and containers. (Planning and Building Inspection)
31. That none of the following invasive non-native species shall be used in landscaping:
  - a. Blue gum (Eucalyptus globulus)
  - b. Acacias (Acacia spp.)
  - c. Genista (Cytisus spp.)
  - d. Pampas grass (Cortaderia spp.)
  - e. Ice plant (Carpobrotus spp.)



32. That the biological consultant retained by the applicant shall visit the property and recommended replanting or additional planting or other work where deficiencies occur, if the property does not appear in compliance with the conditions of the development permit. (Planning and Building Inspection)
33. That the consulting biologist shall flag the locations of specimens of the Eastwood's Golden Fleece, to be protected from construction and development as a plant reserve within the Scenic Conservation Easement. (Planning and Building Inspection)
34. That the restoration plan prepared by the consulting biologist include a two (2) year monitoring program, bonded to the amount of consulting services required for annual reports during the two (2) year period. The restoration plan and bonded monitoring program shall be required prior to the filing of the parcel map. (Planning and Building Inspection)
35. That the above listed conditions appropriate to a covenant of property ownership in the minor subdivision shall be included in the CC&R's prepared for the subdivision, to be reviewed by the Director of Planning and Building Inspection. (Planning and Building Inspection)
36. That a notice be recorded with the Monterey County Recorder which states: "A Botanical Report has been prepared for the subject parcels by Jud Vandevere dated August 23, 1988. A subsequent Restoration Plan has been prepared. Development on the parcel shall be subject to the mitigation measures recommended in both the Biological Report and the Restoration Plan. The mitigation measures shall be monitored over a two year period to assure re-establishment of the endemic plant community on the site. (Planning and Building Inspection)
37. That all building site envelopes and access roads shall be established 1) where slopes are less than 25 percent; 2) where there shall be minimal impact upon the environmentally sensitive habitat as determined by the consulting biologist, Jud Vandevere; and 3) where development shall not constitute ridgeline development. These building site envelopes shall be adequately surveyed and staked in the field to allow the monitoring of proposed construction sites by the consulting biologist prior to the filing of the parcel map. (Planning and Building Inspection)
38. That the applicant pay a fair share toward improvements at the intersection of San Miguel Canyon Road and Prunedale Road (Public Works)
39. That all utilities serving the three lots be placed underground. (Public Works)
40. That the applicant comply with the Recreation Ordinance and pay the appropriate fees. (Parks and Recreation Department)
41. That the applicant shall comply with the requirements of the Inclusionary Housing Ordinance if effect at the time of the filing of the parcel map. (Planning and Building Inspection)
42. That the applicant shall record a notice which states: "A permit (Resolution #91-034) was approved by the Monterey County Planning Commission for Assessor's Parcel Number 129-071-43. The permit was granted subject to 42 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



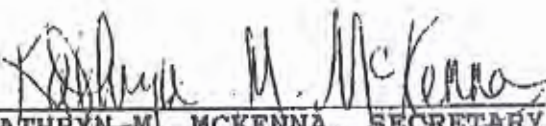
shall be furnished to the Director of Planning and Building Inspection prior to issuance of building permits or commencement of the use. (Planning and Building Inspection)

PASSED AND ADOPTED THIS 25th day of April, 1991, by the following vote:

