

CALIFORNIA COASTAL COMMISSION

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original staff report

W17a

Prepared March 6, 2017 for March8, 2017 Hearing

To: Commissioners and Interested Persons

From: Susan Craig, Central Coast District Manager

Subject: Additional hearing materials for W17a

Appeal Number: A-3-MCO-06-044 (Mayr Subdivision, North Monterey County)

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

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

W17a

Michael W. Stamp
Molly Erickson

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RECEIVED

March 1, 2017

MAR 02 2017

CALIFORNIA
COASTAL COMMISSION

Dayna Bochco, Chair
and Members of the California Coastal Commission
45 Fremont St., #2000
San Francisco, CA 94105

W17a

Deny application:
support appeal.

Re: Appeal No. A-3-MCO-06-044 (Mayr Sudivision, North Monterey Co.)
Support recommendation and deny the subdivision application.

Dear Chair Bochco and Members of the Coastal Commission:

We represent Friends, Artists and Neighbors of Elkhorn Slough (FANS), an association of citizens committed to preserving and enhancing the Elkhorn Slough, its watershed and the surrounding North Monterey County area.

FANS urges you to deny the application for the Mayr residential subdivision in the critically overdrafted Highlands South subbasin, for reasons including:

- No long term water supply, in violation of LCP policies. The project cannot be approved pursuant to the LCP.
- In the last four months, the Commission has unanimously denied due to lack of sustainable water supply two other residential subdivisions in North Monterey County: Sunridge subdivision (Nov. 2016) and Rancho Roberto subdivision (Jan. 2017). Same important LCP water policies, same critically overdrafted subbasin, same water supply problems. To treat projects consistently, the Commission must deny this Mayr subdivision.
- All comprehensive information sources (1995 Fugro West study, 2002 CWRMP, 2015 State of the Salinas River Groundwater Basin report, and SGMA) conclude that North County's groundwater basins, including Highlands South, are overdrafted and supplying water to existing land uses at an amount far exceeding the safe yield.
- In 2005, the Attorney General's office, on behalf of Coastal Commission staff, asked Monterey County to work on the severe water supply problems in North County coastal zone, and the process for consideration of residential development proposals until long term adequate water supplies can be secured. The County did not respond.
- Inconsistent with terms of 1991 Coastal Development Permit CDP MS88-10 for the site. The proposed project is inconsistent with the CDP restrictions on the property.

- Proposes to construct residential roads, utilities, and septic systems into ESHA.
- Proposes removal of 2 acres of ESHA – central maritime chaparral ESHA and coast live oak woodland including removal of 126 coast live oaks. The LCP does not allow these uses in ESHA, and requires protection of oak woodland.

The LCP policies require denial of the project.

Because the proposed subdivision will make additional demand on the already severely overdrawn aquifer and there is no proof of an assured long term sustainable water supply, the subdivision does not conform with the certified Local Coastal Program. The project is simply not approvable and must be denied pursuant to North Monterey County Land Use Plan (LUP) policies.

The project is inconsistent with LUP Policy 2.5.1, which states "The water quality of the North County groundwater aquifers shall be protected, and new development shall be controlled to a level that can be served by identifiable, available, long-term water supplies." The project does not have an available long-term water supply. The project would exacerbate the overdraft that is causing severe water quality problems.

The project is inconsistent with LUP Policy 2.5.2.3 which prohibits existing water supplies from being "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." The project is in an overdrafted subbasin that is being pumped far beyond its safe long term yield with no relief in sight.

The LUP does not allow approval of non-priority development in areas of severely overdrafted water supply. Residential subdivision is not a priority use. The project is inconsistent with LUP Policies 2.5.3.A.2, 4.3.5.4 4.3.5.7 and North County IP sections 20.144.140.A.1, 20.144.070.E.11 and 20.144.020.VVV.

The project is not consistent with the applicable Monterey County Code sections 19.03.015(L) and 19.07.020.K that require "the applicant shall also provide proof of an assured, long-term water supply in terms of sustained yield and adequate quality for all lots which are proposed to be created through subdivisions." Those requirements have not been met. Section 20.144.070(E)(11) prohibits approval of a development if the development will generate a water demand exceeding or adversely impacting the safe, long-term yield of the local aquifer, as here.

The County warned the applicant: water supply and water quality were major obstacles.

In 2000, the County warned that "North Monterey County was experiencing severe overdraft conditions resulting in falling water levels and seawater intrusion." The

County was alarmed because water use in 2000 had led to overdraft of more than twice the then-estimated safe yield.

The County clearly stated: "ANY subdivision in" the North Monterey County hydrogeologic area which would intensify water use has the potential to result in a significant cumulative as well as a project specific impact to water quality and quantity. (Exh. A [July 28, 2000 County memo], emphasis in original.)

The County warned applicants to be "advised that a subdivision project may be denied because of" potentially significant cumulative impacts to water quantity and quality. (*Ibid.*, emphasis in original.)

In 2000, the County official in charge of making water supply determinations clearly stated his official interpretation of the LUP policies, as follows:

The North County Land Use Plan policies dictate that new development be phased so that existing water supplies are not committed beyond their safe long-term yields. Further the plan states that development levels that generate water demand exceeding safe yield of local aquifers shall only be allowed once additional water supplies are secured.

Accordingly, it is [my] position . . . that it is not possible to support a finding of a long-term water supply for development in an area of significant, chronic overdraft.

(Exh. B [October 10, 2000 memo from County Director of Environmental Health Walter Wong], emphasis added.) The County has long acknowledged the overdraft. (Exh. C [October 1995 North Monterey County Hydrogeologic Study excerpts].)

In the face of all these warning signs, the applicant chose to proceed with the subdivision project. The applicant was fully aware of the risk.

The project proposes to develop ESHA for residential purposes, inconsistent with the LUP policies.

The project would violate LUP policies that protect ESHA. The project site contains sensitive environmental resources. The applicant proposes to convert ESHA to residential uses. This is inconsistent with the LUP protections of ESHA, including North County LUP policies 2.3.2.1, 2.3.2.2, 2.3.2.3, 2.4.3.6, 2.3.2.B.1, 2.3.2.B.2, 2.3.2.B.4, and IP section 20.144.040.B.3.

The project would violate existing CDP restrictions.

The project would violate the restrictions that a prior residential subdivision placed on the property. The 1991 Coastal Development Permit MS88-10 was for a

previous residential subdivision of this same land. The CDP placed a scenic and conservation easement that was intended to protect the ESHA that is now threatened by the proposed project. FANS is informed that the property owner relied on the original CDP to make improvements on the property, and thus took advantage of the benefits of that CDP permit. Under the circumstances, the property owner is bound to the CDP limitations.

The County of Monterey does not dispute that North Monterey County is critically overdrafted.

For decades, County of Monterey officials have admitted that the North Monterey County does not have a sustainable water supply.

The North Monterey County area is being far overdrafted over its safe yield. According to Monterey County Code section 19.02.143: "Safe yield is the amount of water that can be extracted continuously from the basin or hydrologic sub-area without degrading water quality, or damaging the economical extraction of water, or producing unmitigatable adverse environmental impacts."

The existing residential parcel can be developed now, should the owner desire to develop it. The parcel can be developed with a residence in a way that would respect the ESHA and the 1991 CDP condition that protects part of the property.

This subdivision application would mean adding one more residential lot to the North Monterey County area. That would cause significant impact in a critically overdrafted basin. The fact that second units on existing lots are no longer allowable in the North County coastal zone due to their water supply impacts demonstrates how significant the addition of even one more residence would be, and why the Mayr project should be denied, consistent with the LCP.

The Coastal Commission has reached out to the County of Monterey to discuss North County coastal water supply problems, to no avail.

On April 26, 2006, the Attorney General's office, acting on behalf of the Coastal Commission staff, as well as for developers and environmental organizations including FANS, wrote to the County of Monterey. The letter asked for Monterey County's help in evaluating, consulting, and recommending to the County Board regarding the adequacy of water supplies in North Monterey County coastal zone, and the process for consideration of residential development proposals until long term adequate water supplies can be secured. (See Exh. D.)

That was more than ten years ago. The County has not responded to the Attorney General's letter.

Issues other than the LCP policies are not germane to the Commission's decision.

Future water projects claimed by County are theoretical, not funded, and have not received environmental review. The County has had numerous water projects dissolve under their own weight in the planning stages. The problem-plagued Salinas Valley Water Project is barely functioning to help the valley floor, and there is no evidence it is providing any additional water supply to the highlands (uplands) where this subdivision project is located. In 2009, the County approved the "Regional Desalination Project" which rapidly collapsed after the County fought with its so-called project partners, the EIR was determined by the Monterey Superior Court to be fatally flawed, and the San Francisco Superior Court determined that a director of the Monterey County Water Resources Agency had a Government Code section 1090 conflict and the MCWRA project approvals were void ab initio.

Request

Please deny the project. FANS appreciates your attention to this important issue. Thank you.

Very truly yours,

STAMP | ERICKSON



Molly Erickson

Table of Exhibits

<u>Table of Exhibits</u>	
A	July 28, 2000 Monterey County Memo from Chief Administrative Office
B	October 10, 2000 memo from Monterey County Health Department Director Walter Wong
C	October 1995 North Monterey County Hydrogeologic Study excerpts
D	April 20, 2006 Letter from Deputy Attorney General Tara Mueller to Board of Supervisors of the County of Monterey

MONTEREY COUNTY

PLANNING AND BUILDING INSPECTION DEPARTMENT

P. O. BOX 1208 SALINAS, CALIFORNIA 93902 (831) 755-5025



DATE: July 28, 2000

TO: Planning Permits Team & Permit Assistance Team Staff

FROM: James Colangelo, Assistant County Administrative Officer
Environmental Resources Policy Division

SUBJECT: Significant Cumulative Impacts to Water Quantity & Quality in the North Monterey County Hydrogeologic Study Area

Effective immediately, applicants for ALL subdivisions proposed in the North Monterey County Hydrogeologic Study Area (see attached map) should be advised that a focused EIR might be required for a project due to potentially significant cumulative impacts to water quantity and quality in that area. More importantly, applicants need to be advised that a subdivision project may be denied because of these conditions. This applies to new applications, as well as to projects in process where the Initial Study has not been prepared or is incomplete.

During the last Planning Commission meeting on July 12, 2000, the Commission voted unanimously (9 to 0) to deny a 26-lot subdivision in part due to potentially significant adverse cumulative water and traffic impacts in North County. At the same time, the Commission directed staff to return in late August with recommendations for future subdivisions in North County in light of the cumulative impacts.

Rancho Roberto

Staff has reevaluated the potential for cumulative impacts to water resources in North County due to intensification of water use and has determined that the impact may be significant. This determination is based on the following facts: 1) completion of the Comprehensive Water Resources Management Plan for North County has taken longer than anticipated; 2) a large number of subdivisions are in process in the impacted area; and 3) there has been an ongoing high level of subdivisions during the past several years due, in part, to the bustling economy. In addition, we now know that the County has exceeded our AMBAG population projections for 2005, if the approved projects are constructed as expected.

North Monterey County is experiencing severe overdraft conditions resulting in falling water levels and seawater intrusion. The current water use is estimated to exceed the average recharge by more than 100 percent. In addition, nitrate contamination levels are increasing and have also had a significant impact on domestic water supply in North County. This water constraint applies specifically to the North Monterey County Hydrogeologic Study Area. As a result, ANY subdivision in this area, which would intensify water use, has the potential to result in a significant cumulative, as well as a project specific, impact to water quality and quantity.

