

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

In the matter of the application of:

**RIO VISTA GROUP LLC (PLN210152)**

**RESOLUTION NO. 22--**

Resolution by the Monterey County Board of Supervisors:

- 1) Granting in part the appeal of Rio Vista Group LLC from the Planning Commission's denial of a Combined Development Permit consisting of: 1) a Use Permit to allow construction of four 16,286 square foot two-story apartment buildings totaling 60 units for agricultural workforce housing and 1 manager unit, and associated site improvements including 17,500 cubic yards of grading; and 2) a Variance to increase the required building site coverage from 5% to 27%;
- 2) Adopting a Mitigated Negative Declaration pursuant to Section 15074 of the CEQA Guidelines;
- 3) Approving a Combined Development Permit for a revised project consisting of:
  - a. A Use Permit to allow the construction of three 16,286 square foot two-story apartment buildings totaling 45 units for agricultural workforce housing and 1 manager unit, and associated site improvements including 15,000 cubic yards of grading;
  - b. An Administrative Permit to allow a 10% setback reduction; and
  - c. A Variance to increase the required building site coverage from 5% to 20%; and
- 4) Adopting a Condition Compliance and Mitigation Monitoring and Reporting Plan.

[PLN210152, RIO VISTA GROUP LLC, 51, 53, 55 & 57 Susan Street, Royal Oaks, North County Area Plan (APN: 117-361-016-000)]

**The Appeal by RIO VISTA GROUP LLC from the decision by the Monterey County Planning Commission came on for public hearing before the Monterey County Board of Supervisors on December 13, 2022. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Board of Supervisors finds and decides as follows:**

## FINDINGS

- 1. FINDING:** **PROCESS** - The County has received and processed a Combined Development Permit (PLN210152) in compliance with applicable procedural requirements.
- EVIDENCE:**
- a) On October 14, 2021, Avila Construction Group on behalf of the property owners, Rio Vista Group LLC (“applicant”), submitted an application for a Combined Development Permit consisting of a Use Permit and Variance to HCD-Planning staff. This application was filed to allow construction of four 16,286 square foot two-story apartment buildings totaling 60 units for agricultural workforce housing and 1 manager unit, and associated site improvements including 17,500 cubic yards of grading, and a Variance to increase the required building site coverage from 5% to 27%.
  - b) On November 12, 2021, the County deemed the application incomplete and requested in writing additional information for review of the application.
  - c) On November 23, 2021, the applicant resubmitted information and the County deemed the application complete on December 23, 2021.
  - d) The County prepared an Initial Study resulting in a Mitigated Negative Declaration for the project and circulated it for public comment from December 23, 2021 through January 24, 2022.
  - e) The project was reviewed by the North County Land Use Advisory Committee (LUAC) on December 1, 2021 and February 2, 2022, and by the Agricultural Advisory Committee (AAC) on January 27, 2022.
  - f) On February 9, 2022, the Planning Commission considered the proposed project (four agricultural housing units) and continued the item to a date uncertain to allow the applicant to conduct more public outreach, to provide additional analysis on flooding, to include the traffic report in the attachments to the staff report, and to schedule a special evening meeting when the item returns. Public and Commissioner comments addressed at the February 9, 2022 Planning Commission included neighborhood character, safety, traffic, noticing, and baseline water use.
  - g) On March 16, 2022, the item was considered at a special evening meeting before the Planning Commission, at which Spanish interpretation services were provided. Two outreach meetings were held by the applicant between the February 9, 2022 hearing and the March 16, 2022 hearing. Meetings were held at the project site on February 16 and February 23, 2022 (see succeeding Evidence “d”). At the Planning Commission hearing on March 16, 2022, the Planning Commission heard public testimony, and continued the hearing to a date uncertain to allow staff to return with more details on flooding elevation, liquefaction, failures in water and wastewater infrastructure, existing and proposed traffic conditions, and stormwater drainage.
  - h) Community Meetings. The Planning Commission suggested that the applicant hold a community meeting to discuss the project proposal and allow for a more informed discussion. In response, the applicant hosted two meetings on the project site with several tables, stands, and lights. The applicant provided large sheets of paper, markers, and project information in English and Spanish to source ideas and suggestions for

the project. The applicant additionally paid for translation services at the first meeting and utilized translation with the facilitation of the Monterey Bay Economic Partnership for the second meeting. The project was noticed to the residents of Susan Street Sunday February 13, 2022 via flyers on each doorstep along Susan Street with information written in English and Spanish.

February 16, 2022, 5:30 pm-6:30pm Meeting: The first community meeting resulted in a relatively low community turnout. A few Gonda Street residents attended the meeting to discuss drainage concerns. One farmer attended in support of the project and stated that he would need the housing. No Susan Street residents attended this meeting, and no comments, ideas, or suggestions were written down at this meeting.

February 23, 2022, 5:30 pm-7:30pm Meeting: The second community meeting resulted in a better turnout. Approximately 30 people attended the meeting. The meeting was facilitated by Matt Huerta of the Monterey Bay Economic Partnership. The residents of Susan Street requested that the applicant, represented by Mike Avila, not present the project. Mr. Avila complied with this request and there were no Susan Street residents who objected to this request. The Susan Street residents did not feel as though the community meetings were genuine, as they believed these meetings should have occurred much earlier in the project, prior to the Planning Commission suggestion. The Susan Street residents discussed many concerns they had with the project including the potential traffic impacts, changed neighborhood character, disagreement with the Mitigated Negative Declaration determination, disagreement with the Long-Term Sustainable Water Finding, flooding, safety, and a lack of translation for the previous LUAC and AAC meetings. See Finding 1, Evidence “q.”

- i) On September 28, 2022, the Planning Commission considered the proposed project at a special evening meeting, at which Spanish interpretation services were provided. Staff addressed the previously raised concerns of flooding elevation, liquefaction, failures in water and wastewater infrastructure, existing and proposed traffic conditions, and stormwater drainage. Conclusions of updated traffic data were also presented. At the September 28, 2022, hearing, concerns relating to proximity to agriculture, liquefaction, traffic and street adequacy, and flooding were unresolved. The applicant requested that a decision be made, rather than continuing the item. After public testimony, the Planning Commission motioned to deny the project based on the above-mentioned unresolved concerns and directed staff to prepare a denial resolution (Resolution No. 22-024). In denying the permit, the Planning Commission found that the disapproval of the project is Statutorily Exempt from the California Environmental Quality Act per Section 15270 of the Guidelines.
- j) On October 31, 2022, Rio Vista Group LLC, represented by JRG Attorneys at Law (“applicant” or “appellant”) filed a timely appeal of the September 28, 2022, discretionary decision of the Planning Commission. The appeal contends that the Planning Commission’s decision was not

supported by the evidence, and that the decision was contrary to law. See Finding No. 10 for the text of appellant’s contentions and the County’s response to the appeal.

- k) Pursuant to Monterey County Code (“MCC”) Section 21.80.050.C and E, an appeal shall be filed with the Clerk of the Board of Supervisors within 10 days after written notice of the decision of the Appropriate Authority (i.e., Planning Commission, Resolution No. 22-024) has been mailed to the applicant, and no appeal shall be accepted until the notice of decision has been given (i.e., mailed). The County mailed the written notice of the decision on October 21, 2022, and said appeal was filed with the Clerk of the Board of Supervisors on October 31, 2022, within the 10-day timeframe prescribed by MCC Section 20.80.050.C. The appeal hearing is de novo. A complete copy of the appeal is on file with the Clerk of the Board, and is attached to the December 13, 2022 staff report to the Board of Supervisors as Attachment D.
- l) On November 11, 2022, the applicant submitted a reduced project scope (“the proposed project”) for consideration by the Board of Supervisors. In comparison to the project considered by the Planning Commission (“previously proposed project”), the proposed project includes the construction of three 16,286 square foot two-story apartment buildings totaling 45 units for agricultural workforce housing and 1 manager unit, and associated site improvements including 15,000 cubic yards of grading. The proposed project results in a 10% reduction of side setbacks and a Variance to increase the required building site coverage from 5% to 20%. The previously proposed project proposed four 16,286 square foot two-story apartment buildings (60 units and 1 manager unit), 17,500 cubic yards of grading and a Variance to increase the required building site coverage from 5% to 27%. The proposed project is described below in Finding Nos. 2 through 9 and is being considered by the Board of Supervisors in conjunction with partially granting the appeal.
- m) The appeal was timely brought to a duly-noticed public hearing before the Monterey County Board of Supervisors on December 13, 2022. Notice of the hearing was published on November 16, 2022, in the Monterey County Weekly; notices were mailed on November 29, 2022, to all property owners and occupants within 300 feet of the project site, and to persons who requested notice; and at least three notices were posted at and near the project site on December 1, 2022.
- n) The application, project plans, and related support materials submitted by the project applicant to Monterey County HCD-Planning for the proposed development found in Project File No. PLN210152 and the Clerk of the Board of Supervisors’ file related to the appeal.

**2. FINDING: CONSISTENCY** – The Proposed Project, as conditioned, is consistent with the applicable plans and policies which designate this area as appropriate for development.

- EVIDENCE:**
- a) During the course of review, this project has been reviewed for consistency with the text, policies, and regulations contained in:
    - 2010 Monterey County General Plan;
    - North County Area Plan; and
    - Monterey County Zoning Ordinance (Title 21).

Communications were received during the course of review of the project suggesting that the project may be inconsistent with some of the applicable policies. Concerns raised during review can be summarized as: inconsistency with neighborhood character; potential impacts of added traffic on a narrow residential road; potential fire hazards; flooding impacts; traffic impacts on San Juan Road; lack of proper notice; lack of notice in Spanish; and concerns regarding existing water use assumptions. Comments have been considered in review of this application, however, as documented in this resolution, the evidence demonstrates consistency of the project with the applicable text policies and regulations.

