



Monterey County

Item No.

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: RES 22-071

March 22, 2022

Introduced: 3/11/2022

Current Status: Agenda Ready

Version: 1

Matter Type: BoS Resolution

- a. Approve a Professional Services Agreement with Denise Duffy & Associates, Inc. to provide environmental review consultation services for the Harper Canyon/Encina Hills Subdivision Project, in a not to exceed amount of \$19,885 and for a term commencing with the signing of the Agreement until December 31, 2024;
- b. Approve a Reimbursement Agreement with Harper Canyon Realty, Inc. related to the processing and services environmental review documentation focused on wildlife corridors for the Harper Canyon/Encina Hills Subdivision project, to take effect only upon execution of the agreement by the parties and for a term to expire upon Board of Supervisors approval or until final disposition of all litigation challenging such an action of the Board;
- c. Authorize the County Housing and Community Development Director, or designee, to execute the Agreements with Denise Duffy & Associates, Inc. and Harper Canyon Realty, LLC and future amendments or extensions to the agreements where the amendments or extensions do not significantly alter the scope of work, agreement amounts or affect the County's obligation.

PROJECT INFORMATION

Planning File Number: PLN000696

Provider of Services: Denise Duffy & Associates, Inc.

Project Applicant: Harper Canyon Realty, LLC

APNs: 416-611-001, 416-611-002 & 416-621-001

Plan Area: Toro

RECOMMENDATIONS

It is recommended that the Board of Supervisors adopt a resolution to:

- a. Approve a Professional Services Agreement with Denise Duffy & Associates, Inc. to provide environmental review consultation services for the Harper Canyon/Encina Hills Subdivision Project, in a not to exceed amount of \$19,885 and for a term commencing with the signing of the Agreement until December 31, 2024;
- b. Approve a Reimbursement Agreement with Harper Canyon Realty, Inc. related to the processing and services environmental review documentation focused on wildlife corridors for the Harper Canyon/Encina Hills Subdivision project, to take effect only upon execution of the agreement by the parties and for a term to expire upon Board of Supervisors approval or until final disposition of all litigation challenging such an action of the Board;
- c. Authorize the County Housing and Community Development Director, or designee, to execute the Agreements with Denise Duffy & Associates, Inc. and Harper Canyon Realty, LLC and future amendments or extensions to the agreements where the amendments or extensions do not significantly alter the scope of work, agreement amounts or affect the County's obligation.

SUMMARY/DISCUSSION

On April 7, 2015, the Board of Supervisors approved a 17-lot subdivision (the “Project”) proposed by Harper Canyon Realty LLC (“Harper”) on approximately 344 acres of land located south of State Route 68 and east of San Benancio Road in the Toro Area. To do so, the Board of Supervisors (the “Board”) adopted Resolution No. 15-084 which did the following: (1) certified the Final Environmental Impact Report (“FEIR”) for the Project; (2) adopted California Environmental Quality Act (“CEQA”) findings and a Statement of Overriding Considerations; (3) upheld the appeal by Harper from the Planning Commission’s denial of their application; (4) approved a Combined Development Permit consisting of a Vesting Tentative Map for the subdivision and associated Use Permits; and (5) adopted a Mitigation Monitoring and Reporting Plan.

On May 4 and 6, 2015, LandWatch Monterey County and Meyer Community Group (collectively, “Petitioners”) filed separate but related challenges to the County’s approval of the Project in Monterey County Superior Court (Case Nos. M131893 and M131913). Petitioners claimed that County failed to comply with the CEQA and that its approval of the Project was inconsistent with the County’s 1982 General Plan. The trial court upheld the Board’s action except with respect to the need to recirculate the FEIR’s groundwater resources analysis and the FEIR’s analysis of project-level impacts on wildlife corridors.

On December 3, 2018, the Superior Court issued its Final Statement of Decision and Ruling on Remedy in the case. The County and Harper appealed the Superior Court’s judgment and argued that substantial evidence supported the County’s determinations regarding the Project’s wildlife corridor impacts. The County and Harper also appealed the Superior Court’s decision that CEQA requires recirculation of the FEIR on groundwater resources. Petitioners filed cross-appeals asserting that the trial court erred in rejecting their claims that the FEIR was legally inadequate in its discussion of the Project’s setting and its cumulative effect on groundwater resources.