Any Initial Study prepared for a subdivision proposed in this impacted area of North County shall reference the 1995 Fugro-West report and state that the project will result in a significant cumulative effect on water quality and supply. For your information, attached is an excerpt from an Initial Study prepared for a subdivision located in this impacted area. This excerpt is intended to be used as a sample for the environmental setting and cumulative impact analysis in the Initial Study.

Should you have any questions, please see your Supervisor. A full size map, with the hydrogeologic study area highlighted in yellow, is located at the front counter.

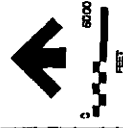
Memo prepared by Ann Towner & Mike Novo

cc: Board of Supervisors; Sally R. Reed; Annette Chaplin; Adrienne Grover; Walter Wong;
Curtis Weeks

Exhibits: 1) North County Hydrogeologic Study Area
2) Initial Study Excerpt for a Subdivision in the North County Hydrogeologic Study Area

AT: Cumulative H2O Impacts In North County/Subdivisions
Revised 7/24/00

EXHIBIT 1



NORTH MONTEREY
COUNTY HYDROGEOLOGIC
STUDY AREA

Exhibit 2

Initial Study Excerpt for a Subdivision in the North County Hydrogeologic Study Area: Environmental Setting & Cumulative Impacts

Note: This particular project is located in the Granite Ridge sub basin. Obviously, your analysis in the Initial Study will vary based on the particular sub basin and the proposed water use for the project.

Excerpt from Environmental Setting Section

The project site is located in the Granite Ridge groundwater sub basin of North County. North County has been identified as an area in a state of overdraft, with a deficit of 11,700 acre-feet identified in the *Fugro-West Inc. report, North Monterey County Hydrogeologic Study, Volume 1, Water Resources*, prepared in October 1995 (References 22 and 23). That study showed the Granite Ridge sub basin in balance. However, this project could potentially contribute an additional 10.2 acre-feet in overdraft to the groundwater basin.

Excerpt from Cumulative Impact Section

There presently exists in the North Monterey County area a serious overdraft in the aquifers, together with seawater intrusion problems in the North County Coastal Zone and nitrate pollution problems throughout the area. The North County Area Plan recognizes the existence of these problems and directs that studies be made to determine the safe-yield of the North Monterey County aquifers and that procedures thereafter be adopted to manage development in the area so as to minimize adverse effects on the aquifers and preserve them as viable sources of water for human consumption. The proposed project, current agricultural practices, as well as future urban development accommodated through subdivisions in the North County area, and potential conversion of land to agricultural use, creates a potentially significant cumulative groundwater impact.

This project will contribute to the North County Overdraft identified in the Fugro-West Inc. report, *North Monterey County Hydrogeologic Study, Volume 1, Water Resources*, prepared in October 1995. According to Monterey County Health Department, this project will contribute to the overdraft in the Granite Ridge sub area, which had a sustainable yield of 610 acre-feet and a historical use of the same amount in 1995 (Reference 22). Information supplied with this application demonstrates that the project will contribute an additional overdraft of 10.2 acre-feet per year. The applicant proposes to recharge groundwater by percolation pits in the bottom of retention and detention ponds (Reference 28), but this will not reduce cumulative impacts to a level of insignificance.

Ordinance #3496 (and as amended by Ordinance #4005) of the County of Monterey adds Chapter 18.51 to the Monterey County Code to establish a Water Impact Fee for development in the North Monterey County Area to assist in financing a study and management plans relating to the safe yield of the North Monterey County aquifers. The impact fee funds the development of a long-range "Comprehensive Water Management Plan" and "Water Issues Action Plan." The "Comprehensive Water Management Plan" is presently being prepared by a consultant and is due to be completed and approved later this year (i.e., 2000). The "Water Issues Action Plan" has been modified, and is presently undergoing CEQA review before a Planning Commission recommendation is made to the Board of Supervisors. Because agriculture is a permitted use in the zoning district, commercial agricultural use on this property could contribute to the groundwater

overdraft situation in North County. Compliance with the following mitigation measures would reduce this potentially significant cumulative impacts BUT not to a level of insignificance (Reference 24). Exp. A, p. 5 of 5

Mitigation Measure

35. The applicant shall pay the appropriate financial contribution in accordance with Ordinance 4005, adopted by the Board of Supervisors to implement an area-wide hydrological study to address ground water overdraft and water resources in the project area. The fees shall be paid prior to issuance of building permits.
36. Prior to filing the Final Map, the applicant shall record a deed restriction prohibiting any commercial agricultural uses on the property.

COUNTY OF MONTEREY HEALTH DEPARTMENT

MEMORANDUM

ENVIRONMENTAL HEALTH DIVISION

October 10, 2000

TO: Monterey County Planning Commission
 FROM: Walter Wong, MPH, REHS Director of Environmental Health
 SUBJECT: Position regarding North County Water

Title 19, the Subdivision Ordinance, currently designates the Health Department as lead agency with regard to proof of water and requires proof of water prior to an application being deemed complete. This code requires that the applicant provide hydrogeologic evidence of proof of an assured, long-term water supply in terms of sustained yield for all lots. The North County Land Use Plan policies dictate that new development be phased so that existing water supplies are not committed beyond their safe long-term yields. Further the plan states that *development levels that generate water demand exceeding safe yield of local aquifers shall only be allowed once additional water supplies are secured.*

Accordingly, it is the position of the Environmental Health Division that it is *not* possible to support a finding of a long-term water supply for development in an area of significant, chronic overdraft. Further, it is not prudent to place additional citizens at risk by allowing residential development in an overdraft area even when the development demonstrates water savings over previous use.

Prior to recent changes (5/16/00) to Title 19, Subdivision Ordinance, proof of water for development was determined after a project was deemed complete but prior to circulation of an environmental document and a public hearing. Findings of a long-term sustainable water supply were proven to the satisfaction of the Planning Commission or the Director of Planning and Building Inspection. The Water Resources Agency was the lead agency in evaluating water demand and in determining the adequacy of existing regional hydrogeological information to demonstrate a long-term source of water for the development. The Health Officer was responsible for evaluating the development's water well with respect to getting the water out of the ground of adequate quality and quantities.

The 1996 Fugro Study concluded that four of the five North County Subbasins were in significant overdraft. Monterey County Water Resources Agency recommended approval of projects based on a mitigation of \$1000 dollar per lot to fund a Comprehensive Water Management Plan.

Subdivision applications deemed complete prior to the effective date of Title 19 changes (6/16/00) were reviewed and processed in accordance with the old process. As such, a recommendation of approval by staff was accomplished under the provisions of the old ordinance. Because these projects were deemed complete under the old ordinance the Environmental Health Division cannot *require* additional information of the applicant at this point in time, however the hearing body may not be precluded from requiring any additional reports it deems necessary to make a finding regarding a long-term, sustainable water supply.

Cc: Jim Colangelo
 Jerold Malkin

Post-it* Fax Note	7671	Date	10/24/00	# of pages	1
To	Al Mulholland	From	Ma P		
Co./Dep.		Co.			
Phone #		Phone #	5045		
Fax #	424-7435	Fax #	5283		

FUGRO WEST, INC.



NORTH MONTEREY COUNTY HYDROGEOLOGIC STUDY

Volume I Water Resources

Prepared for:
MONTEREY COUNTY WATER RESOURCES AGENCY

October 1995



Recharge in the study area is limited to the infiltration of rainfall, streamflow, and applied water. In the undeveloped areas, the annual infiltration of rainfall is estimated at between 0.9 and 1.8 inches and results in an average value of approximately 6,800 AF/Y. These values are consistent with the previous suggested values discussed above. In the developed areas, recharge is also derived from applied agricultural water and septic return flows and is estimated as an additional 6,780 AF/Y. This estimated return flow is a function of land use and will change if land uses are converted to uses with differing consumptive uses. With the exception of the Pajaro subarea, stream recharge is not a significant component of recharge to any of the subareas. In the Pajaro subarea, infiltration from the Pajaro River is the major component of recharge and is estimated at 4,254 AF/Y.

Sustainable Yield. Utilizing the model results, MW developed estimates of the sustainable yield of the study area and various subareas were developed. Sustainable yield is defined as the amount of annual pumping not causing additional ground water declines from 1992 conditions and/or not causing additional seawater intrusion. These estimates are presented in Table 11 - Sustainable Yield.

Table 11. Sustainable Yield

Subarea	Historical Pumping (AF/Y)	Sustainable Yield (AF/Y)	Difference (AF/Y)	Percent Reduction
Highlands South	5,020	4,390	-630	13
Granite Ridge	610	610	0	0
Highlands North	4,780	2,920	-1,860	39
Pajaro	9,030	6,490	-2,540	28
Springfield	6,670	0	-6,670	100
Totals:	26,110	14,410	-11,700	45

The estimates above show that to achieve sustainable yield, significant reductions in pumping will need to occur in all of the subareas with the exception of the Granite Ridge subarea. The required reductions range from no reduction in the Granite Ridge subarea to complete cessation of agricultural pumpage in the Springfield subarea. The cessation of agricultural extractions in Springfield is required because, although recharge does occur, water levels needs to rise above sea level in order to avoid further seawater intrusion. It is assumed that minor pumpage for domestic supply will continue. The complete cessation in agricultural pumpage in Springfield is consistent with the recommendations of the Pajaro Valley Water Management Agency Basin Management Plan (MW, 1993). No expansion of pumpage can occur in the Granite Ridge subarea, as it is estimated to be at sustainable yield.

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



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April 20, 2006

Mr. Jerry Smith
Chairman of the Board of Supervisors
County of Monterey
2616 1st Ave.
Marina, CA 93933

RE: Request for Staff Referral or Appointment of Board Subcommittee Regarding Water Supply and Land Use Planning Issues in the Coastal Zone of North Monterey County

Dear Mr. Smith:

I am writing this letter on behalf of staff to the California Coastal Commission, as well as representatives of Mr. Stephen Bradshaw, LandWatch, and Friends and Neighbors of Elkhorn Slough (FANS) to request that the Monterey County Board of Supervisors refer the issue of the availability of long-term, adequate water supplies in the North Monterey County coastal zone to your staff (e.g. the Monterey County Planning & Building Inspection Department, Water Resources Agency, and County Counsel) for an evaluation and recommendation to the Board. Specifically, we request that staff be authorized to evaluate, consult with interested parties and provide a report and recommendation to the Board regarding: (1) the availability of long-term, adequate water supplies for the North Monterey County coastal zone to accommodate the remaining build out authorized under the North Monterey County Land Use Plan (LUP); and (2) if current water supplies are found to be inadequate, the process for consideration of new and pending residential development proposals in the North Monterey County coastal zone until long-term, adequate water supplies can be secured for this area of North Monterey County.