- b) Proposed Project. The proposed project includes the construction of three 16,286 square foot two-story apartment buildings containing a total of 45 units for agricultural workforce housing plus 1 manager unit. Each unit contains two bedrooms capable of supporting four beds per room (eight beds per unit), a shared kitchen and dining room. The manager unit, located on the first floor of Building A, contains a 216 square foot office with a restroom, and 296 square feet of living area, including a kitchen, bedroom and bathroom. The laundry room is located on the first floor for Buildings B and a recreation room is located on the first floor of Building C. The project will have 95 parking spaces and approximately 59,980 square feet of dedicated open space and recreational areas. These areas would provide onsite recreational opportunities that are immediately available for the employees housed at the site. Proposed recreational facilities include one 975 square feet recreation room, 925 square feet of outdoor seating areas, a 3,074 square foot multi-use court, and various other landscaped and open space recreational areas. Condition No. 44 requires the Applicant/Owner to submit a final recreation and landscape plan meeting the requirements of MCC Section 21.66.060.C.3.g and i. The proposed project also includes construction of sidewalk improvements along the west side of Susan Street and intersection of San Juan Road, and 15,000 cubic yards of grading (8,000 cubic yards of excavated material from the adjacent County stormwater detention pond [APN: 117-381-031-000], and 7,000 cubic yards of imported fill). When accounting for shrinkage, the project's associated grading will be 13,500 cubic yards. Excavation of the County stormwater detention pond will enlarge and improve the existing facility. See Finding 3, Evidence "e."
- c) Allowed Use. The property is located at 51, 53, 55 & 57 Susan Street, Royal Oaks (Assessor's Parcel Number 117-361-016-000), North County Area Plan. This property is within the Pajaro Community Area as shown in Figure CA5 of the 2010 General Plan. Community Areas have been identified as appropriate areas for growth and are the top priority for development in the inland area of Monterey County (see Policy LU-1.19). The parcel has three separate zoning districts: Farmlands with 40 acres per unit (F/40), Resource Conservation 40 acres per unit (RC/40), and High Density Residential, 20 units per acre (HDR/20). The "HDR/20" zoning occupies a narrow strip along the front of the property where it connects with Susan Street. The "RC/40" zoning occupies a small portion of the rear of property where it meets the Pajaro Levee. The "F/40" zoning covers the majority of the parcel. All buildings are

proposed within the Farmland zoning district. No development is proposed in the RC/40 zone and roads, parking, and infrastructure will be located in the HDR/20 zone. The Farmlands zoning district allows agricultural employee housing consisting of more than 12 units or 37 beds in group quarters with a Use Permit in each case [Monterey County Code (“MCC”) Section 21.30.050.AA]. The criteria to grant a Use Permit has been met in this case as described herein. A Variance is also required to exceed the project site’s maximum allowable lot coverage, as established in the Farmland zone, of 5% to 20%. See Findings 5, 6, and 7, and supporting evidence.

- d) Lot Legality. This 3.41 acre lot was created by deed prior to 1972, when subdivision map requirements became effective for lots over 2 acres. The subject parcel is a portion of the 5.95 acre parcel of land shown on the certain map entitled “The Purpose of this Map is Reversion to Acreage,” filed for record on March 25, 1949, in Volume 5 of Cities and Towns, Page 31. The 5.95 acre parcel of land is modified by the portion conveyed by Robert Kall et. al., to J.W. King, et. al. by deed dated November 14, 1950, and recorded December 4, 1950, in Volume 1264, Official Records of Monterey County at page 147. The 5.95 acre parcel of land is further modified by that portion conveyed by Robert Kall to Jacob King, et. ux., by deed dated August 7, 1953, and recorded December 4, 1950, in Volume 1472, Official Records of Monterey County at page 223. Additionally, the 5.95 acre parcel is modified by that portion conveyed by Robert Kall to Julian Perez, et. ux., by deed dated November 20, 1965, and recorded December 13, 1965, in Reel 438, Official Records, at page 46. The deeds were created prior to 1972, and the County recognizes the parcel as modified above as a legal lot of record.
- e) Development Standards. The project is subject to the development standards of the “F/40” or “Farmlands” zoning district (MCC Section 21.30.060). The required main structure setbacks in the Farmland zoning district is 30 feet (front) and 20 feet (side and rear). Pursuant to MCC Section 21.30.040.F, an Administrative Permit is required for a setback reduction of 10 percent for main structures. Although the proposed project maintains a 30-foot front setback, Buildings A and B are sited 18 feet from the western property line to maintain a 200-foot buffer from adjacent agriculture operations to the east. This is a 10% reduction of the required 20 feet side setback and therefore, an Administrative Permit is required. The uncovered stairways on the west side of Buildings A and B encroach 3 feet into the side setback, as allowed by MCC Section 21.62.040.D. Building B is setback 20 feet from the rear property line while Building C is setback 54 feet from the rear property line. The proposed project height is 34 feet and 6 inches from average natural grade, which is within the 35-foot maximum. The project exceeds the building site coverage regulations for the Farmland zoning district, which restricts building site coverage to 5%. The site is 3.41 acres in size (148,536 square feet) and at 5%, the maximum building site coverage would be 7,426 square feet. The proposed project, inclusive of the building footprints, decks, trellises and a covered trash enclosure, proposes 30,214 square feet or approximately 20% of the lot size. A

Variance is requested to allow the additional lot coverage. See subsequent Evidence “k” and Findings 5, 6, and 7 and supporting evidence.

- f) Employee Housing Facility Plan. MCC Section 21.66.060 establishes criteria for consideration of Use Permits for agricultural employee housing projects. These regulations require that a facility plan be submitted with the application. The applicant included an employee housing facility plan that states that the Rio Vista Group LLC will be responsible for housing maintenance and up-keep. The facility plan states that the housing project would be occupied primarily during the Salinas Valley harvest season from April through November. Additionally, the facility plan states that the housing is designed to accommodate 360 agricultural employees without dependents with each unit serving up to 8 people. The letter also includes a project description of the site, listing the 3 two-story permanent apartment style buildings on a 3.41-acre parcel consisting of 45 apartment units, 1 laundry facilities, 1 manager unit, and 1 recreation room for agricultural employees. The facility plan also states that the agricultural employees will be dispersed throughout the agricultural fields in Monterey County as the listed location of work. The facility plan proposes connection to the Pajaro/Sunny Mesa Community Services District (PSMCD) for water and sewer. The project will be made available to domestic agricultural employees and to employees working in the United States with an H-2A visa. The H-2A temporary agricultural program allows agricultural employers to bring nonimmigrant foreign workers to the U.S. to perform agricultural labor or services of a temporary or seasonal nature. Under the U.S. Department of Labor requirements for employee housing, employers must provide housing at no cost to H-2A workers and my charge a “reasonable cost,” as determined by the Secretary of Labor, to an employer of furnishing any employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by the employer to his employees (Code of Federal Regulations, Title 29 Part 531). Therefore, the applicants have included information required to satisfy the findings of the facility plan pursuant to MCC Section 21.66.060.
- g) Agriculture. The project site is located in the Pajaro Community Area as designated in Policy LU-2.21 and Figure CA5 of the 2010 General Plan. The project is designated as Farmlands and the proposed project will be used for agricultural purposes (agricultural employee housing). Pursuant to Policies AG-1.4 and AG-2.1, farmworker housing is an agricultural support use and considered a viable agricultural land use. The proposed project is an allowed use by Policy AG-1.6, which allows for farmworker housing consistent with the surrounding land uses, minimizing impacts to prime farmland to the extent possible. Based on Monterey County Geographic Information System mapping, the project site is considered prime or important farmland. The project results in the conversion of vegetable row crop production to employee housing. However, the 3.41-acre site is not large enough to sustain vegetable production and employee housing, and there is no feasible alternative location on this property that would avoid or minimize development on areas suitable for row crop production. The agricultural workforce housing for the project will support Monterey County’s agricultural industry and will be located

in a Community Area on a small parcel. Row crop and farmlands exist on the eastern boundary of the property (not down-wind from the prevailing winds from the west and north). The farming operation on the property to the east is currently “organic”, but the property owner has informed the Agriculture Commissioner’s Office that they intend to convert to conventional farming in the foreseeable future. On January 27, 2022, the Agricultural Advisory Committee voted 6-0 with 5 members absent to recommend “support” of the previously proposed project with a 100-foot buffer and vegetative screening. Consistent with MCC Section 21.66.030.F.2, the proposed project has been designed with a 200-foot buffer from agricultural operations to the east to minimize impacts on on-going agricultural uses and protect the occupants of the employee housing from inadvertent pesticide drift. Parking will be located within the buffer and the applicant proposes to plant Cosrena trees rather than Sycamore trees within the landscaped area and parking area to aid with protections from on-going farming operations. Further, the project is supported by Policy H-2.11 of the 2010 General Plan Housing Element, which supports private sector partnerships to increase the supply of farmworker housing.

- h) Flooding. The proposed project is located within the 100-year FEMA floodplain of the Pajaro river and is offered some protection from floods by the existing levee on the southern side of the river (north end of project site). In the past, the Pajaro Levee has failed and flood waters from the river have impacted this site and the surroundings. The County owns a stormwater detention pond, adjacent east of the subject property, which was designed and installed after, and in response to, the 1995 floods to provide additional runoff storage and protections for the area. The project has been reviewed by HCD-Environmental Services, HCD-Engineering Services and the County Floodplain Manager to ensure that the project will not substantially alter the flood plain flows or elevations. The project engineer prepared a Potential Flood Hazard Impact report and concluded that that the proposed project will not have a significant impact on the floodplain. The proposed development will not adversely block overland flow paths due to existing flow orientation. Additionally, in accordance with MCC Chapter 16.16, the Potential Flood Hazard Impact report confirms the proposed development will not increase the base flood elevation by more than 1 foot due to the size of the floodplain and the minimal loss of floodplain storage. In addition, plans to improve the Pajaro River Levee are in the works as detailed below in subsection j Funding for these improvements has been identified. Planned improvements to the levee will provide protection from floods for this site and the community in the future.

The project site is adjacent to the Pajaro levee and within Zones AE, AO, and the 100-year floodplain of the Pajaro River. The Federal Emergency Management Agency (FEMA) and Flood Insurance Rate Maps (FIRM) identify land areas that are subject to flooding. The subject property’s current elevations range from 29.5 feet to 32.6 feet. The highest elevations of where Buildings A, B, and C would be located are 31’, 29.5’ and 30.5’, respectively. MCC Section 16.16.050.C.2 requires

finished floors to be at least 1 foot above the specified Federal Insurance Rate Maps (FIRM) flood depth, in this case the property is located within FEMA Zone AO with depth of 1-foot. Therefore, finished floors of Buildings A, B, and C must be constructed at least 2 feet above the highest existing grade or at a minimum elevation of 33', 31.5' and 32.5', respectively. As designed, the proposed finished floor elevation for all buildings is 35.5'. Although not required, the applicant has designed the finished floor elevations to exceed the estimated 100-year composite flood elevations (35.3 to 35.4 feet) provided by the Pajaro Regional Flood Management Agency (PRFMA), which accounts for a 100-year flood and multiple levee overtopping scenarios. Modeling provided by PRFMA is not reflected in the FIRM and is not required for compliance with Chapter 16.16 of the MCC.

