

# Attachment A- Draft Resolution

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**DRAFT RESOLUTION**

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

Resolution No.

- Resolution by the Monterey County Board of Supervisors: )  
a. Certifying that: the Final EIR for the Harper Canyon )  
(Encina Hills) Subdivision Project (SCH )  
#2003071157) has been completed in compliance with )  
CEQA; that the final EIR was presented to the Board )  
of Supervisors and that the Board of Supervisors )  
reviewed and considered the information contained in )  
the EIR prior approving the project; and that the Final )  
EIR reflects the County’s independent judgment and )  
analysis; )  
b. Adopting the findings and the Statement of Overriding )  
Considerations; )  
c. Upholding the appeal by Harper Canyon Realty LLC )  
from the Planning Commission’s denial of their )  
application for a Combined Development Permit )  
consisting of a Vesting Tentative Map for the )  
subdivision of 344 acres into 17 lots and associated )  
Use Permits; and )  
d. Approving a Combined Development Permit )  
consisting of a 1) A Vesting Tentative Map for the )  
subdivision of 344 acres into 17 residential lots )  
ranging in size from 5.13 acres to 23.42 acres on 164 )  
acres with one 180-acre remainder parcel; 2) Use )  
Permit for the removal of approximately 79 Coast live )  
oak trees over six inches in diameter for road and )  
driveway construction; 3) Use Permit for development )  
on slopes in excess of 30 percent; 4) Use Permit for )  
the creation of a public water system with a stand- )  
alone treatment facility (Option B); and 5) grading for )  
net cut and fill of approximately 2,000 cubic yards; )  
and )  
e. Adopting a Mitigation Monitoring and Reporting Plan. )  
[Appeal of Combined Development Permit PLN000696/ )  
Harper Canyon Realty LLC, Toro Area Plan] )

**An appeal by Harper Canyon Realty LLC from the Planning Commission’s denial of the Harper Canyon (Encina Hills) application (PLN000696) came on for public hearing before the Monterey County Board of Supervisors on May 13, 2014, August 26, 2014, December 2, 2014, March 3, 2015 and April 7, 2015. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Monterey County Board of Supervisors finds and decides as follows:**

## FINDINGS

1.       **FINDING:**       **PROJECT DESCRIPTION** – The proposed project is a Combined Development Permit consisting of a 1) A Vesting Tentative Map for the subdivision of 344 acres into 17 residential lots ranging in size from 5.13 acres to 23.42 acres on 164 acres with one 180-acre remainder parcel; 2) Use Permit for the removal of approximately 79 coast live oak trees over six inches in diameter for road and driveway construction; 3) Use Permit for development on slopes in excess of 30 percent; 4) Use Permit for the creation of a public water system with a stand-alone treatment facility; and 5) grading for net cut and fill of approximately 2,000 cubic yards.
- EVIDENCE:**       The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA - Planning for the proposed development found in Project File PLN000696.
2.       **FINDING:**       **PROCEDURAL BACKGROUND** – The County complied with all procedural requirements in processing the subject Combined Development Permit (PLN000696/Harper Canyon (Encina Hills)).
- EVIDENCE:**   a) On August 16, 2001, the project applicant, Harper Canyon Realty, LLC (“Applicant”), submitted an application for a Combined Development Permit for a Vesting Tentative Map in order to subdivide land into 17 lots. The project application was deemed complete on November 22, 2002. An Initial Study/Mitigated Negative Declaration (IS/MND) was prepared in July 2003 and circulated for a 30-day public review period from July 24, 2003 through August 22, 2003.
- b) The project was referred to the Toro Area Land Use Advisory Committee (LUAC) for review. The LUAC reviewed this project at its July 14 and July 28, 2003 meetings. The LUAC conducted a site visit July 28, 2003 and voted on two motions. One motion to recommend approval failed 2-2, and the second motion to recommend denial also failed 2-2.
- c) On October 28, 2004, the Monterey County Standard Subdivision Committee held a duly-noticed public hearing to consider the analysis of project consistency. The Standard Subdivision Committee recommended 3-0 with 3 abstentions that the Planning Commission approve the project subject to findings and conditions.
- d) On January 12, 2005, the Planning Commission conducted a public hearing on the project and recommended that an EIR be prepared.
- e) On April 20, 2005, the applicant filed a timely appeal from the Planning Commission’s determination that an EIR be prepared to the Board of Supervisors. The applicant withdrew the appeal at the Board of Supervisors’ meeting held on September 13, 2005. Subsequently, an EIR was prepared.
- f) The Planning Commission conducted a public hearing on June 30, 2010, to review project and consider certification of the Final EIR. The project was continued to a future hearing to address concerns raised by the public and to await resolution of a complaint filed with the California Public Utilities Commission regarding the ability of the California American Water Company (Cal-Am) to expand the service

area of its Ambler Park water system.

- g) In December 2013, a revised Final EIR was released to the public.
- h) On January 8, 2014, the Planning Commission conducted a public hearing on the project. On a 5-4 vote, the Planning Commission adopted a resolution of intent to deny the project and continued the hearing to February 12, 2014 with direction to staff to return with findings and evidence for denial.
- i) On February 12, 2014, the Planning Commission adopting a resolution denying the project on a vote of 8-0. (**Attachment D** of the May 13, 2014 staff report).
- j) On February 24, 2014, the Applicant filed a timely appeal to the Board of Supervisors from the Planning Commission's decision to deny the project.
- k) On March 11, 2014, the Appellant's agent, Michael Cling, requested to postpone the public hearing until May 13, 2014 to accommodate his client's schedule (**Attachment L** of the May 13, 2014 staff report).
- l) On May 13, 2014, the Board of Supervisors conducted duly noticed public hearing on the project. The Board took public testimony, directed staff to return with a draft resolution with findings and evidence to deny the appeal and deny the project, requested the Applicant, Harper Canyon Realty LLC, to provide updated water quality and quantity testing data on the Applicant's well ("New well"), and continued the public hearing open to August 26, 2014.
- m) On August 26, 2014, at the continued hearing on the project, staff presented a draft resolution with findings and evidence to deny the appeal and deny the project. Attorney Michael Cling, on behalf of the Applicant, requested a continuance to a later date in order to schedule and perform the well testing and to prepare a written analysis of the results. The Board directed staff to return on October 28, 2014 with a status update on the progress of the well testing and continued the public hearing open to December 2, 2014.
- n) On October 28, 2014, Environmental Health Bureau (EHB) staff provided an update on the progress of the well testing to the Board. The applicant decided to test the Oaks well as well as the New Well. A 72-hour pump test was conducted on the Oaks well from October 24-27, 2014. At the time of the Board hearing on October 28, the well test was in the recovery phase. The pump test had not yet been conducted on the New well. The Board accepted the report.
- o) On December 2, 2014, at the continued hearing on the project, Attorney Michael Cling, on behalf of the Applicant, indicated that pump tests still had not yet been conducted on the Harper Canyon (New) well and stated that they expected to have them completed in early December and the written report completed at the end of January. The Board continued the public hearing open to March 3, 2015.
- p) On March 3, 2015, at the continued hearing on the project, the Board considered the report on the pumping and aquifer recovery tests completed for the wells associated with the project, took public testimony, and adopted a motion of intent to approve the project. The Board continued the public hearing to April 7, 2015 to enable staff to present a resolution in support of the motion of intent to approve the

project. On April 7, 2015, staff presented the resolution.

- q) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA - Planning for the proposed development found in Project File PLN000696; the records of the May 13, 2014, August 26, 2014, December 2, 2014, March 3, 2015, and April 7, 2015 hearings maintained by the Clerk of the Board.
- r) The staff reports, minutes, audio, and video recordings of the Subdivision Committee, Planning Commission and Board of Supervisors hearings.

3. **FINDING:** **CONSISTENCY** – The 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 of this application, the project has been reviewed for consistency with the text, policies, and regulations in the:
    - 1982 Monterey County General Plan;
    - Toro Area Plan;
    - Monterey County Zoning Ordinance (Title 21 of the Monterey County Code (MCC));
    - Monterey County Subdivision Ordinance (Title 19 of the MCC);
    - and
    - Monterey County Code Section 18.50.

No conflicts were found to exist. Communications were received during the course of review of the project alleging inconsistencies with the text, policies, and regulations in these documents. The Board received and considered the communications submitted. The Board has determined that the project is consistent with the text, policies, and regulations noted above. Pursuant to the Subdivision Map Act (Government Code §66474.2) and 2010 General Plan Policy LU-9.3, subdivision applications deemed complete on or before October 16, 2007 shall be governed by the plans, policies, ordinances, and standards in effect at the time the application was deemed complete. The project application was deemed complete on November 22, 2002. Therefore, the 1982 General Plan and ordinances listed above apply to the project, and the 2010 Monterey County General Plan (adopted 10/26/2010) does not apply to this project application. References in these findings to the General Plan are to the 1982 General Plan.

- b) The property is located east of San Benancio Road in the Toro area (Assessor's Parcel Numbers 416-611-001-000, 416-621-001 and 416-611-002-000), Toro Area Plan. The parcel is zoned "RDR/5.1-D," Rural Density Residential, 5.1 acres per unit with Design Control Overlay, and a small portion is designated as LDR/1, Low Density Residential, 1 acre per unit, which allows the subdivision of two parcels totaling 344 acres into 17 lots for 17 single-family homes, and one remainder parcel of 180 acres with a combined development permit. Therefore, the project is an allowed land use for this site.
- c) Future development on the project site would be subject to Design Review per the Design Control overlay or "D" zoning designation.
- d) Monterey County Code Sections 21.14.050.Q and 21.16.050.R allow water system facilities including wells and storage tanks serving fifteen

(15) or more service connections with a use permit. Therefore, with the issuance of a use permit, the water system facilities are an allowed use for the site.

- e) Project planners conducted a site inspection on numerous occasions to verify that the project on the subject parcel conforms to the plans listed above.
- f) The project is consistent with the Lot Design Standards of MCC Section 19.10.030. Lots, building sites and improvements of the subdivision comply with applicable provisions of the Subdivision Ordinance (Title 19), Zoning Ordinance, General Plan, and Toro Area Plan in effect when the project application was deemed complete. The conditions of approval require the Applicant to assure long-term maintenance of the improvements by use of a homeowner's association (Condition No. 36).
- g) Overall, the proposed project incorporates the intent of Monterey County General Plan policies. The proposed project will:
  - 1. Preserve open space areas to protect scenic vistas and biological resources;
  - 2. Incorporate design and construction practices to conserve soil resources, water quality, and environmentally sensitive areas;
  - 3. Conserve energy through building and site design;
  - 4. Protect human life and structures from seismic and fire hazards;
  - 5. Ensure compatible land uses; and
  - 6. Provide for adequate, safe, and effective transportation facilities; and allow for the adequate provision of public services.
- h) The project is consistent with the following General Plan goal, objective and policies:
  - 1. **Goal 53 (Water Service) – To promote adequate water service for all county needs.**
  - 2. **Objective 53.1 – Achieve a sustained level of adequate water services.**
  - 3. **Policy 53.1.3 – The County shall not allow water consuming development in areas which do not have proven adequate water supplies.**

Adequate water service is available at the site consistent with Goal 53. The new homes will use water and therefore are considered to be “water consuming development” under this policy. According to the project hydrogeology reports, the proposed project would have a water demand of approximately 12.75 AFY based on a demand value of 0.75 AFY per residence. Based on the Monterey County Water Resources Agency's (MCWRA) water balance worksheet, which takes into account water demand and loss of recharge, the proposed project will result in net negative change of -13.1 AFY. The water supply for the project is two wells, the “Oaks well” and “New well.” Neither the Oaks well, New well nor the project site are located within a B-8 zoning district. According to MCWRA and the *El Toro Ground Water Study* (2007) and the Geosyntec 2010 Supplement, the wells and project site are located within Monterey County Water Resources Agency's benefit assessment Zone 2C, and receive benefits of sustained groundwater levels attributed to the

operation of both the Nacimiento and San Antonio Reservoirs and the Salinas Valley Water Project. Currently, the Oaks well is owned by California American Water Company (Cal Am). Due to the need to treat the water from the Oaks well to meet primary drinking water standards, Cal Am provides water service to the already approved 9-lot Oaks subdivision; pursuant to a Memorandum of Understanding dated May 6, 2014, Cal Am has agreed to transfer raw water from the Oaks' well to Cal Am's Ambler Park water system in an amount equal to the amount of water Cal Am is supplying to the Oaks' subdivision. The Harper Canyon project is conditioned to construct a water treatment facility to treat the water from both the Oaks well and New well. The treatment facility is to be transferred to Cal Am for operation. When that system is built, the Oaks well would be disconnected from the Ambler Park water system, as the new facility rather than the Ambler Park water system would treat the water from the Oaks well. (Condition Nos. 23, 24, 25, 100, and 101.)

In addition, the Monterey County Health Department, Environmental Health Bureau has recommended finding that there is an assured long-term water supply for the project. Accordingly, the project is consistent with Goal 53, Objective 53.1 and the related policies.

4. **Policy 53.1.5 – Proliferation of wells, serving residential, commercial, and institutional uses, into common water tables shall be discouraged.**

No new wells are needed to serve the project because the project will be served by two existing wells. Therefore the project is consistent with Policy 53.1.5.

5. **Policy 26.1.4.3 – A standard tentative subdivision map and/or vesting tentative and/or Preliminary Project Review Subdivision map application for either a standard or minor subdivision shall not be approved until:**

- 1) **an applicant provides evidence of an assured long term water supply in terms of yield and quality for all lots which are to be created through subdivision. A recommendation on the water supply shall be made to the decision making body by the County's Health Officer and the General Manager of the Water Resources Agency, or their respective designees.**

- 2) **the applicant provides proof that the water supply to serve the lots meets both the water quality and quantity standards as set forth in Title 22 of the California Code of Regulations, and Chapters 15.04 and 15.08 of the Monterey County Code subject to the review and recommendation by the County's Health Officer to the decision making body.**

The Board finds that the project has an assured long term water supply. The project wells are located in Zone 2C, the Monterey County Water Resources Agency's (MCWRA) benefit assessment zone for projects that are addressing overdraft in the Salinas River



Groundwater Basin, and Applicant has been paying Zone 2C charges. Members of the public contended that the Corral de Tierra subbasin where the wells are located does not benefit from the SVWP; however, there is substantial evidence that the suite of MCWRA projects that address the Salinas River Groundwater Basin provide benefit to the area where the project wells are located. According to the Monterey County Water Resources Agency, hydrologic modeling performed for the Salinas Valley Water Project (SVWP) indicated that, under 1995 Baseline conditions, groundwater levels in the basin would increase and seawater intrusion would be halted. Higher groundwater levels in the Salinas River Groundwater Basin (SRGB) will result in a reduction in the hydraulic gradient between the SRGB and the Corral de Tierra subbasin retarding outflow from Corral de Tierra to the SRGB. The modeling for the SVWP identified that an additional reduction in pumping near the coast would need to be achieved in order to halt seawater intrusion under 2030 conditions. Analysis of groundwater level and water quality data have shown since the SVWP began operations in 2010, groundwater levels near the coast have increased and the annual rate of seawater intrusion has continued to decrease. Additionally, data analysis has shown that between 2011 and 2013 there was no indication of advancement of the seawater intrusion front in either the Pressure 180-Foot or Pressure 400-Foot aquifers.