This request stems from a lawsuit filed by Mr. Bradshaw in February of 2005, challenging the California Coastal Commission's denial, in December of 2004, of Mr. Bradshaw's application for a coastal development permit (CDP) to subdivide his 25-acre parcel into ten lots. The Bradshaw property is located in the coastal zone of northern Monterey County. (*Bradshaw v. California Coastal Commission*, Monterey County Superior Court Case No. M73177.) The County Board of Supervisors approved the permit in July of 2004. LandWatch, FANS, and two members of the Commission then appealed the Board's decision to the Commission in August of 2004. The Commission denied the CDP in part based on its conclusion that, because the groundwater demand in the North Monterey County coastal zone now significantly exceeds the safe yield of the underlying aquifer, approval of the CDP would

Mr. Jerry Smith
April 20, 2006
Page 2

violate policy 2.5.2.3 of the North Monterey County Land Use Plan, among others. As you are aware, this policy requires development to be phased so that groundwater use does not exceed the safe yield level of local aquifers.

Since Mr. Bradshaw filed his lawsuit challenging the Coastal Commission's denial of his permit, the parties have been engaged in extensive settlement negotiations. As part of those negotiations, the parties have consulted with the environmental organizations that initially appealed Mr. Bradshaw's CDP application to the Commission. Although the Bradshaw litigation has recently been resolved by a settlement between the Commission and Mr. Bradshaw, this settlement is structured so that it does not provide a precedent or template for any other project. At the same time, all interested parties agree that the issues raised by this matter will certainly be raised again, most likely in the very near future. Further litigation on these issues, both at the County and the Commission level, is likewise foreseeable. Indeed, the Commission currently has before it appeals of the County's approval of the Rancho Roberto and Tanglewood residential subdivisions in North Monterey County. We understand that applications for several other residential subdivisions in the North Monterey County coastal zone are currently pending before the County, all of which have the potential to be appealed to the Commission.

Therefore, the Coastal Commission staff, Mr. Bradshaw's counsel, FANS and LandWatch believe that it is in the best interests of all concerned, including the County, to attempt to resolve the broader question of the availability of long-term, adequate water supplies for the North Monterey County coastal zone, and the process for considering residential development proposals pending the availability of such supplies. We understand that the Board is considering an updated general plan that may have some bearing on this issue. However, since that plan and the corresponding revised implementing ordinances are unlikely to be completed in the near future, and the proposed revised plan is not specifically intended to address coastal zone issues, and given that there are a number of pending subdivision applications in North Monterey County coastal zone, we believe that it is necessary and appropriate to move forward on the North Monterey County groundwater issue at this time.

Toward this end, we respectfully request that the Board refer this matter to its staff to provide a report and recommendation to the Board on these issues, or address this matter in an appropriate alternative manner, such as by appointing a subcommittee of the Board to investigate and address these issues and to meet and confer with interested parties. The purpose of this effort would be to engage in a constructive dialogue with all interested parties in an effort to develop a mutually acceptable solution to the ongoing concern about the adequacy of available groundwater supplies to serve new development in the North Monterey County coastal zone. Assuming the County accepts this request, Coastal Commission staff, counsel to Mr. Bradshaw, and representatives of FANS and LandWatch agree to actively participate in the ensuing dialogue and discussion.

Mr. Jerry Smith
April 20, 2006
Page 3


We appreciate the County's consideration of this request. Please contact me at 510-622-2136 if you have any questions. Thank you.

Sincerely,

Tara Mueller/s.v.

TARA MUELLER
Deputy Attorney General

cc: John Bridges, Esq., Fenton & Keller
Charles Lester, California Coastal Commission
Rick Hyman, California Coastal Commission
Bill Yeates, Esq., Law Offices of J. William Yeates
Chris Fitz, LandWatch Monterey County
Mari Kloeppel, Friends, Artists and Neighbors of Elkhorn Slough
Charles McKee, Monterey County Counsel
Alana Knaster, Monterey County Planning Director
Curtis Weeks, Monterey County Water Resources Agency General Manager



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JAN 06 2017

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST OFFICE



LandWatch
monterey county

January 6, 2017

Dayna Bochco, Chair
California Coastal Commission
Central Coast Office
725 Front Street, Suite 300
Santa Cruz, CA 95060

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

Dear Chair Bochco and Commissioners:

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

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

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

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

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

Sincerely,

Michael DeLapa
Executive Director

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JAN - 5 2017

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Re: Mayr, "Th13c"

Dayna Bochco, Chair
and Members of the California Coastal Commission

Dear Chair Bochco and Commissioners:

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

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

As stated in the CCC report,

"North Monterey County has had severe groundwater overdraft problems for decades. . . . The LCP requires development in North County to be served by a long-term water supply, and only allows new development, particularly residential subdivisions, when the groundwater basin is in its safe yield extraction state. The proposed project would authorize a subdivision allowing for two future residences that would demand water from an already severely overdrafted groundwater basin. The project cannot be found to have a long-term water supply, and cannot be found to be served by water from a groundwater basin in a safe yield state. Furthermore, . . . residential subdivision represents a low LCP-priority land use within an area with known water supply deficiencies. When such a combination results, the LCP affirmatively requires the proposed development to be denied."

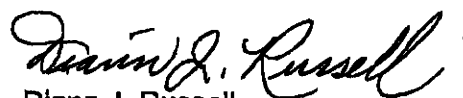
The proposed project is inconsistent with the restrictions of the 1991 Coastal Development Permit CDP MS88-10 on the property.

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

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

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

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



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

RECEIVED

JAN - 5 2017

Re: Mayr, "Th13c"

Dayna Bochco, Chair
and Members of the California Coastal Commission

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Dear Chair Bochco and Commissioners:

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

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

As stated in the CCC report,

"North Monterey County has had severe groundwater overdraft problems for decades. . . . The LCP requires development in North County to be served by a long-term water supply, and only allows new development, particularly residential subdivisions, when the groundwater basin is in its safe yield extraction state. The proposed project would authorize a subdivision allowing for two future residences that would demand water from an already severely overdrafted groundwater basin. The project cannot be found to have a long-term water supply, and cannot be found to be served by water from a groundwater basin in a safe yield state. Furthermore, . . . residential subdivision represents a low LCP-priority land use within an area with known water supply deficiencies. When such a combination results, the LCP affirmatively requires the proposed development to be denied."

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

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

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

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

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



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

Kahn, Kevin@Coastal

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

Dear Mr. Kahn,

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

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

Sent from my iPad

Kahn, Kevin@Coastal

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

Dear Commissioner Kahn,

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

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

Regards,
Jeff Hawkins
Carmel, CA

Kahn, Kevin@Coastal

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

Lets honor the rules that protect existing homeowners.

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

Thank you,

Pat McNeill

Kahn, Kevin@Coastal

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

Hi Kevin,

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

Kahn, Kevin@Coastal

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

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

Linda and Rich Cheatham
Carmel Valley

CALIFORNIA COASTAL COMMISSION

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



W17a

Filed:	8/15/2006
Action Deadline:	None
Staff:	Kevin Kahn - SC
Staff Report:	2/17/2017
Hearing Date:	3/8/2017

STAFF REPORT: DE NOVO HEARING

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

Applicants: Robert and Linda Mayr

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

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

Staff Recommendation: Denial

SUMMARY OF STAFF RECOMMENDATION

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

On January 12, 2017, the Commission found that the County's action approving the project raised a substantial issue of conformance with the Monterey County LCP's water supply, groundwater resources, and ESHA protection policies, as recommended in the staff report. Specifically, the Commission found substantial issue with respect to whether a subdivision that will necessitate an additional permanent demand of water for future residential development from an already overdrafted groundwater source is both inconsistent with LCP policies that only authorize a level of development that can be served by the groundwater basin's safe yield amount, and with LCP policies that dictate residential subdivision to be the lowest priority land use to receive water when supplies are scarce (coastal-dependent uses being the highest priority). Furthermore, the Commission found substantial issue with respect to whether the project is inconsistent with the LCP's ESHA protection policies, including because it authorizes the removal of roughly an acre of central maritime chaparral ESHA, an acre of oak woodland ESHA, and some 130 individual coast live oak and Monterey pine trees for non-resource-dependent residential infrastructure.

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

Furthermore, the project proposes to build residential infrastructure, including roads, utilities, and septic systems, into central maritime chaparral and oak woodland ESHA. The LCP does not allow these uses in ESHA, and further requires that the removal of coast live oaks and other vegetation be minimized. The project would also authorize extensive grading and landform alteration that would convert the area's scenic natural habitats and rural landscape into engineered, structural elements, inconsistent with LCP requirements to protect North County's scenic rolling hills and water quality.

Finally, the proposed project is not consistent with the terms and conditions governing this property pursuant to Monterey County CDP MS88-10. That CDP, approved by the County in 1991, authorized the subdivision of a larger 16.724-acre parcel into three parcels, including the subject parcel. That approval was subject to numerous conditions to protect ESHA, visual resources, and water quality. Building an additional new access road/driveway at the northwestern property boundary along Desmond Road is inconsistent with that CDP's requirement to solely allow access within the existing utility easement on the southeast portion of the property from Castroville Boulevard. The additional proposed vegetation removal and land

disturbance (including some 2 acres of ESHA removal overall) to accommodate the additional residence is inconsistent with conditions requiring all natural vegetation to be left intact (but for the construction of the one authorized residence on the existing parcel). As such, approval of the proposed project would also be inconsistent with the terms and conditions of the 1991 CDP.

In short, the project proposes a residential subdivision in a predominantly rural area with severe water supply deficiencies, on a parcel that contains significant sensitive habitats, and on a parcel with restrictions placed on it pursuant to a previously approved CDP that does not allow for the proposed project. Thus, staff recommends that the Commission deny a CDP for the proposed residential subdivision project. The motion is found on page 5 below.

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APPENDICES

Appendix A – Substantive File Documents

Appendix B – Staff Contacts with Agencies and Groups

EXHIBITS

Exhibit 1: Location Map

Exhibit 2: Site Photos

Exhibit 3: Proposed Project Plans

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

Exhibit 5: Monterey County 1991 CDP MS88-10

Exhibit 6: Map of Department of Water Resources-designated Critically Overdrafted
Groundwater Basins

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

***Resolution to Deny CDP:** The Commission hereby denies Coastal Development Permit Number A-3-MCO-06-044 on the grounds that the development will not be in conformity with the Monterey County Local Coastal Program. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures and/or alternatives that would substantially lessen the significant adverse effects of the development on the environment.*

II. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. PROJECT LOCATION

The proposed project is located on a vacant and undeveloped 5.52-acre parcel at 16323 Castroville Boulevard, near the intersection with Paradise Road and Desmond Road, in the unincorporated Prunedale area of North Monterey County. Prunedale, along with the rest of North Monterey County, is a mostly rural area of rolling hills consisting of open space covered by grasslands, maritime chaparral, and oak forest habitat; agricultural uses, including for both grazing and row crops; and very low density residential development. The parcel is unimproved and consists of sloping hills, some at over 25% grade, covered with central maritime chaparral and coast live oak woodland habitat. The property is zoned Low Density Residential (LDR), which allows for a potential maximum residential density of up to 2.5 units per acre if there aren't other constraints that dictate a lower density.