- i) Future Pajaro River levee improvements. The proposed project incorporates a 15-foot setback from the toe of the Pajaro Levee to allow for potential future improvements to the levee that are currently being studied and designed by the U.S. Army Corps of Engineers. The potential improvements include increasing the height of the levee to provide additional flood protection. Planning staff reached out to Monterey County Water Resources Agency (MCWRA) staff to gather information on the current Pajaro Levee Improvement Plan. This improvement plan, known as the Pajaro River Flood Risk Management Project consists of a \$400 million effort to reduce flood risk from the lower Pajaro River and Corralitos and Salsipuedes Creeks. The Pajaro River Flood Risk Management Project will provide 100-year flood protection to the City of Watsonville and the town of Pajaro, and a mix of 100-year and 25-year flood protection to the surrounding agricultural areas. The project site is located between "Reach 3" and "Reach 4," which are efforts within the Pajaro River Flood Risk Management Project that aim to provide the surrounding areas with 100-year flood protection (1%). The Pajaro Levee improvement project efforts are planned by a joint powers authority, the Pajaro Regional Flood Management Agency (PMFRA), created in coordination with 5 different agencies, including: Monterey County, Santa Cruz County, the City of Watsonville, County of Santa Cruz Flood Control and Water Conservation District, and the MCWRA. The PMFRA's website states that construction is expected to begin in 2025 and that a draft Environmental Impact Report is being prepared. MCWRA staff stated that there is a current 5-to-6-year construction effort for construction of Pajaro Levee improvements
- j) Drainage. Following Policies S-2.5 and S-2.6 of the 2010 General Plan, the proposed project implements mitigation measures to reduce impacts from flooding. A preliminary stormwater control plan and supporting preliminary stormwater control report, dated July 7, 2022, was prepared for the project by Whitson engineers (LIB220216). This report summarizes the project's proposed stormwater management strategy pursuant to the Post Construction Stormwater Management Central coast Region, Central Coast Regional Water Quality Control Board Resolution No. R3-2013-0032, and the guidance documents promulgated by the Monterey Regional Stormwater Management Program (MRSWMP). The drainage system would be designed and constructed to meet current

regulations and requirements, including the Monterey County flood control requirements pursuant to MCC Section 16.16.050.

Stormwater runoff would be collected via a series of gutters, drain inlets, and storm drain piping discharging to on-site treatment and retention basins. These systems would be collectively sized to provide on-site retention and management of runoff rates. General Plan Policy S-3.1 requires post-development, off-site peak flows to be no greater than the pre-development levels. Based on the project's preliminary Stormwater Control Plan, the project proposes treatment of the 85th-percentile 24-hour storm event through implementation of Stormwater Control Measures (SCMs), retention of the 95th-percentile 24-hour storm event, and a reduction of peak site discharge for the 2, 5, 10, 25, 50, and 100-year 24-hour storms to less than current (pre-development) condition levels. Condition No. 38 (Mitigation Measure USS-1) requires the applicant to submit a Final Stormwater Control Plan detailing the proposed stormwater control measures. SCMs may include runoff retention and management measures such as underground storage in high-flow tree box biofilters and on-site bioretention ponds.

A storm drain system analysis dated July 6, 2022 (LIB220217) was prepared pursuant to Mitigation Measure USS-2, and it concluded that the previously proposed project does not negatively impact the existing County-owned pump station. Similarly, the proposed project will also not negatively impact the existing County-owned pump station. The storm drain analysis recommended three storm drain improvements: 1) construction of a 18 inch diameter storm drain along the property's southern boundary to allow future development along Gonda street to utilize the County stormwater facility (pond and lift station) in the event that the Pajaro River levels prevent drainage through the existing flap gate; 2) improving the County storm water detention pond to increase capacity and reduce pump cycle times of the lift station; and 3) installation of a low-flow weir in the manhole at the intersection of San Juan Road and Susan Street to limit the volume of annual drainage routed to the County detention pond and pump station. The proposed project incorporates by design recommendations 1 and 2. The County's Community Services District that maintains the San Juan Road drainage system is aware of Recommendation #3. Improvements to the County detention pond include lowering the adjacent stormwater outlet to an elevation of 24 feet and excavating approximately 8,000 cubic yards of cut which will be used as fill to raise the proposed buildings above the highest estimated flood depth elevation (100-year composite flood event). Expansion of the detention pond will increase the pond's capacity by 4-acre feet (174,240 cubic feet) which would allow for a greater volume of stormwater runoff from the surrounding watershed (includes but not limited to Susan Street development, adjacent agriculture operations, and San Juan Road in the event of a major storm event) to be detained and subsequently pumped across the Pajaro Levee via a County owned and operated stormwater drainage lift system. In accordance with MCC

Section 16.16.050, the proposed development is setback approximately 215 feet from the top of the bank of the Pajaro River.

- k) Emergency Action Plan. In response to public comment, the applicant has prepared a preliminary Emergency Action Plan (EAP). The EAP will be briefed in the employee training and included in the employee/tenant manual, which will also include other rules and regulations for those living at the premises. The EAP includes emergency contact information, before -, during-, and after-evacuation procedures, specific duties of tenants, transportation arrangements, the draft North County Evacuation Guide (prepared by the Monterey County Office of Emergency Services), and a site plan illustrating emergency exit routes and areas of refuge. See Finding 3, Evidence “e.” Condition No. 43 requires the Applicant/Owner to submit a final AEP reflecting the proposed project’s 46 unit design.
- l) Long-Term Water Supply. Policy PS-3.1 of the 2010 General Plan requires proof, based on specific findings and supported by the evidence of a “long-term sustainable water supply.” This project is located within the critically over drafted Pajaro Valley Groundwater Basin according to the State Water Board. Water used for agricultural purposes at the site is currently supplied by a shared well on an adjacent property. The project proposes to disconnect from that shared well and connect to the Pajaro/Sunny Mesa Community Services District for potable water. This project will be required to balance the existing water use from the shared well with the proposed water demand from Pajaro/Sunny Mesa in order to avoid increasing demand for groundwater within the basin. Both the shared well and the water sources from Pajaro/Sunny Mesa for this service area draw from the Pajaro Groundwater Basin. The Pajaro Valley Water Management Agency (PVWMA) is tasked with managing the basin, and has developed a Basin Management Plan pursuant to the State Groundwater Management Act (SGMA) in 2014 and has adopted a 2022 update to that Plan. The Plan contains a number of projects and policies that are intended to stop seawater intrusion and balance the groundwater basin providing for a long-term sustainable water supply within their territory. Some of those projects have already been approved and are operational and others are still being considered and studied. PVWMA has been consulted and has verified that the project will not impact PVWMA Basin Management Plan projects and objectives. See Finding 3 for more details.
- m) Variance. A Variance is required in order to allow for an increased building site coverage of 20% for the subject property. MCC Section 21.72.040 outlines the required findings for Variances. There are unique circumstances applicable to this property that warrant a variance to the building site coverage limitations in this case. See Findings 5, 6, and 7 and supporting evidence.
- n) Environmentally Sensitive Habitat Areas (ESHA). Based on Monterey County GIS resources, the project is located in an area that supports sensitive biological resources. A biological assessment of the project site was prepared to determine potential impacts to biological resources. The project biologist, Liz Camilo, conducted a survey of the project site on September 14, 2021 to identify and describe habitats and special status species. The report acknowledges that the site is highly disturbed with

active agricultural operations. No special-status plant or wildlife species are known to occur within the project site; however, based on the presence of suitable habitat and known occurrences in the vicinity, Monterey spineflower (*Chorizanthe pungens* var. *pungens*) and California red-legged frog (*Rana draytonii*, CRLF) have the potential to occur within the site. A spring survey to look for spineflower during the blooming season was suggested. A supplemental spring survey conducted on June 13, 2022, concluded that Monterey spineflower was not present on the project site. Separately, raptors and other nesting birds were determined to have the potential to nest within large trees near the site. To mitigate potential impacts to these species, staff recommended mitigation measures proposed by the biologist which include an employee education program, a pre-construction survey for raptors, a pre-construction biologist survey for the California red-legged frog (CRLF), a ground disturbance and vegetation removal survey for the CRLF, a construction monitor for the CRLF, a daily log, hole covering, erosion control materials, restricted construction hours, and biological monitor during construction. As mitigated, impacts to environmentally sensitive habitat will be avoided.

- o) Traffic. Traffic is one of the key concerns for the existing residents along Susan Street. Comments submitted on the project express concern with parking, increased traffic on a narrow road, and hazards for kids that play in the street. The project would add 45 two-bedroom apartments supporting up to 361 employees and 1 manager at the end of Susan Street. Accesses to the site for current farming operations is through neighboring properties to the east. This project proposes access using Susan Street which is a County Road.

A traffic impact analysis and supplemental reports/letter were prepared for the project by Keith Higgins on December 8, 2021, January 28, 2022, July 1, 2022, July 8, 2022 studying the previously proposed project, and November 11, 2022 studying the proposed project. The December 8, 2021 traffic report provided an analysis of the project impacts on Levels of Service (LOS) at nearby intersections and impacts on vehicle miles traveled (VMT). Supplemental reports and letters dated July 1 and July 8, 2022 addressed County comments, public concern, and Planning Commission questions. The November 11, 2022 supplemental report addressed the proposed project's reduced scope (46 units). The traffic report provides information about traditional multi-family housing traffic generation and agricultural employee housing traffic generation.

HCD-Engineering Services reviewed the report and agree with its conclusions. The report concludes that Susan Street, a County Road, is 35 feet in width which is sufficient to meet tertiary street standards and is adequate to carry traffic for the number of existing and proposed residential units. Based on the traffic analysis, it is estimated that Susan Street currently carries about 400 daily trips, with 220 being residential related trips and 180 being trip generated from the autobody shop located on the corner of Susan Street and San Juan Road. Although the proposed project would qualify as H2A housing, it is possible that these housing

units could be converted to traditional apartments in the future with no restrictions on vehicle ownership resulting in more traffic than a H2A project. Therefore, impacts to transportation analyze the project as standard apartments to represent a conservative, worse-case scenario. As 45 standard apartments, the proposed project would generate approximately 341 additional trips (for a total of 741 trips along Susan Street). Therefore, as a standard apartment, the project will be below the capacity limit established by the County for a tertiary street (1,000 trips). However, the proposed project will not be standard apartments and will instead be used as agriculture employee housing. Agriculture employee housing tends to generate much less traffic than traditional apartment housing because many of the employees travel by employer sponsored bus or vanpool (an approximately 25% to 33% reduction). Therefore, the proposed project is anticipated to generate 131 daily trips as an agricultural employee sponsored housing project, with 3 trips in the morning peak hour and 27 in the evening peak hour. H2A projects are only occupied during the growing season in the Pajaro and Salinas Valleys which extends from March through the middle of November, about 8 ½ months. The Project would be unoccupied for the winter season, which lasts about 3 ½ months except for the managers unit. Therefore, on an annualized basis, the project will generate 93 trips with 4 in the morning peak hour (3-4AM) and 6 in the evening peak hour (2-3PM). These peak trips are outside of the street peak hours of 6:30-10AM and 4-5PM. Trips generated by this project would not result in a lowering of the LOS ratings at studied roadways and intersections consistent with Policy C-1.1 of the 2010 General Plan.