The “State of the Salinas River Groundwater Basin Report” (Brown and Caldwell, 2015) provided a “snapshot” of current conditions of the SRGB, occurring during the third year of an extended drought. The water balance presented in the report is a summary of historic data, prior to the construction and operation of the SVWP. One of the report’s conclusions is that the SRGB is in overdraft. This was not a new or unexpected conclusion. The SVWP was designed to achieve a balanced basin over a modeling period of about fifty years. Extended periods of droughts occur in the modeling, but the impacts of those droughts are mitigated over time. The primary analysis and conclusions of the Brown and Caldwell, 2015 report are that although the basin is currently estimated to be out of balance by 17,000 to 24,000 acre-feet per year, that offset can be mitigated by an estimated 16 million acre-feet of available groundwater in storage. The impact of the SVWP on basin balance was not within the scope of the Brown and Caldwell, 2015 investigation.

As a result of the request of the Board of Supervisors, the Applicant updated the testing of the Oaks well and New well. A report on the 72-Hour Constant Rate Well Pumping and Aquifer Recovery Tests for the Ambler Oaks (Oaks) and Encina Hills (New) wells was prepared by Bierman Hydrogeologic and submitted to County staff on February 10, 2015 for review (**Attachment A** of the March 3, 2015 staff report). Based on the information in the Bierman Report, Monterey County Water Resources Agency staff performed a well impact threshold analysis to determine if an existing or proposed

well has the potential to cause significant adverse impact to an existing domestic or other water supply well. Under this analysis “potentially significant adverse impact” is defined as the impacted well exceeding drawdown equal to five (5) feet or more, or drawdown equal to 5% of the impacted wells saturated thickness, after one year of pumping. Utilizing a modified Theis equation and a range of aquifer parameters from previous investigations in the Corral de Tierra subbasin, results indicate that the sphere of influence under which either the Oaks or New wells would have the potential to cause significant adverse impact would theoretically range from 25 to 195 feet. The Bierman report did not identify wells within this radius. After reviewing the Bierman Report, Monterey County Water Resources Agency staff determined that the:

- The consultant’s assumptions were reasonable and within boundaries of known hydrologic parameters for the area.
- The consultant’s test methodologies conformed to industry standards.
- The consultant’s findings and conclusions with respect to impacts on neighboring wells were supported by the data presented.

The Health Department’s Environmental Health Bureau (EHB) staff also reviewed the Bierman Report. The Bierman Report assumptions are based on a 25-connection water system because the proposed water system includes a stand-alone water treatment facility for the 16 new lots created by the proposed Harper Canyon subdivision and the already-approved 9 lots of the Oaks subdivision. After reviewing results of the 2000 Oaks well pump testing report and the Bierman Report, EHB has concluded that the Oaks well with a larger pump (i.e. a 5 hp pump) can provide a sufficient water supply for the 25-connection water system. Also, EHB has concluded that the New well can provide a sufficient water supply (quantity) for the proposed 25-connection water system.

Members of the public contended that the well testing did not meet EHB procedures; however, EHB has determined that the testing procedures were adequate and did not violate their procedures. EHB’s Source Capacity Testing Procedures serve as guidance and allow for change in procedures. In this case, the well is constructed in alluvial material. EHB requested that the Monterey County Water Resources Agency (Agency) as EHB’s consultant review the well log for the New Well and render an opinion as to whether the well is an alluvial well or a fractured rock well. The well log is available to staff but is exempt from public disclosure per Water Code Section 13752. The Agency, after reviewing the well log, opined that the New Well is an alluvial well. The applicant was required to perform a 72-hour continuous source capacity test in conformance to the Policy 6.1.4 of the 1982 Toro Area Plan and Section 64554 (f) (1-7) [i.e. alluvial soils] of the California Code of Regulations. The Source Capacity Testing Procedures require source capacity testing of wells

in the months of August, September, and October for non-alluvial wells and alluvial wells in known water shortage problem areas. These months are typically the driest part of normal rainfall years and will show the performance of the well during a period of the year when the aquifer is under the greatest stress. However, in multiple years of drought EHB has permitted source capacity testing to be performed outside of these months when no significant rainfall has occurred. Therefore, the month of testing did not violate EHB procedures. Similarly, the day of the week in which testing was performed did not violate EHB procedures. The Source Capacity Testing Procedures require that testing start on Monday or Tuesday at a specified time. This requirement is based on staffing resources and attempts to keep the testing within normal work hours. However, EHB has accommodated requests when the applicant is willing to pay for staff overtime during weekend testing and staff is available.

With respect to water quality, the Oaks well and New well were tested and determined not to meet all current drinking water standards. Therefore, mitigation measures (MM 3.6-2b (water treatment facility – Option B) and 3.6-2c) are included requiring that the Owner/Applicant to contract with a qualified engineer to design the improvements and the Owner/Applicant to install water system improvements to meet the standards as found in Chapter 15.04 and 15.08 of the Monterey County Code, Titles 17 and 22 of the California Code of Regulations, the Residential Subdivision Water Supply Standards and California Public Utility Commission Standards. In addition, the water treatment facility shall be transferred to the water purveyor for operation and monitoring. These measures provide for treatment of water on-site with a satellite treatment system. The selected option would avoid the Ambler Park water treatment facility having to treat the water and thus avoid physical involvement with water from the B-8 zone, while putting in place a treatment requirement so that the water meets all current Title 22 water quality standards.

After reviewing the Bierman Report, EHB has concluded that the Oaks well and the New well provides sufficient water quantity and quality, with treatment, from each well to supply the 25-connection water system. Both EHB and MCWRA have recommended that the Board find that the project has an assured long term water supply.

- i) The following Toro Area Plan policies apply to the proposed project:
  1. **Policy 5.1.2.1 (T) – Developments shall be designed to maintain groundwater recharge capabilities on the property.** The proposed project includes drainage and recharge facilities that would allow stormwater to be collected on site for groundwater recharge.
  2. **Policy 7.2.3 (T) – The preservation of oak trees in Toro shall be promoted by discouraging removal of healthy trees with diameters in excess of eight inches.** The proposed project includes a use permit for the removal of approximately 79 oak trees, which is

less than one percent of the approximately 9,187 total trees located on the project site. Tree removal would occur primarily within the limits of the grading area to install the widened project roadways, and tree impacts associated with development of proposed building sites would be minimal since the building site locations are proposed primarily within the open areas of the site. The number of oak trees proposed for removal is therefore the minimum number required to develop the site as proposed. See **Findings 14 & 15**.

3. **Policy 26.1.4.3. (T)** – See **Evidence (g) (5)** above.
4. **Policy 26.1.9.1 (T)** – **Development on ridgelines and hilltops or development protruding above ridgelines shall be prohibited.** The approximate locations of proposed homesites are shown on the Vesting Tentative Map and have been sited to comply with this ridgeline policy. See **Finding 9 (a)**.
5. **Policy 26.1.20.1 (T)** – **Lighting of outdoor areas shall be minimized and carefully controlled to preserve the quality of darkness. Street lighting shall be as unobtrusive as practicable and shall be consistent in intensity throughout the Toro Area.** The proposed project will introduce new light sources including, but not limited to, street lighting, and interior and exterior lighting of the proposed residential uses. Stationary light sources have the potential to adversely affect adjacent properties through a “spillover” effect. New light sources would result in a greater overall level of light at night adjacent to the project site, thus reducing night sky visibility, affecting the general character of the area. The Final EIR includes the following mitigation measure to ensure lighting impacts are reduced to a less-than-significant level (MM 3.1-4). Prior to issuance of building permits, Monterey County RMA-Planning shall require that the project applicant prepare and submit a detailed lighting plan that indicates the location and type of lighting that will be used at the project site. The lighting plan shall be consistent with Section 18.28 of Monterey County Code, to minimize glare and light spill. All external lighting shall be indicated on project improvement plans, subject to review and approval by the County of Monterey.
6. **Policy 39.1.1.3 (T)** – **The County shall require significant financial contributions from each new subdivision in the Toro Planning Area in order to expedite funding and construction of Highway 68.** The project will be required to contribute to the TAMC Regional Development Impact Fee (RDIF) program in accordance with the associated fee schedule for the program in order to provide its fair share of funding toward Highway 68 improvement projects included within the RDIF program. See **Finding 9 (i)**.
7. **Water Conservation Regulations.** Monterey County Code Section 18.50 was added by Ordinance 3932 and requires water conservation practices in several parts of Monterey County, including the Toro area. Mandatory measures under this ordinance include use of low-flow plumbing fixtures (also required by state and federal law) and low water usage landscaping. A landscaping plan that utilizes low water usage plantings, irrigation times and low water output irrigation equipment is required (Condition No. 13).

- j) Harper Canyon (Encina Hills) Subdivision Draft EIR prepared by PMC dated October 2008, Harper Canyon (Encina Hills) Subdivision Recirculated Draft EIR prepared by PMC dated December 2009, Harper Canyon (Encina Hills) Subdivision Final EIR prepared by PMC dated December 2013.
- k) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA - Planning for the proposed development found in Project File PLN000696.

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

- EVIDENCE:**
- a) The project has been reviewed for site suitability by the following departments and agencies: RMA - Planning, Monterey Regional Fire Protection District, Parks, RMA - Public Works, Environmental Health Bureau, Water Resources Agency and the Economic Development Department. There has been no indication from these departments/agencies that the site is not suitable for the proposed development. Conditions recommended have been incorporated.
  - b) Staff identified potential impacts to Biological Resources, Archaeological Resources, Soil/Slope Stability, Traffic, Hydrogeology, Archaeological and Historical Resources, and Trees. 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. County staff concurs. The following reports have been prepared:
    - “Preliminary Cultural Resources Reconnaissance of Portions of APN 416-211-21 and 415-011-01, San Benancio, Monterey County, California.” prepared by Archaeological Consulting. March 22, 1993 (LIB060466).
    - “Geological and Geotechnical Feasibility Study” prepared by D&M Consulting Engineers, Inc./Terratech. August 6, 2001 (LIB060463).
    - “El Toro Groundwater Study” prepared by Geosyntec Consultants for the Monterey County Resource Management Agency. July 2007 and supplemented in June 2010.
    - “Harper Canyon/Encina Hills Subdivision Traffic Impact Analysis: prepared by Higgins Associates (now Hatch Mott McDonald). May 29, 2001 (LIB060465).
    - “Harper Canyon/Encina Hills Subdivision Traffic Impact Analysis: prepared by Higgins Associates (now Hatch Mott McDonald). February 11, 2002 (LIB060464).
    - “Harper Canyon/Encina Hills Subdivision Traffic Impact Analysis: prepared by Higgins Associates (now Hatch Mott McDonald). May 28, 2008 (LIB060464).
    - “Project Specific Hydrogeological Report – Harper Canyon Realty, LLC Subdivision” prepared by Todd Engineers, Alameda, California. September 2002. Updated July 2003. Revised October 2010 (LIB060468).
    - “Archaeological and Historical Resources Investigations for the Harper Canyon Project” prepared by Pacific Municipal Consultants, Rancho Cordova, California, May 2006 (LIB060466).

- “Forest Management Plan” prepared by Staub Forestry and Environmental Consulting, June 2001 (LIB060467).
- “Addendum to Forest Management Plan dated June 2001 for Monterey County APNs 416-611-01 and 416-611-03 – Encina Hills” prepared by Staub Forestry and Environmental Consulting, April 28, 2008 (LIB060467).
- “Biological Resources Assessment” prepared by Zander Associates, July 13, 2001 (LIB060470).
- “Results of Follow-Up Survey” prepared by Zander Associates, October 3, 2001 (LIB060470).
- “Biological Resources Assessment” prepared by Zander Associates, November 11, 2005 (LIB060470).
- “Preliminary Drainage Report for Encina Hills Subdivision” prepared by Whitson Engineers, Monterey, California. September 28, 2006 (LIB060566).
- “Preliminary Drainage Report for Encina Hills Subdivision” prepared by Whitson Engineers, Monterey, California. March 22, 2007 (LIB070167).
- “72 Hour Constant Rate Well Pumping and Aquifer Recovery Tests for Ambler Oaks & Encina Hills Wells for Harper Canyon Subdivision” prepared by Bierman Hydrogeologic, February 7, 2015 (LIB150059).

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. County staff has independently reviewed these reports and concurs with their conclusions.

- c) Staff conducted a site inspection on numerous occasions 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 Monterey County RMA - Planning for the proposed development found in Project File PLN000696.

5. **FINDING:** **HEALTH AND SAFETY** - The establishment, maintenance, or operation of the project applied for will not under the circumstances of this 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 the RMA - Planning, Monterey Regional Fire Protection District, Parks, RMA - Public Works, Environmental Health Bureau, Water Resources Agency and the Economic Development Department. 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) Necessary public facilities are available. Potable water will be provided by two groundwater wells. The Board of Supervisors’ approval is conditioned upon Treatment Option B, a stand-alone treatment plant on

the project site in Zone 2C. The project applicant shall be responsible to pay their fair share towards the necessary improvements. The treatment plant shall be separate from the Ambler Park water treatment facility; however, the water purveyor (Cal-Am) shall operate and manage the treatment facility (See Mitigation Measures MM 3.6-2b and MM 3.6-2c). Sewage will be conveyed and treated at California Utility Services treatment facility on Reservation Road. See **Finding 7**.