On March 29, 2021, the Court of Appeal issued its opinion. The Court of Appeal denied Petitioners’ cross-appeal and found that the County’s analysis of groundwater resources in the Draft EIR was adequate. The Court of Appeal also held that CEQA did not mandate recirculation of the FEIR on the topic of groundwater resources prior to approval of the Project. The Court of Appeal agreed with the trial court’s conclusion that the FEIR’s analysis of the Project’s impact on wildlife corridors was deficient and not supported by substantial evidence.

The Court of Appeal remanded the matter to the trial court with directions to vacate its original order, and to issue a new writ of mandate ordering the Board to vacate Resolution No. 15-084, and to vacate the Board’s approval and certification of the EIR for the Project only as it relates to wildlife corridor issue.

On July 1, 2021, the Superior Court issued its Second Amended Judgment Granting Peremptory Writ of Mandate (“Writ of Mandate”), and Second Amended Peremptory Writ of Mandate. The writ requires the Board do the following:

1. Set aside the portions of Resolution No. 15-084 certifying the FEIR for the Project as to project wildlife corridor issues only and reconsider the non-CEQA approvals in Resolution No. 15-084 and set them aside only to the extent they are dependent on project wildlife corridors issues.
2. To not take any further action to approve the Project without the preparation, circulation and

consideration under CEQA of a legally adequate EIR with regard to the wildlife corridor issues discussed in the Court of Appeal Opinion.

3. Make and file a return to this writ within 60 days of taking such action, setting forth what it has done to comply.

To comply with the Writ of Mandate, the Board adopted a Resolution, including but not limited to, setting aside Resolution No. 15-084 for the purpose of reconsidering whether the Project as designed and previously approved would result in a significant impact to wildlife corridors and to not take any further action to approve the Project without the preparation, circulation and consideration under CEQA of a legally adequate EIR with regard to the wildlife corridor issues discussed in the Court of Appeal Opinion.

In accordance with the Court of Appeal Opinion, Harper has asked the County to prepare a revised EIR pertaining focus on wildlife corridors. The County solicited proposals under its established EIR Consultation list. Denise Duffy & Associates, Inc. (DD&A) provided an acceptable scope of work for the needs applicable to the work needed. A draft professional service agreement has been drafted to engage in this work. A separate reimbursement agreement has been drafted that obligates Harper to reimburse costs associate with the work.

Once that analysis has been completed in accordance with CEQA, the Board, which will retain jurisdiction over the Project application (File No. PLN000696), will reconsider the Project approvals only in light of that supplemental analysis pertaining to wildlife corridors.

OTHER AGENCY INVOLVEMENT

The Office of the County Counsel, Auditor-Controller's Office and Risk Management Office have reviewed and approved the Agreements as to form and legality, and fiscal and insurance provisions, respectively.

FINANCING

There are no costs to the General Fund as a result of this action. Staff costs to manage the contracts and professional services provided by Denise Duffy & Associates, Inc., will be funded by Harper Canyon Realty, LLC, via a Funding Agreement in the amount of \$2,982.75 and \$19,885.00 respectively. Staff time for processing the environmental review will be charged at the billing rate established per the Department's fee article.

Due to late submission of this Board Report, the CAO Budget and Analysis Division was not provided adequate time to fully review for potential fiscal, organizational, policy, or other implications to the County of Monterey.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES

Agreements between the parties would promote the County as an organization that practices efficient and effective resource management and is recognized for responsiveness, strong customer orientation, accountability and transparency. All services will be fully funded by Harper.

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Check the related Board of Supervisors Strategic Initiatives:

- Economic Development
- Administration
- Health and Human Services
- Infrastructure
- Public Safety

Prepared by: Erik V. Lundquist, AICP, Housing & Community Development Director

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The following attachments are on file with the Clerk of the Board:

Attachment A - Board Resolution Approving Agreements with Denise Duffy & Associates, Inc. and Harper Canyon Realty, LLC

Attachment B - Professional Services Agreement with Denise Duffy & Associates, Inc.

Attachment C - FA with Harper

Attachment D - Denise Duffy and Associates, Inc. Proposal