The parcel was previously part of a larger 16.724-acre parcel (APN 129-071-043) that was subdivided into three parcels of roughly five acres each in 1991¹ (Monterey County CDP MS88-10). That approval was subject to numerous conditions, including that all future building sites and driveways/access roads be located where slopes are less than 25 percent, where ESHA impacts are minimal, and off of ridgelines (Condition 37). To implement such requirements, that CDP included conditions requiring access to the three parcels to be limited to the southeastern portion of the site where an existing utility easement is located (Condition 24), that natural vegetation be left intact and undisturbed, but for normal construction of future residences and

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

their ancillary development (Condition 26), and that a scenic easement be conveyed to the County over those portions of the property where the slope exceeds 25% and where maritime chaparral exists (Condition 19). Per this last condition, 1.54 acres of the subject parcel is currently protected by a scenic and conservation easement held by the County. The other two parcels have since been developed with one residence each.²

See **Exhibit 1** for a project location map, **Exhibit 2** for aerial photos of the project site, and **Exhibit 5** for Monterey County CDP MS88-10.

B. PROJECT DESCRIPTION

The proposed project consists of the subdivision of a 5.52-acre parcel into two parcels, one of 2.85 acres (Parcel A) and a second of 2.67 acres (Parcel B). The project also proposes the construction of driveways, septic systems, water supply infrastructure, and other related development on both parcels to facilitate future home construction. A new driveway would access Parcel A's building site from Desmond Road, located on the parcel's northern boundary, while access to Parcel B would be from a new driveway extended from an existing road along the parcel's southeastern boundary (see **Exhibit 3** for the proposed project plans). The project does not include construction of the actual homes on the two parcels, and future CDPs would be necessary to permit construction of the homes.

C. PROJECT HISTORY

On May 25, 2006, the Monterey County Minor Subdivision Committee approved CDP application number PLN000260. On August 15, 2006, the County's approval was appealed to the Coastal Commission. On January 12, 2017, the Commission found that the County's action approving the project raised a substantial issue of conformance with the Monterey County LCP's water supply, groundwater resources, and ESHA protection policies. Specifically, the Commission found substantial issue with respect to whether a subdivision that will necessitate an additional permanent demand of water for future residential development from an already overdrafted groundwater source is both inconsistent with LCP policies that only authorize a level of development that can be served by the groundwater basin's safe yield amount, and with LCP policies that dictate residential subdivision to be the lowest priority land use to receive water when supplies are scarce (coastal-dependent uses being the highest priority). Furthermore, the Commission found substantial issue with respect to whether the project is inconsistent with the LCP's ESHA protection policies, including because it includes the removal of both central maritime chaparral and oak woodland ESHA, including some 130 coast live oak and Monterey pine trees for non-resource-dependent residential development and 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 policies relate to the residential development potential in North County given common factual circumstances (so as to avoid

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

further similar appeals). Commission staff reviewed and commented on all of these projects, including voicing concern with the County's interpretations on various LCP policies and the assumptions being made with respect to available water supplies. Additionally, numerous water supply projects and programs were either being proposed or under construction that could have affected North Monterey County's water resources and groundwater supply. Furthermore, Commission staff felt it necessary to understand the efficacy of the various water supply projects, and whether those projects would abate the area's groundwater overdraft.

While undertaking this outreach with the County and monitoring North Monterey County's water situation, and after informing the Applicants of the LCP inconsistencies the County-approved project engendered, staff did not hear from the Applicants for many years, including after staff sent a letter to the Applicants in 2011 asking whether they still intended to move forward with the project. In 2016, staff sent the Applicants another letter asking about project status, and the Applicants responded that they were still interested in pursuing the project, despite the project's potential coastal resource impacts. Since then, staff has worked with the Applicants extensively in identifying project issues and potential LCP inconsistencies.

D. 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 flanking Elkhorn Slough, 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 has been to retain North Monterey County as a rural, agricultural buffer along the mid-Monterey Bay area, in between 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, 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 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.*³ (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 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

The Monterey County LCP includes an extensive policy framework meant to protect the area's rich coastal resources, including through policies that protect groundwater and the related basins' safe yield, require an adequate and long-term water supply to serve new development, and protect and prioritize agriculture and other coastal-dependent development. Specifically, the North County LCP contains numerous policies and standards that protect North County's groundwater resources, including (where text in **bold** format means emphasis added):

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

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

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

³ California Coastal Plan Central Coast Subregion 5: Pajaro-Elkhorn (Part IV: Plan Maps and Regional Summaries, page 230).

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

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

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

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

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

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

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

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

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

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

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

Specifically, the LCP includes policies and standards that require all new development to be served by an identifiable, available, and long-term water supply (LUP Policy 2.5.1), including by only authorizing an amount of development that can be served by the safe yield groundwater extraction level (LUP Policies 2.5.2.3 and 2.5.3.A.2). The LCP defines “safe yield” as the amount of extraction that the resource can produce over the long-term without impairment of the resource and other associated resources (North County IP Section 20.144.020.VVVV). The LCP does not contain a specific numeric safe yield amount for each groundwater basin, but instead requires definitive water studies, hydrologic reports, and the most updated resource information to determine appropriate safe yields and the amount of new development such a yield can support (LUP Policy 2.5.3.A.2 and IP Section 20.144.070.E.11).

Consistent with the above-discussed policies and standards, the LCP also requires development to be phased so that water supplies are not committed beyond their safe yield and, if the safe yield is already exceeded, only allows additional development to proceed once additional water supplies are secured that will bring the basin back into LCP-required safe yield state (LUP Policy 2.5.2.3). The LUP further requires that where there is limited water supply to support

development, coastal-dependent uses (such as coastal-dependent agriculture, recreation, commercial, and industrial uses) shall have priority over residential and other non-coastal-dependent uses (LUP Policy 4.3.5.4). Finally, LUP Policy 4.3.5.7 requires new subdivisions and development dependent upon groundwater to be limited and phased over time until an adequate supply of water to meet long-term needs can be assured. Should 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), and in a manner that does not impact groundwater and other coastal resources (Sections 30231 and 30250).

Analysis

Groundwater Overdraft and Safe Yield Calculations

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

The LUP also limited the total amount of residential development in North County (beyond one home per legal parcel) by placing a maximum threshold on residential buildout until that safe yield level could be determined. Because the overdraft situation was not precisely known at time of LUP adoption, to be cautious, LUP Policy 2.5.3.A.2 establishes that no more than 50% of the maximum⁴ residential buildout based on parcel size and subdivision potential (i.e., 1,351 units or lots) may be allowed while the County pursued efforts to quantify the overdraft problem and arrive at a solution. The policy establishes this maximum as a cap until a new water supply is secured or once safe yield is achieved, at which time this cap could be increased via LCP amendment.⁵ However, that is a maximum threshold, and LUP policy 2.5.3.A.2 includes a caveat that allows this cap to be reduced to limit groundwater use to the safe-yield level once it was determined, or if required in order to protect agricultural water supplies. Thus, the 50% build-out level is not determinative of the amount of development that the area's resource can support, but rather an upper range that could be further reduced in order to protect groundwater resources once more was known about their status. Other LCP policies similarly state that development and density allowances are maximums, not entitlements, with new development limited by resource constraints and LCP requirements (e.g., LUP Policy 4.3.6.D.1 and IP Section 20.64.180.D).⁶

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 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

⁴ The 50% buildout density figures were derived from multiplying plan densities by area acreage. These buildout numbers do not account for potential resource constraints that might be identified when additional units or subdivision are proposed, and that might dictate a lower density (e.g., significant wetland areas and water resource constraints that could not be developed). The LUP is clear that actual development potential is contingent on natural resource constraints and the availability of public services (e.g., LUP Policy 4.3.6.D.1 and IP Section 20.64.180.D).

⁵ This policy applies to new lots and second units on existing lots; one home per vacant parcel is allowed independent of the 50% buildout number. However, second units are no longer allowable in the North County coastal zone due to water supply inadequacies per LCP amendment number LCP-3-MCO-15-0022-1, approved by the Commission in October 2015.

⁶ The Commission has found that North County's buildout and density numbers are maximums, whereby actual allowable buildout and density must be understood based on resource constraints and LCP requirements (see, for example, CDP applications A-3-MCO-04-054 and A-3-MCO-05-027, LCP amendment MCO-MAJ-1-06, and CDP extension A-3-MCO-04-054-E3).

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

The 2002 CWRMP also showed that long-term over-commitment of the aquifer threatens water supplies and other existing users due to the risk of lowered groundwater levels and seawater intrusion. The Fugro West study identified a general long-term trend of declining water levels in the area over the preceding 20 years, with 1994 water levels in some portions of the Highlands South area being more than 40 feet below mean sea level (near Prunedale). Seawater intrusion results when wells pumped near the coast cause the water table elevation (or groundwater level) to drop below sea level. Once the water table elevation drops below sea level, seawater can migrate into the aquifer (from the ocean as well as from the tidally-influenced Elkhorn Slough system) and mix with freshwater, which increases the chloride concentrations in the groundwater pumped from these wells. The CWRMP maps entitled “Seawater Intrusion in North Monterey County” show that the 500-mg/l-chloride contour⁷ has moved landward over time, from between 1,650 feet inland of the coast to 3,300 feet inland of the coast over the period between 1979 and 1993. Seawater intrusion threatens both agricultural and residential water uses. According to the CWRMP, the Springfield Terrace area (in the northwestern portion of North Monterey County) and other areas near Elkhorn Slough have been the most impacted by elevated chloride ion concentrations as a result of seawater intrusion, and many agricultural producers have had to abandon their water supply wells, mix salty well water with fresher water to reduce the chloride concentrations, or purchase reclaimed water for irrigating agricultural lands. Other agricultural and residential wells have had to be abandoned or drilled to deeper depths to reach unaffected portions of the aquifer.

In 2015, the Monterey County Resource Management Agency prepared its *State of the Salinas River Groundwater Basin* (report). The purpose of the report is to provide an assessment of the current health and status of the groundwater basin,⁸ including in terms of water supply and

⁷ 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.

⁸ The *State of the Salinas River Groundwater Basin* quantified the overdraft condition of the entire Salinas River Groundwater Basin, which extends beyond the North County coastal zone. The *North Monterey County Hydrogeologic Study* and the *North Monterey County Comprehensive Water Resources Management Plan*, the two previous studies on groundwater overdraft, quantified overdraft solely within the portions of the two

seawater intrusion, including due to drought conditions. The report calculated the entire groundwater basin's overdraft at between 17,000 to 24,000 AFY, based on a safe yield of roughly 499,000 to 506,000 AFY and a historic withdrawal (annual average extraction between 1959 and 2013) of roughly 523,000 AFY. The report concluded:⁹

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

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 South sub-basin (where the property at issue is located) is being over-extracted in exceedance of its safe yield. The SGMA was signed into law by the Governor on September 16, 2014. The 2014 SGMA establishes a new structure for groundwater management in California, requiring all overdrafted groundwater basins to be managed by local groundwater sustainability agencies (GSA) under the purview of a Department of Water Resources (DWR)-approved Groundwater Sustainability Plan (GSP). The legislation's intent is to provide for sustainable management of groundwater basins, to enhance local management of groundwater, to establish minimum standards for sustainable groundwater management, and to provide local groundwater agencies with the authority and the technical and feasible assistance necessary to manage groundwater. SGMA defines "sustainable groundwater management" as the "management and use of groundwater in a manner that can be maintained during the planning and implementation horizon without causing undesirable results,"¹⁰ and defines "undesirable results"¹¹ 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

groundwater basins (Salinas River and Pajaro Valley) located within the North County LCP area. Thus, the three reports share different geographic scopes, but all quantify overdraft within the project area.