AYES: Messenger, McKenna, Moore, Naslund, Stewart, Walker, McPharlin

NOES: None

ABSENT: Brandau, Haines

  
KATHRYN-M. MCKENNA, SECRETARY

COPY OF THIS DECISION WAS MAILED TO APPLICANT ON: JUN 2 1 1991

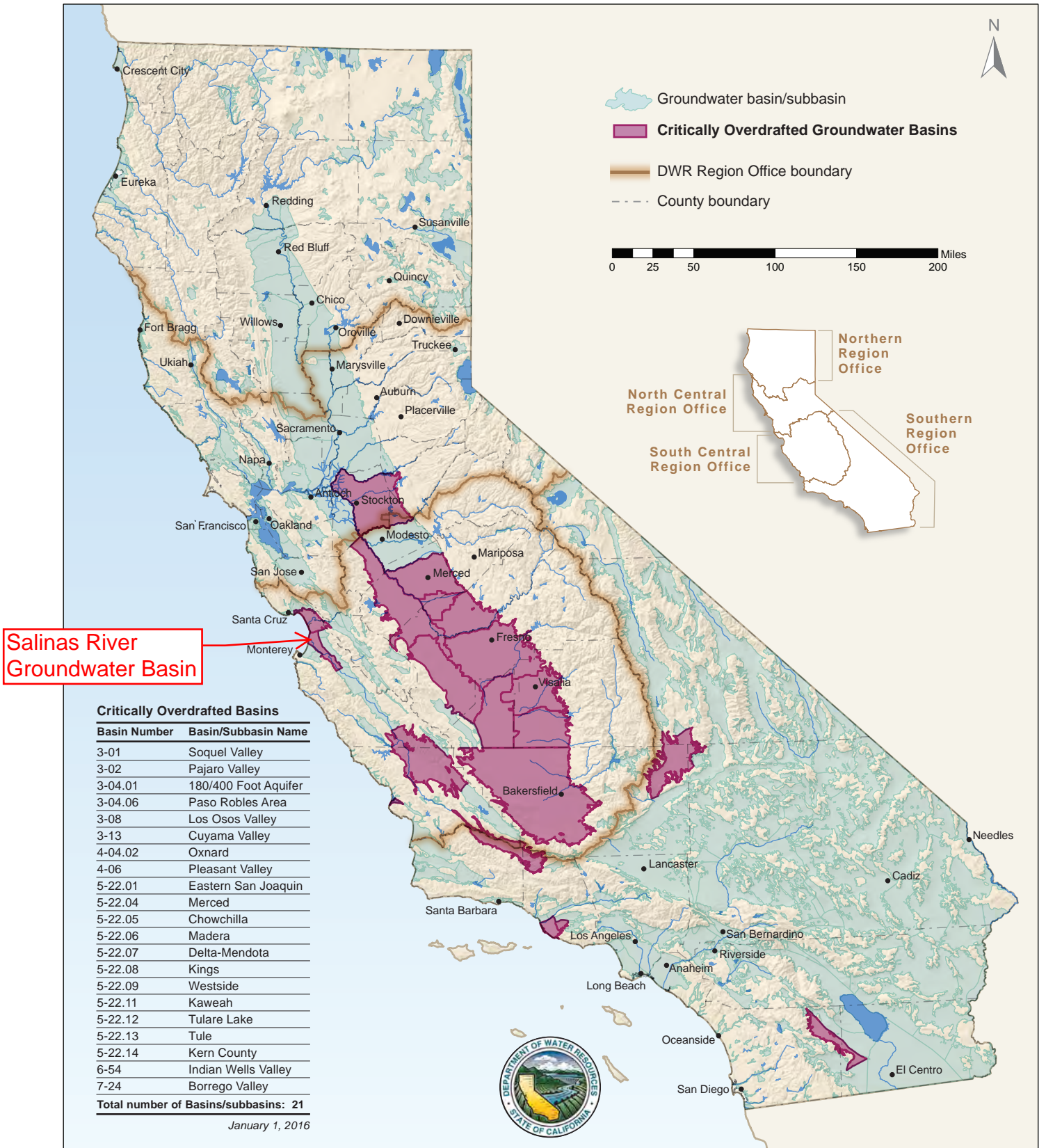
IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK TO THE BOARD OF SUPERVISORS ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE JUL 0 1 1991

UNLESS EXTENDED AS PROVIDED BY CHAPTER 19.09.035, TITLE 19 (SUBDIVISIONS), MONTEREY COUNTY CODE, THIS APPROVAL EXPIRES ON APRIL 25, 1993. EXTENSION REQUESTS MUST BE MADE IN WRITING 30 DAYS PRIOR TO THE AFOREMENTIONED EXPIRATION DATE.