The proposed project would exceed the threshold of 110 daily trips set by the Technical Advisory on Evaluating Transportation Impacts in CEQA (December 2018) for the purposes of VMT analysis. However, the project site is located within a ½ mile of an existing, high-quality transit corridor, as MST Routes 28 and 29 operate along Pajaro Street and Main Street within 0.30 miles of the site. According to the technical advisory, a project consisting of a high percentage of affordable housing, such as the proposed project, may be a basis for the lead agency to find a less-than-significant impact on VMT. Additionally, the project places housing in a community area that has access to goods and services which aligns with intended outcomes of VMT analysis. As such, the proposed project was found to have a less than significant impact on VMT. This project would be required to pay regional development impact fees (TAMC fees) and County traffic impact fees.

- p) Traffic Improvements. There is a need to improve sidewalks along Susan Street in areas where the sidewalk does not exist for pedestrian access. To improve pedestrian connections, the project has been conditioned to require the owner/applicant to: 1) construct accessible pedestrian offsite improvements along Susan Street (including but not limited to curb, gutter, sidewalk, and ADA ramps at the intersection of Susan Street and San Juan Road); and 2) construct 85 feet of sidewalk on northside of San Juan Road. The preliminary plans for the proposed project have been reviewed by Public Works and the North County Fire Protection District.

- q) Archaeological Resources. The site is located within a high archaeological sensitivity area. Pursuant to MCC Section 21.66.050, staff required a preliminary archaeological assessment to determine whether or not archaeological resources were present. A Phase 1 Archaeological Resource Assessment and addendum (LIB220024) was submitted for the project that acknowledged that surface soils have been substantially impacted due to past and current agricultural practices and it is unlikely that the resources would be uncovered during construction. However, because the proposed project requires excavation of the top five feet of soil for foundation preparation, and 8,000 cubic yards of excavation of the adjacent County detention pond, there is a potential that resources could be located under the disced and disturbed topsoil. The project has been conditioned to include a note on the plans that state that if resources are discovered, work must immediately halt within 50 meters of resource until a qualified archaeologist or other qualified professional can evaluate.
- r) Public Comment. Nineteen property owners along Susan Street signed a petition opposing the previously proposed project. Comments have requested that this project not be approved as it would negatively impact neighborhood character, traffic, fire, and flooding. Additional concerns have been raised by neighbors about the lack of notice to all neighbors on Susan Street and lack of notice in Spanish. Comments provided on this project have been reviewed and are responded to as follows:

*Neighborhood Character:* The project would result in an increase in population and traffic on Susan Street and would introduce new multi-family housing in the area. There is a need for housing of all types and the increase in housing in this area was contemplated in the 2010 General Plan which designates this area as a priority for development. The site has access to adequate public services and facilities and is capable of supporting the proposed housing.

*Fire:* A fuel management plan was prepared in accordance with local and state wildlife urban interface guidelines that focuses on irrigating and landscaping within 30 feet of structures and managing vegetation within 100 feet from structures or to the edge of the parcel, whichever comes first.

*Public Notice:* A notice of public hearing was distributed in English to all properties within 300 feet of the project site prior to the February 9, 2022 Planning Commission. In response to comments, a notice of public hearing for the March 16, 2022 and September 28, 2022 Planning Commission hearing, and December 13, 2022 Board of Supervisors were provided in both English and Spanish and notices were distributed to everyone who requested notice of the hearing, in addition to all property owners within 300 feet of the project. Separate notices have also been provided for advisory committee meetings including the North County Land Use Advisory Committee and the Agricultural Advisory Committee. Additionally, both the March 16, 2022 and September 28, 2022 Planning Commission hearings were conducted in the evening with

Spanish interpretation services available during the hearing. The December 13, 2022 Board of Supervisors hearing was conducted with Spanish interpretation services.

*Baseline Water Use:* Comments were received during the CEQA comment period concerning the establishment of the existing average annual water demand for agricultural use (baseline water use). The Initial Study prepared for the project assumes an annual water use on the 3.41 acre property of 5.25 Acre Feet per Year (AFY) per acre for irrigation of celery, spinach, and brussels sprouts grown on-site in a one year period. This figure was based on information provided by Lakeside Organics who have been farming on this property and other nearby properties for the last 4 years. Comments from Anthony Nicola (neighbor) and LandWatch Monterey County suggest that this number is high and request reconciliation of this water amount with average water use numbers published in the Monterey County Water Resources Agency (MCWRA) annual Groundwater Extraction Summary (GEMS) Report. Figures published in the MCWRA GEMS report do not cover the Pajaro groundwater basin since this basin falls under the jurisdiction of the Pajaro Valley Water Management Agency (PVMA) and not MCWRA. The 2020 GEMS report covers four groundwater basins in the Salinas Valley; Pressure, East Side, Forebay, and Upper Valley. Well data is used to average and summarize water use within the Basins for the GEMS report. In Figure 22 of the 2020 GEMS report, average water use by basin for “vegetable crop” irrigation is provided. Average water use ranges from between 2.3 (in the Pressure basin) and 3.2 AFY per acre (in the Upper Valley Basin). The of the average of the amounts in all four basins is approximately 2.675 AFY per acre. This is significantly less (about half) than the stated 5.25 AFY per acre water demand. HCD-Planning staff reached out to MCWRA staff and learned that the data used in Figure 22 is an average of data which includes wells serving agricultural operations with a range of vegetable crops and irrigation systems and including multiple operations with 1 crop rotation per year, 2 crop rotations per year, and 3 crop rotations per year. Three crop rotation operations use more water than 1 crop and 2 crop rotation agricultural harvesting operations. MCWRA staff confirmed that in their professional opinion that 5.25 AFY per acre use on a three-crop rotation farm is within range of other three crop rotation farming operations collected in the GEMS program. Site specific information is available in this case rather than averages applicable in other areas and the site specific information is within the range of similar agricultural operations with similar crop types, rotations, and irrigation systems. On February 22, 2022, Mr. Nicola commented on his original comment stating, “Since making the initial comment it has been discovered that 51% of all effluent that goes out the sewer line of these proposed buildings is recycled into ag water that otherwise would have been pumped from the aquifer. Meaning, regardless of if the previous water calculations are correct or not, the proposed project is either going to show zero increase in water demand with the demise of the farming, or it will actually be showing a decrease in overall water usage, positively affecting the aquifer.”

*Long-Term Sustainable Water Supply (LTSWS):* The California Coastal Commission issued a letter addressed to Erik Lundquist, HCD-Director, which stated that the California Coastal Commission respectfully asked that the County not further find there is a LTSWS for future CDP [Coastal Development Permit] decisions. The LUAC committee drew an arrow on the previously written letter to the line that stated, “Seawater intrusion remains a threat.” Additionally, she underlined “Our position is that North Monterey County remains without a LTSWS. And thus, the LCP policies regarding development... respectfully ask the County not to further find there is a LTSWS for future CDP decisions”. This project is not located in the Coastal zone and is not within the purview or jurisdiction of the Coastal Commission. Further, this letter does not come from the Coastal Commission itself, this is an annotation to a previously sent letter from the Coastal Commission staff. In this case, the proposed project has been found to have no impact on the groundwater basin because the proposed water use will not exceed the current water use within the basin. In this way, the project will not impact, or make more difficult, plans of PSMCSD to provide a long-term sustainability of the water supply within their jurisdiction.

*Safety:* Many Susan Street residents expressed safety concerns about the project’s population. The project is serviced by the Monterey County Sherriff’s Department and the closest police station is located approximately 0.8 miles away. The Monterey County Sheriff’s HQ is located approximately 23.9 miles away. Monterey County has reciprocal agreements for service with neighboring jurisdictions including Santa Cruz County and Watsonville. Emergencies are responded to by the nearest available emergency responders. Additionally, an Emergency Action Plan has been prepared for the proposed project that provides for on-site emergency response protocols to protect the safety of residence in the event of an emergency.

*Traffic.* In response to concerns raised over the traffic and parking conditions on Susan Street, staff requested that the applicant explore options for alternative ingress and egress to the site (e.g. not using Susan Street). The applicant stated that they explored other exit and entrance opportunities and found the Susan Street traffic connection to be the most feasible for the project. The applicant states that they do not own or control any of the adjacent parcel, that the project complies with current standards, and that the anticipated traffic volumes will be within traffic volumes allowed on Susan Street. The applicant states that Susan Street is the current and only legal access point to the project site.

Susan Street is designated as a Tertiary Street under Monterey County Road standards because it is a dead-end street serving a small number of residential lots. According to Monterey County road standards, Tertiary Streets can accommodate up to 100 lots or units or up to 1,000 vehicles per day. Nineteen residential lots and 1 commercial lot currently abut Susan Street. The proposed project would add 46 units at the end of the

street with a maximum occupancy of up to 361 employees. A traffic report prepared for the previously proposed project by Keith Higgins (traffic engineer), dated December 8, 2021, describes that traffic counts were conducted at the intersection of San Juan Grade Road and Susan Street on August 28, 2021. 400 trips were counted at that time including 180 trips associated with the commercial automotive use on the corner of Susan Street and San Juan Grade Road. To provide additional data to determine daily trip generation totals and hourly variations, the project's Traffic Engineer conducted a second 24-hour traffic count at the 525 Third Street Apartments Agricultural Worker Housing project (Greenfield Project) in Greenfield, California on Wednesday, June 22, 2022. The Greenfield Project has 60 workforce units which generate 175 one-way trips. In comparison to the Greenfield Project (60 units) and to address the reduced scope (45 units), Keith Higgins prepared a supplemental letter on November 11, 2022 to address the proposed project's reduced scope, and concluded that the proposed project would result in a 25% reduction of trips when compared to the previously proposed 61 unit project (131 one way daily trips, with 3 trips in the morning peak hour and 27 in the evening peak hour). With 131 agriculture workforce related daily trips, Susan Street would have a total of 531 daily trips.