⁹ State of the Salinas River Groundwater Basin, page ES-16.

¹⁰ California Water Code Section 10721(v).

¹¹ California Water Code Section 10721(x)(1-6).

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.”¹²

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 118¹³ 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, 2022.¹⁴

In January 2016, DWR officially designated portions of the Salinas River Groundwater Basin, including the area in which the proposed project is located, as “critically overdrafted” (see map of DWR-designated “critically overdrafted” groundwater basins in **Exhibit 6**). Since the Salinas River Groundwater Basin has been deemed a “High Priority” basin in Bulletin 118 since 1980, the basin will be deemed in “critical conditions of overdraft” and required to have an approved GSP by 2020.

Thus, all four comprehensive information sources (i.e., the 1995 Fugro West study, the 2002 CWRMP, the 2015 State of the Salinas River Groundwater Basin report, and the SGMA) conclude that North County’s groundwater basins, including the Highlands South sub-basin from which the proposed project would receive its 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

¹² California Water Code Section 10721(w).

¹³ 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.

¹⁴ All other non-High and non-Medium priority groundwater basins are encouraged, but not required, to prepare a GSP.

affirmatively requiring denial of low LCP (and Coastal Act) priority residential subdivisions. In essence, when essential services are limited, including when groundwater basins are overdrafted and not within their safe yield extraction level, as is the case in North County, the LCP prioritizes certain land uses over others. Specifically, the LCP states that agriculture and coastal-dependent development have priority over residential development, particularly residential subdivisions, in order to ensure that non-priority land uses do not divert scarce water supplies at the expense of priority uses. Indeed, IP Section 20.144.140.A.1 instructs that, “where services are determined not to be adequate for the proposed non-coastal dependent use, *only coastal dependent uses shall be permitted*” (emphasis added). In essence, this IP standard affirmatively requires the reviewing authority to deny a non-priority use (including residential subdivision) when services are found to be inadequate, as it is with respect to water supply in North County.

The proposed project is a residential subdivision that would increase water demand by an estimated 0.8 AFY for new residential development 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 indicates that, in its current state, the basin cannot supply water over the long term in a manner that would not impair the basin and the resources that depend on it, and thus a project that would be served by it cannot be found to have a long-term, adequate water supply. Therefore, the proposed project is inconsistent with LUP Policies 2.5.1 (which requires development to be served by identifiable, available, long-term water supplies) and 4.3.5.7 (which limits new subdivisions and development until adequate long-term water supplies are assured).

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

Alternatives and Impact Mitigation

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

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, complete water usage offsets as mitigation are not appropriate nor allowable under the core LCP policies described above, nor are they realistically feasible in Northern Monterey County in order to be able to find consistency with IP Section 20.144.070.E.11. While some past projects have proposed and been approved to mitigate their water demands by offsetting their anticipated water usage via retrofitting programs (i.e., requirements to offset a proposed development's water usage through reducing a commensurate amount of water use offsite), there are multiple concerns that have subsequently emerged with this approach, including that they do not address nor are they consistent with other LCP requirements that only allow a level of development commensurate with the safe yield groundwater extraction level (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.¹⁵ 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 as they don't affect 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, as described above, there are no project modifications and/or mitigations available to ensure that the proposed project can be served by groundwater at its safe yield level. As such, and because this IP standard makes an affirmative statement that "development *shall not be permitted*" (emphasis added) when these two findings are made, the proposed project must be denied.

County LCP Interpretations

While the County does not dispute the significant overdraft situation in North County, 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

¹⁵ 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, a water provider in the North County area, concluded that there are no significant retrofit candidates or opportunities remaining in North Monterey County. Therefore, the District and the Commission were unable to approve a retrofit program for that project, and the Commission ultimately denied an extension of the CDP in October 2016 (CDP extension number A-3-MCO-04-054-E3). That denial was based in part on changed circumstances affecting the project's LCP consistency because of the inability to offset its water usage. Given this fact, and because such an offset program would not address overall basin safe yield requirements, a water retrofit/offset program is not an appropriate or feasible mitigation approach for the currently proposed subdivision project or others like it.

other words, and notwithstanding evidence of County actions in other cases to the contrary,¹⁶ 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 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.¹⁷

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.1¹⁸ and IP Section 20.64.180.D¹⁹). 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 seems to suggest that the subdivision is approvable as a matter of right. 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 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

¹⁶ 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 (and lifted only 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 2009.

¹⁷ See, for example, Commission findings and actions on CDP A-3-MCO-04-054 (2004), LCP amendment MCO-MAJ-1-06 (2008), A-3-MCO-04-054-E3 (2016), and A-3-MCO-05-027 (2017).

¹⁸ 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).

¹⁹ 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).

subsequently in 2002, both of which documented significant overdraft in North County).²⁰ 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 simple mathematical application of maximum zoning to overall acreage without consideration of any resource constraints that may be applicable through other LCP policies) may be allowed while the County pursued efforts to quantify the overdraft problem and arrive at a solution. The policy establishes this maximum as a cap until a new water supply is secured or once safe yield is achieved, at which time this cap could be increased via LCP amendment. However, that is a maximum threshold, and LUP Policy 2.5.3.A.2 includes a caveat that allows this cap to be reduced to limit groundwater use to the safe-yield level once it was determined, or if required in order to protect agricultural water supplies.

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 or 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 other 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 nor the facts surrounding the Commission's LCP certification in this case.

That is not to say that Policy 2.5.3.A's buildout limits cannot be allowed in the future should groundwater aquifers be replenished and overdraft eliminated (or if a specific project proposal somehow satisfies LCP coastal resource policies, including those relating to groundwater use); it is simply a recognition that the LCP as a whole does not allow additional residential subdivisions at this time for this specific project proposal under the given facts. 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. The LCP states that the overarching objectives are to both 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, the LCP seeks to protect groundwater, water supply, and water quality by requiring even priority agricultural development to address and employ water

²⁰ The North County LUP was certified in 1982, and the LCP was certified in 1988.

conservation measures and by ensuring residential subdivision is only allowed when generated water demand can be met without exceeding safe yield levels of the groundwater basin. 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.

Conclusion

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

2. Environmentally Sensitive Habitat Areas

The LCP 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:

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

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

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

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

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

North County IP Section 20.144.040.B.3. *New land uses and new subdivisions on parcels within 100 feet of environmentally sensitive habitats, as identified on the current North County Environmentally Sensitive Habitat resource map, other resource information, or planner's on-site investigation, shall not be permitted where they will adversely impact the habitat's long-term maintenance, either on a project or cumulative basis. As such, a project shall only be approved where sufficient conditions of approval are available, such as for siting, location, design, setbacks, and size, which will mitigate adverse impacts to and allow for the long-term maintenance of the habitat, as determined through the biological survey. Also, a project shall only be approved where the decision-making body is able to make a determination that the project will not set a precedent for continued land development which, on a cumulative basis, could degrade the habitat.*

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

Thus, the LCP includes strong protections for ESHA, including maritime chaparral and oak woodland areas, both of which are 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); and requires development within oak woodland and maritime chaparral areas to maximize protection of these habitats, and to be sited to minimize disruption of vegetation and habitat loss (LUP Policies 2.3.3.A.2 and 2.3.3.A.4). Finally, the LCP requires the maintenance of large areas of continuous and undisturbed ESHA, and only allows low intensity recreation, education, or resource conservation uses within such areas (LUP Policy 2.3.2.4).

Analysis

The project site is a rural, vacant and undeveloped property, which the project's Initial Study characterized as consisting of "predominantly oak woodland and chaparral with rare or uncommon plants such as Eastwood's golden fleece, Monterey ceanothus, Pajaro manzanita, and the Monterey spine flower."²¹ Of the parcel's 5.52 acres, 4.07 acres constitute oak woodland and 1.07 acres constitute central maritime chaparral habitat. Thus, nearly the entire site is ESHA per the LCP. Furthermore, 1.53 acres of the parcel's slopes over 25 percent and chaparral habitat are protected by a recorded scenic and conservation easement that doesn't allow for residential development. The Initial Study found that the project's approved access roads, utilities, and building envelopes would result in removal of 121 coast live oaks, nine Monterey pines, and 0.87 acres of central maritime chaparral ESHA. And project plans indicate that a similar amount of oak woodland ESHA (i.e., about an acre) would be removed for residential development as well. Residential development is not an allowed use 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 that prohibit subdivisions when they will adversely impact ESHA (LUP Policies 2.3.2.1 and 2.3.2.3 and IP Sections 20.144.040(B)(3) and (B)(4)). Furthermore, while LUP Policy 2.3.2.3 requires development adjacent to ESHA to be compatible with the long-term maintenance of the resource, which typically consists of requisite buffers, the proposed project does not address, quantify, nor require any buffer between the approved development and the identified sensitive habitats. The project as proposed is thus inconsistent with LCP ESHA buffer requirements as well. Finally, the removal of 121 coast live oak trees does not conform with LCP policies that seek to minimize such tree loss (LUP Policy 2.3.3.A.4), or with policies that do not allow subdivision and residential development within large areas of continuous undisturbed land, as is the case here (LUP Policies 2.3.2.1, 2.3.2.3, and 2.3.3.A.2; IP Section 20.144.040.B.3).

²¹ Mayr-Desmond Subdivision Initial Study-PLN000260-April 3, 2006, page 15. Central maritime chaparral consists of Pajaro manzanita, Hooker's manzanita, Monterey ceanothus, and black sage. Pajaro manzanita and Hooker's manzanita are listed as rare (List 1B) by the California Native Plant Society (CNPS), and Monterey ceanothus is considered a plant of limited distribution (List 4) by CNPS.

Finally, it is worth noting that the proposed project is not consistent with the terms and conditions governing this property pursuant to CDP MS88-10, which was approved by Monterey County in 1991 (see **Exhibit 5** for this CDP and its conditions). As previously described, that CDP authorized the subdivision of a larger 16.724-acre parcel to create the subject parcel and two other parcels. That approval was subject to numerous conditions, including that all future building sites and driveways/access roads be located off of ridgelines and where slopes are less than 25 percent, and where there shall be minimal impact on ESHA (Condition 37). To implement such requirements, the CDP included conditions requiring access to the three parcels to be limited to the southeastern portion of the site where an existing utility easement was located (Condition 24), that natural vegetation be left intact and undisturbed, but for normal construction of future residences and their ancillary development (Condition 26), and that a scenic easement be conveyed to the County over those portions of the property where the slope exceeds 25 percent and where maritime chaparral exists (Condition 19). Since this project proposes to further subdivide this parcel and build additional infrastructure to accommodate an additional future residence, doing so would be inconsistent with the previously approved CDP's requirements. For example, building a new access road/driveway at the northwestern property boundary along Desmond Road is inconsistent with Condition 24's requirement to solely allow access within the existing utility easement on the southeast portion of the property from Castroville Boulevard (Condition 24), and the additional proposed vegetation removal and land disturbance (including removal of some two acres of ESHA overall) to accommodate the additional residence is inconsistent with Condition 26's requirement to leave all natural vegetation intact (but for the construction of the one authorized residence on the existing parcel that is the subject of this appeal). As such, although CDP MS88-10 is not the standard of review here, the proposed project appears to be inconsistent with the terms and conditions of the 1991 CDP, which was not amended to provide for the proposed project.

