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# W15a

Substantial Issue Found: 7/14/2017  
Staff: Kevin Kahn - SC  
Staff Report: 10/20/2017  
Hearing Date: 11/8/2017

## STAFF REPORT: DE NOVO HEARING

**Application Number:** A-3-MCO-09-009 (Rancho Los Robles Subdivision)

**Applicant:** Heritage Western Communities, Ltd.

**Project Location:** 100 Sill Road, Las Lomas, North Monterey County (APNs 412-073-002 and 412-073-015)

**Project Description:** Subdivision of two parcels totaling 33.58 acres (one 16.96 acres and one 16.62 acres) into 52 residential lots; demolition of one single-family residence, two barns, and removal of two mobile home units; construction of 54 residences, comprised of 50 single-family residences and four residences in duplexes; dedication of 3.5 acres of land to Monterey County for future parks and recreational facilities; dedication of 17 acres of land and one existing single-family residence to a future to-be-formed Community Services District for future parks and recreational facilities; construction of roads and related improvements.

**Staff Recommendation:** Denial

## SUMMARY OF STAFF RECOMMENDATION

The Applicant proposes the subdivision of two parcels totaling 33.58 acres into 52 residential lots; demolition of one single-family residence, two barns, and removal of two mobile home units; construction of 54 residences, comprised of 50 single-family residences and four units in duplexes; dedication of 3.5 acres of land to Monterey County for future parks and recreational facilities, as well as dedication of 17 acres of land and one existing single-family residence to a future to-be-formed Community Services District (CSD) for future parks and recreational facilities; and construction of roads and related improvements. Specifically, of the proposed 54

residential units, two of the single-family residences would be designated as Workforce Housing for households earning no more than 180% of median income, the four duplex units would be designated as affordable rental units pursuant to the County's affordable housing guidelines, and an affordable housing in-lieu fee would be paid to the County in lieu of developing additional affordable units on-site. With respect to the proposed park land dedication, 3.5 acres of land would be dedicated to Monterey County for future public park and recreation improvements. Specific facility types would be identified in conjunction with Monterey County Parks Department and subject to separate CDP review and approval in the future. In addition, roughly 17 acres of land would be dedicated to a to-be-formed CSD. Again, specific community facilities would be identified and built subject to the CSD securing funding and separate CDP approval in the future. Thus, the Applicant is proposing to dedicate over 20 acres of land to the County and to a to-be-created CSD for future parks, recreation, community facilities, and open space. This CDP application, however, does not propose the *construction* of any of these community and park facilities—it only proposes the land dedication.

The project site is located in the unincorporated community of Las Lomas in North Monterey County. Las Lomas is a small, rural, mostly residential community surrounded by North Monterey County's characteristic rolling hills consisting of open space, agriculture, and very-low-density residential development. The project site consists of sloping hills containing 16.5 acres of oak woodland habitat and 11 acres of strawberry row-crop agricultural production.

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 an identifiable, adequate, long-term water supply, and only allows new development, particularly residential subdivisions, when the groundwater basin is in its safe yield extraction state (i.e., when the groundwater basin is not overdrafted). The proposed project would authorize a subdivision allowing for 54 residences and other development—essentially a brand new community—which would demand water from an already severely overdrafted groundwater basin. Thus, the project cannot be found to have a long-term and adequate water supply, and cannot be found to be served by water from a groundwater basin in a safe yield state, as the LCP requires. Even if, as the Applicant alleges, the proposed project would use roughly the same amount of water as the existing agricultural operation, the LCP still does not allow for such development when groundwater is overdrafted. Even if the LCP included a “no net increase in water demand” criteria (which it does not), the vast majority of existing water use is for a Coastal Act and LCP priority agricultural use, and it is not LCP consistent to convert such high priority use to a proposed 54-unit residential subdivision in an area with known water supply deficiencies. In fact, when water deficiencies of the type currently present in this area exist, the LCP affirmatively *requires* the proposed development to be denied. Therefore, because the project proposes to convert existing high-priority agricultural uses to allow for the construction of a low-priority 54-unit residential 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 create new lots and build a significant residential community, including roads, utilities, and potential future recreational uses, within oak woodland habitat that is deemed ESHA pursuant to the LCP, and within prime/productive farmland (i.e.,

the western part of the site contains 16.5 acres of mature oak woodland habitat, while the eastern part currently supports 11 acres of strawberry row crops). Thus, the project proposes to convert nearly 28 acres that consist of either oak woodland or agricultural row crops to a 54-unit residential subdivision and related development, including associated grading, the construction of retaining walls, tree removal, and the installation of utilities. *The LCP does not allow these uses in ESHA or on productive agricultural soils.* The project would also convert some of the area's scenic natural habitats and rural agricultural landscape into engineered, structural elements, inconsistent with LCP requirements to protect North County's scenic rolling hills, oak woodlands, and agricultural landscapes. For these reasons, in addition to North County's groundwater/water supply limitations, the proposed project is inconsistent with the LCP, and must be denied.

Finally, the Commission has recently evaluated similar residential subdivision projects in North Monterey County, including Rancho Roberto (CDP application A-3-MCO-05-027) and Mayr (CDP application A-3-MCO-06-044). The Commission denied CDP applications for both of these projects in early 2017 due to their various LCP inconsistencies, including with respect to the lack of an available water supply and impermissible development within ESHA. While this project is similar to those in terms of basic concept (i.e., a residential subdivision) and LCP nonconformance issues (e.g., water supply, land use prioritization, ESHA protection), the currently-proposed project would have LCP-impermissible coastal resource impacts of a much more significant magnitude than the Rancho Roberto and Mayr applications because the proposed project is almost twice the size in terms of number of proposed residences as those other two projects *combined*).

However, unlike those previous projects, which were solely residential, this project also includes the dedication of land for potential to-be-identified public amenities to be built in the future, including through the formation of a new CSD that would build, own, operate, and maintain such facilities. While the Applicant does not propose the construction of any community facilities as part of this CDP application, and it is unclear when and how such facilities would be built, the County nevertheless found in its certification of the project's Environmental Impact Report (EIR) that these potential future recreational amenities outweighed the project's significant and unavoidable environmental impacts.<sup>1</sup> However, while staff clearly recognizes the potential public benefit such additional parks and recreation land could provide (again, should they be funded and built in the future), particularly to the community of Las Lomas, which is in need of such amenities as described throughout this report, the project site includes numerous LCP fatal flaw constraints. Such constraints include proposed development in oak woodland ESHA and on prime/productive agricultural soils and being located in a predominantly rural area with insufficient transportation infrastructure. And most fundamentally, the LCP does not allow residential subdivisions, particularly one that will convert an existing agricultural operation and ESHA, when the groundwater basin from which water supply will be provided is overdrafted beyond its safe yield level. These were the same identified constraints that necessitated denial of the Rancho Roberto and Mayr residential subdivision projects, and are the same fundamental inconsistencies that require denial of this project as well. Thus, while this project's potential site

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<sup>1</sup> And the County certified the EIR pursuant to a Statement of Overriding Consideration. It should be noted that the Monterey County LCP does not include any type of "override" provision similar to CEQA, and development must be consistent with the LCP in all cases.

amenities could be beneficial to the broader community should they be funded and built at some point in the future, they cannot be used as justification to find the larger proposed residential subdivision project LCP consistent.

Finally, staff understands the desire and need for additional community amenities in the Las Lomas area, including additional parks, active recreation areas, and other facilities (e.g., a library, a community center, etc.). There is no doubt that the Las Lomas community is lacking in and deserves these types of improvements, and staff is fully supportive of the community pursuing such amenities. There are potential options for standalone community facilities projects that could meet LCP tests (e.g., potential improvements at existing public facilities (such as at nearby Hall District Elementary School and/or on existing County-owned property in the community) and would provide expanded access and utility to the broader community. Staff is fully supportive of the County and the Las Lomas community pursuing such projects, and remains committed to continued collaboration toward that end. This project, however, has fatal LCP flaws and is not the appropriate vehicle to realize such community goals. Rather, staff looks forward to helping the community to reach its goals in an LCP-consistent way, and stands ready to provide LCP guidance and support towards that end (including with respect to a potential LCP amendment to create a Las Lomas community plan to help guide and carry out the vision for community development in the future).

In short, the project proposes a very large suburban-style residential subdivision in a predominantly rural, agricultural area with severe water supply deficiencies, and on land currently comprised of ESHA and bona fide agricultural production. Thus, staff recommends that the Commission deny a CDP for the proposed residential subdivision project. The motion is found on page 6 below.