LIA2



# Critically Overdrafted Groundwater Basins – January 2016





# Critically Overdrafted Groundwater Basins – January 2016 — North Central and South Central Regions



**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



# Th13c

**Prepared January 9, 2017 for January 12, 2017 Hearing**

**To:** Commissioners and Interested Persons  
**From:** Susan Craig, Central Coast District Manager  
**Subject:** Additional hearing materials for Th13c  
Appeal Number A-3-MCO-06-004 (Mayr Subdivision)

Where checked in the boxes below, this package includes additional materials related to the above-referenced hearing item as follows:

- ☐ Staff report addendum
- ☒ Additional correspondence received in the time since the staff report was distributed
- ☐ Additional ex parte disclosures received in the time since the staff report was distributed
- ☐ Other:

TH13C

**RECEIVED**

JAN 06 2017

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST OFFICE



January 6, 2017

Dayna Bochco, Chair  
California Coastal Commission  
Central Coast Office  
725 Front Street, Suite 300  
Santa Cruz, CA 5060

Subject: Mayr Subdivision (A-3-MCO-06044)

Dear Chair Bochco and Commissioners:

LandWatch Monterey County supports staff's recommendation to uphold the appeals and deny the Mayr Subdivision (A-3-MCO-06044).

The Mayr Subdivision includes division of a 5.52-acre parcel into two lots (one 2.85 acres and one 2.67 acres), development of a mutual water system, construction of septic systems and driveway infrastructure, and related improvements. The project was approved by Monterey County on May 25, 2006. Coastal Commissioners Shallenberger and Reilly appealed the project.

The project proposes a residential subdivision in a predominantly rural area with severe water supply deficiencies and on a parcel that contains significant sensitive habitats. It would require removal of 121 coast live oak trees and almost an acre of central maritime chaparral habitat. Water usage is estimated at 0.8 acre-feet per year.

The proposed project would require water from a severely overdrafted groundwater basin, and it would not have a long-term water supply as required by the Local Coastal Program (LCP). Groundwater overdraft has continued to worsen since initial project approval, and in January 2016 the Department of Water Resources officially designated portions of the Salinas River Groundwater Basin, including the area in which the proposed project is located, as "critically overdrafted". Removal of coast live oaks and chaparral would be inconsistent with the LCP's habitat protection policies. Finally, the proposed project is not consistent with the terms and conditions governing this property pursuant to County conditions (CDP MS88-10).

In conclusion, the project is not allowed under the LCP and under the 1991 permit. Please uphold the appeals and deny the project

Sincerely,

A handwritten signature in black ink, appearing to read "Michael DeLapa". The signature is stylized with a large, looped "M" and a trailing flourish.

Michael DeLapa  
Executive Director

# RECEIVED

JAN - 5 2017

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Re: Mayr, "Th13c"

Dayna Bochco, Chair  
and Members of the California Coastal Commission

Dear Chair Bochco and Commissioners:

I am a resident of North Monterey County and I urge you to uphold the appeals and deny the Mayr residential subdivision application.

The Mayr project cannot be approved pursuant to the Local Coastal Plan.

As stated in the CCC report,

"North Monterey County has had severe groundwater overdraft problems for decades. . . . 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 two future residences that would demand 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, . . . 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."

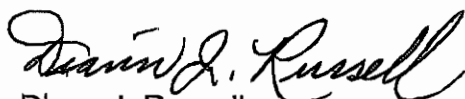
The proposed project is inconsistent with the restrictions of the 1991 Coastal Development Permit CDP MS88-10 on the property.

The project proposes to construct residential roads, utilities, and septic systems into central maritime chaparral ESHA and coast live oak woodland. The LCP does not allow these uses in ESHA, and requires protection of oak woodland.

The project would require extensive grading and landform alterations that are inconsistent with LCP protections of North County's scenic hills and water quality.

The fundamental issue is LCP compliance, and this project does not comply.

In conclusion, the facts are clear: the project is unapprovable under the LCP and under the 1991 permit. Please uphold the appeal and deny the project.