- c) Two water treatment options were presented for the proposed project: Option A – to treat water at the existing Ambler Park water treatment facility (Mitigation Measure MM 3.6-2a); or Option B – create a new satellite water treatment system that would serve the proposed project and previously approved Oaks subdivision only (Mitigation Measure MM 3.6-2b). The Board of Supervisors’ approval includes implementation of Option B (Mitigation Measure MM 3.6-2b) and omits the option of treating the water at Cal-Am’s Ambler Park water treatment facility.
- d) 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. County staff concurs (See **Finding 4**).
- e) Staff conducted site inspections on numerous occasions to verify that the site is suitable for this use.
- f) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA - Planning for the proposed development found in Project File PLN000696.

6.       **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 RMA - Planning and RMA - Building Services records and is not aware of any violations existing on subject property.
- b) Staff conducted site inspections on numerous occasions 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 the Monterey County RMA - Planning for the proposed development are found in Project File PLN000696.

7.       **FINDING:**       **SUBDIVISION** – Section 66474 of the California Government Code (Subdivision Map Act) and Title 19 (Subdivision Ordinance) of the Monterey County Code (MCC) requires that a request for subdivision be denied if any of the following findings are made:
- 1. The proposed map is not consistent with the general plan, area plan, coastal land use plan, or specific plan.
  - 2. The design or improvements of the proposed subdivision are not consistent with the applicable general plan, area plan, coastal land use plan, Master Plan or specific plan.
  - 3. That the site is not physically suitable for the type of development.
  - 4. That the site is not physically suitable for the proposed density of

development.

5. That the design of the subdivision or the proposed improvements is likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
6. That the design of the subdivision or type of improvements is likely to cause serious public health problems.
7. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision.

None of these findings are made.

- EVIDENCE:**
- a) Consistency. The project as designed and conditioned is consistent with the 1982 Monterey County General Plan and Toro Area Plan (See **Finding 3 and 18 (b)**).
  - b) Design. The lot design is consistent with the Lot Design Standards of MCC Section 19.10.030. (See **Finding 3 (f)**)
  - c) Site Suitability. The site is suitable for the proposed project including the type and density of the development (See **Finding 4**).
  - d) Environment. The subdivision design and improvements will not cause environmental damage to fish or wildlife habitat. The project has been conditioned (Condition No. 21) to require a Wildlife Corridor Plan for all of the lots to remove obstacles that would impair movement of wildlife, keep the landscape as permeable as feasible to facilitate wildlife movement, and preserve wildlife corridors (See **Findings 8 and 9**).
  - e) Health and Safety. The proposed project as designed and conditioned will not, under the circumstances of the particular application, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood or to the general welfare of the County (See **Finding 5 and 18 (b)**).
  - f) Water Supply. MCC Section 19.10.070 requires provision shall be made for domestic water supply as may be necessary to protect public health, safety, or welfare, and that the source of supply is adequate and potable. MCC Sections 19.03.015.L and 19.07.020.K require Water Supply and Nitrate Loading Information in order to assess these conditions and proof that there is a long term water supply with the project. An Initial Water Use/Nitrate Impact Questionnaire, dated May 30, 2001, was submitted and is found in the project file. The project has an assured long term water supply (See **Findings 4, 5, 9, 11, and 18 (b)**).
  - g) Sewage Disposal. MCC Section 19.07.020.J requires a letter from a public or private entity stating that the entity can and will serve the proposed subdivision. California Utility Service provided a letter dated June 11, 2001 stating that it can and will provide sewer service for the proposed subdivision. (See **Finding 5**).
  - h) Easements. The subdivision or the type of improvements will not conflict with easements. According to the Title Report, dated March 19, 2001, the property is encumbered by two public utilities easements (PG&E and the Pacific Telephone and Telegraph Company). The subdivision will not affect these easements.
  - i) Traffic. The proposed project will be accessed through Meyer Road.



Meyer Road is a two-lane privately maintained road owned by the project applicant, Harper Canyon Realty LLC. The project has been mitigated to reduce the impacts to transportation and circulation (See **Finding 9**).

- j) Affordable Housing. The project is subject to the County's Inclusionary Housing Ordinance, #3419, which requires that prior to the recording the final map, the project applicant pay, or secure to the satisfaction of the Economic Development Department Director, an in-lieu fee. The project has been conditioned to pay an in-lieu fee of \$409,555.50 (\$160,610 per inclusionary unit, 2.55 equivalent units required). (See **Finding 13**).
- k) Parks and Recreation. The project complies with Section 19.12.010 of Title 19/Quimby Act through a project condition requiring the dedication of land to Monterey County that is contiguous to Toro County Park in the amount of approximately 154 acres with improvements to said land in order satisfy the requirement for recreation fees that would otherwise be imposed. Under section 19.12.010, a subdivision of fewer than 50 parcels could pay a fee in lieu of land dedication; land dedication for a size of this subdivision would be only .153 of one acre. The donation of 154 acres far exceeds these requirements.
- l) The application, tentative map and supporting materials submitted by the project applicant to Monterey County RMA - Planning for the proposed development are found in Project File PLN000696.
- m) The project planner conducted site inspections on numerous occasions.

8. **FINDING:** **CEQA (EIR)** - The Board of Supervisors on behalf of the County of Monterey certifies: that the Final Environmental Impact Report (Final EIR) has been completed in compliance with CEQA; that the Final EIR has been presented to the Board of Supervisors, the decision-making body designated by the County Code; that the Board of Supervisors has reviewed and considered the information contained in the Final EIR prior to approving the project; and that the Final EIR reflects the County of Monterey's independent judgment and analysis.

- EVIDENCE:**
- a) The California Environmental Quality Act (CEQA) requires preparation of an environmental impact report if there is substantial evidence in light of the whole record that the project may have a significant effect on the environment.
  - b) The Monterey County RMA-Planning prepared an Initial Study pursuant to CEQA. The Initial Study is on file in the offices of Monterey County RMA - Planning and is hereby incorporated by reference (PLN000696).
  - c) The Initial Study identified potentially significant effects to Aesthetics, Biological Resources, Cultural Resources, Geology and Soils, Land Use and Planning, Noise, and Transportation/Traffic, which could be reduced to a less than significant level with implementation of mitigation measures. The Initial Study is on file in RMA-Planning and is hereby incorporated by reference (PLN000696). At a hearing on the project on January 12, 2005, the Planning Commission directed staff to prepare an EIR. The project applicant appealed the Planning

Commission's decision to the Board of Supervisors but ultimately withdrew its appeal and agreed to preparation of an EIR. An environmental impact report was subsequently prepared.

- d) The Draft Environmental Impact Report (DEIR) was prepared in accordance with CEQA and circulated for a 45-day public review period from October 24, 2008 through December 12, 2008 (SCH#: 2003071157). Issues analyzed in the Draft EIR include: land use, population and housing, transportation and circulation, air quality, noise, groundwater resources and hydrogeology, surface hydrology and water quality, aesthetics and visual sensitivity, biological resources, cultural resources, geology and soils, and public services and utilities.
- e) Following the end of the DEIR public review period, County staff determined that significant new information existed regarding traffic and revised and recirculated relevant portions of the DEIR pursuant to Section 15088.5 of the CEQA Guidelines for a 45-day public review period ending on February 1, 2010. The Recirculated DEIR (RDEIR) was specifically limited to Section 3.10, Transportation and Circulation.
- f) A Final EIR (FEIR) was prepared in June 2010. On June 30, 2010 the Planning Commission held a public hearing to review the Harper Canyon Subdivision (Encina Hills) proposal. No recommendations were made, and the hearing was subsequently continued to August 25, 2010. In the fall of 2010, several other factors (including the formal complaint to the California Public Utilities Commission (CPUC) regarding the ability of Cal-Am to expand the service area served by the Ambler Park water system) caused the project to be put on hold until the CPUC proceeding concluded. The CPUC has since dismissed the complaint against Cal-Am regarding the Ambler Park water system. The Board of Supervisors also held a hearing to address water supply to the Oaks subdivision. These recent actions affected and necessitated an update to several of the County's previous responses to comments in the prior draft FEIR. Consequently, the County updated the Final EIR document from the June 2010 version and released an updated FEIR in December 2013. The update did not require recirculation of the EIR. It identified Option B for water treatment, and the project applicant has accepted that option. The FEIR did not disclose a significant new environmental impact, a substantial increase in the severity of an environmental impact, or disclose a mitigation measure that the project applicant declined to adopt.
- g) Staff analysis contained in the Final EIR and the record as a whole indicate the project could result in changes to the resources listed in Section 753.5(d) of the Department of Fish and Game (DFG) 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, also known as the California Department of Fish and Wildlife (CDFW), determines that the project will have no effect on fish and wildlife resources. The site supports biological resources. For purposes of the Fish and Game Code, the project will have a significant adverse impact on the fish and wildlife resources upon which the wildlife depends. State Department of Fish and Game reviewed the Draft EIR to comment and 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).

- h) The County prepared a Final EIR (dated December 2013) which contains responses to comments and text changes to the DEIR. The responses to comments include individual responses to each written and verbal comment received during the public review period for the DEIR and the RDEIR, as well as two “master responses” that address recurring comments submitted by more than one person. In accordance with State CEQA Guidelines Section 15088(b), the written responses describe the disposition of significant environmental issues raised. The County and its consultants have provided a good faith effort to respond in detail to all significant environmental issues raised by the comments. The County has considered the comments received during the public review period for the DEIR and RDEIR and responses to the comments received. Together, the DEIR (2008), RDEIR (2010) and Final EIR (2013) and any resulting text changes, clarifications, or amplifications necessary to address comments in the course of the County’s review of the project constitute the Final EIR on the project.
- i) A Condition Compliance and Mitigation Monitoring and/or Reporting Plan has been prepared in accordance with Monterey County regulations and is designed to ensure compliance during project implementation and is attached hereto and incorporated herein by reference. The applicant must enter into an “Agreement to Implement a Mitigation Monitoring and/or Reporting Plan” as a condition of project approval (Condition No. 6).
- j) Evidence that has been received and considered includes: the application, technical studies/reports (see **Finding 4**), staff reports that reflect the County’s independent judgment, and information and testimony presented during public hearings; Harper Canyon (Encina Hills) Subdivision Draft EIR prepared by PMC dated October 2008, Harper Canyon (Encina Hills) Subdivision Recirculated Draft EIR prepared by PMC dated December 2009, and Harper Canyon (Encina Hills) Subdivision Final EIR prepared by PMC dated December 2013. These documents are on file in RMA-Planning (PLN000696) and are hereby incorporated herein by reference.
- k) All of the documents that comprise the Final EIR have been provided to the Monterey County Board of Supervisors in advance of the Board of Supervisors hearing on May 13, 2014 and provided again for the April 7, 2015 Board meeting. The Board of Supervisors reviewed and considered the information in the Final EIR prior to approving the project and makes the findings as set forth herein concerning each of the potentially significant effects of the project.
- l) The Monterey County Resource Management Agency – Planning, located at 168 W. Alisal Street, 2<sup>nd</sup> Floor, Salinas, CA, 93901, is the custodian of documents and other materials that constitute the record of proceedings upon which the decision to adopt the Environmental Impact Report is based.

9. **FINDING:** **EIR-ENVIRONMENTAL IMPACTS MITIGATED TO LESS THAN SIGNIFICANT** - Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effects identified in the Final EIR. As further described below, potentially significant impacts are mitigated to a less than significant level due to incorporation of mitigation measures from the Final EIR into the conditions of project approval.

**EVIDENCE:** a) **IMPACTS TO AESTHETICS AND VISUAL RESOURCES WILL BE MITIGATED TO LESS THAN SIGNIFICANT.** Mitigation Measures MM 3.1-1 through MM 3.1-4 will reduce impacts to aesthetics and visual resources to a less than significant level and are required as conditions of approval.

1. Mitigation Measure MM 3.1-1. Prior to recording the Final Subdivision Map, the project applicant designate the knoll located along the eastern boundary of Lot #1 as a “scenic easement.” The Final Subdivision Map shall identify the areas within a “scenic easement” and note that no development shall occur within the areas designated as “scenic easement.”
2. Mitigation Measure MM 3.1-2a. Prior to recording the Final Subdivision Map, Monterey County Planning Department shall require that the project applicant designate all land that exceeds slopes of 30 percent as “scenic easements” in accordance with Policy 26.1.10 of the *Monterey County General Plan*, except where roadway improvements have no other alternative. This includes land exceeding 30 percent slopes within the 17 residential lots. The Final Subdivision Map shall identify the areas within a “scenic easement” and note that no development shall occur within the areas designated as “scenic easement.”
3. Mitigation Measure MM 3.1-2b. To further reduce the potential visibility of proposed development from common viewing areas, Toro Park, BLM public lands and State Route 68, prior to recording the Final Subdivision Map, the project applicant shall designate building envelopes on each proposed lot to clearly identify the location of all utility and infrastructure improvements (including water tanks) to define the building area. The building envelopes, utilities and infrastructure improvement locations shall be selected to minimize grading, avoid vistas that have a direct line of site to State Route 68 to the maximum extent feasible and preserve existing screening vegetation. These shall be subject to review and approval by the RMA-Planning Department.
4. Mitigation Measure 3.1-2c. In order to preserve the visual character of the project site and surrounding area, the project applicant shall prepare design standards that shall be recorded on the titles for all of the parcels. These shall apply to all site development, architectural design and landscape plans. These shall include the following elements:
  - a) Use of natural materials, simulated natural materials, texturing and/or coloring that will be used for all walkways, patios, and buildings.
  - b) Use of rolled curbs for areas where curbs may be required;