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## APPENDICES

Appendix A – Substantive File Documents

Appendix B – Staff Contacts with Agencies and Groups

## EXHIBITS

Exhibit 1 – Location Maps

Exhibit 2 – Site Photos

Exhibit 3 – Applicant’s Proposed Site Plan and Project Description

Exhibit 4 – North Monterey County Groundwater Sub-basins and Overdraft Amounts

Exhibit 5 – Former Commission Staff Geologist Dr. Mark Johnsson Water Usage Comments

Exhibit 6 – Post-Appeal Correspondence

Exhibit 7 – Monterey County LCP Amendment No. 1-85 Staff Report

Exhibit 8 – Department of Water Resources’ Critically Overdrafted Groundwater Basins

Exhibit 9 – Comment Letters from Commission Staff to Monterey County

Exhibit 10 – EIR Oak Woodland Habitat Map

Exhibit 11 – NRCS Land Capability Classification Soils Map

## CORRESPONDENCE

Correspondence 1 – Applicant’s September 2017 Correspondence

Correspondence 2 – Applicant’s July 2017 Correspondence

Correspondence 3 – Petition in Support of Rancho Los Robles

## EX PARTE COMMUNICATION

Ex Parte Correspondence

## I. MOTION AND RESOLUTION

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-09-009 for the development proposed by the applicant, and I recommend a no vote.*

*Resolution to Deny CDP: The Commission hereby denies Coastal Development Permit Number A-3-MCO-09-009 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. DECLARATIONS

The Commission finds and declares as follows:

### A. PROJECT LOCATION

The proposed project is located on two parcels (totaling 33.58 acres) at 100 Sill Road on the eastern edge of the unincorporated community of Las Lomas in North Monterey County. Las Lomas is a small, rural, predominantly residential community surrounded by North Monterey County's characteristic 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 project site generally is located along the eastern border of the urbanized portion of this rural community, and is surrounded to the northwest and southwest by low-density residential development, and to the northeast and southeast by open space and agricultural row crops. The western side of the project site is undeveloped, consisting of 16.5 acres of oak woodland, while roughly 11 acres along the eastern side of the site consists of strawberry row crops and other agricultural development. Hall Road forms the project site's southern boundary, while Sill Road forms the northern boundary. The northern portion along Sill Road is mostly flat at an elevation of roughly 72 feet above sea level, and then slopes down some 60 feet in elevation to an elevation of roughly 12 feet above sea level along Hall Road. The project site contains two single-family residences and two mobile homes. The property is mostly zoned Medium Density Residential (MDR), which allows for a potential maximum residential density of up to four units per acre if constraints are not present that dictate a lower density. A portion of the southeast corner of the project site is zoned Coastal General Commercial (CGC), which allows for a broad range of commercial uses.

See **Exhibit 1** for project location maps and **Exhibit 2** for aerial photos of the project site.

### B. PROJECT DESCRIPTION

The proposed project consists of the subdivision of two parcels totaling 33.58 acres into 52 residential lots; demolition of one single-family residence, two barns, and removal of two mobile home units; construction of 54 residences, comprised of 50 single-family residences and four residences in duplexes; dedication of 3.5 acres of land to Monterey County for future parks and recreational facilities, as well as dedication of 17 acres of land and one existing single-family residence to a future to-be-formed Community Service District (CSD) for future parks and recreational facilities; and construction of roads and related improvements.<sup>2</sup>

Specifically, two of the single-family residences would be designated as Workforce Housing for households earning no more than 180% of median income, the four duplex units would be designated as affordable rental units pursuant to the County's affordable housing guidelines, and an affordable housing in-lieu fee<sup>3</sup> would be paid to the County in lieu of developing additional affordable units onsite. With respect to the park land dedication, 3.5 acres of land would be dedicated to Monterey County for future public park and recreation improvements. Specific facility types would be identified in conjunction with Monterey County Parks Department and subject to separate CDP review and approval in the future. In addition, roughly 17 acres of land would be dedicated to a to-be-formed CSD. Again, specific community facilities would be identified and built subject to the CSD securing funding and separate CDP approval in the future. Thus, the Applicant is proposing to dedicate over 20 acres of land to the County and to a to-be-created CSD for future parks, recreation, community facilities, and open space. This CDP application does not propose the construction of any of these facilities—it only proposes the land dedication. Finally, the proposed project also includes construction of an interior private road network, construction of a stormwater detention pond, and related improvements. The development would occupy much of the project site, with most of the single-family residences located within the oak woodland on the western portion of the site and the potential future park and recreation facilities located along the eastern portion of the site, which is currently used for strawberry production (see **Exhibit 3** for the proposed project plans). Water would be provided by the California Water Service Company via offsite existing wells.

## C. PROJECT HISTORY

The project site was the subject of an LCP amendment approved by the Commission in 1986. LUP Policy 4.3.6.D.6 formerly designated the project site High Density Residential and as a Special Treatment Area specifically programmed for residential development, as follows:

*An area of high density residential development is planned at Las Lomas between Hall and Sill roads in order to encourage the provision of low and moderate income housing consistent with the Las Lomas Development Incentive Zone of the Monterey County Housing Element. The area designated for High Density Residential development contains approximately 44 acres and may, consistent with the availability of public services and other resource considerations, be developed at a gross density of 7 to 7.5*

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<sup>2</sup> The project proposes improvements at the Hall Road and Sill Road intersection, including a new left-turn lane and striping from the southbound Sill Road lane. It also proposes a nine-foot-wide travel lane with a four-foot-wide sidewalk along Sill Road to connect the project site with Hall District School, and interior improvements to connect the future residences with the potential future recreational field.

<sup>3</sup> The affordable housing in-lieu fee is \$67,813 for 3.65 additional units, for a total of \$247,517.45 (\$67,813 x 3.65).

*dwellings per acre, or a total of about 320 units. The Special Treatment Area designation is applied in order to encourage planned development that will ensure retention of the site's natural amenities, particularly its mature oaks and also to provide for community needs such as a meeting hall or recreation area, and convenience shopping.*

However, this entire policy was deleted from the LCP in 1986 in LCP Amendment No. 1-85.<sup>4</sup> This LCP amendment also changed the land use designation from High Density Residential to Medium Density Residential and deleted the Special Treatment Area designation, all due to public service capacity constraints that limited the intense residential development previously envisioned (see the Commission-adopted staff report for this LCP amendment in **Exhibit 7**).

On October 29, 2008, the Monterey County Planning Commission *denied* the proposed project based on LCP inconsistencies with respect to lack of water and traffic congestion, including finding that the project's benefits did not outweigh its environmental effects. The Planning Commission's decision was appealed to the Board of Supervisors, who reversed the Planning Commission denial and approved a CDP for the project on December 9, 2008. On February 25, 2009, the project was appealed to the Coastal Commission, and on July 14, 2017, the Commission found that the County's action raised a substantial issue of conformance with the Monterey County LCP's water supply and groundwater resources policies, as well as policies protecting agriculture, visual resources, ESHA, and traffic. Specifically, the Commission found that a subdivision that would necessitate an additional permanent demand of water for future residential development from an already overdrafted groundwater source raises substantial conformance issues 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 Commission found substantial issue with respect to the project's conformance with the LCP's ESHA and agricultural protection policies, including because it included subdivision and residential development of LCP-protected oak woodland ESHA and prime/productive soils. And lastly, the Commission found that the project raised LCP conformance issues with respect to visual resources and traffic, including that it would introduce a large, suburban-style subdivision into a rural, agricultural area with limited transportation infrastructure.

At the time the 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 provisions relate to the residential development potential in North County given common factual circumstances (in order to reach an understanding as to interpretation of core LCP policies so as to avoid unnecessary appeals, if possible). Commission staff reviewed and commented on all of these projects, including the current project on appeal as it went through the local process (see Commission staff comments to the County and Applicant in **Exhibit 9**, where Commission staff identified numerous concerns with the County's interpretations on various LCP policies and the assumptions being made with respect to available water supplies, as well as the LCP inconsistencies this project engendered with respect to agricultural, visual, and biological resources and traffic). Additionally, at that

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<sup>4</sup> Approved by the Commission on March 26, 1986.

time numerous water supply projects and programs were either being proposed or were under construction that could have potentially affected North Monterey County's water resources and groundwater supply. Therefore, Commission staff felt it necessary to understand the viability and efficacy of the various water supply projects as they would relate to the project currently on appeal, and whether those projects would abate the area's ongoing and long-term groundwater overdraft.

While undertaking this outreach with the County and monitoring North Monterey County's water situation, and after informing the Applicant of the LCP inconsistencies the County-approved project engendered, staff did not hear from the Applicant about whether it still intended to move forward with the project following the appeals in 2009 (see 2011 staff letter to the Applicant in **Exhibit 6**, where staff also identified that, if the Applicant still wanted to pursue the project, staff would be recommending that a substantial issue with the County's approval exists and that the Commission deny a CDP for the project on de novo review based on LCP inconsistencies with respect to water supply, groundwater resources, agricultural resources, visual resources, ESHA, and traffic). In 2015, the Applicant indicated that it was still interested in pursuing the project and that, in an attempt to address the project's potential coastal resource impacts, had revised the project from the one approved by the County. Since then, staff subsequently met with the Applicant and its representatives on several occasions to discuss project issues. While all parties had agreed that the Commission's July 2017 hearing in the Central Coast would be an appropriate time and venue to hear the project before the Commission, on the day of the hearing, the Applicant postponed the de novo review portion of that hearing. Staff subsequently informed the Applicant that the project would be heard on de novo review in November 2017.

## D. COASTAL DEVELOPMENT PERMIT DETERMINATION

The standard of review for this CDP determination is the Monterey County certified LCP.

### *North Monterey County Background*

North Monterey County is a predominantly rural area with significant coastal resources, including open space occupied by grasslands, maritime chaparral, and oak woodland habitats, and significant agricultural operations, including for both grazing and row crops, all surrounding the Elkhorn Slough estuarine complex, a federal reserve and one of the largest and most important coastal wetlands and estuaries remaining in California. Because of the area's rich coastal resources, longstanding public policy, including as codified in the LCP, has been to retain North Monterey County as a rural, open space and agricultural buffer along the mid-Monterey Bay area, in between the more urban areas of Santa Cruz County to the north and the Monterey Peninsula to the south. In other words, one of the region's land use planning goals has historically been to direct more urban development to existing urban centers along the north and south ends of the 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 (Coastal 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 Coastal 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 Coastal 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>5</sup> (emphasis added)*

Thus, the Coastal Plan found that strong growth control protections were needed to protect coastal resources in 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 the entire Elkhorn Slough area, extending inland a distance of over seven miles, 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 and Standards*

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 Land Use Plan (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***

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

*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 Implementation Plan (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.*

To summarize, the LCP includes policies and standards that require all new development limited to a level that can 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 the LCP’s 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 studies suggest 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), in a manner that does not significantly and adversely impact groundwater and other coastal resources (Sections 30231 and 30250), and by prioritizing certain land uses, such as agriculture, over others as a matter of policy, such as residential subdivision (Section 30222).