Assuming that the proposed project is not restricted to agricultural employee housing, a typical 46-unit multi-family apartment building would be expected to generate about 341 daily traffic trips. This scenario would result in 741 total daily trips on Susan Street which is less than the 1,000 trips that maximum range expected for a tertiary street. Secondly, and as proposed, the project will be limited to occupancy by agricultural employees. Based on actual traffic counts conducted at the Casa Boronda and Greenfield agricultural employee housing projects, agricultural employee traffic trips are anticipated to be considerably less than a standard apartment because many employees will not have individual vehicles and are much more likely to rely on buses and vans for transport to/from work.

The traffic engineer states that although Susan Street allows parking on both sides of the street, there is a clear width of 19 feet between the cars which would allow two vehicles with a maximum width of 7 feet (i.e. typical passenger vehicles or trucks) to pass at once. School buses, which will be used for the H2A worker transport, have an exterior width of 8 feet or 9.5 feet when including the exterior side mirrors. When gaps in parked cars provide a width of 19 feet, two buses may pass each other. Otherwise, the buses must pull over to allow the oncoming bus to pass. This will effectively decrease traffic speeds along Susan Street and is a common traffic calming practice called "Yield Streets." National Association of City Transportation Officials confirms that 2-way yield streets are appropriate in residential environments where drivers are expected to travel at low speeds, such as Susan Street. Left turning buses will be able to exit and enter Susan Street to and from San Juan Road with no interference from other vehicles stopped on the Susan Street

approach. Right turns from buses exiting Susan Street to proceed westbound on San Juan Road will also be able to complete the turn without encroaching into oncoming traffic. Westbound right turns from buses entering Susan Street will encroach about 6 feet into the southbound Susan Street approach lane. Based on the proposed peak hour trips, this scenario may only occur up to 3 times between 3 to 4 AM and up to 2 times between 2 to 3 PM and 4 to 5 PM. Based on all the information in the record, the proposed project, as proposed and conditioned, would not conflict with a plan, ordinance or policy addressing the circulation system, including transit, roadways, bicycle lanes and pedestrian facilities. The increased traffic along Susan Street can be accommodated in this case. See Finding 1, Evidence “m” and “n.”

*Liquefaction.* A Geotechnical Report (LIB210241), amended on July 1, 2022, addresses the project site’s high liquefaction potential. The project engineer states that the risk for damaging liquefaction and/or differential compaction and settlement during a major seismic event is low, provided their recommendations are implemented. These recommendations, including engineered foundations and subexcavation and recompaction of the upper 5 feet of soil. These recommendations have been applied as Mitigation Measures GEO-1 and GEO-2. A supplemental geotechnical letter dated November 11, 2022, confirms that the conclusions and recommendations of the amended Geotechnical Report (LIB210241) are still accurate for the proposed project.

*Water and Wastewater Infrastructure.* The County of Monterey’s Public Works, Facilities and Park’s Special Districts Division has confirmed that although there is always the possibility for the wastewater system to experience a failure for a variety of reasons, the proposed project will not increase the likelihood of such a failure. All past wastewater failures have been resolved and infrastructure improvements are in the works. Additionally, the Pajaro Sunny Mesa Community Services Districts has stated that no water infrastructure failures have recently occurred and that the proposed project will not create a water infrastructure failure.

- s) Land Use Advisory Committee. The previously proposed project (60 units) was referred to the North County Land Use Advisory Committee (LUAC) for review. Based on the LUAC Procedure guidelines adopted by the Monterey County Board of Supervisors, the application warranted referral to the LUAC because the project requires CEQA review and the project includes a Variance. The previously proposed project was first heard at the December 1, 2021, North County LUAC hearing. After hearing public comments and concerns, the North County LUAC members requested that the project be continued until staff prepared an environmental analysis for the project. An Initial Study/Mitigated Negative Declaration has been prepared for the project. The project returned to the LUAC on February 2, 2022. At that hearing, the LUAC recommend denial of the project as presented because the committee did not support current traffic access and found the project incompatible with the surrounding neighborhood. The LUAC raised concerns regarding water use and cumulative impacts of this and other projects in the Pajaro

community. A reduced density for the project was suggested. The LUAC committee unanimously recommended denial of the previously proposed project with a vote of 4-0. The LUAC recommendations have been considered by the applicant. A reduced density for the project was suggested. The LUAC unanimously recommended denial of the project with a vote of 4-0 on February 2, 2022. The proposed project incorporates a reduced density (361 occupants compared to 481) which will result in a reduced water demand.

- t) Agricultural Advisory Committee (AAC). The previously proposed project scope was heard at the January 27, 2022, Agricultural Advisory Committee meeting. Comments from the public at that meeting indicated that the project had not been properly noticed and that the project should not be approved because of its negative impacts on the community. The AAC reviewed the project and adopted a recommendation of support by a 6-0 vote. The AAC suggested that a 100 foot agricultural buffer and proposed vegetation screening would be adequate but suggested that the proposed Sycamore trees be replaced with Cosrena trees or something similar in order to provide a dense tree canopy from the ground up. The previously proposed project scope incorporated the 100 foot buffer and the applicant agreed to plant Cosrena trees rather than Sycamore trees to provide additional screening from nearby row crop uses. The proposed project incorporates a 200 foot buffer and vegetative screening.
- u) The project planner conducted a site inspection on October 27, 2021, to verify that the project on the subject parcel conforms to the plans listed above.
- v) The application, project plans, and related support materials submitted by the project applicant to Monterey County HCD-Planning for the proposed development found in Project File PLN210152.

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

- EVIDENCE:**
- a) The proposed project has been reviewed for site suitability by the following departments and agencies: HCD-Planning, North County Fire Protection District, HCD-Engineering Services, HCD-Environmental Services, the Environmental Health Bureau and Public Works Facilities & Parks. There has been no indication from these departments/agencies that the site is not suitable for the proposed development. Conditions recommended by above have been incorporated.
  - b) Staff identified potential impacts to biological resources, archaeological resources, soil/slope stability, drainage, hazards, noise, and traffic. The following reports have been prepared:
    - “Biological Resources Memorandum for the Susan Street Agricultural Housing Project” (LIB210240) prepared by Denise Duffy & Associates, Monterey, CA, October 4, 2021 and a supplemental spring survey dated July 1, 2022;
    - “Air Quality & Greenhouse Gas Impact Assessment for the Susan Street Agricultural Housing Project” (LIB220260), prepared by Kurt Legleiter of AMBIET Air Quality & Noise Consulting, San Luis Obispo, California, November 2021, including supplemental letter “Air Quality Modeling Assumptions for the Susan Street Project”,

dated July 6, 2022, and supplemental letter “Modifications to the Rio Vista Group LLC (PLN210152) Project (Reduced Project)”, dated November 11, 2022;

- “Archaeological Resources Assessment Report” (LIB220024) prepared by Basin Research Associates, San Leandro, CA, October 3, 2021, as amended on July 7, 2022;
- “Geotechnical and Infiltration Investigation” (LIB210241) prepared by Belinda A. Taluban, Salinas, CA, October 2021, as amended on July 1, 2022, and supplemental letter, “Response to Revised Project Scope”, dated November 11, 2022;
- “Phase I & II Environmental Site Assessment” (LIB210242) prepared by Caprock Geology Inc, Spreckels, California, September 7, 2021 and October 15, 2021;
- “Preliminary Stormwater Control Plan for Susan Street Agricultural Employee Housing” (LIB220216) prepared by Whitson Engineers, Monterey, CA, December 8, 2021, as revised on February 7, 2022 and July 7, 2022;
- “45 dB Acoustics Acoustical Analysis: Susan St. Agricultural Housing” (LIB220025) prepared by 45 dB Acoustics, August 17, 2021;
- “Susan Street Apartments Transportation Impact Analysis” (LIB210281) prepared by Keith Higgins, Gilroy, CA, November 23, 2021 and supplemental reports and letters dated December 8, 2021, , July 1, 2022, July 8, 2022 and November 11, 2022;
- “Assessment of Potential Flood Hazard Impacts Related to the Susan Street Agriculture Housing Project” (LIB220194) prepared by Nathaniel Milam of Whitson Engineers, May 27, 2022;
- “Export Fill Soil Sampling of APN: 117-381-031” (LIB220195) prepared by CapRock Geology Inc, Spreckels, California, June 30, 2022; and
- “Supplemental Drainage Study” (LIB220217) prepared by Nathaniel Milam of Whitson Engineers, July 6, 2022, and supplemental letter dated November 11, 2022.

The above-mentioned technical reports by outside consultants indicated that there are no physical or environmental constraints that would indicate that the site is not suitable for the use proposed with mitigation proposed. County staff has independently reviewed these reports and concurs with their conclusions.

- c) Staff conducted a site inspection on October 27, 2021, to verify that the site is suitable for this use.
- d) The application, project plans, and related support materials submitted by the project applicant to the Monterey County HCD-Planning for the proposed development found in Project File PLN210152.

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

injurious to property and improvements in the neighborhood; or to the general welfare of the County.

- EVIDENCE:**
- a) The project was reviewed by HCD-Planning, North County Fire Protection District, HCD-Engineering Services, HCD-Environmental Services, the Environmental Health Bureau and Public Works Facilities & Parks. The respective agencies have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood.
  - b) Adequate public water and sewer are available for the project. The Health Department confirmed in a memo addressed December 20, 2021, that a Can-And-Will-Serve Letter from Pajaro County Sanitation District (PCSD) was received on November 17, 2021, verifying sewer service connection is available. PCSD has sufficient allocation available for connection to the Watsonville treatment plant and the Watsonville treatment plan has adequate capacity to serve the project. The Pajaro/Sunny Mesa Community Services District issued a Can-And-Will-Serve Letter that confirms drinking water service for 61 units. The proposed project includes 46 units which is less than previously considered. Health Department also reviewed the applicant submitted Initial Water Use/Nitrate Impact questionnaire for consistency with site suitability standards. A Waste Management Can-And-Will-Serve was submitted that guarantees Waste Management will serve with Pajaro Apartments to provide weekly collection services of trash, recyclables, and organic waste.
  - c) Water. The proposed project would connect to the Pajaro/Sunny Mesa Community Services District (PSMCS D). PSMCS D is a regulated public water district that has water treatment systems in place to provide potable water meeting state drinking water standards. PSMCS D is the only public water system serving the Pajaro area. PSMCS D has provided a Can-And-Will-Serve Letter for this project and has indicated that they have the capacity and ability to serve the project from their existing facilities. PSMCS D operates a public water system regulated by the State Water Board and Monterey County Environmental Health. The project has been reviewed by Monterey County Environmental Health and it has been determined that PSMCS D has existing infrastructure, rates, and governing boards that provide adequate technical, managerial and financial capabilities to maintain their water system. The Pajaro service area operated by PSMCS D draws water from wells located in the Pajaro Valley groundwater basin. PSMCS D has adequate court-ordered and approved groundwater supplies and water rights to serve existing development and the proposed development. Water supply will come from existing wells owned and operated by PSMCS D. No new wells or substantial increase in demand on existing wells will result from this project.