- c) Substantial use of vegetative screening using a native drought tolerant plant palette to obscure off-site view;
  - d) Re-planting with native grasses and vegetation of any roadways serving the subdivision and individual parcels; and
  - e) A planting plan shall be submitted to the RMA-Planning Department for review and approval prior to the approval of grading plans for creation of subdivision roadways. A planting plan shall be submitted as part of the Design Review approval process for each residential lot.
5. Mitigation Measure MM 3.1-4. Prior to issuance of building permits or grading permits, whichever occurs first, for subdivision improvements and the construction of residences on lots proposed on the project site, Monterey County Planning Department shall require that the project applicant prepare and submit for review and approval a detailed lighting plan that indicates the location, type, and wattage of all light fixtures to be installed on the project site and include catalog sheets for each fixture. The lighting plan shall comply with the requirements of the California Energy Code set forth in California Code of Regulations, Title 24, Part 6. The lighting plan shall be consistent with Section 18.28 of *Monterey County Code*, to minimize glare and light spill. All external lighting shall be indicated on project improvement plans, subject to review and approval by the County of Monterey.
- b) **IMPACTS TO AIR QUALITY WILL BE MITIGATED TO LESS THAN SIGNIFICANT.** Mitigation Measures MM 3.2-1a through 3.2-1b will reduce impacts to air quality to a less than significant level and are required as conditions of approval.
1. Mitigation Measure MM 3.2-1a. During construction activities, Monterey County Planning Department shall require that the project applicant implement best available control measures (BACM) to reduce airborne particulate matter, as recommended by the MBUAPCD and in accordance with Policy 20.2.5 of the *Monterey County General Plan*. BACM typically recommended by the MBUAPCD include, but are not limited to, the following:
- Water all active construction areas at least twice daily. Frequency should be based on the type of operation, soil and wind exposure;
  - Prohibit all grading activities during periods of high wind (over 15 mph);
  - Apply chemical soil stabilizers on inactive construction areas (disturbed lands within construction projects that are unused for at least four consecutive days);
  - Apply non-toxic binders (e.g., latex acrylic copolymer) to exposed areas after cut and fill operations and hydroseed areas;
  - Cover all trucks hauling soil, sand, and other loose materials and require all trucks to maintain at least 2 feet of freeboard;
  - Plant vegetation ground cover in disturbed areas as quickly as possible;
  - Sweep daily, with water sweepers, all paved access roads,

- parking areas and staging areas at construction sites;
  - Sweep streets daily, with water sweepers, if visible soil materials are carried onto adjacent public streets;
  - Plant tree windbreaks on the windward perimeter of construction project if adjacent to open land;
  - Cover inactive storage piles;
  - Install wheel washers at the entrance to construction sites for all existing trucks;
  - Pave all roads on construction sites;
  - Post a publicly visible sign which specifies the telephone number and person to contact regarding dust complaints; and
  - Limit areas of active disturbance to no more than 2.2 acres per day for initial site preparation activities that involve extensive earth-moving activities (grubbing, excavation, rough grading), or 8.1 acres per day for activities that involve minimal earth moving (e.g., finish grading).
2. Mitigation Measure MM 3.2-1b. During construction activities, Monterey County Planning Department shall require that the project applicant implement best available control measures (BACM) to reduce toxic air contaminants, as recommended by the MBUAPCD and in accordance with Policy 20.2.5 of the Monterey County General Plan. BACM typically recommended by the MBUAPCD include, but are not limited to, the following:
- Limit the hours of operation consistent with related noise restrictions;
  - Utilize gasoline-powered equipment whenever an equipment choice is available;
  - Use PuriNOx emulsified diesel fuel in existing engines;
  - Repower and utilize heavy equipment with current standard diesel technology or CNG/LNG technology;
  - Demonstrate on construction document how construction phasing and equipment programming will comply with County policies and BACMs identified by the Air District.
- c) **IMPACTS TO BIOLOGICAL RESOURCES WILL BE MITIGATED TO LESS THAN SIGNIFICANT.** Mitigation Measures MM 3.3-1a through MM 3.3-6 will reduce impacts to biological resources to a less than significant level and are required as conditions of approval.
1. Mitigation Measure MM 3.3-1a. Prior to issuance of building or grading permits, whichever occurs first, for subdivision improvements, the project applicant shall submit for review and approval a pre-construction survey report. The pre-construction survey shall be prepared in consultation with a qualified biologist to summarize additional pre-construction focused plant surveys to be conducted in April and July and confirm the presence or absence of special status plants during the blooming period to reduce the potential loss of these species. These species are listed in Table 3.3-3, Additional Pre-Construction Focused Plant Surveys. If no individuals are observed, no further action is required. If individuals

are found, a report shall be prepared detailing the species potentially affected by the proposed project and the appropriate mitigation measures to reduce the loss of individuals, including siting development to minimize disturbance or removal of special status plant species. Informal consultation with CDFW/USFWS may be required. If Monterey spineflowers are found, informal consultation with USFWS shall be required. Mitigation may include but not be limited to avoidance of populations, restoration, maintenance, and enhancement and obtaining an Incidental Take Permit from the USFWS and notification with the CDFW.

2. Mitigation Measure MM 3.3-1b. Damage to Monterey Manzanita (*Arctostaphylos montereyensis*) shall be avoided or replaced during construction. If the approximate locations of the home sites change within Lots #2 and #13, the project applicant shall hire a qualified biologist to cultivate stock of Monterey Manzanita plants from existing plants located within these lots. The individual Monterey Manzanita plants removed from within Lots #2 and #13 shall be replaced at a 3:1 ratio within undeveloped areas of Lots #2 and #13 using stock collected by qualified biologist.
3. Mitigation Measure MM 3.3-2a. Prior to issuance of building permit, Monterey County Planning Department shall require that the project applicant submit for review and approval a comprehensive landscape plan prepared in consultation with a qualified botanist. The plant list shall exclude any invasive and non-native plants and emphasize the use of native species requiring minimal irrigation, herbicides, pesticides, or fertilizers and are drought-tolerant native species from local sources. Drought-tolerant non-native species may be used if they are known to be non-invasive.
4. Mitigation Measure MM 3.3-2b. Prior to final inspection of grading permit for subdivision improvements, Monterey County Planning Department shall require that the project applicant control the introduction of non-native, invasive plants through rapid re-vegetation of denuded areas with plants and seed harvested from areas proposed for development or other appropriate seed mixes. The seed mix selected shall contain native species of local genetic stock. If non-native species are within the mix, the species must be known not to be invasive or persistent. The seed mix shall contain species known to compete well against non-native, invasive species. In areas of re-vegetation, non-landscaped disruption and adjacent to landscaping, the project applicant shall have a botanist or resource ecologist annually monitor for non-native species and invasive plant species, especially French broom, for a period of three years and provide an annual written status report to Monterey County Planning Department.
5. Mitigation Measure MM 3.3-2c. Monterey County Planning Department shall require that the project applicant consult with a qualified botanist to develop CC&Rs that describes the native flora and fauna and provides guidelines for homeowners to follow which limit disturbance of native habitat. Said CC&Rs shall be recorded with the final map, for each parcel created by the final map.

6. Mitigation Measure MM 3.3-2d. Prior to issuance of building or grading permits, whichever comes first, the Monterey County Planning Department shall require that the project applicant to design the proposed development on the project site so that homesites, landscaped areas and outbuildings are located a minimum of 75 feet to 100 feet from the active drainage channels to avoid filling or disturbing natural drainage courses. In the event that disturbances cannot be avoided (culverts, storm drain outfalls, etc.), the necessary permits from the California Department of Fish and Wildlife (CDFW) through section 1600 of the Fish and Game Code and/or the U.S. Army Corps of Engineers through Section 404 of the Clean Water Act may be required. Necessary permits and/or authorizations should be obtained from appropriate regulatory agencies prior to any activity that might encroach on drainage channels.
7. Mitigation Measure MM 3.3-3a. Prior to the issuance of grading and/or building permits, whichever comes first, the project applicant shall submit for review and approval a Final Forest Management Plan, prepared by a qualified forest manager, that minimizes the removal of Coast live oak (*Quercus agrifolia*) trees in accordance with the recommendations in Section 21083.4 of the Public Resources Code and the *Forest Management Plan* that was prepared for the proposed project by Staub Forestry and Environmental Consulting in June 2001. A professional forest manager shall identify where trees can be retained and establish conservation easements, trees that need pruning, areas that require keyed fills, etc. All recommended pruning shall be performed by a qualified arborist or other tree professional and occur prior to commencement of grading. The Final Forest Management Plan shall be subject to review and approval by the Monterey County Planning Department prior to issuance of grading permits.
8. Mitigation Measure MM 3.3-3b. Prior to the issuance of grading and/or building permits, whichever occurs first, the project applicant shall submit a Final Forest Management Plan for review and approval by Monterey County Planning Department as required in mitigation measure MM 3.3-3a. The Final Forest Management Plan shall include a monitoring plan that accurately identifies the number and acreage of oak trees five inches in diameter at breast height to be removed during construction and the replacement of these oak trees on a 3:1 basis as a means of promoting 1:1 tree replacement in compliance with Section 21.64.260 of the *Monterey County Zoning Ordinance* and Section 21083.4 of the Public Resources Code. Tree replacement on residential lots shall occur as space permits and may not exceed more than one tree per 10 foot by 10 foot block of available space. If a specific lot does not allow for replanting of trees, the project applicant shall have a qualified forester identify an alternate location for replanting on the project site. Tree replacement for infrastructure tree removals shall be placed within any scenic easements and/or portion of the “Remainder Parcel” that would be dedicated to the Monterey County Parks Department as an extension



of the adjacent Toro Park. All trees shall be replaced with Coast live oak (*Quercas agrifolia*) trees obtained from onsite sources or should be grown from local native seed stock in sizes not greater than five gallons, with one gallon or smaller being preferred to increase chances of successful adaptation to the project conditions. Replacement trees shall be monitored and maintained for a minimum of seven years after planting. A monitoring plan shall be prepared by a qualified professional forester, arborist, or horticulturalist, and shall be subject to review and approval by the County of Monterey Planning Department. In addition, the owner/applicant shall contribute funds to the Oak Woodlands Conservation Fund, as established under subdivision (a) of Section 1363 of the Fish and Game Code, for the purpose of purchasing oak woodlands conservation easements, as specified under paragraph (1) of subdivision (d) of that section and the guidelines and criteria of the Wildlife Conservation Board. The owner/applicant shall not receive a grant from the Oak Woodlands Conservation Fund as part of the mitigation for the project. The amount of the contribution to the Oak Woodlands Conservation Fund shall be determined according to the procedures set forth in the Oak Woodland Impact Decision Matrix-2008 prepared by the UC Integrated Hardwood Range Management Program.

9. Mitigation Measure MM 3.3-3c. The applicant shall prepare for review and approval Covenants, Conditions, and Restrictions (CC&Rs) in consultation with a qualified professional forester, that shall include oak tree protection measures as outlined in the *Forest Management Plan* (Staub Forestry and Environmental Consulting 2001) on individual lots as part of future home construction to minimize the damage to oak trees and ensure successful replanting. These measures shall include, but not be limited to the following:
- Around each group of trees to be preserved within a construction area, a boundary of snow netting of high visibility plastic fencing supported by wood or metal stakes shall be placed along the approximate dripline of such protected trees to define the construction project boundary;
  - No storage of equipment or construction materials, or parking of vehicles shall be permitted within the tree rooting zone defined by the fencing of the construction boundary defined above;
  - No soil may be removed from within the dripline of any tree and no fill that exceeds two inches shall be placed at the base of any tree, unless it is part of approved construction and is reviewed by a qualified forester, certified arborist, or other tree professional;
  - Roots exposed by excavation during construction shall be pruned promptly to promote callusing, closure, and regrowth; and
  - All tree work shall be monitored by a qualified forester, certified arborist, or tree professional and work completed by qualified tree service personnel.
  - Said CC&Rs shall be recorded with the final map, for each parcel created by the final map.

10. Mitigation Measure MM 3.3-4. Prior to issuance of building or grading permits, whichever occurs first, for subdivision improvements and the construction of residences on the project site, the project applicant shall prepare, in consultation with a qualified biologist, a pre-construction survey for special-status bat species within the project site to comply with the California Fish and Game (CDFG) Code relative to special status bat maternity roosts. Prior to tree removal in the Coast live oak woodland, a qualified biologist shall survey the trees to evaluate their potential use by special-status bat species. If special-status bat species are determined to be using these trees, or trees in the immediate vicinity, the biologist shall provide recommendations to avoid harming individual bats or disturbance of active roosts. If the biologist recommends active removal of bats, a Memorandum of Understanding (MOU) with the CDFW shall be obtained. Alternate habitat may need to be provided if bats are to be excluded from maternity roosts. A roost with comparable spatial and thermal characteristics should be constructed as directed by a qualified biologist. In the event that adult bats need to be handled and relocated, a qualified biologist shall prepare and implement a relocation plan subject to approval by CDFW that includes relocating all bats found on-site to an alternate suitable habitat. A Mitigation and Monitoring Plan that documents mitigation for loss of bat roosting habitat should be prepared by a qualified biologist and approved by CDFW prior to tree removal.
11. Mitigation Measure MM 3.3-5. No more than 30 days prior to grading or construction in oak woodland habitat, the project applicant shall contract with a qualified biologist to complete a pre-construction survey for the Monterey dusky-footed woodrat for review and approval by the Monterey County Resource Management Agency – Director of Planning. If individuals of these species are observed, a salvage and relocation program shall be prepared in coordination with CDFW to prevent death or injury to individuals of these species during grading or construction operations. The salvage program shall include measures to remove individuals from the project site prior to and during project grading and construction, and to relocate them to a suitable location within the project site.
12. Mitigation Measure MM 3.3-6. Surveys shall be conducted no more than 30 days prior to ground disturbance during the nesting seasons for local avian species (typically February 1<sup>st</sup> through August 31<sup>st</sup>). The Monterey County Planning Department shall require that the project applicant retain a qualified biologist to conduct a focused survey for active nests of raptors and migratory birds within and in the vicinity of the construction area. If active nests are located during preconstruction surveys, USFWS and/or CDFW (as appropriate) shall be notified regarding the status of the nests and agency recommendations regarding nest avoidance measures implemented. Furthermore, construction activities shall be restricted as necessary to avoid disturbance of the nest until it is

abandoned or the biologist deems disturbance potential to be minimal. Restrictions may include establishment of exclusion zones (no ingress of personnel or equipment at a minimum radius of 100-feet around the nest) or alteration of the construction schedule. No action is necessary if construction will occur during the non-breeding season (between August 1<sup>st</sup> and November 1st).

d) **IMPACTS TO CULTURAL RESOURCES WILL BE MITIGATED TO LESS THAN SIGNIFICANT.** Mitigation Measure MM 3.4-1 will reduce impacts to cultural resources to a less than significant level and is required as a condition of approval.