### *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 accounting for 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 noted 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 included a policy framework that allowed for some development, but only 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 later quantified and 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 the time of LUP adoption, to be cautious, LUP Policy 2.5.3.A.2 establishes that no more than 50% of the maximum<sup>6</sup> residential buildout based on parcel size and subdivision potential (i.e., 1,351 units or lots) for the entire North County area 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 a safe yield is achieved, at which time this cap could be increased via LCP amendment.<sup>7</sup> However, that is a maximum possible 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, the 50% build-out level is not determinative of the amount of development that the area's resource can actually support or is permitted when taking into account coastal resource considerations, but rather is an upper range that could be further

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<sup>6</sup> The 50% buildout cap was 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/or water resource constraints that preclude development). 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>7</sup> This policy applies to new subdivided lots and second units on existing lots. One home per vacant parcel (existing at the time of enactment of the LCP policy) 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 number LCP-3-MCO-15-0022-1, approved by the Commission in October 2015.

reduced in order to protect groundwater resources once more was known about their status. Other LCP provisions similarly state that development and density allowances are theoretic 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>8</sup>

Since the time that the LUP was certified, the County has sponsored more definitive studies to determine the safe yield. 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 acre-feet per year (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) (see **Exhibit 4** for the North Monterey County groundwater aquifer geography).

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, increase in the number of abandoned wells, adverse effects on coastal agriculture, etc.) have increased over time. For example, in the Highlands North sub-basin, which would provide water to the proposed project, the 1995 Fugro West study calculated a sustainable yield of 2,920 AFY and historical groundwater demand of 4,780 AFY, resulting in a deficit of 1,860 AFY. Updated values provided in the 2002 CWRMP identified the same sustainable yield of 2,920 AFY, but updated the water demand estimates for the sub-area to be 5,621 AFY, for a total overdraft of 2,701 AFY. This represents an over 45% increase in the overdraft for the Highlands North sub-basin over the span of seven years.

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 North County 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>9</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.

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<sup>8</sup> The Commission has found that North County's buildout and density numbers are hypothetical maximums, whereby actual allowable buildout and density must be understood based on actual resource constraints and LCP requirements (e.g., see CDP applications A-3-MCO-04-054, A-3-MCO-05-027, A-3-MCO-06-044, LCP amendment MCO-MAJ-1-06, and CDP extension A-3-MCO-04-054-E3).

<sup>9</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.

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 2014, the Pajaro Valley Water Management Agency (Agency) updated its *Basin Management Plan* (Basin Plan).<sup>10</sup> The purpose of the Basin Plan is to serve as the principal document guiding all of the Agency's major projects and programs, with the goals of reducing overdraft, halting seawater intrusion, and improving and protecting water quality within the entire Pajaro Valley Groundwater Basin. The 2014 Basin Plan updated the previously adopted version from 2002. The 2002 Basin Plan found that sustainable yield<sup>11</sup> was roughly 48,000 AFY and, with a then-current demand of 69,000 AFY, the basin's groundwater supply was being overdrafted by roughly 21,000 AFY. The 2002 Basin Plan then described various programs intended to address this overdraft, including projects that reduced water demand as well as projects that increased water supply. One such identified water supply project was 13,400 AFY of new imported water from the United States Bureau of Reclamation-controlled Central Valley Project. However, due to funding issues and other project constraints, in early 2010 the Agency took formal action to remove this import pipeline from project consideration.

The updated 2014 Basin Plan calculated the entire Basin's 2013 total water usage to be roughly 61,000 AFY, and calculated its overdraft at 12,100 AFY (assuming a sustainable yield of roughly 48,000 AFY). Although the 2014 Basin Plan calculated a reduced overdraft as compared to the 2002 Plan (21,000 AFY v. 12,000 AFY), the Basin Plan still concluded:

***The Pajaro Valley groundwater basin is in severe overdraft, causing groundwater elevations to drop below sea level as shown in Figure ES-1 and leading to seawater intrusion. Seawater intrusion has caused chloride contamination of groundwater wells up to three miles inland, as shown in Figure ES-2. Seawater intrusion is an immediate and direct threat to the Pajaro Valley economy. The elevated chloride concentrations make the groundwater unusable for irrigating the high value, salt-sensitive crops in the coastal region of the Pajaro Valley.<sup>12</sup>*** (emphasis added)

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<sup>10</sup> The *Basin Management Plan* quantified the overdraft condition of the entire Pajaro Valley Groundwater Basin, which extends into Santa Cruz County. 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 resulting in larger absolute calculations for the 2014 Basin Management Plan as compared to the 1995 Fugro West Study and the 2002 CWRMP, but all quantify overdraft within the project area.

<sup>11</sup> The 2002 Plan defined "sustainable yield" as "the maximum amount of groundwater that can be extracted from the aquifer without causing adverse effects...i.e. recharge = demand, and seawater intrusion [is] eliminated."

<sup>12</sup> Pajaro Valley Water Management Agency Basin Management Plan Update Executive Summary Page ES-1.

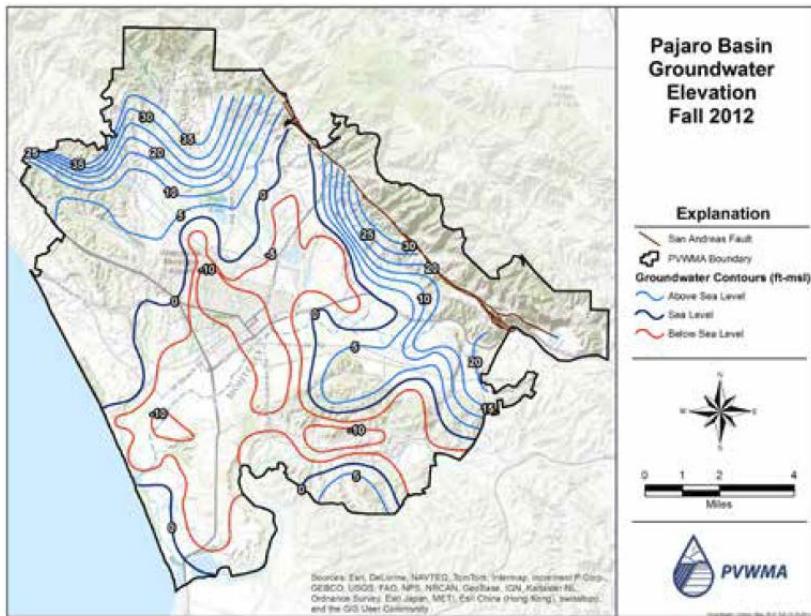


Figure ES-1. Groundwater levels in much of the basin are below sea level.

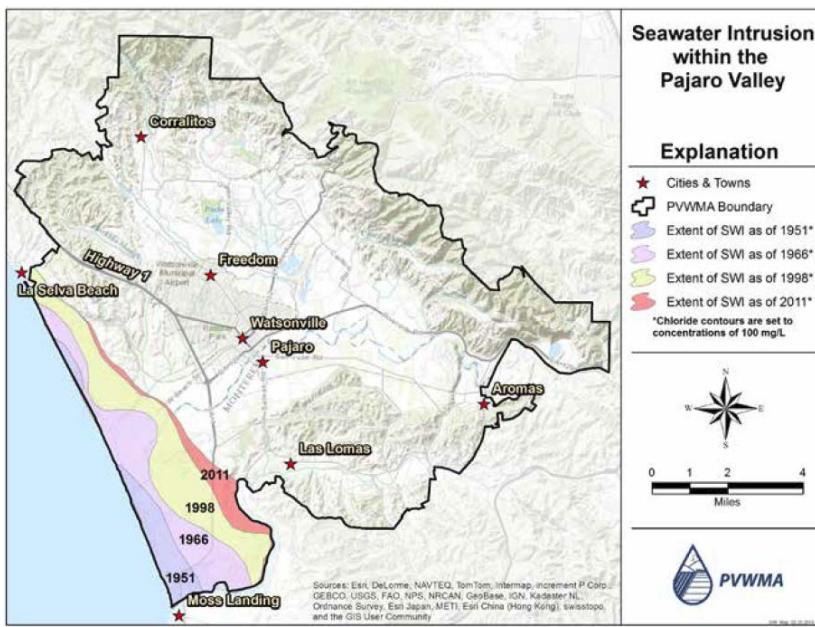


Figure ES-2. Seawater continues to degrade groundwater along the coast.