Conclusion

The project proposes to remove some two acres of oak woodland and maritime chaparral ESHA, including 121 individual coast live oak trees, and is thus inconsistent with the LCP's habitat protection policies. These project inconsistencies require project denial for this reason in addition to the water supply problems described above.

Any resubmitted development proposal (e.g., single family development without a subdivision component) must address LCP habitat protection policies through siting and design alternatives, including avoidance of development within identified habitat areas with adequate buffers. Furthermore, even if the project were consistent with other LCP policies and standards with respect to water supply and ESHA policies, the applicants would still need to apply to Monterey County to amend the terms and conditions of CDP M88-10.

3. Water Quality

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

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

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

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

- a. Existing sources of erosion shall be reduced through diligent enforcement of the County's most current Erosion Control Ordinance. The County shall institute a system of fines sufficiently large or shall take other actions to compel compliance by landowners or farm operators in violation of the ordinance.*
...
- c. Erosion control plans shall be required for all new development as set forth in the Erosion Control Ordinance. These plans shall incorporate measures for on-site reduction of bare ground and maximum retention of storm water runoff resulting from impervious surfaces. The plans shall be reviewed by the Soil Conservation Service, and shall be approved by the Director of Building Inspection or by the Planning or Public Works Director prior to issuance of any permits. In reviewing plans in the Coastal Zone, certification will be made for the following, in addition to other requirements of the Erosion Control Ordinance:*
 - That the amount of bare ground in the proposed development, is zero, or when combined with the bare ground from existing and committed land use, shall not exceed the Land Disturbance Targets shown on Table 1.*
 - That measures incorporated in the site plan to retain storm water runoff shall be designed to contain runoff resulting from a 20 year recurrence interval storm.*
 - That measures designed to reduce the amount of bare ground shall maintain a continuous vegetation cover throughout the year. Other types of ground cover may be used where it can be shown that vegetation is not suitable.*...
- d. All land clearing shall be consistent with the provisions of the County's Erosion Control Ordinance. No land clearing or grading shall take place between October 15 and April 15 in Watershed Restoration Areas or Critical Erosion Areas or other high erosion hazard areas unless specifically authorized by the Director of Building Inspection. Such authorizations shall generally be confined to agricultural operations in areas designated in this plan for Agricultural Preservation or Agricultural Conservation uses.*
- e. Maximum retention of vegetation cover shall be required for all new development. In particular, natural vegetation should be retained to the fullest extent possible through*

careful siting and construction of new development.

- f. Property owners are encouraged to cooperate with the County in establishing Conservation Easements over areas of natural vegetation and on Critical Erosion Areas.*

Analysis

The proposed project would result in two parcels which could be developed in the future with two new residences (under separate CDPs), along with commensurate urban infrastructure including roads, driveways, and other utilities, that will lead to the conversion of portions of the undeveloped land on the project site into new impervious surfaces. Such development, as well as drainage and runoff from the completed projects, could potentially result in increased sedimentation, increased oil and heavy metals from vehicles, and an overall decrease in water quality, including for nearby Elkhorn Slough. Furthermore, the project proposes to remove 121 coast live oak trees, nine Monterey pine trees, and 0.87 acres of central maritime chaparral, inconsistent with LUP Policy 2.5.3.C.6(e)'s requirement to retain the maximum amount of vegetation for all new development in order to address potential erosion concerns.

While some of these water quality concerns could potentially be addressed by siting and design alternatives, including avoidance of structural development within identified oak woodland and chaparral areas, as well as requirements for water quality protection both during construction (e.g., construction best management practices, prohibiting building a new driveway, etc.) as well as post-construction (e.g., low-impact development strategies, bioswales, infiltration requirements, and erosion control plans consistent with LUP Policy 2.5.3.C.6), the project's inconsistencies with LCP water supply/groundwater resource and ESHA 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).

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

4. Visual Resources and Community Character

The North County LUP includes numerous policies aimed at protecting visual resources in North County, as well as policies that seek to retain North County's rural, agricultural character. Applicable policies include:

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

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

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

North County LUP Policy 2.5.3.C.6.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 residential subdivision and associated infrastructure into an undeveloped and wooded lot (see **Exhibit 2** for area photos). The project proposes extensive grading and landform alteration on a highly sloping parcel, including significant removal of coast live oak and central maritime chaparral areas, to convert the area's scenic habitats into engineered, structural elements, including new access roads and infrastructure. The proposed project is thus inconsistent with LUP Policy 2.2.1 (which requires screening and visual impact minimization) and LUP Policy 2.2.2.3 (which requires new roads and lots from subdivisions to minimize tree removal and grading). Furthermore, the project does not utilize the existing access road from Castroville Boulevard, but rather a new access road from Desmond Road, inconsistent with LUP Policy 2.2.3.4 which prioritizes use of existing roads in lieu of building new ones (as well as inconsistent with the terms of the 1991 CDP that required access to solely be from Castroville Boulevard – see previous discussion on this point). Finally, the project's significant vegetation removal, including 121 coast live oak trees, nine Monterey pine trees, and 0.87 acres of central maritime chaparral, is inconsistent with LUP Policy 2.5.3.C.6(e)'s requirement to maximize vegetation cover and retain natural vegetation to the fullest extent possible.

Conclusion

The project's inconsistencies with LCP water supply and ESHA policies render project modifications (including alternatives that seek to retain vegetation and utilize the existing driveway) moot (because the project is still independently and irreconcilably inconsistent with LCP water supply/groundwater resource and ESHA policies).

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

5. Takings

In addition to evaluating the proposed development for consistency with the certified LCP, 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 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 Applicants' property could constitute a taking. As discussed further below, the Commission finds that under these circumstances, denial of the proposed project likely would not, because the takings claim is not yet ripe, and because the Applicants already enjoy economic uses on the property.

General Principles of Takings Law

The Takings Clause of the Fifth Amendment of the United States Constitution provides that private property shall not “be taken for public use, without just compensation.”²² Similarly, Article 1, Section 19 of the California Constitution provides that “[p]rivate property may be taken or damaged for public use only when just compensation...has first been paid to, or into court for, the owner.” Despite the slightly different wordings, the two “takings clauses” are construed congruently in California, and California courts have analyzed takings claims under decisions of both state and federal courts (*San Remo Hotel v City and County of San Francisco* (2002) 27 Cal. 4th 643, 664.). The “damaging private property” clause in the California Constitution is not relevant to the current analysis. Because Section 30010 is a statutory bar against an unconstitutional action, compliance with state and federal constitutional requirements concerning takings necessarily ensures compliance with Section 30010.

The United States Supreme Court has held that the taking clause of the Fifth Amendment proscribes more than just the direct appropriation of private property (*Pennsylvania Coal Co. v. Mahon* (1922) 260 U.S. 393, 415 (“*Pennsylvania Coal*”)) [stating “The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking”]]. Since *Pennsylvania Coal*, most of the takings cases in land use law have fallen into two categories (*Yee v. City of Escondido* (1992) 503 U.S. 519, 522-523). The first category consists of those cases in which government authorizes a physical occupation of property (*Loretto v. Teleprompter Manhattan CATV Corp.* (1982) 458 U.S. 419, 426). The second category consists of those cases whereby government “merely” regulates the use of property and considerations such as the purpose of the regulation or the extent to which it deprives the owner of economic use of the property suggest that the regulation has unfairly singled out the property owner to bear a burden that should be borne by the public as a whole (*Yee*, 503 U.S. at 522-523). Moreover, a taking is less likely to be found when the interference with property is an application of a regulatory program rather than a physical appropriation (*Keystone Bituminous Coal Ass’n. v. DeBenedictis* (1987) 480 U.S. 470, 488-489, fn. 18). Here, because the current development proposal does not involve physical occupation of the applicant’s property by the Commission, the Commission’s actions are evaluated under the standards for a regulatory taking.

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).

²² 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).

(*emphasis in original*); *Riverside Bayview Homes*, (1985) 474 U.S. 121, 126 (regulatory takings occur only under “extreme circumstances.”²³).

The second circumstance in which a regulatory taking might occur is under the multi-part, *ad hoc* test identified in *Penn Central Transportation Co. (Penn Central) v. New York* (1978) 438 U.S. 104, 124. This test generally requires at a minimum an examination into the character of the government action, its economic impact, and its interference with reasonable, investment-backed expectations (*Id.* at 124; *Ruckelshaus v. Monsanto Co.* (1984) 467 U.S. 986, 1005). In *Palazzolo v. Rhode Island* ((2001) 533 U.S. 606, 617), the Court again acknowledged that the *Lucas* categorical test and the three-part *Penn Central* test were the two basic situations in which a regulatory taking might be found to occur (*see Id.* at 632 (rejecting *Lucas* categorical test where property retained value following regulation but remanding for further consideration under *Penn Central*)).

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

Denial Would Not Result in a Regulatory Taking

As analyzed above, application of the LCP’s water supply/groundwater resource and ESHA policies and standards require denial of the proposed subdivision on the grounds that the project cannot be served by an identifiable, available, and long-term water supply at the present time, and because it would allow prohibited development in ESHA, and it is likely the case that, even for a revised project proposing a residential subdivision for this property, denial would be appropriate for the same LCP inconsistencies with respect to water supply and ESHA policies. However, based on the law and facts analyzed below, it is unlikely that such a denial of development would constitute an unconstitutional taking in this case because the Applicant here proposes a subdivision and two residential development areas on a single parcel that is encumbered by significant ESHA areas and that is located in an area with a lack of water to serve development. Such a proposal goes well beyond what might need to be considered in the event a takings scenario is presented, and the Applicants have not yet submitted an alternative/revised project application for a reduced scale project, such as a single single-family development without a subdivision, for consideration by the County. The Applicants have also not explored

²³ 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).

with the County what entitlements may remain under the 1991 CDP to this effect. Thus, a takings claim is not yet ripe.

At this time, application of the LCP's water supply and groundwater resources policies require denial of new residential subdivisions that require a new water supply in North Monterey County. Perhaps most importantly for determining whether denial of the proposed project would result in an unconstitutional taking, the Applicants own the existing legal lot of record as well as two adjacent parcels (which were all created through a previous 1991 subdivision and which are both developed with single-family residences), and may potentially be able to build a single-family residence on this parcel as well.²⁴ Therefore, under a *Lucas* standard, denial of the Applicants' proposed project will not deny the owner of all economically viable use of the land. For substantially similar reasons, under a *Penn Central* standard, denial of the proposed project does not result in substantial economic impact to the Applicants in relation to the property at issue considering the potential economic uses on the property. Regarding the character of the governmental action, denial of the project ensures consistency with LCP policies (which itself is a valid local implementation of Coastal Act requirements) that strictly limit new residential development in North Monterey County based on County concerns over water supplies and groundwater resources. Regarding the Applicants' reasonable investment-backed expectations, the Applicants cannot have reasonably expected to subdivide this parcel further for residential purposes as proposed here given the numerous conditions and requirements of CDP MS88-10 restricting this parcel upon its creation in 1991, as well as the LCP policies governing land use in effect at the time of purchase.