The baseline water use, as discussed in Finding 2, Evidence “r”, is 17.9 AFY. This is the amount of water used for the existing row crop irrigation. The proposed 46-unit agricultural workforce housing project has a projected water demand of 14.2 AFY if occupied for 8 months,

which is anticipated for the seasonal nature of H2A housing. If all units were occupied for 12-months, the anticipated water demand would be 20.2 AFY which is 2.3 AFY over baseline. Mitigation Measure HYD-1 has been incorporated to ensure the water use for the proposed project will be less than 17.9 AFY by requiring metering of the water and regular reporting and rationing as needed to achieve a balance or reduction in water use from existing conditions.

- d) Due to the previous agricultural use of the project site and surrounding parcels, an Export Soil Sampling Report (LIB220195) was prepared to determine the levels of potentially hazardous materials residing in the soil proposed for re-use as fill. Additionally, a Phase I and II Environmental Site Assessment was prepared to determine if the project site soils contained chemicals or other pesticides such as lead arsenate and DDT, which may have been applied during the normal course of farming operations prior to establishing the current organic agriculture practice. The Export Soils Sampling Report and Phase I and II ESA concluded that metals and pesticides detected at the excavation pond site and project site are within normal background levels for the Monterey Bay area, and no further investigation is required prior to construction. However, construction workers at the site could be exposed to dust particles disturbed as a result of construction activities. In accordance with MCC Section 16.080.340, an erosion control plan shall be prepared and maintained for all disturbed surfaces resulting from grading operations, including dust control. As such, the proposed project will be required to implement standard dust control measures as part of grading and building.
- e) The North County Fire Protection District has reviewed the proposed project and all applicable materials and found the project to provide adequate emergency access.
- f) Staff conducted a site inspection on October 27, 2021, to verify that the site is suitable for this use.
- g) The application, project plans, and related support materials submitted by the project applicant to the Monterey County HCD – Planning for the proposed development found in Project File PLN210152.

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

- EVIDENCE:**
- a) Staff reviewed Monterey County HCD Planning and Building Services Department records and is not aware of any violations existing on subject property.
  - b) Staff conducted a site inspection on October 27, 2021 and researched County records to assess if any violation exists on the subject property.
  - c) There are no known violations on the subject parcel.
  - d) The application, plans and supporting materials submitted by the project applicant to Monterey County HCD-Planning for the proposed development are found in Project File PLN210152.

**6. FINDING: VARIANCE (SPECIAL CIRCUMSTANCES)** – Special circumstances apply to the subject property, including the size, shape, topography, location or surroundings. Therefore, the strict application of development standards in the Monterey County Codes is found to deprive the subject property of privileges enjoyed by other properties in the vicinity under and under identical zoning classification.

- EVIDENCE:**
- a) The project structures and use are located within the Farmland (“F”) zoning district which requires a building site coverage maximum of 5% of the total lot size. This project proposes a building site coverage of 20% and therefore the granting of a Variance is required.
  - b) There are unique circumstances applicable to this site. The site is located within the boundaries of the Pajaro Community Area (2010 General Plan Figure CA5), which is an area that is a priority for development in the unincorporated areas of Monterey County. The property is much smaller in size, 3.41 acres, than typical Farmland properties which typically have a minimum lot size of 40 acres. This property was created prior to the current zoning regulations and is non-conforming to the minimum parcel size for the zoning district. Additionally, the project is located adjacent to properties zoned for High Density Residential use.
  - c) This project includes an application for an agricultural support use (agricultural employee housing). While it is an agriculturally related development, it is also for housing. Typical residential (housing) building site coverage is between 25% in Low Density Residential zones and 60% in High Density Residential Zones. Properties to the west and south are zoned for High Density Residential use and those properties enjoy a much higher building site coverage limitation. The site is 3.41 acres in size (148,536 square feet). At 5% of the lot size, the maximum building site coverage would be 7,426 square feet which would severely limit the ability to construct an agricultural employee housing project.
  - d) Staff conducted a site inspection on October 27, 2021, to verify circumstances related to this property.
  - e) The application, plans and supporting materials submitted by the project applicant to Monterey County HCD-Planning for the proposed development are found in Project File PLN210152.

**7. FINDING: VARIANCE (SPECIAL PRIVILEGES)** – Granting of this Variance does not constitute a grant of privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.

- EVIDENCE:**
- a) The property has a Farmland (“F”) zoning designation.
  - b) Other properties in the Farmland zone have received approval of a Variance to the lot coverage when non-conforming lot sizes limit the ability to construct residential buildings or agricultural support facilities. A similar Variance in the vicinity includes PLN190077 (Duran) which allowed a 13% lot coverage for an addition to an agricultural support facility. There are many other examples of Variances granted to Lot Coverage in the Farmland zones throughout the County for improvements on properties that have a non-conforming parcel size (for example PLN140684 and PLN120312).

- c) As demonstrated in Finding 1, the proposed use supports the viable agricultural uses in Monterey County which are located in proximity of the subject property. Establishment of supportive housing for agricultural employees would not constitute a special circumstance in this case.
- d) The application, plans and supporting materials submitted by the project applicant to Monterey County HCD-Planning for the proposed development are found in Project File PLN210152.

**8. FINDING: VARIANCE (AUTHORIZED USE) –** The Variance does not grant a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.

- EVIDENCE:**
- a) The property is zoned Farmland which allows agricultural employee housing consisting of more than 12 units or 37 beds in group quarters with a Use Permit in each case (MCC Section 21.30.050.AA). As proposed, the project includes 45 agriculture employee housing units and 1 manager unit, and is therefore an allowed use under the subject zoning district.
  - b) The application, plans and supporting materials submitted by the project applicant to Monterey County HCD-Planning for the proposed development are found in Project File PLN210152.

**9. FINDING: CEQA (Mitigated Negative Declaration) -** On the basis of the whole record before the Monterey County Board of Supervisors, there is no substantial evidence that the proposed project as designed, conditioned and mitigated, will have a significant effect on the environment. The Mitigated Negative Declaration reflects the independent judgment and analysis of the County.

- EVIDENCE:**
- a) Public Resources Code Section 21080(d) and California Environmental Quality Act (CEQA) Guidelines Section 15064(a)(1) requires environmental review if there is substantial evidence that the project may have a significant effect on the environment.
  - b) Monterey County HCD-Planning prepared an Initial Study pursuant to CEQA. The Initial Study is on file in the offices of HCD-Planning and is hereby incorporated by reference (PLN210152).
  - c) The Initial Study identified several potentially significant effects, but the applicant has agreed to proposed mitigation measures that avoid the effects or mitigate the effects to a point where no significant effects would occur.
  - d) All project changes required to avoid significant effects on the environment have been incorporated into the project and/or are made conditions of approval. A Condition Compliance and Mitigation Monitoring and/or Reporting Plan has been prepared in accordance with Monterey County regulations. The applicant must enter into an “Agreement to Implement a Mitigation Monitoring and/or Reporting Program” as a condition of project approval.
  - e) The Draft Mitigated Negative Declaration (“MND”) for PLN210152 was prepared in accordance with CEQA and circulated for public review from December 23, 2021 through January 24, 2022 (SCH#: 2021120560).
  - f) Potential Impacts that were analyzed in the Mitigated Negative Declaration include: aesthetics, agriculture and forest resources, air

quality, biological resources, cumulative effects, cultural resources, geology/soils, growth inducement, greenhouse gas emissions, hazards/hazardous materials, hydrology/water quality, land use/planning, mineral resources, noise, population/housing, public services, recreation, forest land/fire hazard, solid waste, sewer capacity, noise, transportation/traffic, and utility/service systems.

- g) Impacts and Mitigation Measures. Potential impacts to biological resources, energy, geology, hazards and hazardous materials, hydrology and water quality, noise, tribal cultural resources, utilities and service systems, and mandatory findings of significance were identified in the IS. As demonstrated below, implementation of County regulations and/or incorporation of identified mitigations would reduce project impacts to a less than significant level.

*Biological Resources:* Potential impacts to California Red-legged Frog and nesting birds were identified. Mitigation Measures BIO-1, BIO-3, BIO-4, BIO-5, BIO-6, BIO-7, BIO-8, BIO-9, BIO-10, and BIO-11 have been incorporated to reduce potential biological impacts to a less than significant level (See Finding 1).

*Energy:* Potential impacts to energy resources to the project come from transportation related energy, which is mitigated by transporting the agricultural workforce to and from the work site via vanpools and buses. Use of the shared transportation would reduce impacts to energy resources to a less than significant level.

*Soils:* Potential liquefaction and lateral spreading impacts were identified. Risks from liquefaction would be reduced by implementing geotechnical recommendations and Mitigation Measures GEO-1 and GEO-2.

*Hazards:* A Phase 1 Environmental Site Assessment did not identify hazards on the site, and the Phase II Environmental Site Assessment and Export Soil Sampling Report concluded that the metals and pesticides detected on site are within the normal range and that no further investigation is required prior to construction. However, construction workers at the site could be exposed to dust particles disturbed as a result of construction activities, so an erosion control plan (Condition No. 19) shall be prepared and implemented to reduce these hazards and bring these impacts to a less than significant level.

*Hydrology:* Potential impacts to groundwater were identified however mitigation measure MM HYD-1 has been applied to reduce impacts on the groundwater to a less than significant level. Also see succeeding Evidence "h."

*Noise:* Construction of the project will produce noise. Mitigation Measure MM NOISE-1 reduces these impacts to a less than significant level by reducing construction operations to Monday through Saturday, 9:00 am to thirty minutes prior to sunset or 5:00 pm, whichever comes

first and incorporating best management practices for muffling of equipment.