To erase the groundwater deficit (and to make up for the loss of imported water relied on in the 2002 Basin Plan), the 2014 Basin Plan listed a set of projects meant to either increase supply (including through increased water recycling), optimize existing supplies (including through upgrades at existing facilities), and reduce water consumption. Specifically, one of the primary differences in the 2014 Basin Plan update from the 2002 Basin Plan is its reliance on conservation programs to reduce water demand, eliminate basin overdraft, and halt seawater intrusion. The 2014 Basin Plan relies on conservation programs, which are intended to result in 5,000 AFY of reduced water consumption, or over 40% of the total water consumption reduction necessary to stop basin overdraft. These conservation programs include agricultural irrigation efficiency projects, pricing strategies, and residential

groundwater usage metering. In essence, the new Basin Plan provides an updated quantification of the basin's overdraft and serves as the blueprint for identifying measures meant to address and solve the Pajaro Valley Groundwater Basin's overdraft and seawater intrusion problems. Unlike the previous 2002 Plan, which relied heavily on new water supplies emanating from imported water from the Federal government, the updated Basin Plan eliminates the imported water allowance and instead relies heavily on reducing water demand through conservation strategies. The 2014 Basin Plan, however, acknowledges that it will take decades for these strategies to meet its overdraft reduction objectives.

Furthermore, although not a groundwater study commissioned by the County, implementation to date of the State's Sustainable Groundwater Management Act (SGMA) represents additional best available scientific information supporting the conclusion that groundwater in the Highlands North 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>13</sup> and defines "undesirable results"<sup>14</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>15</sup>

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<sup>13</sup> California Water Code Section 10721(v).

<sup>14</sup> California Water Code Section 10721(x)(1)-(6).

<sup>15</sup> California Water Code Section 10721(w).

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>16</sup> and designated as “critically overdrafted” by DWR would be 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>17</sup>

In July 2015, DWR developed a draft list of 21 “critically overdrafted” basins and sub-basins. A groundwater basin was determined to be critically overdrafted if it is currently subject to one or more “undesirable results,” as that term is defined in the law (see bulleted list above). The draft list included the Pajaro Valley Groundwater Basin. As such, in September 2015, PVWMA elected itself to be the Groundwater Sustainability Agency (GSA) for the groundwater basin. As the official GSA, PVWMA will prepare, submit to DWR for adoption, and be the primary agency tasked with implementing the GSP. In January 2016, DWR officially designated the Pajaro Valley Groundwater Basin as “critically overdrafted” (see map of DWR-designated “critically overdrafted” groundwater basins in **Exhibit 8**). Since the Pajaro Valley 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 be 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 2014 Basin Plan, and the SGMA) conclude that North County’s groundwater basins, including the Highlands North sub-basin from which the proposed project would receive its 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 to allow for certain new development, such as that proposed. 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 low-Coastal Act-) priority residential

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<sup>16</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.

<sup>17</sup> All other non-High and non-Medium priority groundwater basins are encouraged, but not required, to prepare a GSP.

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 attempts to manage groundwater usage by numerous measures, including through prioritizing 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. For example, LUP Policy 4.3.6.D.5 limits residential growth until a water supply adequate to support residential development is provided and, until that time when additional supply is secured, 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. In other words, the LCP addresses two co-equal goals: ensuring development is served by an adequate, long-term water supply from groundwater in its safe yield state, *and* doing so in a manner that protects priority land uses over other development types. The LCP is clear that meeting groundwater safe yield limits is not an at-all-costs endeavor, but rather must be dealt with in a manner that protects and respects existing and proposed priority land uses.

The proposed project is a residential subdivision that would use water from groundwater 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 and its resultant seawater intrusion impacts indicate 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 Policy 2.5.1 (which requires development to be served by identifiable, available, long-term water supplies) and 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 (and in fact there is not adequate water at safe yield to serve even *existing* development), which is a non-coastal-dependent use, and thus the proposed subdivision must be denied.

Since the project cannot be served by an adequate, long-term water supply from a groundwater source within its safe yield state, the proposed residential subdivision, a low-LCP priority land use, cannot be found consistent with the slew of LUP policies that prioritize other uses for such scarce water supplies.<sup>18</sup> In addition, the proposed project would not only commit scarce water for a new low-priority residential subdivision, it will do so by *removing an existing priority agricultural use*. Thus, both aspects of this project—its *conversion* of an existing priority land use and its *construction* of a non-priority land use—are inconsistent with the aforementioned land use prioritization policies. While the Applicant estimates that the proposed project

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<sup>18</sup> 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), Policy 4.3.5.7 (which limits new subdivisions and development until adequate long-term water supplies are assured), and Policy 7.3.1 (which prioritizes applications for coastal-dependent or related uses).

(including future to-be-built park facilities) will use an estimated 18.21 AFY of water (see page 53 of **Correspondence 1** for the Applicant's estimated water usage report) from existing offsite wells located within the same Highlands North sub-basin), slightly less than the current estimated water usage of 23.7 AFY, and thus argues that the proposed project will help ameliorate North County's groundwater overdraft, the LCP is clear<sup>19</sup> that converting a priority agricultural use to a low-priority residential subdivision is not an allowable way to reduce water usage (see additional discussion on this topic subsequently in this report).<sup>20</sup> Thus, the proposed subdivision must be denied due to its numerous inconsistencies with LCP groundwater management and land use prioritization 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 lead to the aquifer's long-term safe yield being exceeded or adversely impacted. In this case, the groundwater basins are already severely overdrafted at a magnitude that will require significant reductions in demand or new water inputs. Thus, *any* subdivision would commit a permanent water supply from a source that is already overdrafted, inconsistent with the LCP. In other words, because safe yield is already significantly exceeded, most all development, and certainly residential subdivisions that create *new* residential demand past the first home on existing legally established lots, is simply not approvable until the underlying aquifers are brought into a condition of safe, long-term yield. It is not enough to have a "no net increase" project (or even a slight reduction in water usage as argued by the Applicant in this case, which is also problematic for other priority land use issues as described above); rather the fundamental resource itself is required to be in a condition of safe, long-term yield to be able to support new development in North Monterey County. This is a critical LCP policy distinction inasmuch as the basin is so significantly overdrafted at the current time as to make it virtually impossible for projects to address the overdraft situation in a way that would allow approval of projects within North Monterey County. And thus the LCP simply does not allow approval when such circumstances exist.

Similarly, some prior applicants for subdivisions in North Monterey County have argued before the Commission that offsets and retrofits can be used to overcome these LCP obstacles to allow additional development in North County. However, water usage offsets as mitigation are not appropriate nor allowable under the core LCP policies described above, including as a "no net increase" project cannot by itself resolve the fundamental water supply resource constraints in a way that would allow approval under the LCP given the way the LCP is structured. In addition, an offset/retrofit program is not realistically feasible in North Monterey County. While some past projects have proposed to mitigate their water demands by offsetting their anticipated water usage via retrofitting programs (i.e., requirements to offset a proposed development's water usage through reducing a commensurate amount of water use offsite), there are multiple concerns that have subsequently emerged with this approach, including that they do not address

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<sup>19</sup> Again, see LUP Policies 2.5.3.A.1, 4.3.5.4, 4.3.6.D.1, 4.3.6.D.5, 4.3.5.7, and 7.3.1.

<sup>20</sup> The Commission has also found that converting priority agricultural uses to a low-priority residential subdivision is not an LCP-permissible way to reduce water consumption (see A-3-MCO-04-054 Sunridge Views Subdivision).

nor are they consistent with other LCP requirements that only allow a level of development commensurate with the safe yield groundwater extraction level (as discussed above in terms of this proposed project), and because their efficacy and ability to provide bona fide, long-term water savings have not been borne out.<sup>21</sup> Furthermore, in these kinds of areas with water supply limitations, simply offsetting a proposed development's estimated water usage cannot be used to meet LCP water availability requirements related to overall safe yield because such offsetting does nothing to improve the long-term sustainability of the basins. 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 there are not any identified viable 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.

#### *County LCP Interpretations*

While the County does not dispute the significant overdraft situation in North County, and agrees on its level of severity, the County has in the past construed the LCP's buildout numbers as mandatory entitlements given that the North County LCP was certified with many areas, including the subject property, zoned for residential use knowing that the area suffered from groundwater overdraft conditions. In other words, and notwithstanding evidence of County actions in other cases to the contrary,<sup>22</sup> the County has argued in certain past cases that the LCP already contemplated a certain amount of residential subdivision and use in North County, despite this lack of water, when it was certified. However, this buildout "override" interpretation

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<sup>21</sup> Indeed, in the Commission's 2006 approval of CDP 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 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 (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 November 2016 (CDP extension request number A-3-MCO-04-054-E3). That denial was based in part on changed circumstances affecting the project's LCP consistency, including 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, a water retrofit/offset program is not an appropriate or feasible mitigation approach for the currently proposed subdivision project or others like it.

