



County of Monterey

Item No.

Board Report

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

Legistar File Number: A 22-596

December 06, 2022

Introduced: 11/14/2022

Current Status: Agenda Ready

Version: 1

Matter Type: BoS Agreement

- a. Approve Amendment No. 1 to Professional Services Agreement A-15745 with Denise Duffy & Associates, Inc., to provide continued services associated with completion of an Environmental Impact Report for the Harper Canyon/Encina Hills Subdivision project; add new tasks, and increase the not to exceed amount of \$19,885 by \$66,470 for a total amount not to exceed \$86,355 with no change in the term of the Agreement, April 1, 2012 to December 31, 2024;
- b. Approve Amendment No. 1 to Funding Agreement A-15746 with Harper Canyon Realty, Inc., related to the processing and services for environmental review documentation focused on wildlife corridors for the Harper Canyon/Encina Hills Subdivision project for a term to expire upon Board of Supervisors' approval or until final disposition of all litigation challenging such an action of the Board; and
- c. Authorize the County Housing and Community Development Director, or designee, to execute Amendments No. 1 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, subject to review by County Counsel.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Approve Amendment No. 1 to Professional Services Agreement A-15745 with Denise Duffy & Associates, Inc., to provide continued services associated with completion of an Environmental Impact Report for the Harper Canyon/Encina Hills Subdivision project; add new tasks, and increase the not to exceed amount of \$19,885 by \$66,470 for a total amount not to exceed \$86,355 with no change in the term of the Agreement, April 1, 2012 to December 31, 2024;
- b. Approve Amendment No. 1 to Funding Agreement A-15746 with Harper Canyon Realty, Inc., related to the processing and services for environmental review documentation focused on wildlife corridors for the Harper Canyon/Encina Hills Subdivision project for a term to expire upon Board of Supervisors' approval or until final disposition of all litigation challenging such an action of the Board; and
- c. Authorize the County Housing and Community Development Director, or designee, to execute Amendments No. 1 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, subject to review by County Counsel.

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

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 Monterey County Page 2 Printed on 3/15/2022 Legistar File Number: RES 22-071 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 asked the County to prepare a revised EIR to 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 required work.

On April 1, 2022, the County entered into Professional Services Agreement A-15745 with DD&A to provide services to prepare CEQA documentation, including an update to the FEIR in the amount of \$19,885. The next phase of the project requires the expansion of the Scope of Services to implement a wildlife camera trapping survey for the project site. The additional tasks will include deployment of wildlife camera trapping stations throughout the project site to ascertain faunal detection and inventory. The survey will likely determine movement patterns and the level of activity of wildlife throughout the project site.

The cost for the additional tasks is \$57,800 which increases the contingency amount of \$2,982.75 by \$8,670 for a new contingency amount of \$11,652.75. The contingency amount of \$2,982.75 was paid when the Funding Agreement was executed in April 2022. The additional funds requested of Harper amount to \$66,470.

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 and Auditor-Controller's Office have reviewed and approved the Agreements as to form and legality, and fiscal 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 DD&A will be funded by Harper through a Funding Agreement in the amount of \$114,320.50. Staff time for processing the environmental review will be charged at the billing rate established per the Department's fee article.


BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Agreements between the parties promote the County as an organization that manages resources responsibly and effectively as well as being accountable and transparent.

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

Prepared by: Kathleen M. Nielsen, Management Analyst, x4832

Reviewed by: Lori Woodle, Finance Manager I, x6682

Approved by: Erik V. Lundquist, AICP, Director, x5154 

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

Attachment A - Amendment No. 1 to PSA with Denise Duffy & Associates, Inc.

Attachment B - Amendment No. 1 to FA with Harper Canyon Realty, LLC

Attachment C - Executed Board Resolution 22-104

Attachment D - Executed PSA with Denise Duffy & Associates, Inc.

Attachment E - Executed FA with Harper Canyon Realty, LLC