1. Mitigation Measure MM 3.4-1. If archaeological resources or human remains are discovered during grading or construction, the following steps shall be taken immediately upon discovery: There shall be no further excavation or disturbance of the project site or any nearby area reasonably suspected to overlie adjacent human remains until:

- The coroner of the county in which the remains are discovered is contacted to determine that no investigation of the cause of death is required, and
- If the coroner determines the remains to be Native American:
  - The coroner shall contact the Native American Heritage Commission and the RMA – Planning Department within 24 hours.
  - The Native American Heritage Commission shall identify the person or persons from a recognized local tribe of the Esselen, Salinian, Costonoans/Ohlone and Chumash tribal groups, as appropriate, to be the most likely descendent.
  - The most likely descendent may make recommendations to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code Section 5097.9 and 5097.993, or
  - Where the following conditions occur, the landowner or his authorized representatives shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further subsurface disturbance:
    - The Native American Heritage Commission is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation with 24 hours after being notified by the commission.
    - The descendent identified fails to make a recommendation; or
    - The landowner or his authorized representative rejects the recommendation of the descendent, and the mediation by the Native American Heritage Commission fails to provide measure acceptable to the landowner.

e) **IMPACTS TO GEOLOGY AND SOILS WILL BE MITIGATED**

**TO LESS THAN SIGNIFICANT.** Mitigation Measures MM 3.5-1 through MM 3.5-6 will reduce impacts to geology and soils to a less than significant level and are required as conditions of approval.

1. Mitigation Measure MM 3.5-1. Prior to issuance of building permit(s), the Monterey County Building Services Department shall require that the project applicant consult with a qualified engineer to prepare design level geotechnical reports in accordance with the current edition of the California Building Code and the recommendations contained within the *Geologic and Geotechnical Feasibility Study* prepared by D&M Consulting Engineers in August 2001. Said reports shall be submitted for plan check with any improvement plans including earthwork, water tank construction/installation, or foundation construction. The *Geological and Geotechnical Feasibility Study* provides specific recommendations regarding site preparation and construction of foundations, retaining walls, utilities, sidewalks, roadways, subsurface drainage, and landscaping features based on the lot characteristics and proximity to the fault at the project site. In addition, *Geological and Geotechnical Feasibility Study* provides specific recommendations regarding slope stability and energy dissipation measures, the recommended location of homesites on Lots #8, #9, #11, and Lots #13 through #16, and reconstruction of the steep slope near Lots #8 and #9. All slope stability and energy dissipation measures shall be incorporated into the site grading plans and constructed concurrent with grading activities. During the course of construction, the project applicant shall contract with a qualified engineering geologist to be on site during all grading operations to make onsite remediation and recommendations as needed, and perform required tests, observations, and consultation as specified in the *Geological and Geotechnical Feasibility Study*. Prior to final inspection, the project applicant shall provide certification from a qualified professional engineer that all development has been constructed in accordance with all applicable geologic and geotechnical reports.
2. Mitigation Measure MM 3.5-2a. Prior to issuance of building permits, the Monterey County Planning Department shall require that the project applicant design the building envelopes to minimize slope failure on Lot #17 by restricting development of structures on the north facing slope of Lot #17, due to the steep terrain. The homesite and driveway for Lot #17 shall be placed on the south side of the ridge similar to the driveway and building envelope design shown in Figure 3.5-4, Potential Driveway and Building Envelope for Lot #17, of the DEIR and subject to review and approval by the recommending engineering geologist and the County of Monterey.
3. Mitigation Measure MM 3.5-2b. Prior to final subdivision map approval, the Monterey County Planning Department shall require that the project applicant update the Subdivision Map to reflect the revised and approved driveway and building envelope design for Lot #17.
4. Mitigation Measure MM 3.5-3. Prior to issuance of grading and

building permits, the project applicant shall contract with a registered engineer to design a subsurface drainage system for review and approval by Monterey County Resource Management Agency – Director of Planning and the Director of Public Works where perched groundwater exists on the project site, including but not limited to Lots #2, #8, #9, #10, #11 and Lots #13 through #16. Subsurface drainage system shall be designed and installed in accordance with the recommendations provided in the *Geological and Geotechnical Feasibility Study* prepared by D&M Consulting Engineers in August 2001. These improvements shall be included in the final improvement plans for the proposed project and installed concurrent with site preparation and grading activities associated with future residential development. Prior to final inspection of grading permits for subdivision improvements, the project applicant shall submit certification prepared by a registered engineer verifying that the improvements were installed according to the findings and recommendations in the *Geological and Geotechnical Feasibility Study*.

5. Mitigation Measure MM 3.5-6. Prior to issuance of grading permit, Monterey County Public Works Department, Planning Department and Water Resources Agency shall require that the project applicant contract with a registered engineer to prepare an erosion control plan and a Storm Water Pollution Prevention Plan (SWPPP) that documents best management practices (filters, traps, bio-filtration swales, etc.) to ensure that urban runoff contaminants and sediments are minimized during site preparation, construction, and post construction periods. The erosion control plan and SWPPP shall incorporate best management practices consistent with the requirements of the National Pollution Discharge Prevention System and *Monterey County Ordinance 16.12.80, Land Clearing*. The erosion and sediment control plan shall specify which erosion control measures necessary to control runoff shall be in place during the rainy season (November 1 through April 15) and which measures shall be in place year round. The SWPPP shall be consistent with the Central Coast Water Quality Control Board standards.
- f) **IMPACTS TO GROUNDWATER RESOURCES AND HYDROLOGY WILL BE MITIGATED TO LESS THAN SIGNIFICANT.** Mitigation Measures MM 3.6-2b and MM 3.6-2c will reduce impacts to groundwater resources and hydrology to a less than significant level and are required as conditions of approval.

The Final EIR identified three mitigation measures to mitigate impacts to groundwater resources and hydrology: MM 3.6-2a (treating water at the Ambler Park water treatment facility – Option A), MM 3.6-2b (stand alone water treatment facility for the Oaks well and New well – Option B), and MM 3.6-2c. Under Mitigation Measure MM 3.6-2a, the proposed project would have been provided water from the Ambler Park water treatment facility in exchange for an equivalent amount of water from the Oaks well and New well. Water pumped from the wells would have been conveyed to the Ambler Park water treatment facility

for treatment in order to meet drinking water standards. Because the Ambler Park water treatment facility is in the B-8 zoning district, an equally viable option is to require the project to build a treatment facility outside of the B-8 zoning district to treat the water from the Oaks well and New well, with the developer responsible for the fair share cost of building this treatment plant. That second option, Option B, has been selected, and is incorporated as Condition 100. Mitigation Measure MM 3.6-2b is equally or more effective to MM 3.6-2a, and MM 3.6-2a is omitted from the project.

Additionally, staff has made a correction and clarification to MM 3.6-2c. Mitigation Measure MM 3.6-2c was modified on page 3.6-31 of the FEIR to eliminate references to Mitigation Measure MM 3.6-2a. However, text referencing monitoring of water pumping volume, which would have applied only to MM 3.6-2a, was erroneously left in. Monitoring of quantity is not required with Option B (MM 3.6-2b). Accordingly, MM 3.6-2c has been modified to delete the reference to monitoring of water pumping. Mitigation Measure MM 3.6-2c has also been modified to clarify the timing of the transfer of the water system operation. The revised Mitigation Measure MM 3.6-2c, shown in ~~striketrough~~ and underlined text below. See **Finding 11 (e)**.

1. Mitigation Measure MM 3.6-2b. Prior to recording the first Final Subdivision Map with Treatment Facility Option B, Monterey County Health Department, Environmental Health Bureau shall require that the project applicant contract with a qualified engineer to design and install water system improvements to meet the standards as found in Chapter 15.04 and 15.08 of the Monterey County Code, Titles 17 and 22 of the California Code of Regulations, the Residential Subdivision Water Supply Standards and California Public Utility Commission Standards. Water system improvement plans shall identify the water treatment facilities and how the water treatment facilities will remove all constituents that exceed current California Primary and Secondary MCLs (e.g. arsenic, coliform, TDS, iron, etc.) from drinking water. These plans shall be subject to review by the Monterey County Health Department, Environmental Health Bureau, and California-American Water Company. The treatment facility shall be located on the project site in a disturbed area void of environmentally sensitive resources, inside an enclosure. The enclosure shall be designed to complement the surrounding visual character (i.e. rural residential) and shall be subject to the Design Control Zoning District regulations provided in Chapter 21.44 of the County Code. The treatment facility shall be designed and sized to treat water pumped from both the Oaks Well and New Well and accommodate the proposed project and Oaks subdivision only. The project applicant shall be required to pay their fair share towards treatment facility improvements. Facility maintenance and removal of accumulated constituents shall be the responsibility of the facility owner and accomplished in accordance with local, state and federal regulations

based on the treatment method chosen.

2. Mitigation Measure MM 3.6-2c. Within one month of ~~completing of the water system improvements~~ the County's issuance of the water system permit, the ~~Monterey County Health Department, Environmental Health Bureau~~ shall require that the ~~project Owner/Applicant~~ shall transfer the operation and monitoring of the water system to the water purveyor (currently California-American Water Company). The water system operator shall monitor the ~~water pumping volume and~~ water quality of the Oaks Well and New Well in accordance with Chapters 15.04 and 15.08 of the Monterey County Municipal Code and Section 64480 of Title 22, California Code of Regulations.

g) **IMPACTS TO HYDROGEOLOGY AND WATER QUALITY WILL BE MITIGATED TO LESS THAN SIGNIFICANT.**

Mitigation Measures MM 3.7-2 through 3.7-3 will reduce impacts to hydrogeology and water quality to a less than significant level and are required as conditions of approval.

1. Mitigation Measure MM 3.7-2. Prior to recording the Final Subdivision Map, Monterey County Planning Department and Monterey County Water Resources Agency shall require that the project applicant contract with a registered civil engineer to prepare a final drainage plan. The drainage control plan shall include detention ponds to limit storm water runoff generated by the development of impervious surfaces. The detention ponds shall be designed to detain the difference between the 100-year post-development runoff rate and the 10-year pre-development runoff rate in accordance with Section 16.16.040.B.5 of the *Monterey County Code* and Monterey County Water Resource Agency (MCWRA). All of the detention basins shall be fenced for public safety. In addition, the drainage plan shall incorporate mitigation measures as recommended in the *Geological and Geotechnical Feasibility Study* prepared by D&M Consulting Engineers including, but not limited to: installing lined ditches above and below any engineered slopes, and above existing erosion gullies; use of vegetative matting and hydroseeding on slopes; installation of erosion-control landscaping; reduction of ponding water; grading of land that prevents surface water flow over the tops of slopes; construction of berms at the top of slopes; installation of concrete v-ditches; and control of irrigation on slopes. The final drainage plan shall be submitted for review and approval by the Public Works Department and Monterey County Water Resources Agency prior to the recording the Final Subdivision Map.
2. Mitigation Measure MM 3.7-3. In order to prevent the potential contamination of downstream waters from urban pollutants, Monterey County Planning Department, Public Works Department and Water Resources Agency shall require that the storm drainage system design, required under mitigation measure MM 3.7-2, includes a Storm Water Pollution Prevention Plan (SWPPP) and Low Impact Development (LID) design techniques. Such techniques include but are not limited to the following components: grease/oil

separators (where required by Public Works); sediment separation; vegetative filtering to open drainage conveyances and retention basins; and on-site percolation of as much run-off as feasible, including diversion of roof gutters to French drains or dispersion trenches, dispersion of road and driveway runoff to vegetative margins, or other LID design and pollution control techniques. Said provisions shall be incorporated into the storm drain system plans submitted to the county prior to issuance of building or grading permits, whichever occurs first. A report shall be submitted prior to final inspection verifying that installation of the system occurred pursuant to said drainage system plan. In the event that the drainage system was not installed according to recommendations of plan, measures shall be recommended by a qualified drainage engineer or equal professional recommendations to ensure that the final installed system meets the recommendations of the approved drainage plan. All plans shall meet current Public Works and Building Department standards.

- h) **IMPACTS TO PUBLIC SERVICES AND UTILITIES WILL BE MITIGATED TO LESS THAN SIGNIFICANT.** Mitigation Measure MM 3.9-4 will reduce impacts to public services and utilities to a less than significant level and is required as a condition of approval.
  - 1. Mitigation Measure MM 3.9-4. Prior to filing of the Final Subdivision Map, Monterey County Bureau of Environmental Health shall require that the project applicant prepare and submit for review and approval wastewater collection improvement plans and calculations prepared by a registered engineer that demonstrate adequate capacity. The wastewater collection improvement plans shall be subject to approval by California Utility Service, Monterey Bay Unified Air Pollution Control District, and the County of Monterey. Upon review of the design, the project applicant shall be required to enter into a wastewater main extension agreement with California Utility Service.

In addition, prior to approval of any building permits, the applicant shall verify that there is sufficient treatment capacity in the California Utilities Service, Inc. (CUS) wastewater treatment facility to address the wastewater needs of the proposed project. The project applicant shall submit proof to Monterey County that the existing wastewater treatment plant is meeting the current effluent limitations as required per Waste Discharge Requirement Order No. R3-2007-0008. If the CUS facility exceeds its permitted capacity, then the County of Monterey would not issue a building permit until such time as the CUS has attained a revised permit from the Regional Water Quality Control Board.
- i) **CERTAIN IMPACTS TO TRANSPORTATION AND CIRCULATION WILL BE MITIGATED TO LESS THAN SIGNIFICANT.** Mitigation Measures MM 3.10-1 through 3.10-6 will reduce certain impacts to transportation and circulation to a less than significant level and are required as conditions of approval. The addition of up to 30 vehicle trips to SR 68 during the weekday A.M.



and P.M. peak traffic hours, however, will result in the further degradation of the operation of four intersections (as noted in Impact 3.10-1a of the Final EIR) and four roadway segments (as noted in Impact 3.10-1b of the Final EIR) along the SR 68 that currently operate below an acceptable level of service C (see **Finding 10** - EIR- Environmental Impacts Not Mitigated To Less Than Significant). This is considered to be a significant and unavoidable impact. All other transportation and circulation impacts will be mitigated to a less than significant level.