<sup>22</sup> Indeed, the County has addressed North County's groundwater overdraft in numerous ways, including a building moratorium in North County between 2000-2002, adoption of a new General Plan in 2013 that prohibits subdivision in North County outside of the coastal zone until at least 2018 (where the prohibition may only be lifted if and when certain groundwater conditions are realized), and an accessory dwelling unit prohibition in the North County coastal zone (approved by the Commission in October 2015 in LCP-3-MCO-15-0022-1) due to a lack of available water supplies. Furthermore, the County has not approved a CDP for a residential subdivision in North County since this project's approval in 2008.

is not supported by the LCP or by any of the LCP's certification documents, and is inconsistent with past Commission actions and findings on this specific issue.<sup>23</sup>

First, the LCP is clear that maximum densities and maximum buildout numbers are only *theoretical maximums* that must be understood based on site constraints and other LCP requirements, including with respect to the availability of an adequate water supply (see, for example, North County LUP Policy 4.3.6.D.1<sup>24</sup> and IP Section 20.64.180.D<sup>25</sup>). In other words, development maximums (whether construed as a function of allowable density under the site's LDR zoning or as a function of allowable buildout under specific North County LUP Policy 2.5.3.A.2) are *not* LCP entitlements. Interpreting the LCP provisions that identify maximum densities and buildout in order to support the proposed subdivision would suggest that the subdivision is approvable as a matter of right, despite overwhelming evidence that the Highlands North sub-basin is in overdraft beyond its safe yield and the proposed project would not ameliorate the overdraft situation. Instead, any opportunity for residential subdivision that is *generally* supportable by certain LCP policies (e.g., North County LUP Policy 2.5.3.A.2) may be limited for a specific project proposal when, considering the actual facts on the ground, other LCP provisions are applied that regulate allowable development on the basis of coastal resource protection for the particular project (e.g., North County LUP Policy 4.3.6.D.1 and IP Section 20.64.180.D). The LCP provisions are all read together, and the potential theoretical zoning maximums, or even increases in lot and residential density through subdivision at all, can only be understood in relation to resource and other constraints. As discussed previously, the LCP does not allow for any increase in units (per LUP Policy 2.5.3.A.2) based on the facts of this case.

Second, the Commission has consistently found that when the LCP was certified, the extent and magnitude of the groundwater overdraft was not precisely known, and thus the LCP required definitive groundwater supply studies to quantify it (which were first prepared in 1995 and subsequently in 2002, both of which documented significant overdraft in North County).<sup>26</sup> In other words, because the overdraft situation was not precisely known at time of LUP adoption, to be cautious, LUP Policy 2.5.3.A.2 established that no more than 50% of the maximum residential buildout based on parcel size and maximum subdivision potential (i.e., 1,351 units, again based on a straightforward mathematical application of maximum zoning to overall acreage without consideration of any site-specific resource constraints that may be applicable through other LCP policies) may be allowed while the County pursued efforts to quantify the

<sup>23</sup> See, for example, Commission findings and actions on CDP application A-3-MCO-04-054 (2004), LCP amendment MCO-MAJ-1-06 (2008), CDP extension application A-3-MCO-04-054-E3 (2016), and CDP application A-3-MCO-05-027 (2017).

<sup>24</sup> North County LUP Policy 4.3.D.1 states in relevant part: "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 ... water availability...*" (emphasis added).

<sup>25</sup> IP Section 20.64.180.D states in relevant part: "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 ... Such considerations may include but are not limited to... *Available supply and priorities for water...*" (emphasis added).

<sup>26</sup> The North County LUP was certified in 1982, and the LCP was certified in 1988.

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. 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 is determined, or if required in order to protect agricultural water supplies otherwise.

The 50% build-out level is best understood as a then-approximation of what *might* be possible without consideration of any site-specific resource/site constraints, and it presumes that water would be available for same. To argue otherwise would suggest that the LCP explicitly provides for 1,351 additional units regardless of whether required future studies established that that level of development could not be accommodated by the North Monterey County water supply. We now know, and have known for some time, that there is inadequate water supply to support such development, and all parties – including the County – are in agreement that a significant overdraft problem exists. While the County has done significant work to address the overdraft situation, the overdraft condition in the groundwater basin remains acute. As such, and pursuant to the numerous LCP policies and standards that do not allow residential subdivision when groundwater basins are overdrafted, the proposed project is simply not approvable. Again, to construe the LCP otherwise to allow for residential subdivision in these rural areas when there is a distinct lack of available water supply fails to meet the objectives of the Coastal Act and the LCP, and is simply not supported by the LCP or the facts surrounding the Commission's LCP certification in this case. That is not to say that Policy 2.5.3.A's buildout potential cannot be allowed in the future should groundwater aquifers be replenished and the overdraft eliminated (or if a specific project proposal somehow satisfies LCP coastal resource policies, including those relating to groundwater use); rather it is simply a recognition that the LCP's water supply/use policies do not allow additional residential subdivisions at this time for this specific project proposal under the given facts.

#### *“No-Net Increase” Water Usage*

Finally, as discussed throughout this report, the LCP addresses two co-equal goals: ensuring development is served by an adequate, long-term water supply from groundwater in its safe yield state, *and* doing so in a manner that protects priority land uses over other development types. The LCP is clear that meeting groundwater safe yield limits is not an at-all-costs endeavor, but rather must be dealt with in a manner that protects and respects existing and proposed priority land uses. Thus, in many ways, the LCP's policy framework is a proactive identification of the appropriate actions to take for evaluating development when the groundwater basin is overdrafted, as is the case here. As discussed earlier, the LCP states that the overarching objectives are to protect groundwater and water quality while also prioritizing agriculture (and coastal-dependent uses and recreation) over other types of development. The LCP then implements such objectives by not allowing low-priority residential subdivisions that cannot meet LCP resource policies, including with respect to groundwater use (instead, explicitly requiring their phasing and allowance *only when* additional water supplies are available that bring the groundwater basins to their safe yield state), *and* by ensuring that priority land uses, including new agricultural uses, must also protect water supplies and be as water efficient as possible. Thus, even though the Applicant argues that the proposed project will use similar, if not reduced, amounts of water (a “no-net increase” use of water, an argument used for other similar subdivision projects, including through proposed water offsets and retrofits to make the project

“water neutral”) as the existing agricultural operation, this analytical argument is not rooted in the LCP, including because it disregards the other key LCP factor: land use prioritization. That is, regardless of how much water a residential subdivision may use, even if it will use less, it is not LCP-permissible to address North County’s groundwater overdraft by converting agricultural land to new lots and residences while the groundwater basin ultimately remains in overdraft. In this case, both aspects of the proposed project (i.e. its *conversion* of an existing priority land use and its *construction* of a non-priority land use) are inconsistent with the aforementioned land use prioritization policies. Allowing for the residential subdivision proposed here when the groundwater basin is overdrafted would frustrate the LCP’s fundamental structure on the overlapping issues of groundwater overdraft, water supply, and land use prioritization. In short, the LCP does not allow the conversion of agriculture and other higher Coastal Act and LCP priority land uses to a low-priority residential subdivision as a way to ameliorate North County’s groundwater overdraft.

### *Conclusion*

The proposed project constitutes a residential subdivision (a low-LCP-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 that would ultimately allow for significant additional residential development and future park/recreational facilities 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 defines environmentally sensitive habitat areas (ESHA), both broadly and specifically, 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:

***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.*

**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 Section 4.2.** *The preservation of coastal resources including agricultural soils; environmentally sensitive habitat areas of estuaries and other wetlands, dunes, riparian areas, and oak woodland/maritime chaparral areas; water quality as impacted by point and non-point pollution, circulation and sedimentation from erosion; recreation and access opportunities; and the visual resources characteristic of the coast are prime issues of importance.*

**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 oak woodland habitat, which is called out explicitly as ESHA in the North County LUP (LUP Section 4.2). 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); requires development within oak woodland to maximize protection of these habitats and to be sited to minimize disruption of vegetation and habitat loss (LUP Policy 2.3.3.A.4); and requires development adjacent to the habitat to be compatible with its long term maintenance, including through buffers (LUP Policy 2.3.2.2). 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 western portion of the project site, or roughly 16.5 acres, is comprised of oak woodland habitat, which, as described above, the LCP categorically designates as ESHA (see **Exhibit 10** for the EIR's oak woodland habitat map). The eastern portion of the site, or roughly 11 acres, is agricultural development comprised of strawberry row crops. The proposed project would subdivide the oak woodland habitat into residential lots and commit those lots for single-family residences (including removing 17 oak trees). Residential subdivision and development are not allowed uses in 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 those that prohibit subdivisions when they will adversely impact and/or are within 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, the proposed project does not address, quantify, nor require any buffer between the development and the identified sensitive habitats. The project as proposed is thus inconsistent with the LCP policy regarding development adjacent to ESHA as well. Finally, the removal of 17 coast live oak trees in order to facilitate residential subdivision does not conform with LCP policies that do not allow non-resource dependent development in ESHA (LUP Policy 2.3.2.1), that seek to minimize such tree loss (LUP Policy 2.3.3.A.4), and 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).

#### *Conclusion*

The project proposes to subdivide 16.5 acres of oak woodland ESHA into residential lots, which is not allowed within this habitat. This project inconsistency requires denial for this reason in addition to the groundwater resources and water supply problems described above.

While some of these inconsistencies could possibly be addressed by siting and design alternatives, including avoidance of subdivision and development within the oak woodland ESHA (which would result in a significantly truncated project), the project's inconsistencies with LCP groundwater resources and water supply policies and standards discussed above render such additional analysis and project modifications moot (because the project is still independently and irreconcilably inconsistent with LCP groundwater resource and water supply policies, and this basis on its own warrants denial of the proposed project).

Even if the project were consistent with other LCP policies and standards with respect to water supply, the Commission would need the Applicant to submit an oak woodland 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. Given the degree of oak woodland identified to date, it would presumably leave a very small potentially developable area, and the project would need to be redesigned so as to ensure only LCP-allowable uses within this habitat (e.g., not residential uses). In this case, however, the Commission is independently denying the project based on the lack of an adequate water supply, and thus such delineations and reduced project alternatives are not warranted at this time.