*Tribal Cultural Resources:* Tribal consultation has occurred with the Ohlone Costanoan Esselen Nation and Esselen Tribe of Monterey County. Mitigation measures MM TCR-1 and MM TCR-2 would reduce impacts to a less than significant level by requiring contractor training prior to construction and tribal monitoring during excavation.

*Utilities:* Mitigation measures were required to bring impacts to utilities and service systems to a less than significant level, which include a Final Stormwater Control Plan, MM-USS-1, and a Drainage Study, MM USS-2.

- h) Cumulative Water Impacts: This project proposes to maintain existing water use within the Pajaro Valley Groundwater Basin. This project is located within the critically over drafted Pajaro Valley Groundwater Basin according to the State Water Board. Water used for agricultural purposes at the site is currently supplied by a shared well that is on an adjacent property. Current water use on the property is approximately 17.9 Acre Feet Per Year (AFY) (5.25 AFY per acre times 3.4 acres). The project proposes to disconnect from that shared well and connect to the Pajaro/Sunny Mesa Community Services District for potable water. This project will be required to balance the existing water use from the shared well with the proposed water demand from Pajaro/Sunny Mesa in order to avoid increasing demand for groundwater within the basin. Both the shared well and the water sources from Pajaro/Sunny Mesa for this service area draw from the Pajaro Groundwater Basin. The Pajaro Valley Water Management Agency (PVWMA) is tasked with managing the basin and has developed a Basin Management Plan pursuant to the State Groundwater Management Act (SGMA) in 2014 and has adopted a 2022 update to that Plan. The Plan contains a number of projects and policies that are intended to stop seawater intrusion and balance the groundwater basin. Some of those projects have already been approved and are operational and others are still being considered and studied. The 2022 update shows that projects and objectives are helping to increase groundwater storage in the basin. PVWMA has been consulted and has verified that the project will not impact PVWMA Basin Management Plan projects and objectives.

Proposed project water demand estimated were provided by Schaaf & Wheeler Consulting Engineers. Typical indoor water demand for residential development is 50 to 55 gallons per day per person (gpd/person), and is inclusive of cooking, cleaning, laundry, bathing and restroom use. The water demand in this development is expected to be lower due to the nature of the farmworker schedules which takes the residents off the site for the majority of the day. The Boronda agriculture H2A housing project uses an average 45 gpd/person, inclusive of landscape demand. If the project is at maximum occupancy year-round (8 employees per unit 12 months out of the year), which is not a reasonably foreseeable condition, the residential water use would be 20.2 AFY. If

occupied for 8-months out of the year, the residential use would be 14.2 AFY. To ensure that the project water use does not exceed historic water use, mitigation measure “MM HYD 1” has been applied to this project that requires that the applicants supply the Monterey County Environmental Health Bureau with water use data every 4 months for the first two years following approval of a certificate of occupancy or final building permit inspection. After the first two years of reporting, the applicant/owner shall submit evidence of actual water use annually. In the event that water usage exceeds 17.9 AFY, the applicant will be required to submit a plan to HCD and the Environmental Health Bureau for review and approval that contains measures that will reduce the actual water use in the following year to no more than 17.9 AFY minus any amount of water used in excess of 17.9 AFY in the prior year. Failure to reduce water usage to in any year following a year that exceeds the limits will result in a mandatory occupancy limit reductions as determined by HCD and the Environmental Health Bureau. With the implementation of this mitigation measure the proposed project will not increase demands on water within the critically over drafted groundwater basin and will not impede plans adopted to attain sustainable yields within the basin.

- i) All other categories were found to have no impacts or less than significant impacts from the project as proposed. Potential impacts from the project, as detailed in the proceeding evidence, will be less than significant with mitigation incorporated.
- j) Evidence that has been received and considered includes: the application, technical studies/reports (see Finding 3), staff reports that reflect the County’s independent judgment, and information and testimony presented during public hearings. These documents are on file in HCD-Planning (PLN210152) and are hereby incorporated herein by reference.
- k) Staff analysis contained in the Initial Study and the record as a whole indicate the proposed project could result in changes to the resources listed in Section 753.5(d) of the California Department of Fish and Game (CDFG) regulations. All land development projects that are subject to environmental review are subject to a State filing fee plus the County recording fee, unless the Department of Fish and Game determines that the project will have no effect on fish and wildlife resources. For purposes of the Fish and Game Code, the project may have an impact on the fish and wildlife resources upon which the wildlife depends. The Initial Study was sent to the California Department of Fish and Game for review, comment, and to recommend necessary conditions to protect biological resources in this area. Therefore, the project will be required to pay the State fee plus a fee payable to the Monterey County Clerk/Recorder for processing said fee and posting the Notice of Determination (NOD).
- l) During the public comment period, comments were received on the Initial Study/Mitigated Negative Declaration. The County has considered the comments and has made minor revisions to the project in response to comments.
- m) Revisions to the IS/MND have been made following the March 16, 2022 Planning Commission hearing. Revisions are required to clarify and amplify the analysis and to reflect the change in project addressing flooding elevations. The proposed project was slightly changed to include

raising the buildings to a finish floor elevation by 2.5 feet from the original proposal in response to comments provided by the Pajaro Valley Flood Management Agency. Additionally, the applicant is now proposing to deepen the County detention pond and use soils excavated from the pond as fill materials (8,000 cubic yard) on the site. Other minor revisions include installation of 4 high-flow tree box biofilters and 1 bioretention pond rather than 5 bioretention ponds. These changes triggered minor changes such as the need for additional retaining walls, ramps and stairs to accommodate the transition between the ground level and the building finish floor elevation. In response to traffic related concerns, the project traffic engineer conducted a second 24-hour traffic count at the 525 Third Street Apartments Agricultural Worker Housing project (Greenfield Project) in Greenfield, California to provide additional data to determine daily trip generation totals and hourly variations. Mitigation Measure BIO-2 required submittal of a spring survey to determine whether Monterey spineflower was present at the project site. After circulation of the IS/MND, Denise Duffy & Associates conducted the required spring survey and confirmed that the species does not exist on the property. Therefore, BIO-2 has been removed from consideration. The Supplemental Drainage Study (LIB220217) was prepared in response to Mitigation Measure USS 2 but has yet to be approved by HCD-Engineering Services and therefore is still applicable. All other mitigation measures remain the same as drafted in the circulated Initial Study (December 23, 2021 and January 24, 2022). No additional mitigation measures were proposed as a result of the IS/MND revisions. Changes have been made to the IS/MND that reflect the change in the project to address flood elevations and to clarify and amplify the analysis. The changes do not result in any new significant impacts or substantially increase the severity of impacts previously identified in the IS/MND.

- n) Additional revisions to the IS/MND have been made following the September 28, 2022, Planning Commission hearing. Revisions are required to clarify and amplify the analysis and to reflect the change in project scope (46 units with a total occupancy of 361 rather than 61 units with a total occupancy of 481). The proposed project's reduced scope resulted revisions to address the decreased traffic trips, water and sewer demand, air quality and greenhouse gas impacts, and grading quantities, and the incorporation of a 200-foot agriculture buffer. All other previous revisions made following the March 16, 2022 Planning Commission hearing remain. The changes do not result in any new significant impacts or substantially increase the severity of impacts previously identified in the IS/MND.
- o) Pursuant to CEQA Guidelines Section 15073.5(c), recirculation of the IS/MND is not required because the project revisions made following the March 16, 2022 and September 28, 2022 Planning Commission hearing have been added in response to comments on the projects effects which are not new avoidable significant effects, and the new information merely clarifies and amplifies the previous analysis. Additionally, pursuant to CEQA Guidelines Section 15074.1(b)(2), a public hearing on was held on September 28, 2022 to consider the previously proposed project and the draft IS/MND with the deletion of Mitigation Measure BIO-2 (as

discussed in Finding No. 9, Evidence “m”), and no new or substituting mitigation measures were proposed. Deletion of Mitigation Measure No. 2 will not cause any potentially significant effect on the environment.

- p) The draft IS/MND is not adopted and therefore CEQA Guidelines Sections 15162 and 15164 relating to preparation of subsequent EIRs and Negative Declarations and Addendums to an EIR or Negative Declaration do not apply.
- q) Monterey County HCD-Planning, located at 1441 Schilling Place, 2nd Floor, Salinas, California, 93901, is the custodian of documents and other materials that constitute the record of proceedings upon which the decision to adopt the Mitigated Negative Declaration is based.

**10. FINDING:**

**APPEAL** - The Appellant contends that the Planning Commission’s decision was not supported by the evidence and is contrary to law. Upon consideration of the documentary information in the files, the staff reports, the oral and written testimony, all other evidence presented before the Board of Supervisors, and the administrative record as a whole, the Board responds as follows to the Appellant’s contentions:

- EVIDENCE:** a) The Appellant (Rio Vista LLC) pursuant to Monterey County Code (MCC) Section 21.80.050.C, timely filed an appeal from the September 28, 2022, denial decision of the Planning Commission. The appeal challenged the Planning Commission’s denial of the Combined Development Permit consisting of Use Permit to allow construction of 45 agricultural workforce housing units and 1 managers unit, and a Variance to allow an increase in required site coverage (27%), and contended that the findings are not supported by the evidence, and that the decision was contrary to law.

The text of the Appellant’s contentions and the County’s responses to those contentions are set forth in Evidence “b” through “o” below. The appeal documentation is included in the December 13, 2022 staff report to the Board of Supervisors as Attachment D and is incorporated herein by reference.

- b) Appellant’s Contention No. 1: *“The Planning Commission’s Finding No. 1 that the Project does not conform to applicable plans and policies is not supported by substantial evidence” and “... is based on unsubstantiated opinions or narrative, fears and speculation from the nearby neighbors, and evidence that is simply not credible...”*

Response No. 1: Communications were received during the course of review of the previously proposed project suggesting that the project may be inconsistent with some of the applicable policies. The Planning Commission found that based on all the information in the record, concerns surrounding two-way traffic along Susan Street, San Juan Road and Susan Street intersection visibility, and indirect impacts to the residence of Susan Street still exist and without further resolution, make the 61-unit development proposal an incompatible use. Additionally, the Planning Commission found that due to the location, density, and size of the development, the 61-unit project as designed has a potential to expose occupants to hazards such as flooding and liquefaction. Although the Planning Commission found the 61-unit proposal inconsistent, the applicant has submitted a reduced project scope (46 units). Based on supplemental

technical letters addressing the proposed project's reduced scope, and in comparison to the 61-unit project, the reduced project scope will decrease the number daily trips by 44, decrease the proposed water demand by 4.1 AFY (assuming 8 month occupancy), decrease the sewer demand by 5,400 gallons per day, decrease the required grading quantities by 2,500 cubic yards, and decrease the occupancy by 120. The revised project scope further reduces such concerns and is consistent with the goals, policies, and objectives in the 2010 General Plan and MCC Title 21.