The California Court of Appeal for the Fourth District reasoning in *Charles A. Pratt Construction Co., Inc., v. California Coastal Commission*, (2008) 162 Cal. App. 4th 1068 (*Pratt*) is also instructive here. In *Pratt*, the plaintiff argued that the Coastal Commission's decision to deny a CDP for the plaintiff's proposed project based on inconsistencies with LCP water requirements was an unconstitutional taking (*Id.* at 1081). The Court of Appeal upheld the Commission's denial of the CDP and found that it was not an unconstitutional taking. It stated that the plaintiff-applicant failed to cite any authority that: (1) denial of a development permit because of water supply constitutes a taking; or (2) that the setting of priorities for water use in the face of an insufficient supply constitutes a taking (*Id.*). The court stated, "Even where the lack of water deprives a parcel owner of all economically beneficial use, it is the lack of water, not a regulation that causes the harm" (*Id.*). Finally, the court noted that the plaintiff "is not entitled to whatever project it desires" and "has yet to submit proposals that contemplate a reduction in the size, scope, configuration or density of the project" (*Id.* at 1082). The court's reasoning in *Pratt* is reflective of the reasons why denial here would not constitute a taking: (1) denial does not foreclose the possibility that a project proposal of reduced size, scope, configuration, and density may be approved as LCP consistent (i.e., primary single-family residence without subdivision that avoids ESHA and meets other LCP requirements); and (2) the Applicants have not yet

²⁴ Assuming that the so-called "unitary theory" does not apply here such that all three contiguous parcels commonly held by the Applicants should be considered a single lot for purposes of takings analysis (*see generally District Intown Properties v. District of Columbia* (1999) 198 F.3d 874), the Applicants may still be able to enjoy beneficial economic use of the property at issue without subdividing it including because the certified LCP would potentially allow for a primary single-family residence to be built if it can avoid ESHA and be served by adequate water and meet other relevant LCP requirements.

submitted such a proposal, so any takings claim would be premature until the County considers such a proposal.

In sum, the Commission's decision to deny the proposed development, on the grounds that it is inconsistent with the LCP's water supply/groundwater resource and ESHA policies, would not result in an unconstitutional taking. Although the regulations require denial of the proposed new residential subdivision at this time, the Applicants own two adjacent parcels, both which have existing single-family residences, and may apply to the County to build a single-family residence on the current parcel under consideration, thereby affording an economic use of the property. Any takings claim is therefore premature.

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.

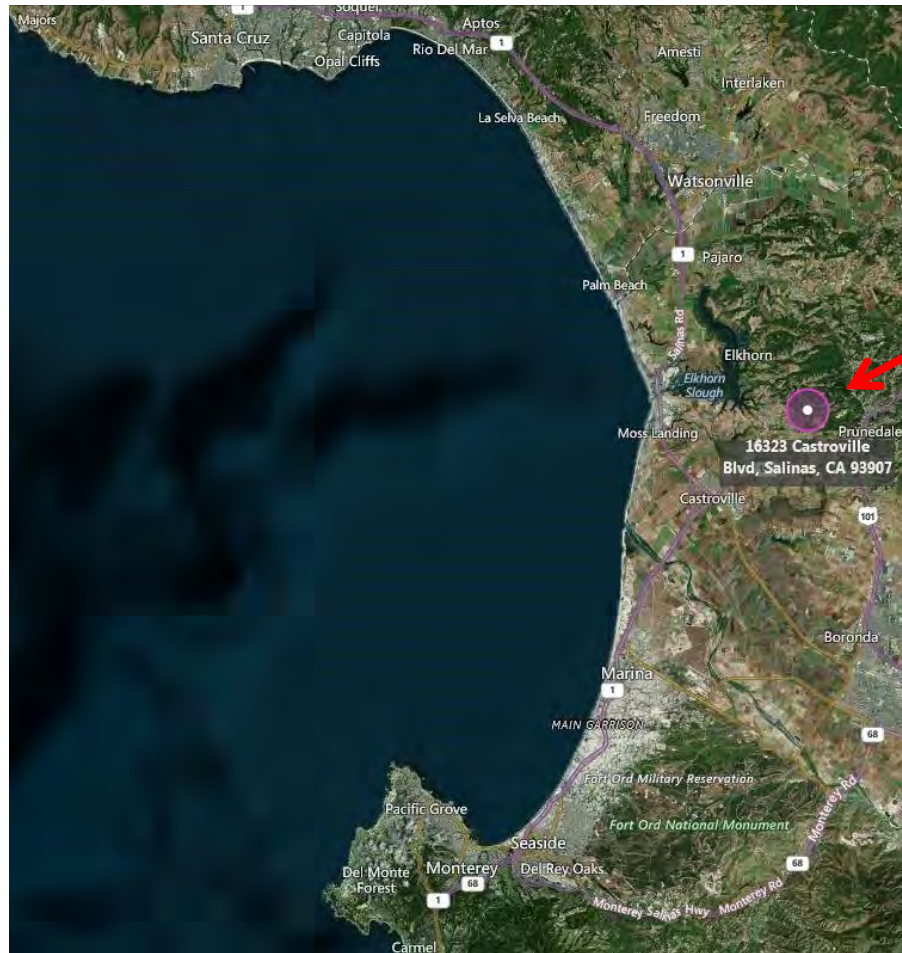
APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

1. Fugro West, Inc., 1995. *North Monterey County Hydrogeologic Study, Vol. 1: Water Resources*. Prepared for Monterey County Water Resources Agency, October 1995.
2. Monterey County Water Resources Agency and EDAW, Inc., 2002. *North Monterey County Comprehensive Water Resources Management Plan*, January 2002.
3. Monterey County Resource Management Agency and Brown and Caldwell. *State of the Salinas River Groundwater Basin*, January 2015.
4. Mayr-Desmond Subdivision Initial Study-PLN000260-April 3, 2006.

APPENDIX B – STAFF CONTACT WITH AGENCIES AND GROUPS

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

Location Map



Project Location

Parcel Map

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



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

Site Photo

Central Maritime Chaparral



Oak Woodland

Site Photo

Existing Road/Utility Easement



Proposed New Driveway to Parcel "A"

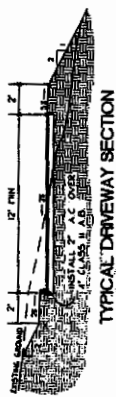
Proposed Building Site for Parcel "A"

Proposed Building Site for Parcel "B"

Proposed New Driveway to Parcel "B"

Exhibit 3 (Proposed Project Plans)
A-3-MCO-06-044 (Mayr Subdivision)
Page 1 of 2

- 1) PROPOSED DEVELOPMENT: LOTS FOR SALE
- 2) WATER, MUTUAL SYSTEM
- 3) ZONING: LOR 2.5 (CZ)
- 4) SEWAGE DISPOSAL: INDIVIDUAL SEPTIC SYSTEMS
- 5) TREE PLANTING: NONE PROPOSED
- 6) EROSION CONTROL: THE PROVISIONS OF CHAPTER 16.05, THE MONTEREY COUNTY CODE SHALL BE COMPLIED WITH
- 7) PRIOR ACTIVITY: NONE - UNIMPROVED, UNDEVELOPED



BENCHMARK:
IRON CO BRASS DISC "CASTRO BLVD 3"
ON NW CORNER OF CONCRETE DROP INLET
ELEVATION 127.00

CASTROVILLE BOULEVARD

EROSION CONTROL PLANNING

[illegible]

21 During construction, never store oil and fill materials where it may wash into streams or drainage ways. Should weather threaten the stored materials it should be covered with plastic or runoff retention facilities provided to divert the storm water prior to release.

EC.3 Revegetation and Planting:
3.1 Revegetate and protect exposed soils by October 15. Use

3.3 ACTUAL GRADING SHALL BEGIN WITHIN 30 DAYS OF VEGETATION REMOVAL OR THE AREA SHALL BE PLANTED TO CONTROL EROSION.

4.] In the event that any unusual conditions are encountered during grading operations which are not covered by the soil investigation or the specifications, the Soils Engineer shall be immediately

NOTED WITH THE ADDITIONAL RECOMMENDATIONS MAY BE MADE.

GRACE ENGINEERING & GEOLOGY, INC.
541 BRINKEN AVENUE
SALINAS, CALIFORNIA 95001

(33) 422-6119

PARCEL SUMMARY TABLE

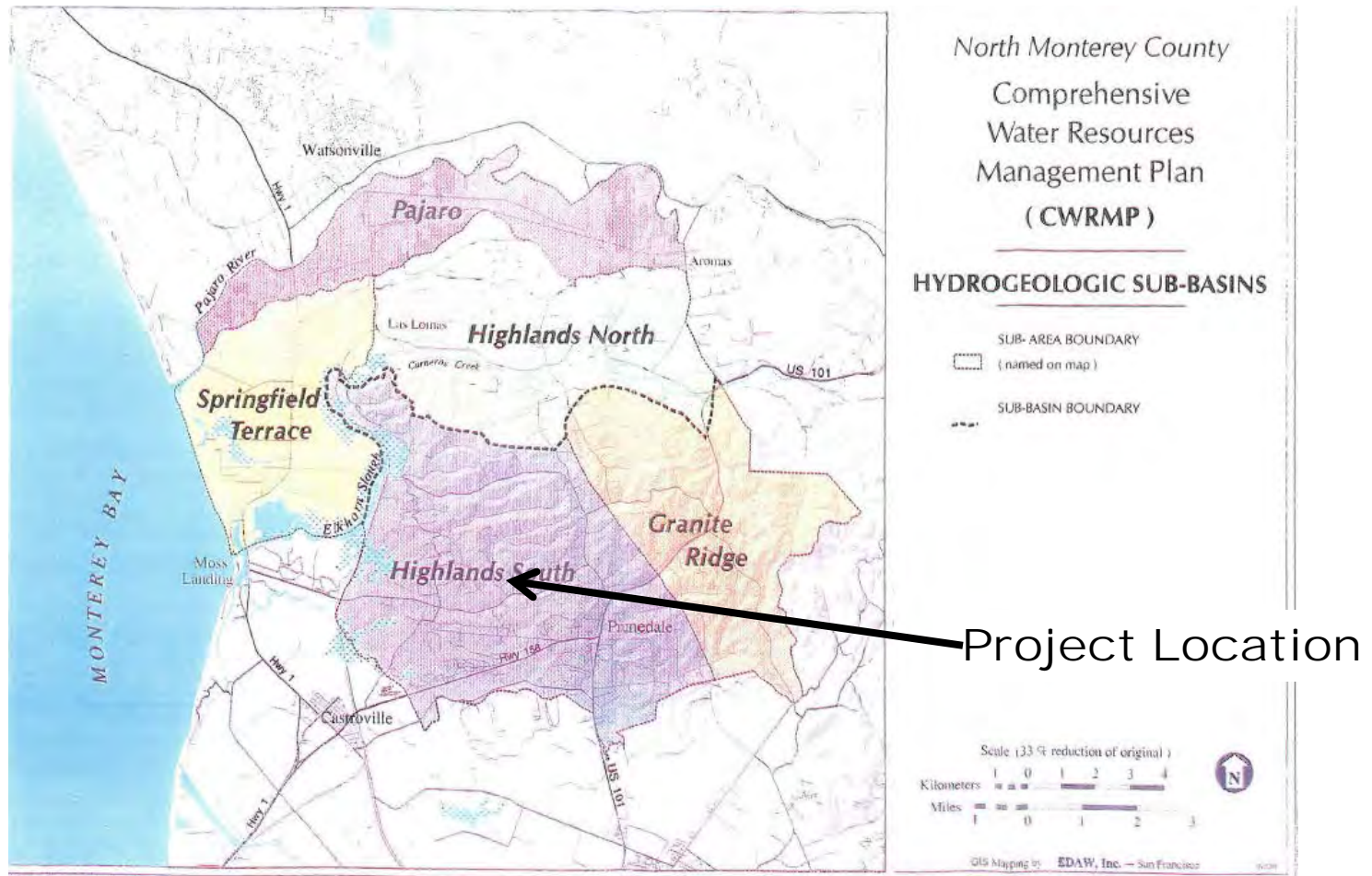
	CROSS AREA	AREA IN SCIENCE ELEMENT, 10% SLOPES SENSITIVE HABITAT AND OTHER ELEMENTS	NET AREA
LOT "A"	2.6 ACRES	1.3% ACRES	1.50 ACRES
LOT "B"	2.67 ACRES	1.41 ACRES	1.2% ACRES

Shaded areas are covered by scenic & conservation easement pursuant to 1991 County CDP.