### **3. Water Quality**

The North County LUP includes strong protections for water quality, including to protect Elkhorn Slough. 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 54 new residences, along with commensurate urban infrastructure including roads, driveways, and other utilities, that will lead to the conversion of portions of the undeveloped land on the project site into new impervious surfaces. Such development 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 coast live oak trees through the creation of new residential lots in oak woodland habitat, 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 areas, as well as requirements for water quality protection both during construction (e.g., construction best management practices, 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/groundwater resource policies render such additional analysis and project modifications moot (because the project is still independently and irreconcilably inconsistent with the LCP on these other points, and these points on their own warrant denial of the proposed project).

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 based on the lack of an

adequate water supply and ESHA issues, and thus water quality protection modifications are not warranted at this time.

#### **4. Visual Resources and Community Character**

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

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

***North County LUP Policy 2.5.3.C.6.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 would introduce a major suburban-style residential subdivision and associated infrastructure into a site that currently consists of oak woodland ESHA and agriculture (see **Exhibit 2** for area photos). The project proposes extensive grading, retaining walls, and landform alteration on a highly sloping parcel (with an elevation change of 60 feet

from its top to its bottom), including significant removal of coast live oak, to convert the area's scenic habitats and rural, agricultural landscape 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's residences and improvements would be located on a ridge that is highly visible from Hall Road, thereby introducing suburban-style development on the ridge inconsistent with LUP Policy 2.2.3.4, which states that new roads should not be located on open frontal slopes and ridgelines visible from scenic routes or viewpoints. In fact, the proposed project is located on a broad, south-facing ridge, thus rendering the project inconsistent with: LUP Policy 2.2.1 (requiring low-intensity development on ridgelines to be sited, screened, and designed to minimize visual impacts); Policy 2.2.2.3 (requiring subdivisions of property on ridgelines to be carried out in a manner such that the highest potential for screening of future development is achieved); and Policy 2.2.4.6 (which seeks to preserve the visual character of the Elkhorn Slough area). Thus, the project would introduce a suburban residential community that would dominate the public viewshed in this area, directly contrary to the numerous LCP policies requiring screening of development in Northern Monterey County. Finally, the project's significant vegetation removal, including tree removal in furtherance of residential subdivision within coast live oak woodland 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 visual policies render project modifications (including alternatives that seek to retain vegetation and redesign the proposed development to ensure maximum screening from public views) moot (because the project is still independently and irreconcilably inconsistent with LCP water supply/groundwater resource policies, and this basis on its own warrants denial of the proposed project).

Even if the project were consistent with other LCP policies and standards with respect to water supply, the Applicant 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 as described above. 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. Agriculture**

The North County LUP includes numerous policies aimed at protecting agricultural 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 2.2.2.6.*** Agricultural uses on flat or rolling land should be preserved as a productive and visual resource....

**North County LUP Policy 4.3.5.1:** *The rural character of the coastal area of North County with its predominant agricultural, low-density residential and open space land uses shall be retained. Prime and productive agricultural soils shall be protected for agricultural use.*

**North County LUP Appendix B, Glossary of Terms:**

**Prime Agricultural Land/Soils:** *Those lands defined in Section 51201 of the Government Code as follows:*

- a) *All land which qualifies for rating as Class I or Class II in the Soil Conservation Service land use capability classifications.*
- b) *Land which qualifies for rating 80 through 100 in the Storie Index Rating.*
- c) *Land which supports livestock used for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture.*
- d) *Land planted with fruit-or-not-bearing trees, vines, bushes, or crops which have a nonbearing period of less than five years and which will normally return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than two hundred dollars per acre.*

**Productive Agricultural Land/Soils:** *Those lands that qualify as Class III or IV in the Soil Conservation Service land use capability classification scheme (Soil Conservation Service). In North County, lands qualifying as prime under (c) and (d), of Section 51201 of the Government Code are included as productive agricultural lands.*

Thus, the LCP seeks to protect the rural, agricultural nature of North County, including through protection of agricultural uses and agricultural soils. Specifically, the LCP protects agricultural uses as a character-defining visual resource (LUP Policy 2.2.2.6), and, notably requires prime and productive agricultural soils to be “protected for agricultural use” (LUP Policy 4.3.5.1). The LCP defines “prime” and “productive” soils in a number of ways, including through the Soil Conservation Service’s (now known as the Natural Resource Conservation Service (NRCS), an agency of the United States Department of Agriculture) land use capability classifications. The land use classification system shows the suitability of soils for most kinds of field crops, ranging from a Class 1 designation as having the best soils for crop production to a Class 8 designation having the most restrictive soils. According to the LCP, Class 1 and 2 soils are “prime”, and Class 3 and 4 soils are “productive.”

**Analysis**

As previously described, roughly 11 acres along the eastern portion of the project site is currently used for irrigated strawberry row crops. According to the NRCS’s land capability classification, all 11 acres are either Class 2 or 3 soils (see the site’s soil classifications in **Exhibit 11**). As such, some of the soils are designated prime (generally the flat area near Hall Road, classified as Class 2 Elkhorn fine sandy loam, 2 to 5 percent slopes) and the remainder are designated productive (Class 3 Elkhorn find sandy loam, 5 to 15 percent slopes and Santa Ynez find sandy loam, 2 to 9

percent slopes) under the LCP. While the project proposes to convert this entire agricultural operation to residential and future park uses, the LCP does not allow such agricultural conversion (again, see LUP Policy 4.3.5.1) for these uses. As such, the proposed project is inconsistent with the LCP's agricultural protection policies.

### *Conclusion*

The project's inconsistencies with LCP water supply policies render project modifications (including alternatives that seek to retain agricultural soils and the existing agricultural production uses) moot (because the project is still independently and irreconcilably inconsistent with LCP water supply/groundwater resource policies, and this basis on its own warrants denial of the proposed project).

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 avoidance of subdivision and development within and conversion to parks of existing agricultural areas, which would result in a significantly truncated project. In this case, however, the Commission is denying the project primarily based on the lack of an adequate water supply, and thus such project alternatives are not warranted at this time.

## **6. Traffic**

The North Monterey County LUP includes numerous policies addressing transportation and road capacity. Applicable policies include:

***North County LUP Policy 3.1.2.6.*** *New development in rural areas should be located in areas with sufficient road capacity to accommodate additional transportation demand. Where necessary, the capacities of roads and public transit systems should be expanded to serve the transportation demand of areas specifically planned for concentrated development. In areas with highly congested traffic conditions, coastal-dependent development generating low volumes of traffic shall be preferred.*

***North County LUP Policy 3.1.3.1.*** *Due to the limited capacity of Highway 1 until the time it is expanded, development of coastal dependent industrial, agricultural, commercial, and recreational uses shall be given priority over non-coastal dependent development in areas where Highway 1 provides the major transportation access.*

***North County LUP Policy 3.1.3.2.*** *Salinas Road, San Miguel Canyon Road, Hall Road, and San Juan Road should be designated as major arterial roads serving the North County coastal area. These should be upgraded as necessary to maintain Level of Service C traffic conditions. Wherever feasible, through traffic on these roads should be routed to State highways.*

***North County LUP Policy 4.3.5.9.*** *Development and use of the land, whether public or private, must conform to the policies of the plan, must be consistent with the availability of public services and with established urban service lines, and must meet resource protection standards set forth in the plan.*

Specifically, the LCP requires new development to be located in areas with sufficient road capacity (LUP Policy 3.1.2.6), specifies non-coastal dependent development, such as residential subdivision, to be a low priority for use of existing road capacity (LUP Policy 3.1.3.1), and specifies a Level of Service (LOS) “C” as the identified traffic capacity for Hall Road (LUP Policy 3.1.3.2). The project would introduce 54 new residences (and future park and other development) and their associated traffic to an area served by two-lane rural roads. As such, the EIR concluded that “the proposed project would result in significant and unavoidable traffic impacts at intersections and highways for which no foreseeable or adequate improvements are foreseen,”<sup>27</sup> including because intersections along Hall Road in the immediate project vicinity already operate at LOS F.<sup>28</sup> The project thus introduces significant new development in a rural area with insufficient transportation infrastructure that already operates below LOS C, inconsistent with LUP Policies 3.1.2.6 and 3.1.3.2. Furthermore, the project allocates already congested and scarce road capacity for a low-priority LCP land use (residential subdivision), and is thus inconsistent with LUP Policy 3.1.3.1 in this regard as well.

#### *Conclusion*

The project’s inconsistencies with LCP water supply policies render project modifications (including reduced project alternatives address traffic congestion) moot (because the project is still independently and irreconcilably inconsistent with LCP water supply/groundwater resource policies, and this basis on its own warrants denial of the proposed project).

Even if the project were consistent with other LCP policies and standards with respect to water supply, the Applicant would need to submit siting and design alternatives that address traffic impacts. In this case, however, the Commission is denying the project based on the lack of an adequate water supply, and thus such project alternatives are not warranted at this time.

## **7. Response to Comments**

The Applicant raises a series of points about the merits of the proposed project (see the Applicant’s comment letters in **Correspondence 1 and 2**), including that the Commission should approve the project because: it would use less water and provide greater groundwater recharge than the existing agricultural use; the project site is zoned for Medium Density Residential (MDR) use; and the project provides benefits to an underserved community. The Applicant also states that Commission staff has changed its interpretations of LCP policies over the years, including with respect to LCP policies governing water supply. Many of the Applicant’s arguments have already been addressed throughout the staff report and, as further explained below, the Commission disagrees with the Applicant’s assertions on these points.

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<sup>27</sup> Rancho Los Robles Subdivision Final Environmental Impact Report, State Clearinghouse Number 2002091010 (the “Rancho Los Robles Subdivision EIR”), pages 3-12.