- c) *Appellant's Contention No. 2: The "Planning Commission's finding (Finding l(g)) that the Project's proposed 100-foot buffer is inconsistent with the 200-foot buffer requirement that is set forth in the County's zoning ordinance is not a legal basis to deny this Project" and "...and even though the County zoning ordinance [MCC Section 21.66.030] has not been amended yet to implement this policy [AG 1.2], the 2010 General Plan governs over any conflicting zoning regulation, which is invalid on its fact."*

*Response No. 2:* MCC Section 21.66.030 requires all development adjacent to Farmland, Permanent Grazing, and Rural Grazing zoning districts to establish an easement with a width of 200 feet, or wider where necessary to mitigate adverse impacts between agricultural and adjacent land uses. As accurately stated in the Appellant's Notice of Appeal, this regulation was adopted to implement Policy 30.0.2 of the 1982 General Plan. In 2010, the County of Monterey amended the General Plan. 2010 General Plan Policy AG-1.2 replaced 1982 General Plan Policy 30.0.2. Although the language is similar in that the goal of each policy is to protect agricultural operations, AG-1.2 details criteria to help establish an appropriate buffer width based on proposed development, site conditions, weather patterns, anticipated agriculture practices, crop type, machinery, and pesticide use, etc. California Government Code section 65860 requires county ordinances to be consistent with the General Plan. This section states that "[i]n the event that a zoning ordinance becomes inconsistent with a general plan by reason of amendment to the plan... the zoning ordinance shall be amended within a reasonable time so that it is consistent with the general plan as amended" (Government Code section 65860(c)). MCC Section 21.66.030 has yet to be amended to reflect the 2010 General Plan Policy AG-1.2 criterion, but it is included in the County's long range planning work program.

Although the previously proposed project included a 100-foot buffer, the proposed project scope incorporates a 200-foot agriculture buffer between the proposed three buildings (45 units of agriculture workforce housing) and the current organic farming operation to the west. As such, the proposed project is consistent with MCC Section 21.66.030 and exceeds the AAC's recommendation of a 100-foot buffer, which was recommended in accordance with General Plan Policy AG-1.2.

- d) *Appellant's Contention No. 3: "...the Agricultural Commissioner, at the eleventh hour and during the September 28, 2022 and unbeknownst to the applicant team, claimed for the first time that a 150 foot agricultural would be required due to his discussions with a neighboring owner and known opponent of this Project that the adjacent farm would be converted at some time in the future from its current and historic organic*

*farming to conventional farming. Such statements are not credible considering that the adjacent farm is currently leased to an organic farmer and the significant value and demand for organic farmland.”*

Response No. 3: Prior to the September 28, 2022 Planning Commission hearing, the neighboring property owners (Miller Trust) informed the Agriculture Commissioner that they intend to convert to conventional farming in the foreseeable future. Although the Agricultural Advisory Committee voted 6-0 with 5 members absent to recommend “support” of the previously proposed project with a 100 foot buffer, the Agriculture Commissioner provided comment at the public hearing that a 150 foot buffer, or wider, and vegetative screening would be more appropriate and encouraged the applicant and neighboring property owner discuss buffer alternatives. The increased buffer width was recommended to combat the potential pesticide drift associated with conventional farming. The proposed project scope incorporates a 200-foot buffer thereby adequately protecting the 361 proposed occupants and minimizing impacts to nearby agricultural operations, regardless of being conventional or organic.

The Appellant’s Notice of Appeal also accurately describes another foreseeable use of the neighboring Miller Trust property. HCD-Project File Number PLN060217 (Miller Trust Commercial Project) was deemed complete by applicable County agencies and departments on July 3, 2006. PLN060217 proposes to convert the exiting prime farmland to a commercial use, consisting of a 178,695 square foot commercial retail building and a 20,000 square foot garden center with 870 parking spaces. On February 7, 2020, the County of Monterey released a Notice of Preparation of a Draft Environmental Impact Report for this project. On July 27, 2020, the representative of PLN060217 requested that the Administrative Draft EIR and all associated project review be paused and that the project would likely be reassessed and moved forward once the “post-COVID economy settles” and “things return to normal.” Such development potential on the neighboring property would also be required to meet General Plan Policy AG-1.2.

- e) Appellant’s Contention No. 4: *“The Planning Commission’s Finding No. 2 that the site is not suitable for the Project is not supported by substantial evidence” and “The Planning Commission’s finding that this site is somehow unsuitable for the Project is based on lay person claims and unsubstantiated opinions about this project’s potential safety impacts relating to flooding, the limited bus trips that will occur only when this Project is occupied for the 8-month harvest season, proximity to agricultural fields, and liquefaction.”*

Response No. 4: In denying the 61 unit previously proposed project, the Planning Commission commented that it was not given adequate information to make necessary findings yet respected the request for a decision from the application. Questions that remained unsatisfactorily answered included traffic on a narrow street, impacts from flooding and liquefaction, and proximity to on-going agriculture.

Information is provided in this resolution that address the concerns raised by the Planning Commission. Similar to the 61-unit proposal, the

proposed project elevates all finished floors above the highest projected flood depths for this area (35.4-foot flood depth elevations), which is greater than FEMA and Monterey County Code requirements. As required by MCC Section 16.08.110 and Mitigation Measures GEO-1 and GEO-2, the proposed project's grading and construction plans will incorporate all recommendations of the project's geotechnical engineer which include engineered foundations and sub-excavation and re-compaction of the upper 5 feet of soil. In comparison to the 61-unit proposal, the proposed project will reduce the unit count by 15, which reduces occupancy by 120 and daily trip counts by 44. Similar to the previously proposed project, the proposed project scope includes the construction of sidewalks, curbs, and gutters along Susan Street. The traffic engineer recommended these improvements to improve pedestrian safety of Susan Street. The Applicant has prepared a draft Emergency Action Plan, as discussed in Finding No. 2, Evidence "k," which addresses procedures in the case of an emergency or hazard. Therefore, the proposed project will reduce the number of individuals which may be exposed to environmental hazards, and as conditioned and mitigated, will protect all occupants from hazards like flooding and liquefaction. Additionally, the proposed project has been revised to comply with agricultural buffer requirements (200 feet).

- f) *Appellant's Contention No. 5: The Planning Commission's Finding No. 3 that the Project may be detrimental to the health, safety, peace, morals, and general welfare of persons residing or working in the neighborhood of the Project is not supported by substantial evidence" and "...is based on the same unsubstantiated opinion or narrative, fears and speculation that purports to support its other findings."*

Response No. 5: The Planning Commission found that the 61-unit project would place up to 480 residents in a floodplain, on a site with known liquefaction hazards, at the end of a narrow dead-end road making evacuation of the area more difficult, and place people less than 200 feet from activate agricultural uses which can lead to exposure to pesticides from drift. The proposed project (46 units, 361 occupants) reduces the number of individuals who may be exposed to hazards. The Federal Emergency Management Agency (FEMA) and Flood Insurance Rate Maps (FIRM) identify land areas that are subject to flooding. MCC Section 16.16.050.C.2 requires finished floors to be at least 1 foot above the specified Federal Insurance Rate Maps (FIRM) flood depth, in this case the property is located within FEMA Zone AO with depth of 1-foot. Therefore, finished floors of Buildings A, B, and C must be constructed at least 2 feet above the highest existing grade or at a minimum elevation of 33', 31.5' and 32.5', respectively. As designed, the proposed finished floor elevation for all buildings is 35.5'. Although not required, the applicant has designed the finished floor elevations to exceed the estimated 100-year composite flood elevations (35.3 to 35.4 feet) provided by the Pajaro Regional Flood Management Agency (PRFMA), which accounts for a 100-year flood and multiple levee overtopping scenarios. Additionally, the applicant has prepared a preliminary Emergency Action Plan (EAP) that includes emergency contact information, before -, during-, and after-evacuation procedures, specific

duties of tenants, transportation arrangements, the draft North County Evacuation Guide (prepared by the Monterey County Office of Emergency Services), and a site plan illustrating emergency exit routes and areas of refuge. Finally, proposed project incorporates a 200-foot buffer thereby adequately protecting the 361 proposed occupants from inadvertent pesticide drift and minimizing impacts to nearby agricultural operations.

- 11. FINDING: APPEALABILITY** - The decision on this project may not be appealed.  
**EVIDENCE:** a) MCC Section 21.80.090.I states that decision on the appeal by the Appropriate Authority, in this case the Board of Supervisors, shall be final.

### **DECISION**

**NOW, THEREFORE**, based on the above findings and evidence, the Board of Supervisors does hereby:

1. Grant in part the appeal of Rio Vista Group LLC from the Planning Commission's denial of a Combined Development Permit consisting of: 1) Use Permit to allow construction of four 16,286 square foot two-story apartment buildings totaling 60 units for agricultural workforce housing and 1 manager unit, and associated site improvements including 17,500 cubic yards of grading; and 2) a Variance to increase the required building site coverage from 5% to 27%;
2. Adopt a Mitigated Negative Declaration pursuant to Section 15074 of the CEQA Guidelines;
3. Approve a Combined Development Permit consisting of:
  - a. Use Permit to allow the construction of three 16,286 square foot two-story apartment buildings totaling 45 units for agricultural workforce housing and 1 manager unit, and associated site improvements including 15,000 cubic yards of grading;
  - b. Administrative Permit to allow a 10% setback reduction; and
  - c. Variance to increase the required building site coverage from 5% to 20%; and
4. Adopt a Condition Compliance and Mitigation Monitoring and Reporting Plan.

All of which is in general conformance with the attached plan set and subject to the attached conditions and mitigation measures, attached hereto.

**PASSED AND ADOPTED** upon motion of Supervisor \_\_\_\_\_, seconded by Supervisor \_\_\_\_\_, and carried this 13<sup>th</sup> day of December, 2022, by the following vote to wit:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof Minute Book \_\_\_\_\_ for the meeting on December 13, 2022.

Date:  
File Number:

Valerie Ralph, Clerk of the Board of Supervisors  
County of Monterey, State of California

By \_\_\_\_\_  
Deputy