1. Mitigation Measure MM 3.10-1. Prior to issuance of building permits within the subdivision, the project applicant(s) shall contribute their proportionate fair share, as calculated by the County, towards the “State Route 68 Commuter Improvements” through payment of the TAMC Regional Development Impact Fee (RDIF) in effect at that time as required under mitigation measure MM 3.10-6.
2. Mitigation Measure MM 3.10-3. Prior to approval of final improvement plans, the project applicant shall contract with a registered engineer to design roadway improvements to widen and resurface Meyer Road per the County of Monterey standards for a cul-de-sac private road (e.g. 18-foot wide roadbed). The roadway improvement plans shall be subject to review and approval by the County of Monterey and shall be constructed prior to occupancy of any of the residential units at the project site.
3. Mitigation Measure MM 3.10-4a. Prior to approval of final improvement plans, the Monterey County Public Works Department shall require that the project applicant contract with a registered engineer to prepare a sight distance improvement plan at the Meyer Road/San Benancio Road intersection. The improvement plan shall include but not be limited to the following: trimming the vegetation and grading the embankment in the vicinity of the intersection and installing right turn tapers into and out of Meyer Road. The design of all intersection improvements shall be subject to review and approval by the County of Monterey Public Works Department. All improvements shall be completed prior to occupancy of any residential units.
4. Mitigation Measure MM 3.10-4b. Prior to approval of final improvement plans, the Monterey County Public Works Department shall require that the project applicant shall design and construct a southbound San Benancio Road left-turn lane at the Meyer Road/San Benancio Road intersection in accordance with the Monterey County Public Works Department standards and guidelines.
5. Mitigation Measure MM 3.10-6. The Monterey County Resource Management Agency shall require the project applicant to pay the project’s fair share of traffic impact fees in effect at the time of building permit applications for future development on the project site. Such fees may include, but are not necessarily limited to, the TAMC Regional Development Impact Fee (RDIF), and Monterey County ad hoc mitigation fees. Payment of the TAMC RDIF may be done as part of compliance with mitigation measure MM 3.10-1.

j) **IMPACTS TO NOISE WILL BE MITIGATED TO LESS THAN SIGNIFICANT.** Mitigation Measure MM 3.11-3 will reduce noise impacts to a less than significant level and is required as a condition of approval.

1. Mitigation Measure MM 3.11-3. During the course of construction, Monterey County Planning Department shall require that the project applicant adhere to Monterey County's requirements for construction activities with respect to hours of operation, muffling of internal combustion engines, and other factors which affect construction noise generation and its effects on noise-sensitive land uses. This would include implementing the following measures:

- Limit noise-generating construction operations to between the least noise-sensitive periods of the day (e.g., 7:00 A.M. to 7:00 P.M.) Monday through Saturday; no construction operations on Sundays or holidays;
- Locate construction equipment and equipment staging areas at the furthest distance possible from nearby noise-sensitive land uses;
- Ensure that construction equipment is properly maintained and equipped with noise-reduction intake and exhaust mufflers and engine shrouds, in accordance with manufacturers' recommendations. Equipment engine shrouds should be closed during equipment operation;
- When not in use, motorized construction equipment should not be left idling; and
- Install temporary noise barriers when activities would affect daytime noise-sensitive receptors (e.g., residential uses, schools, and churches).

10. **FINDING:** **EIR-ENVIRONMENTAL IMPACTS NOT MITIGATED TO LESS THAN SIGNIFICANT** – Specific economic, legal, social, technological, or other considerations, make infeasible mitigation measures that would avoid significant unavoidable impacts. The project would result in significant and unavoidable impacts that would not be mitigated to a less than significant level even with incorporation of mitigation measures from the Final EIR into the conditions of project approval, as further described in this finding.

**EVIDENCE:** **CERTAIN IMPACTS TO TRANSPORTATION AND CIRCULATION WILL BE MITIGATED SIGNIFICANT AND UNAVOIDABLE.** The addition of up to 30 vehicle trips to State Route 68 (SR 68) during the weekday A.M. and P.M. peak traffic hours will result in the further degradation of the operation of intersections and roadway segments, under Background Plus Project Conditions, along the SR 68 that currently operate below an acceptable level of service C. The impacted intersections are: York Road/SR 68; Laureles Grade Road/SR 68; Corral de Tierra Road/SR 68; and San Benancio Road/SR 68 (Impact 3.10-1a). The impacted roadway segments are: York Road and Pasadera Drive/Boots Road; Pasadera Drive/Boots Road/ Laureles Grade Road; Laureles Grade and Corral de Tierra Road; and Corral de Tierra Road and San Benancio Road (Impact 3.10-1b). Improvements to the intersections and roadway segments would improve the operating

conditions at the study intersections to acceptable levels of service. However, no funding is available for the implementation these major improvements. Therefore, there is no feasible mitigation to reduce the impact to a level of insignificance and this impact is considered to be a significant and unavoidable impact.

11. **FINDING:** **CEQA. THE EIR DOES NOT REQUIRE RECIRCULATION.** The EIR does not require recirculation because the Final EIR merely clarified and amplified the analysis in the DEIR and RDEIR and did not contain significant new information. The modifications do not identify a new significant impact that would result from the project or from a new proposed mitigation measure, do not result in a substantial increase in the severity of an environmental impact, and do not propose mitigation measures considerably different from others previously analyzed but that the applicant has declined to adopt. The mitigation measures that have been modified as described below are equivalent or more effective in mitigating or avoiding potential significant effects and will not themselves cause any potentially significant effect on the environment. The revised mitigation measures were considered at the public hearing of the Board of Supervisors prior to certification of the Final EIR or approval of the project.

- EVIDENCE:**
- a) Mitigation Measures that address potential Visual/Aesthetics impacts were modified to require creation of building envelopes and identification of all utility and infrastructure improvements, vegetative screening, the use of natural materials in building and landscaping, submittal of a planting plan to address revegetation of all roadways in the subdivision, and require specific requirements for the detailed lighting plan and consistency with the California Energy Code (California Code of Regulations, Title 24, Part 6). These modifications further reduced potential impacts to scenic resources, and lighting impacts. See FEIR pages 3-6 through 3-9.
  - b) Mitigation Measures that address potential Air Quality impacts were modified to clarify the best available control measures recommended by the MBUAPCD. The discussion regarding consistency with the MBUAPCD Air Quality Management Plan was also updated to reflect AMBAG's 2008 regional forecasts. These modifications ensured consistency with the MBUAPCD recommendations, Air Quality Management Plan, and Policy 20.2.5 of the Monterey County General Plan. See FEIR pages 3-12 through 3-15.
  - c) Mitigation Measures that address potential impacts to Biological Resources were further amplified by clarifying timing of mitigation, requiring a comprehensive landscape plan prepared in consultation with qualified botanist, requiring the use of local genetic stock for seed mixes, requiring a qualified forest manager to prepared the Final Forest Management Plan and by requiring the owner/applicant to contribute to the Oak Woodlands Conservation Fund. These modifications further reduced potential impacts to special-status plant species, sensitive habitat, Coast Live Oak Trees and Woodlands, and special-status bat species. See FEIR pages 3-16 through 3-22.
  - d) Mitigation Measures that address Geology and Soil impacts were

modified to clarify the timing and inclusion of water tank construction for geotechnical reports, and the engineer and timing requirements for subsurface drainage system. These modifications further reduced potential impacts to seismic ground shaking, and liquefaction and lateral spreading. See FEIR pages 3-23 through 3-24.

- e) A Mitigation Measure that addresses a Groundwater Resources and Hydrogeology impact was modified to clarify agreement requirements for the water system. See FEIR pages 3.6-29 through 3.6-32. These modifications clarify requirements for ensuring potential impacts associated with drinking water quality are reduced. See **Finding 9 (f)**. In addition, several modifications were made to the environmental setting to clarify the hydrogeologic setting and relationship with the Geosyntec Report. See FEIR pages 3.6-1 through 3.6-13. Subsequently impact discussions were updated accordingly. The Water Balance was updated to include analysis based on MCWRA's standard format and existing conditions. The cumulative analysis was updated to reflect cumulative conditions of the groundwater basin (subbasin), Salinas Valley Water Project, as opposed to the El Toro Groundwater Basin. The findings remained less than significant.

Additionally, staff has made a correction and clarification to MM 3.6-2c. Mitigation Measure MM 3.6-2c was modified on page 3.6-31 of the FEIR to eliminate references to Mitigation Measure MM 3.6-2a. However, text referencing monitoring of water pumping volume, which would have applied only to MM 3.6-2a, was erroneously left in. Monitoring of quantity is not required with Option B (MM 3.6-2b), According, MM 3.6-2c has been modified to delete the reference to monitoring of water pumping. Mitigation Measure MM 3.6-2c has also been modified to clarify the timing of the transfer of the water system operation. These changes merely amplify and clarify what is required under the mitigation measure. Therefore, revised Mitigation Measure MM 3.6-2c, as shown in **Finding 9 (f)**, is equally or more effective as the original wording.

- f) Mitigation Measures to address Surface Hydrology and Water Quality were modified to include preparation of a Storm Water Pollution Prevention Plan and use of Low Impact Development (LID) techniques. These modifications further reduced potential impacts with respect to potential contamination to downstream waters from urban pollutants. The setting was also modified to clarify that the project site is located in the Toro Creek-Salinas River subarea of the Salinas watershed, which is partially located within the Geosyntec Study area. See FEIR pages 3-27 and 3-28.
- g) Mitigation Measures that address Public Services and Utilities were modified to ensure that the wastewater treatment facility has sufficient capacity to address the wastewater needs of the project at the time the applicant enters into a wastewater main extension agreement. These modifications further reduced potential impacts to wastewater treatment capacity. See FEIR pages 3-35 to 3-36.
- h) Mitigation Measures that address Transportation and Circulation were modified to remove options and require applicants to contribute their

proportionate fair towards the “State Route 68 Commuter Improvement” through payment of the TAMC Regional Development Impact Fee (RDIF) along with other traffic impact fees in effect at the time of the building permit application. These modifications minimize options for payment of fee. See FEIR pages 3-37 to 3-39.

- i) Cumulative Impact Summary was modified to reflect changes made to Impacts 3.6-4 and 3.10-6. These modifications were made just to ensure consistency throughout the document. See FEIR pages 3-40 to 3-58.
- j) A report on the 72-Hour Constant Rate Well Pumping and Aquifer Recovery Tests for the Ambler Oaks (Oaks) and Encina Hills (New) wells was prepared by Bierman Hydrogeologic. The pump test and recovery test data for the two wells did not provide significant new information that result in a new significant environmental impact or a substantial increase in the severity of an environmental impact. The Final EIR acknowledged the existing overdraft conditions of the groundwater basin, but concluded that the contribution is not substantial. The pump and recovery test data merely amplifies the information in the Final EIR. Therefore recirculation is not required.

12. **FINDING:**

**EIR-CEQA ALTERNATIVES TO THE PROPOSED PROJECT** - Specific economic, legal, social, technological, or other considerations, make infeasible project alternatives identified in the Final EIR. The Final EIR considered several alternatives to the proposed project in compliance with CEQA Guidelines section 15126.6. The Final EIR considered the following alternatives as more fully described in the DEIR.

**EVIDENCE:**

- a) No Project Alternative. Under the No Project/No Development Alternative, the proposed project would not be implemented and the project site would remain in its existing condition. The Draft EIR found that the No Project/No Development Alternative would result in fewer impacts for all environmental topic areas relative to the project, with the exception of land use, which would have greater impact, and Public Services and Utilities, which would have similar or greater impacts. However, this alternative is infeasible because it would not meet the project objectives to create 17 residential lots and to provide a 154-acre parcel to the County of Monterey for the expansion of Toro Park.
- b) Modified Subdivision Design ‘A’ Alternative. Under the Modified Subdivision Design ‘A’ Alternative, Lot #17 would be divided into two lots, creating a Parcel A for two inclusionary units to be developed on site, rather than requiring the project applicant to pay an in-lieu fee to fund construction of inclusionary housing elsewhere. This alternative would result in marginally greater impacts for most environmental impact areas due to the increased site disturbance for the additional two units, and would also add approximately two additional vehicle trips to the peak hour traffic. While this alternative would meet the project objectives to create 17 residential lots, it would result in marginally greater environmental impacts due to the additional vehicle traffic as a result of the two additional units, and was therefore not selected for implementation.
- c) Modified Subdivision Design ‘B’ Alternative. Under the Modified

Subdivision Design ‘B’ Alternative, four residential units would be eliminated under this scenario, reducing the overall density of the project. A decrease in density would generate fewer trips on surrounding roadways and State Route 68, which is currently operating at an unacceptable level of service; however, a significant, unavoidable impact to traffic still exists. A decrease in density would also indirectly reduce noise and air pollutant emissions, though these reductions would be minimal. This alternative, however, is infeasible because it does not meet the project objective to create 17 residential lots.

- d) Environmentally Superior Alternative. Each of the alternatives either avoided or minimized to a greater extent the impacts associated with the proposed project, except for “Modified Subdivision Design ‘A’”. When all the alternatives were considered, the No Project Alternative is considered to be the Environmentally Superior Alternative because only the No Project Alternative avoided all the impacts related to the proposed project. However, as mentioned previously, Section 15126.6(e) of the CEQA Guidelines requires that if the No Project Alternative is the environmentally superior alternative, then another alternative must be identified amongst the alternatives considered as the Environmentally Superior Alternative. Therefore, the Alternative 3, “Modified Subdivision Design ‘B’” is considered to be the Environmentally Superior Alternative because it meets most of the project objectives with incrementally less degree of environmental impacts to traffic, noise and air pollutant emissions, though these reductions would be minimal. Mitigation would remain applicable and level significance would remain the same. It is infeasible, however, for the reasons stated above.

13. **FINDING:** **INCLUSIONARY HOUSING REQUIREMENT** – The subdivision complies with the County’s Inclusionary Housing Ordinance that was in effect when the application was deemed complete.

- EVIDENCE:**
- a) According to the County’s Economic Development Department (formerly the County Redevelopment and Housing Office), the proposed project is subject to the Monterey County Inclusionary Housing Ordinance at the time the application was deemed complete, which was in November 2002. The applicable Inclusionary Housing Ordinance, Ordinance #3419, requires developers to contribute 15 percent of the new residential lots or units as low-and moderate-income units. This ordinance allows several options for compliance, including payment of an in-lieu fee. According to the Economic Development Department, payment of the in-lieu fee equal to \$409,555.50 (\$160,610/inclusionary unit) shall satisfy compliance with the Monterey County Inclusionary Housing Ordinance (Internal memo from Marti Noel, Housing and Redevelopment to Paul Muga, Planning dated April 8, 2004). Payment of the fee must be made or secured prior to the recordation of the final map (Condition No. 20). Therefore, the proposed project is consistent with the Monterey County Inclusionary Housing Ordinance.
  - b) Additional memorandum from the County’s Redevelopment and Housing Office, dated January 2, 2009.
  - c) Materials in project file PLN000696.