<sup>28</sup> Note that the EIR evaluated the impacts of a larger subdivision project consisting of 97 residences and commercial development. However, even though the project as now proposed is reduced as compared to the project evaluated in the EIR, the proposed project would still likely have significant impacts on traffic given the existing LOS situation and the fact that the project also includes park and other development, which would also contribute to traffic.

### *LCP Groundwater Supply Policies*

First, with respect to the project's history, the Applicant asserts that Commission staff has changed its interpretations of the LCP's water supply and groundwater resources policies, including that past discussions had centered around the idea of the project being "water positive" (i.e., if the Applicant could ensure that water usage and groundwater recharge were improved over existing conditions, including if the proposed project would use less water than is currently used on site, the Commission could find the project LCP-consistent with respect to water supply). However, this is inaccurate. The Commission finds that staff has consistently maintained that the LCP's policies are not keyed to reducing water usage relative to present uses or being water neutral, but rather that the policies require groundwater basins to objectively be within their safe yield in order to approve the development as proposed here, and do not allow for approval of residential subdivisions when they are not, as is the case here. In other words, it is not LCP compliant to residentially subdivide and develop land considering the facts on the ground, even if doing so could potentially reduce water usage at the site relative to present uses, because the LCP does not allow low-LCP-priority residential subdivision when the groundwater basin is severely overdrafted (and does not allow for retiring a priority agricultural use to instead use scarce water for non-priority residential uses in such an overdraft situation). In short, the two concepts are separate and distinguishable (water positivity vs. identified, long-term groundwater supply in its safe yield), and the relevant LCP policies utilize "identified, long-term groundwater supply in its safe yield" as the applicable standard, not "water positivity." Thus, the Applicant's reliance on attempting to make the project water neutral or positive cannot overcome this LCP fatal flaw.

On this point, the Applicant points to staff's review of the Applicant's water balance analysis as evidence that staff agreed that a water neutral or positive project might be approvable as consistent with LCP groundwater supply policies. This assertion is simply incorrect. The Commission finds that while staff did review and comment on the Applicant's water reports and analyses (see additional discussion of staff's substantive review of the Applicant's water analyses subsequently in this report), such review was to understand the assumptions being made and the potential impact the project could have on water usage (i.e., the degree of impact on water usage based on the Applicant's assumptions), *not* an evaluation of whether the assumptions and conclusions reached in such reports would make the project LCP compliant. In fact, staff proactively alerted the Applicant that, regardless of the water usage information, staff could not support a recommendation of a residential subdivision as approvable under the LCP while the groundwater basin is overdrafted. Staff's consistent position with respect to this issue is that the requisite findings simply cannot be made (that a long-term groundwater supply in its safe yield has been identified), regardless of whether this project is water positive and regardless of the potential public benefits the project proposed. Because of this, staff informed the Applicant that the only possible avenue for staff to recommend approval of any subdivision project here was to amend the LCP. Such a potential LCP amendment did not come to fruition, however, in part because of the other site constraints that also warrant denial of this project, including with respect to residentially subdividing oak woodland ESHA and the conversion of prime/productive agricultural soils.

In short, the Commission finds that it is inaccurate to suggest that staff has modified its interpretations of the LCP's groundwater supply provisions, or that staff's interpretations of the LCP's water supply provisions as they relate to the proposed project are "new." The analysis of

these LCP provisions is the same as that which necessitated the Commission’s denial of similar North County residential subdivision projects,<sup>29</sup> and which also warrants denial of this proposed project as well for the same reasons.

#### *“Water-Positive” Groundwater Supply*

Next, with respect to the Applicant’s observations that the project would be a net benefit for groundwater supplies over existing conditions (because it would use less water than is currently used on the site) thus allowing for it to be found LCP consistent with respect to water supply, the Commission continues to disagree. As explained beginning on page 24, comparing residential versus agricultural water use is immaterial because the LCP simply does not allow for residential subdivision (a low-LCP-priority land use) when the residential subdivision would generate water demand that results in continued overdraft of the groundwater basin beyond its safe yield, as is the case here (even if that generated water demand is *relatively* less than the water demand generated presently for a high priority use, here agricultural production). While the Applicant estimates that the proposed project should be approved since it would use slightly less water than the existing site’s agricultural production and residences (an estimated 18.21 AFY for the proposed project versus 23.7 AFY for the existing uses), it is not analytically appropriate under the LCP to make this water usage comparison argument. As described in detail previously in this report, the LCP does *not* stand for reducing water consumption by any means necessary, including conversion of water-using agriculture to residential subdivision. Instead, the LCP addresses two co-equal goals: ensuring development is served by an adequate, long-term water supply from groundwater in its safe yield state, *and* doing so in a manner that protects priority land uses over other lower-priority development types. Allowing for the residential subdivision proposed here when the groundwater basin is overdrafted would frustrate the LCP’s fundamental structure on the overlapping, interrelated issues of groundwater overdraft, water supply, and land use prioritization.

In short, the LCP does not allow the conversion of agriculture and other higher Coastal Act and LCP priority land uses to a low-priority residential subdivision as a way to ameliorate North County’s groundwater overdraft. And even if the LCP did allow for residential subdivision if water usage would be reduced as compared with the baseline condition, there are numerous unresolved issues with respect to the Applicant’s water usage assumptions. While the Applicant’s letter asserts that the Commission’s former Staff Geologist, Dr. Mark Johnsson, was “satisfied” with the conclusion that the proposed project would increase groundwater recharge, this statement is inaccurate. Dr. Johnsson did review and comment on the Applicant’s water usage information, but had concerns about many of the assumptions being made, including with respect to infiltration rates, low per-capita water usage estimates, and assumptions that were modified from previous analyses and which had the result of maintaining the project’s “water-positive” conclusions (see his comments in **Exhibit 5**). For example, the Applicant prepared multiple analyses with respect to water usage and groundwater recharge. One analysis actually showed that the proposed project would result in a *decrease* in aquifer recharge and an *increase* in estimated water usage over existing conditions. However, subsequent analyses changed the baseline operating assumptions (e.g., reducing the number of people per household to make the

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<sup>29</sup> Sunridge Views Subdivision (CDP Extension A-3-MCO-04-054-E3, denied by the Commission in November 2016), Rancho Roberto Subdivision (CDP A-3-MCO-05-027, denied by the Commission in January 2017), and Mayr Subdivision (CDP A-3-MCO-06-044, denied by the Commission in March 2017).

project's projected water usage lower, or using a different number to estimate the site's current water usage) which had the effect of ensuring that the conclusion still showed less water being used over existing conditions and a positive aquifer recharge. Thus, it is unclear at best whether the proposed project can even be considered "water neutral" (relative to the current existing use) due to the uncertainties regarding the Applicant's water analyses and the seemingly unwarranted modification of baseline operating assumptions. Furthermore, the Applicant's reliance on a will-serve letter is misplaced as it is not relevant to assess the degree of overdraft conditions, and it does not adequately overcome the substantial evidence that the groundwater basin from which the water would come is in overdraft, inconsistent with the LCP.<sup>30</sup> For similar reasons, a 20-year Water Supply Assessment prepared by the California Water Service Company in accordance with SB610 is not controlling with respect to whether the proposed project is served by an identified, long-term groundwater supply within its safe yield. As its name suggests, an SB 610 Water Supply Assessment only requires consideration whether the projected water supply *for the next 20 years* will meet demand projected for the project. The proffered SB 610 Water Supply Assessment does not provide substantial evidence that the proposed developed is served by an identified, long-term groundwater supply within its safe yield as required by the LCP.

#### *Medium Density Residential Land Use Designation*

Third, although it is accurate that the site is zoned Medium Density Residential (MDR),<sup>31</sup> such zoning designation does not override or supersede all other LCP policies and standards applicable to the proposed project, considering actual facts and circumstances on the ground. In other words, the Applicant seems to argue that the site's residential zoning<sup>32</sup> and proximity to the Las Lomas community provide justification to approve the proposed residential subdivision project, including that such designation categorically takes precedence over other LCP

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<sup>30</sup> See also *Pratt v. California Coastal Commission* (2008) 162 Cal.App.4th 1068, 1082 (applicant cited no authority that water company's "can and will serve" letter was definitive on issue of adequacy of water supply).

<sup>31</sup> Note that, as described on page 7 of this staff report, the site's current MDR zoning was implemented via LCP amendment No. 1-85, approved by the Commission in 1986. That amendment downzoned the site from High Density Residential with a Special Treatment Area overlay to MDR, and also deleted a policy specific to the project site describing envisioned high density development if consistent with natural resource constraints. The Applicant suggests that the Commission's approval of this LCP amendment is justification to approve the proposed project, namely that the Commission already found the site appropriate for this project via its MDR-rezoning. However, the fact that the Commission approved the site's downzoning does not also mean that they were approving an actual subdivision project, particularly one 30 years later. At the time that the Commission adopted the LCP amendment, the Commission did not have an actual project submitted for its review and approval—only an application from Monterey County to downzone the site (and remove a specific policy identifying the site for high density development—a policy that also acknowledged that any proposed development needed to also be found consistent with site constraints), which the Commission approved. Furthermore, as explained previously, at the time of the LCP amendment, the extent and severity of North County's groundwater basin overdraft, and the limits such overdraft placed on residentially subdividing land, was not known. The resource constraints, including on water supply, are better known today, and the site's zoning today has to be understood in terms of site constraints here. To suggest that the zoning somehow trumps a site-specific analysis of other applicable resource protection policies in the LCP is an inaccurate oversimplification. In short, the Applicant is not entitled to any project as a matter of zoning designation simply because the proposed project is within the theoretic limits of the site's zoning.