Diann J. Russell  
14671 Tumbleweed Lane  
Royal Oaks, CA 95076-9259



# RECEIVED

JAN - 5 2017

Re: Mayr, "Th13c"

Dayna Bochco, Chair

and Members of the California Coastal Commission

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

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The proposed project is inconsistent with the restrictions of the 1991 Coastal Development Permit CDP MS88-10 on the property.

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In conclusion, the facts are clear: the project is unapprovable under the LCP and under the 1991 permit. Please uphold the appeal and deny the project.



David L. Fried  
14671 Tumbleweed Lane  
Royal Oaks, CA 95076-9259

## Kahn, Kevin@Coastal

---

**From:** Jacqueline Fobes <jtfobes@icloud.com>  
**Sent:** Thursday, January 05, 2017 1:19 PM  
**To:** Kahn, Kevin@Coastal  
**Subject:** Ranch Roberto & Mayr Subdivision

Dear Mr. Kahn,

Please DO NOT APPROVE these two subdivisions. The central coast does not have the water, the roads, the infrastructure to support yet another hair-brained housing scheme from someone who wants to make money on the backs of those of us who live here.

Thank you.

Sincerely,  
Jacqueline Fobes, Ph.D.  
James L. Fobes, Ph.D.

Sent from my iPad

**Kahn, Kevin@Coastal**

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**From:** Jeff Hawkins <jeff.hawkins@sbcglobal.net>  
**Sent:** Thursday, January 05, 2017 4:21 PM  
**To:** Kahn, Kevin@Coastal  
**Subject:** Rancho Roberto Subdivision (Item #th13d) and/or Mayr Subdivision (Item #th13c)

Dear Commissioner Kahn,

Please reject both of these projects since they violate the requirements of the North County Coastal Land Use Plan ("No Co Coastal LUP") and lack of a sustainable water supply.

Seawater intrusion in the Salinas Valley Groundwater Basin remains a critical issue. Additionally, the 180 and 400-foot aquifers in the northern part of the Basin are identified as critically over-drafted under the Sustainability Groundwater Management Act of 2014. Plans for sustainability for the Pajaro Valley Groundwater Basin and the Salinas Valley Groundwater Basin should be approved and implemented pursuant to the Act's requirements prior to approval of any new water-demanding projects.

Regards,  
Jeff Hawkins  
Carmel, CA



**Kahn, Kevin@Coastal**

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**From:** Pat McNeill <pmcneill@sbcglobal.net>  
**Sent:** Thursday, January 05, 2017 7:52 PM  
**To:** Kahn, Kevin@Coastal  
**Subject:** Rancho Roberto and Mayr subdivisions

Lets honor the rules that protect existing homeowners.

It is not disputed that the North County coastal aquifers are severely overdrafted and that new residential use is not an LCP priority. Thus, these two subdivisions cannot be approved under the LCP.

Thank you,

Pat McNeill

**Kahn, Kevin@Coastal**

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**From:** NMCKAY20003@aol.com  
**Sent:** Thursday, January 05, 2017 7:31 PM  
**To:** Kahn, Kevin@Coastal  
**Cc:** jeaf20003@pacbell.net  
**Subject:** against approval of new subdivisions due to water issues

Hi Kevin,

I am a North Monterey county resident who opposes the project's agenda item: Rancho Roberto Subdivision (Item #th13d) and/or Mayr Subdivision (Item #th13c). Please don't let these items pass. Thank you . Nora McKay, 1571 Kari Lane, 95076-9306.

**Kahn, Kevin@Coastal**

---

**From:** Linda Cheatham <bigruffs1616@yahoo.com>  
**Sent:** Friday, January 06, 2017 9:04 AM  
**To:** Kahn, Kevin@Coastal  
**Subject:** development

Please deny any subdivisions in the Roberto Ranch and Mayr Subdivision plan. We do not want our county to become L.A.. As a past long term resident of LA County you will be welcoming more traffic problems, water problems, parking problems and plenty of crime effectively lowering the quality of life in the area.

Linda and Rich Cheatham  
Carmel Valley