14. **FINDING:** **TREE REMOVAL** –The tree removal is the minimum required under the circumstances and the removal will not involve a risk of adverse environmental impacts.
- EVIDENCE:**
- a) The project includes application for the removal of 79 oak trees. In accordance with the applicable policies of the Toro Area Plan and the Monterey County Zoning Ordinance (Title 21), a Use Permit is required and the criteria to grant said permit have been met.
  - b) The proposed project includes a use permit for the removal of approximately 79 oak trees, which is less than one percent of the approximately 9,187 total trees located on the project site. Of the total number of trees on-site, 8,194 trees (68 proposed for removal) are estimated to be between 6”-11” in diameter, 913 trees (10 proposed for removal) are estimated to be between 12”-23” in diameter and 80 trees (1 proposed for removal) are estimated to be 24” and greater in diameter. Tree removal would occur primarily within the limits of the grading area to install the widened project roadway, and tree impacts associated with development of proposed building sites would be minimal since the building site locations are proposed primarily within the open grassland areas of the site. The number of oak trees proposed for removal is therefore the minimum number required to develop the site as proposed.
  - c) Forest Management Plan and supplemental reports were prepared by Staub Forestry and Environmental Consulting. Forest Management Plan in June 2001.
  - d) Best Management Practices for tree protection during construction have been incorporated as a condition of approval (Condition No. 9) and include tree protection zones; no storage of equipment or construction materials or parking of vehicles within tree rooting zones; pruning of roots; and monitoring by a qualified forester, certified arborist, or tree professional.
  - e) The project has been designed and sited to minimize the removal of protected trees to the greatest extent feasible. Tree removal would occur primarily within the limits of the grading area to install the widened project roadway. The roadway is an existing roadway that would be widened. Relocating the roadway would result in steeper slopes. Per Condition No. 18, tree removal shall not occur until a construction permit has been issued in conformance with the appropriate phase of development.
  - f) The removal will not involve a risk of adverse environmental impacts. The Final EIR Section 3.3 includes mitigation measures to reduce adverse impacts. See **Finding 15 (a)**.
  - g) Staff, the EIR consultant, and the Forestry Consultant conducted site inspections on numerous occasions to verify that the tree removal is the minimum necessary for the project and to identify any potential adverse environmental impacts related to the proposed tree removal.
  - h) The application, plans and supporting materials submitted by the project applicant to the Monterey County Planning Department for the proposed development are found in Project File PLN000696.

15. **FINDING:** **OAK WOODLANDS** – The project, as conditioned and mitigated, will not have significant environmental impacts to oak woodlands.

**EVIDENCE:** a) Pursuant to Public Resources Code section 21083.4, the County as a part of its environmental review must evaluate whether the project may result in a conversion of oak woodlands that will have a significant effect on the environment. If the County determines that the project may have a significant effect on oak woodlands, the County must require feasible mitigation measures to mitigate the significant effect of the conversion of oak woodlands. In this case, the project may result in a conversion of oak woodland that could have a significant impact on the environment, but the effect is mitigated with the mitigation measures outlined in the Forest Management Plan prepared for the proposed project and incorporated as conditions of approval. The County has required several conditions of approval to mitigate the impact on oak woodlands. The proposed mitigation measures and conditions of approval fulfill and exceed those required by Public Resources Code Section 21083.4. Public Resources Code Section 21083.4 requires one or more of the following mitigation measures:

1. Conserve Oak woodlands through the use of conservation easements.
2. Plant an appropriate number of trees, including maintaining planting and replacing dead or diseased trees (maintenance measures are required for seven years after trees are planted, and planting of trees does not fulfill more than one half of the mitigation requirement.)
3. Contribute to the Oak Woodlands Conservation Fund, as established under subdivision (a) of Section 1363 of the Fish and Game Code.
4. Other mitigation measures developed by the county.

The proposed tree loss is minimal in relation to the overall number of trees on the project site. Additionally, the trees proposed for removal are primarily located in the immediate vicinity of the existing dirt road on the site that is proposed for surfacing and widening, and the proposed homesites within each lot are located predominantly in grassland areas, necessitating minimal oak removal. For these reasons, the overall oak woodland on the site will remain intact. In addition, the County would require that the scenic/conservation easement (outside of the proposed roads and building envelopes) shall include areas where trees are replaced for infrastructure tree removals as well as those areas where slopes are in excess of 30 percent. The required conservation easements are consistent with mitigation measure alternative (1) as established by Public Resources Code Section 21083.4.

The project proposes Mitigation Measures MM 3.3-3a through 3.3-3c to ensure tree replacement and protection measures are implemented and reduce impacts to less than significant. With regard to tree protection and replacement, Mitigation Measure MM 3.3-3a requires that prior to the issuance of grading and/or building permits, whichever occurs first, the project applicant shall submit a Final Forest Management Plan for review and approval by Monterey County Planning Department that



identifies where trees can be retained, establishes conservation easements, identifies trees that need pruning, and other recommendations.

Mitigation measure MM 3.3-3b requires that the Final Forest Management Plan shall include a monitoring plan that accurately identifies the number and acreage of oak trees five inches in diameter at breast height to be removed during construction and the replacement of these oak trees on a 3:1 basis as a means of promoting 1:1 tree replacement in compliance with Section 21.64.260 of the *Monterey County Zoning Ordinance* and Section 21083.4 of Public Resources Code. Further, the mitigation measure requires that replacement trees shall be monitored and maintained for a minimum of seven years after planting. A monitoring plan shall be prepared by a qualified professional forester, arborist, or horticulturalist, and shall be subject to review and approval by the County of Monterey Planning Department. In addition, the project applicant shall contribute funds to the Oak Woodland Conservation Fund. In summary, Public Resources Code Section 21083.4 requires the County to require one or more of the oak woodlands mitigation alternatives to mitigate the significant effect of the conversion of oak woodlands. The County is requiring two alternatives, and is therefore compliant with Public Resources Code Section 21083.4.

Mitigation Measure 3.3-3c requires the applicant to prepared in consultation with a qualified forester, CC&Rs that include oak tree protection measures on individual lots to minimize damage of trees and ensure successful replanting.

- b) The applicant is required to enter into an agreement to implement the MMRP pursuant to Condition No. 6.
- c) See **Finding 14** and associated evidence.
- d) Staub Forestry and Environmental Consulting. Forest Management Plan. June 2001.
- e) Site visit by staff from RMA-Planning and Monterey County's EIR consultant (PMC).
- f) Mitigation measures have been recommended in the Final EIR, and incorporated as project conditions of approval, to minimize impacts related to the proposed tree removal.
- g) Administrative records, including material in RMA-Planning file PLN000696.

16. **FINDING:** **DEVELOPMENT ON SLOPE** – There is no feasible alternative which would allow development to occur on slopes of less than 30%.
- EVIDENCE:**
- a) In accordance with the applicable policies of the Toro Area Plan and the Monterey County Zoning Ordinance (Title 21), a Use Permit is required and the criteria to grant said permit have been met.
  - b) The project includes application for development on slopes exceeding 30%. Development envelopes, including all building sites, have been located on slopes of less than 30 percent.
  - c) The application, plans and supporting materials submitted by the project applicant to the Monterey County RMA-Planning for the

- proposed development are found in Project File PLN000696.
- d) The project planner conducted site inspections on numerous occasions.
  - e) The subject project minimizes development on slopes exceeding 30% in accordance with the applicable goals and policies of the applicable area plan and zoning codes.
  - f) To access areas of the property determined suitable for residential development, limited areas of 30 percent slope must be crossed by infrastructure, such as roads and utilities. The areas of 30 percent slope where development is allowed consist of existing dirt roads that need to be improved to accommodate the project, fire safety requirements, and county private road requirements. The road system has been designed to achieve the maximum amount of resource protection while taking advantage of existing dirt roads, where possible, to minimize resource disturbance.
  - g) All undeveloped areas of the project that will contain slopes over 30 percent will be placed into a conservation and scenic easement, per the requirements of the conditions of approval.
  - h) **Finding 4 (b); Finding 9 (a); and Finding 9 (e).**

17. **FINDING:** **EIR – STATEMENT OF OVERRIDING CONSIDERATIONS -** In accordance with Public Resources Code section 21081 and CEQA Guidelines Section 15093, the County has balanced the economic, legal, social, technological, or other benefits, including region-wide or statewide benefits, of the project against its unavoidable environmental risks in determining whether to approve the project, and has determined that the specific economic, legal, social, technological or other benefits of the project outweigh its unavoidable, adverse environmental impacts so that the identified significant unavoidable impact may be considered acceptable.

The only unavoidable adverse environmental effect identified by the Final EIR are Impacts 3.10-1a and 3.10-1b which are impacts to traffic circulation as a result of the up to 30 additional vehicle trips on SR 68 attributable to the project during peak traffic hours (13 during the weekday A.M. and 17 during the weekday P.M.) with the worst increase traffic delay being 2.1 seconds. The impacted intersections are: York Road/SR 68; Laureles Grade Road/SR 68; Corral de Tierra Road/SR 68; and San Benancio Road/SR 68 (Impact 3.10-1a). The impacted roadway segments are: York Road and Pasadera Drive/Boots Road; Pasadera Drive/Boots Road/ Laureles Grade Road; Laureles Grade and Corral de Tierra Road; and Corral de Tierra Road and San Benancio Road (Impact 3.10-1b). The Board of Supervisors finds, based on substantial evidence in the record, that the project’s unavoidable impact associated with the additional vehicle traffic is acceptable in light of the project’s benefits.

- EVIDENCE:**
- a) The proposed project will result in benefits described herein to the surrounding community and the County has a whole.
  - b) The project includes the donation of 154 acres of land to the Monterey County for the enlargement of Toro Park. The donation of 154 acres far exceeds the requirements under the Quimby Act and County ordinance,

which would require either land dedication of approximately .153 of one acre or an in-lieu fee. Applicant will also make certain fencing improvements that will improve public use. (See Condition 31.) The donation will result in a significant addition to the size of the park, and enhance its value as an open space and recreational resource for residents and visitors to the county.

- c) The proposed project will contribute its fair share traffic impact fee to the TAMC Regional Development Impact Fee (RDIF) program, which includes the “State Route 68 Commuter Improvements” project. That project would widen a 2.3-mile section of SR 68 to four lanes between the existing 4-lane section adjacent to Toro Park and Corral de Tierra Road. That project would shorten the travel time on SR 68 in both directions; improve intersection operations at two locations from unacceptable to acceptable levels; and reduce the length of the queue on westbound SR 68 east of San Benancio Road during the weekday A.M. peak hour. Mitigation measures are included in the Final EIR requiring the project to contribute its fair share costs of Highway 68 improvement projects through payment of the TAMC Regional Development Impact Fee (RDIF). The contribution of the Harper Canyon project toward these improvements will ultimately result in substantial improvements to the operation of SR 68 as a vital transportation corridor between Salinas Valley and the Monterey Peninsula area.
- d) The Board of Supervisors’ approval of the project is conditioned upon Treatment Facility Option B which creates a new satellite water treatment system that would serve the proposed project and previously-approved Oaks subdivision. Under Option B, a new treatment facility would be constructed on the project site within Zone 2C and operated by Cal-Am. This option would eliminate the need for the Ambler Park water system to treat the water not only for the Harper Canyon subdivision but also for the already approved nine-lot Oaks subdivision; as a result of the new treatment facility, the Oaks’ well water would be treated by the new treatment facility rather than by the Ambler Park water treatment facility, thus eliminating concerns of the public regarding water from the B-8 zoning district (where Ambler Park water system’s wells are located) serving the Oaks and potentially eliminating the need for the MOU which requires Cal Am to transfer Oaks’ well water to the Ambler Park water treatment facility in the same amount as the Ambler Park water treatment facility is serving to the Oaks. Applicant’s construction of a treatment plant that is not in the B-8 zone and that serves both the Oaks and Harper Canyon subdivisions eliminates these complexities.

18. **FINDING:** **APPEAL** - The appellant contends that there was a lack of a fair or impartial hearing, that the findings or decision or conditions by the Planning Commission to deny the Combined Development Permit on February 12, 2014 are not supported by the evidence, and that the decision was contrary to law. The Board of Supervisors agrees in part and disagrees in part with Applicant’s (Appellant’s) contentions, as further described below.