Proposed Parcel

Proposed Parcel

North Monterey County Groundwater Sub-basins

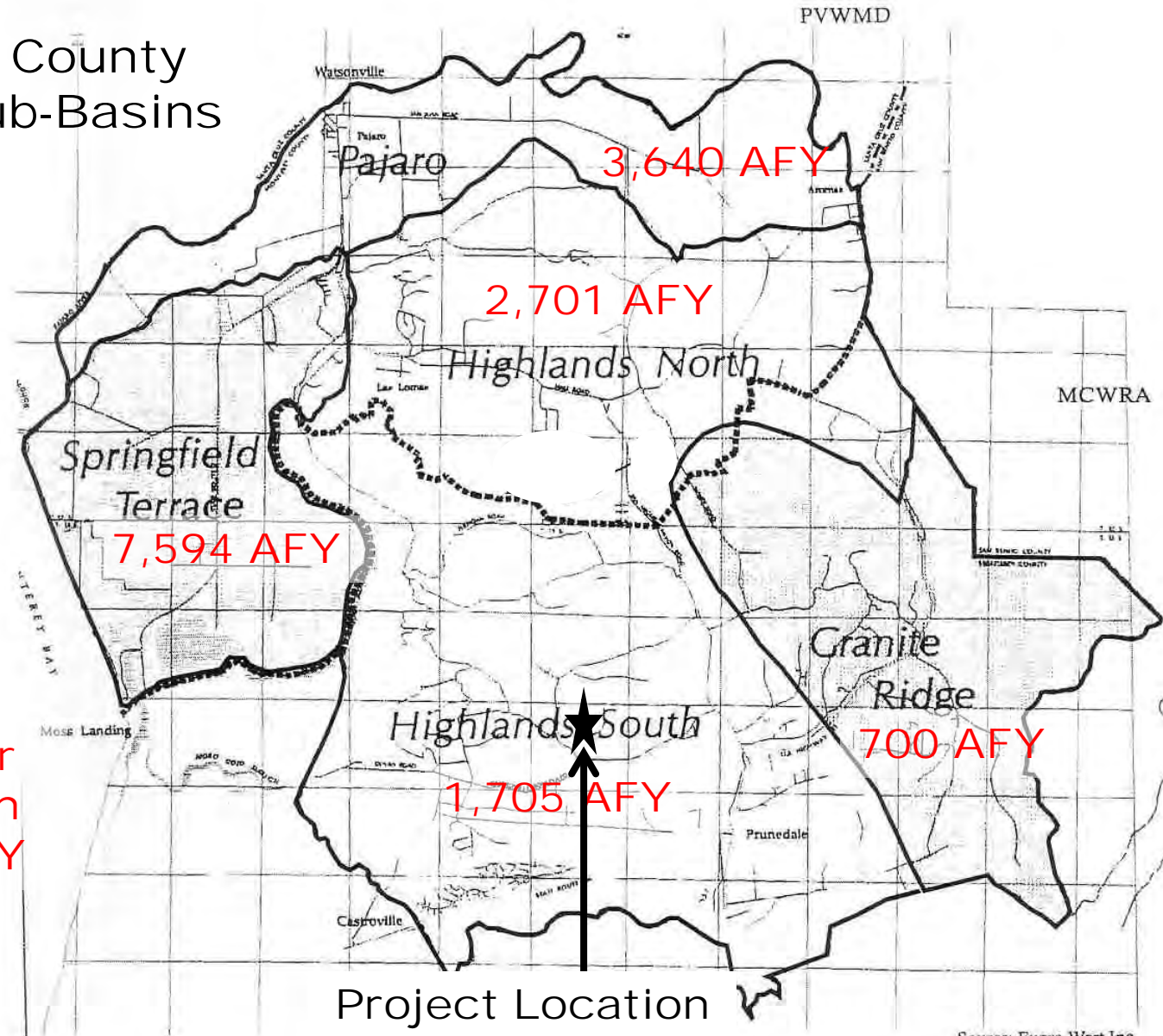


North Monterey County Hydrogeologic Sub-Basins

#AFY=

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

Total Groundwater
Overdraft for North
County=16,340 AFY



Source: Fugro West Inc.



1 inch = 1.5 miles



PVWMD / MCWRA Boundary
Exhibit 4 (North Monterey County Groundwater Sub-basins and Overdraft Amounts)



Subarea Boundaries

A-3-MCO-06-044 (Mayr Subdivision)

Page 2 of 2

MINOR SUBDIVISION COMMITTEE
COUNTY OF MONTEREY, STATE OF CALIFORNIA

RESOLUTION NO. 91-034

MINOR SUBDIVISION # MS88-10

A.P.# 129-071-43

FINDINGS AND DECISION

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

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

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The remaining buildout figure is 645 new lots or units. This figure shall include senior citizen units, caretaker units, multiple family dwellings, employee housing, and lots created through subdivision approved after County assumption of permitting authority, but shall exclude development of a single family dwelling on a vacant lot of record. (Ref. Policy 2.5.3.A.2 and 4.3.3)

EVIDENCE: North County Land Use Plan

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20. That property owner agrees as a condition of the approval of this permit to defend at his sole expense any action brought against the County because of the approval of this permit. The property owner will reimburse the County for any court costs and attorney's fees which the County may be required by a court to pay as a result of such action. County may, at its sole discretion, participate in the defense of any such action; but such participation shall not relieve applicant of his obligations under this condition. Said agreement shall be recorded prior to the issuance of building permits or use of the property. (Planning and Building Inspection)

21. Pursuant to the State Public Resources Code and the State Fish and Game Code, the applicant shall pay a fee to be collected by the County of Monterey in the amount of \$1,275. This fee shall be paid prior to filing of the Notice of Determination. Proof of payment shall be furnished by the applicant to the Director of Planning and Building

Inspection prior to the filing of a parcel map. (Planning and Building Inspection)

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

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

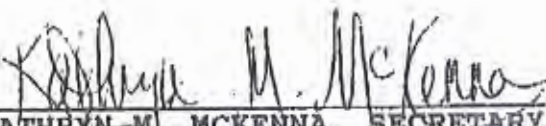
shall be furnished to the Director of Planning and Building Inspection prior to issuance of building permits or commencement of the use. (Planning and Building Inspection)

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

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

NOES: None

ABSENT: Brandau, Haines


KATHRYN-M. MCKENNA, SECRETARY

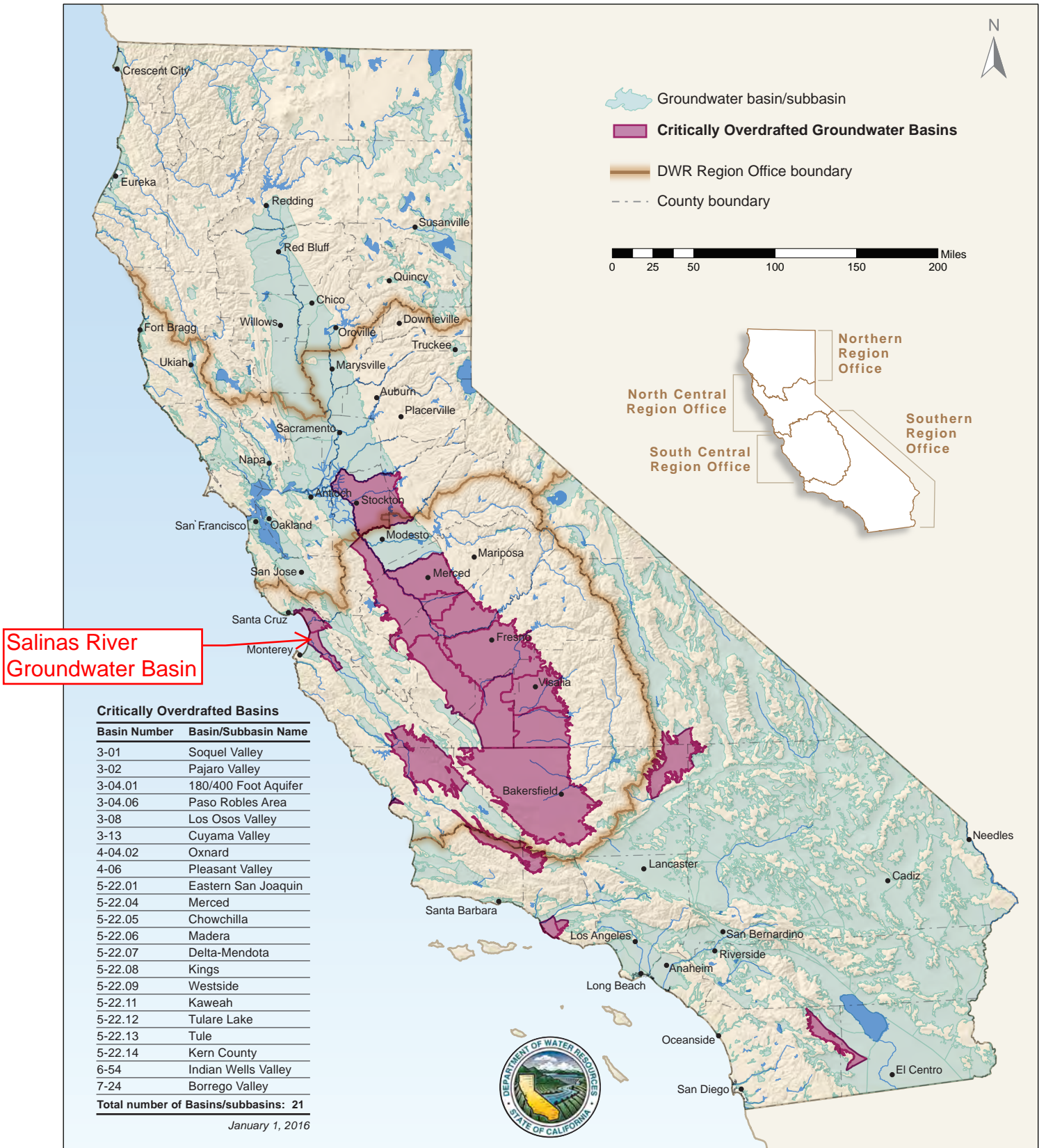
COPY OF THIS DECISION WAS MAILED TO APPLICANT ON: JUN 2 1 1991

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

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

LIA2

Critically Overdrafted Groundwater Basins – January 2016



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