<sup>32</sup> The Applicant also argues that the site is an LCP-designated Special Treatment Area for which the LCP directs concentrated development. However, the Special Treatment Area designation and corresponding LUP policy were removed from the LCP via LCP amendment 1-85 in 1986, specifically due to concerns about constraints to development at this site.

provisions that prohibit low-LCP-priority residential subdivision when groundwater basins are overdrafted and that prohibit residentially subdividing oak woodland ESHA and prime/productive agricultural soils. However, as described throughout the report and in depth on page 14, the *opposite* of the Applicant's argument is true, in that the LCP is clear that zoning designations, buildup numbers, and density limits are to be understood as a starting point for determining what is potentially/hypothetically allowable irrespective of any site constraints. Then, such theoretical development maximums must be determined on a case-by-case basis based on an analysis of fact-specific, on-the-ground site constraints and the applicable LCP requirements regulating such constraints. For example, IP Section 20.64.180.D<sup>33</sup> states that "*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*" (emphasis added). The Applicant's interpretation is the opposite, in that zoning district's residential density is the *determinative/final* consideration to establish allowable development, as opposed to the zoning serving as a theoretical starting point. The LCP provisions are all read together, and the potential allowable uses, theoretical zoning maximums, or even increases in lot and residential density through subdivision at all, can only be understood in relation to resource and other constraints as applied to the facts on the ground. These site constraints, in this case for this project as discussed above, include an inadequate water supply, impermissible residential conversion of ESHA and agriculture, traffic, and visual resource impacts, which all require the proposed project to be denied notwithstanding the site's zoning.

#### *Oak Woodland and Agricultural Soils*

The Applicant also disputes the LCP's policies governing oak woodland and prime/productive soils. With respect to oak woodland, while the Applicant cites LCP policies that allow for oak woodland removal in certain cases, those policies must be understood as only allowing for such removal for uses allowed in ESHA, including for restoration and other resource-dependent uses, and *not* for residential subdivision. In other words, oak woodland is ESHA pursuant to the LCP (see North County LUP Section 4.2), the only allowed uses in it are those dependent on the resource (not residential subdivision), and policies describing removal of oak woodland are applicable only for those allowable resource-dependent uses. It should also be noted that oak woodland is designated as ESHA in the LCP due to its ecosystem benefits, including because other sensitive species are dependent on oak woodland habitat as a food source and for other ancillary benefits such as erosion control and soil fertility, and because of its sensitivity and long recovery time period (it can take 60-80 years for trees to reach maturity). Oak woodland is also a character-defining feature of California's Mediterranean climate and landscape. As such, other LCPs, including in the Santa Monica Mountains, also designate oak woodland as ESHA.

With respect to the site's agricultural soils, while the Applicant argues that the site is poor for agricultural production, the site is and has been used for bona fide strawberry row crops, providing a clear economically beneficial use, and its soils are designated by the LCP (via the

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<sup>33</sup> IP Section 20.64.180.D states in relevant part: "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 ... Such considerations may include but are not limited to... **Available supply and priorities for water...**" (emphasis added).

USDA's classifications) as prime and productive (see **Exhibit 11** and the staff report discussion of this issue beginning on page 32). The LCP protects these important soil types regardless of whether the site is specifically zoned for agricultural use.

#### *Other Community Benefits*

Finally, the Applicant notes that the project should be approved regardless of its LCP noncompliance due to the substantial community benefits being offered to the underserved Las Lomas community. In essence, the Applicant urges the Commission to approve the project based on the “overriding consideration” that this project will help benefit the community, and that such benefits overcome the LCP compliance issues. However, this is not permissible under the Coastal Act for a number of reasons. As discussed in the footnote on page 3 of the staff report, while CEQA allows a decision maker to approve a project despite its significant environmental impacts if findings are made that the project’s benefits “override” its impacts, the Monterey County LCP does not (nor does the Coastal Act) allow for approval of an LCP or Coastal Act inconsistent project on the basis of “overriding considerations.” Instead, development must be consistent with the LCP in all cases. And as described throughout the staff report, the proposed project is fundamentally inconsistent with the LCP and cannot be approved even as conditioned, regardless of the project’s potential community benefits (and again, these are “potential” community benefits as the Applicant is not proposing the construction of any facility as part of this project, and it is unclear when and how such facilities would be funded and built). Furthermore, the Commission reiterates here that it understands the need for additional community benefits in Las Lomas, including additional parks and other facilities. However, although the proposed project includes setting aside land for potential future park development, the proffered community benefits cannot render *this* project consistent with the LCP or otherwise allow the Commission to approve the project despite the clear LCP inconsistencies. The Commission is fully supportive of the County and the community pursuing projects which *can* be found consistent with the LCP, and remains committed to continued collaboration toward that end, including providing guidance on LCP compliance for any future project proposal by the Applicant moving forward.

## 8. Takings

In addition to evaluating the proposed development for consistency with the certified LCP, in a denial situation 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 and/or LCP inconsistencies while still allowing some reasonable amount of development.

The remainder of this section provides an analysis of whether, for purposes of compliance with Section 30010, denial of the proposed subdivision of the Applicant's property could constitute a taking. As discussed further below, the Commission finds that under these circumstances, denial of the proposed project likely would not, because the 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>34</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

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<sup>34</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).

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 in all fairness 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.

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*); *U.S. v. Riverside Bayview Homes*, (1985) 474 U.S. 121, 126 [regulatory takings occur only under "extreme circumstances."<sup>35</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. v. New York* (1978) 438 U.S. 104, 124 ("Penn Central"). 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 application of *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.

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<sup>35</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).

***Denial Would Not Result in a Regulatory Taking***

As analyzed above, application of the LCP's water supply/groundwater resource policies and standards on their own require denial of the proposed subdivision on the grounds that the project cannot be served by an identifiable, available, and long-term water supply within the groundwater sub-basin's safe yield at the present time and it is likely the case that, even for a revised project proposing a residential subdivision reduced in scale for this property, denial would still be appropriate for the same LCP inconsistencies with respect to water supply. However, based on the law and facts analyzed below, it is unlikely that such a denial of development would constitute an unconstitutional taking in this case because the Applicant *already* enjoys multiple economic beneficial uses of the property, including two single-family residences and significant agricultural development.

At this time, application of the LCP's water supply and groundwater resources policies require denial of new residential subdivisions that require water in North Monterey County for which an available, long-term supply within the groundwater sub-basin's safe yield has not been identified. Perhaps most importantly for determining whether denial of the proposed project would result in an unconstitutional taking, the Applicant already enjoys multiple beneficial economic uses on the property, including two existing single-family residences, and 11 acres of agricultural development including strawberry row crops. The property is and has historically been used for agricultural uses, including due to its prime and productive agricultural soils. Therefore, under a *Lucas* standard, denial of the Applicant's 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 Applicant in relation to the property at issue considering the multiple existing economic uses on the property. Regarding the character of the government action, denial of the project ensures consistency with LCP provisions (which itself is a valid local implementation of Coastal Act requirements) that strictly limit new residential subdivisions in North Monterey County based on County policy concerns over water supplies and groundwater resources. Regarding the Applicant's reasonable-investment-backed expectations, it is unlikely that the Applicant could have expected to residentially subdivide the property as a matter of right given that the Applicant has benefited from *existing* economic uses on the site that are consistent with the site's zoning, as well as the LCP provisions governing land use in effect, and the fact that residential subdivisions of this size have not been approved in this area.

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 ripe for an unconstitutional taking claim. Still, in dicta the court 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.*). The court also found that an "intent-to-serve letter" from a community water supplier did not change the result

because there is no rule that the water company's determination is definitive. (*Id.*) "It is undisputed," the court continued, "that there is substantial evidence from which the Commission could conclude the groundwater basin from which the water would come is in overdraft." (*Id.*) The court further reasoned that the plaintiff-applicant failed to demonstrate with sufficient certainty that his development would have an adequate supply of water. 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 because the Applicant's inability to establish an identifiable, long-term water supply within its safe yield is the cause for denial here, rather than the regulations which merely require a showing of an identified, long-term water supply within its safe yield in order to pursue the proposed development.

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 Applicant already has multiple economically beneficial uses on the property, including two existing single-family residences and bona fide agricultural development.

## **E. 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

- Fugro West, Inc., 1995. *North Monterey County Hydrogeologic Study, Vol. 1: Water Resources*. Prepared for Monterey County Water Resources Agency, October 1995.
- Monterey County Water Resources Agency and EDAW, Inc., 2002. *North Monterey County Comprehensive Water Resources Management Plan*, January 2002.
- Pajaro Valley Water Management Agency and Carollo Engineers, 2014. *Basin Management Plan Update*, February 2014.
- Rancho Los Robles Subdivision Final Environmental Impact Report, State Clearinghouse Number 2002091010 (the “Rancho Los Robles Subdivision EIR”).

## APPENDIX B – STAFF CONTACT WITH AGENCIES AND GROUPS

- Applicant and Applicant’s Representatives
- Friends, Artists, and Neighbors of Elkhorn Slough
- Pajaro-Sunny Mesa Community Services District
- Pajaro Valley Water Management Agency
- Monterey County Resource Management Agency
- California Department of Water Resources
- Office of Monterey County Supervisor John Phillips