**EVIDENCE:** a) **Appellant’s Contention a): Lack of Fair or Impartial Hearing.**

*The Planning Commission (Commission) failed to consider all relevant evidence and to act as neutral and impartial decision-makers when acting on the project. In particular, the Commission acted arbitrarily and without consideration of proper planning criteria and with the seemingly sole and specific purpose of denying the development. As a result, the applicant was denied a fair and impartial hearing.*

**County's Response a):** The Appellant contends that the Planning Commission failed to consider all relevant evidence and to act as neutral and impartial decision-makers when acting on the project and, as a result, the applicant was denied a fair and impartial hearing. The County disagrees with this contention. Procedurally, the Appellant was given due process. The Planning Commission held two (2) duly noticed public hearings on January 8, 2014 and February 12, 2014. The Applicant (Appellant) and all members of the public who attended the hearing had an opportunity to testify and be heard. The Appellant testified at both hearings. The Applicant was also afforded the opportunity to appeal the Planning Commission decision to the Board of Supervisors. The Board of Supervisors' hearing is a de novo hearing, where the Applicant has had ample opportunity to be heard. See also County Response 1b.

b) **Appellant's Contention b): Findings, Decision, or Conditions Not Supported by Evidence.**

*In its resolution purporting to deny the project, the Commission found the project to be inconsistent with General Plan Goal 53, Objective 53.1 and Policy 53.1 as well as Toro Area Plan Policy 26.1.4.3. In general, those policies require applicants to provide evidence of an assured long-term water supply in connection with new development. The project site and project wells are located in Zone 2C and receive benefits of sustained groundwater levels attributable to the operation of the Nacimiento Reservoir and the San Antonio Reservoir as well as the Salinas Valley Water Project. In addition, the Monterey County Health Department, Environmental Health Bureau determined that there is an adequate longterm water supply for the project. County staff has similarly acknowledged that the project wells are in a location with good groundwater production and determined that the project thus has an adequate water supply. The evidence in the administrative record, including the Environmental Impact Report (EIR) prepared by the County's expert environmental consultant and opinions expressed by County staff and staff of the Monterey County Water Resources Agency, demonstrates that the project does indeed have an assured long-term water supply. See, e.g. Staff Report to Commission on project dated December 20, 2013.*

*In contrast to this substantial evidence, the Commission purported to base its finding of denial on unsubstantiated testimony of project opponents that the subarea where the proposed project's wells will be located does not receive hydrological benefits from the Salinas Valley Water Project. The testimony of project opponents and/or their counsel is speculation not supported by expert opinion or fact. It is not evidence*

*let alone substantial evidence as is required. Thus, the findings made by the County are not supported by the evidence.*

*The Commission similarly made cursory findings unsupported by the evidence purporting to justify its denial of the vesting tentative map. The Commission purported to find that the proposed map was not consistent with the General Plan, the design or improvements of the proposed subdivision were not consistent with the General Plan and the subdivision did not meet the requirements or conditions of the Subdivision Map Act and County Subdivision Ordinance. There is no evidence to support any of these findings. Instead, the Commission's resolution purporting to deny the project merely contends that the project is inconsistent with the aforementioned policies. For reasons similar to those outlined above, the Commission's findings in this regard are not supported by the evidence. The Commission's resolution also states that the subdivision does not meet the findings for approval as set forth in Government Code §66474 and Monterey County Code § 19.05.055.B. Yet, those sections outline the grounds for denial of a subdivision map, and the purported grounds cited above are not supported by the evidence.*

**County's Response b):** The Appellant contends that in its resolution purporting to deny the project, the Planning Commission found the project to be inconsistent with General Plan Goal 53, Objective 53.1 and Policy 53.1 as well as Toro Area Plan Policy 26.1.4.3. The County begins with one correction: the Toro Area Plan Policy 26.1.4.3 identified is also General Plan Policy 26.1.4.3 which requires evidence of an assured long term water supply. The provision of a long term water supply was the central issue of concern in the Planning Commission's reasoning and decision to deny. The Planning Commission also determined as a policy matter that the goal of promoting adequate water service for all county needs was better served by not approving new lots. County staff, in recommending approval of the project, considered evidence within several reports related to local groundwater conditions in the immediate area where the project's primary and backup well are located. These reports include a project specific hydrogeologic report by Todd Engineers (2002 and 2003) (DEIR Appendix F in **Attachment B-1** in the April 7, 2015 staff report) and a more recent, comprehensive regional study - the *El Toro Groundwater Study* - prepared in July 2007 by Geosyntec and supplemented in June 2010. This study is referred to as the "Geosyntec Study" (**Attachment H** in the May 13, 2014 staff report). The County agrees with the Appellant's contention that these studies, as well as the analysis provided by the Monterey County Water Resources Agency, cited in **Finding 3 (h)** above, provide substantial evidence that the projects' wells benefit from the Salinas Valley Water Project and that the Planning Commission's decision was incorrect to the extent it concluded otherwise. These studies demonstrate that the project has an assured long term water supply and support the County's approval and are summarized below:

## Groundwater Basins and Well Locations

The project site lies within the Salinas Valley Groundwater Basin, which is divided into eight subbasins (Final EIR Figure 3.6-1 in **Attachment B-3** in the April 7, 2015 staff report). The project site lies within two subbasins: the Corral de Tierra Area subbasin and 180/400-Foot Aquifer (Pressure) subbasin. The wells that would serve the proposed project are located within the Corral de Tierra Area subbasin. These subbasins are defined and recognized by both the Monterey County Water Resources Agency (MCWRA) and California Department of Water Resources, and are based on hydrogeologic features below the surface.

These recognized subbasin boundaries do not match the Geosyntec Study area boundary, which is based on surface topographic and watershed features (Geosyntec Executive Summary page ES-1). Geosyntec defined their own boundaries (again, based on watersheds), identified as the “El Toro Planning Area” in their study, in order to evaluate groundwater resource capacity within a specific geographic area and to make recommendations to the County regarding potential changes to the B-8 zoning overlay. The Geosyntec Study was prepared for MCWRA, used a topography/watershed-based methodology to define its limits of study, and did not take into account MCWRA’s Zone 2C boundaries or the recognized Corral de Tierra Area subbasin of the Salinas Valley Groundwater Basin. The relationship of the “Geosyntec Study Area” to the proposed project is illustrated in Exhibit MR1-1 (**Attachment B-3** in the April 7, 2015 staff report).

According to both MCWRA and Geosyntec, it is the underlying groundwater aquifers, not watershed topographic boundaries that are of greater importance with respect to long term groundwater management. In fact, Geosyntec makes the following specific recommendation within their own report:

*“Eliminate the designated planning subareas for water resource management that are based on watershed topographic boundaries because they are not relevant to the groundwater aquifers, which are the sole source water supply in the El Toro Planning Area.” (Geosyntec, page ES-6).*

Despite arguments to the contrary made in the record, the project’s two wells are indeed located within subbasins of the Salinas Valley Groundwater Basin. The wells are also located within the El Toro Planning Area as defined by Geosyntec.

## Findings of the Geosyntec Study Related to the Project’s Groundwater Needs

As mentioned above, the primary objective of the Geosyntec Study was to evaluate groundwater resource capacity in a specific portion of the Salinas Valley Groundwater Basin and to make recommendations regarding the extent of the B-8 zoning overlay. The B-8 zoning overlay, with some exceptions, restricts development and/or intensification of land use where, due to various infrastructure constraints, the

development or intensification is found to be detrimental to the health, safety and welfare (Monterey County Code Section 21.42.030.H.1).

According to the Geosyntec Study, the “primary aquifer system” of the El Toro Planning Area – which includes both the Santa Margarita sandstone and Paso Robles formations - is in overdraft. Long term trends predict lower groundwater levels in the study area as a whole into the future (Geosyntec, page ES-3). However, according to the Geosyntec Study (Geosyntec, Figure ES-4), the wells for the proposed project are located in an area noted as have good potential for groundwater production due to a saturated thickness of over 600 feet. The Final EIR for the project acknowledges the overdraft of the condition of the El Toro Primary Aquifer System as defined by Geosyntec, but also acknowledges that specific areas within the study area – including the area where the project’s wells are located – are in an area of good groundwater production.

The El Toro Planning Area is not homogenous in terms of groundwater production capacity, and varies greatly depending upon the underlying geology and saturated thickness. Estimated annual rates of change in groundwater elevations also vary within the El Toro Planning Area, with some areas near Highway 68 and San Benancio Road estimated to see a rise in groundwater elevations (Geosyntec, Figure ES-5). Expansion of the B-8 zoning was recommended for areas with negligible and poor potential for groundwater production. Expansion of the B-8 zoning was not recommended in the area of the project’s wells.

Water-bearing formations in the northeastern portion of the subbasin dip in a northeasterly direction toward the Salinas Valley as shown in Final EIR Exhibit MR1-2 (**Attachment B-3** in the April 7, 2015 staff report). As shown in Final EIR Exhibit MR1-3 (**Attachment B-3** in the April 7, 2015 staff report), granitic rocks uplifted along the Harper Fault likely limit hydraulic connection to the northeast from the El Toro Planning Area to the Salinas Valley. However, the continuous presence of the Paso Robles Formation beneath the El Toro Creek, the Highway 68 corridor, and former Fort Ord lands to the northwest provides hydraulic connection between the El Toro Planning Area and the Salinas Valley (Geosyntec 2010 Supplement, page 1 – **Attachment H** in the May 13, 2014 staff report).

The Geosyntec Study area overlaps with a portion of the project site, and the Study demonstrates hydraulic connectivity between the larger Salinas Valley Groundwater Basin and the Corral de Tierra Area Subbasin.

#### Project Relationship to the Salinas Valley Water Project (SVWP)

The Appellant contends that the Planning Commission purported to base its finding of denial on the unsubstantiated testimony of project opponents that the subarea where the proposed project’s wells are located does not receive hydrological benefits from the Salinas Valley Water project. To the extent the Planning Commission based its denial on this testimony, the Appellant’s contention has merit. Information

submitted by the public to the Planning Commission on January 8, 2014 challenging the project's location within an area of benefit was based on the *Salinas Valley Historic Benefits Analysis* (HBA) prepared for the County by Montgomery Watson in 1998 (**Attachment I** in the May 13, 2014 staff report). The public presented Figure 1-50 (between pages 1-22 and 1-23 in **Attachment I** in the May 13, 2014 staff report); the Figure shows the results of the modeling used to quantify the hydrologic benefits associated with the operation of the Nacimiento and San Antonio reservoirs. The public testimony asserted that the Figure showed that that the area where the Harper Canyon Subdivision's wells are located (within the Fort Ord/Toro Subarea) does not demonstrate a benefit from the SVWP—that there was no increase in water levels within the Fort Ord/Toro Subarea with the reservoirs. County staff did not dispute the information at the Planning Commission hearing. However, staff thereafter researched the question further and sought advice from the MCWRA after the hearing and reached a different conclusion. Although the Fort Ord/Toro areas were within Zones 2/2A (predecessor to Zone 2C), the HBA did not analyze the Fort Ord/Toro Subarea—in fact, the area was specifically excluded from the analysis “because Fort Ord and Toro areas are not believed to be part of the main ground water basin.” (Page ES-4 in **Attachment I** in the May 13, 2014 staff report). Simply put, the HBA was silent on the benefits (or lack of benefits) to the Fort Ord/Toro Subarea. In the years since the HBA was prepared, more current data by Geosyntec has been analyzed and documents the connectivity between the Salinas Valley Groundwater Basin's subbasins (Geosyntec 2010 Supplement – **Attachment H** in the May 13, 2014 staff report).

The project site, the Oaks Well (the project's primary well) and New Well (project's backup well) are located in the Zone 2C area of benefit and the property owner contributes financially to the SVWP and its groundwater management strategies through an assessment on the property (Final EIR, revised Section 3.6 page 3.6-26 - **Attachment B-3** in the April 7, 2015 staff report). The SVWP provides a regional mitigation strategy for the groundwater basin and its subbasins, and the Zone 2C boundary and associated areas of benefit have been modeled based upon the predicted long term effect of the SVWP.

The MCWRA constructed the SVWP to provide the surface water supply necessary to attain a hydrologically-balanced groundwater basin. Recent data compiled by MCWRA in 2011 (**Attachment J** in the May 13, 2014 staff report) indicates that since SVWP went online, the groundwater levels within the Salinas Valley Groundwater Basin are up and that the rate of seawater intrusion in the Salinas Valley is decreasing. Additionally, data analysis has shown that between 2011 and 2013 there was no indication of advancement of the seawater intrusion front in either the Pressure 180-Foot or Pressure 400-Foot aquifers. A study is currently underway to thoroughly evaluate the effects of the SVWP, pursuant to Policy PS-3.1 of the 2010 General Plan. See also **Finding 3 (h)**.



## Assured Long Term Water Supply

The proposed project has an assured long term water supply and is consistent with General Plan Goal 53, Objective 53.1 and Policy 53.1 as well as General Plan Policy 26.1.4.3 for the following reasons:

- The project's wells are located within a subbasin of the Salinas Valley Groundwater Basin. In this area, the alluvial geology beneath El Toro Creek and Highway 68 (QTc deposits) provide a hydraulic connection between the El Toro Planning Area and the Salinas Valley (Geosyntec 2010 Supplement, page 1 - **Attachment H** in the May 13, 2014 staff report).
- Groundwater level data indicate that the hydraulic gradient under the El Toro Creek Valley and Highway 68 corridor is generally northeastward toward the Salinas Valley, further demonstrating a relationship between the location of the project's wells and the Salinas Valley Groundwater Basin (Geosyntec Figure 4-5 - **Attachment H** in the May 13, 2014 staff report and Final EIR Exhibit MR1-2 - **Attachment B-3** in the April 7, 2015 staff report). See also **Finding 3 (h)**.
- The project and project's wells are located on parcels in Zone 2C. The Zone 2C area is the benefit assessment zone for the Salinas Valley Water Project (SVWP). As identified by Geosyntec, the extent and location of the underlying hydrogeology (groundwater) is not defined by surface topography or watershed basins (Geosyntec page ES-6). Geosyntec therefore provides further evidence of hydraulic connectivity and therefore the potential for benefit from the SVWP in this location.
- With the SVWP, initial data compiled by the MCWRA suggests that groundwater levels are up and the rate of seawater intrusion is decreasing; however, more detailed studies have not been completed (**Attachment J** in the May 13, 2014 staff report).
- The County considers participation in the Zone 2C assessment as contributing to a long term, regional solution to help mitigate groundwater issues well beyond the project's boundaries.
- In November 2002, pursuant to Monterey County Code Title 19, EHB staff reviewed the project-specific hydrogeological report for the project. The report indicates that there is adequate source capacity for the proposed project and that the project in and of itself should have negligible effects on the aquifer in this area and on nearby existing wells.
- In February 2015, staff reviewed the report on the 72-Hour Constant Rate Well Pumping and Aquifer Recovery Tests for the Ambler Oaks (Oaks) and Encina Hills (New) wells (**Attachment A** of the March 3, 2015 staff report) prepared by Bierman Hydrogeologic. Based on the information in the report, the County has concluded that:
  - The consultant's assumptions were reasonable and within boundaries of known hydrologic parameters for the area.
  - The consultant's test methodologies conformed to industry

standards.

- The consultant's findings and conclusions with respect to impacts on neighboring wells were supported by the data presented.
- The Oaks well with a larger pump (i.e. a 5 hp pump) can provide a sufficient water supply for the 25-connection water system.
- The New well can provide a sufficient water supply (quantity) for the proposed 25-connection water system.
- The Oaks well and the New well provide sufficient water quality, with treatment, from each well to supply the 25-connection water system.

See also the Evidence in **Finding 3 (h)**.

#### Consistency with the General Plan and the Subdivision Map Act

The Appellant contends that there is no evidence to support the Planning Commission's findings that the proposed map was not consistent with the General Plan, the design or improvements of the proposed subdivision were not consistent with the General Plan and the subdivision did not meet the requirements or conditions of the Subdivision Map Act and County Subdivision Ordinance. To the extent the Planning Commission relied upon the Salinas Valley Historic Benefits Analysis, the County agrees with the Appellant's contention. The Board also agrees with Appellant that the proposed Vesting Tentative Map is consistent with the General Plan. See County Response 1b above and **Findings 3 and 7**.

c) **Appellant's Contention c): Decision Contrary to Law.**

*The Commission failed to make the necessary findings to deny the project. The Commission did not find that the project was inconsistent with the General Plan as a whole, as required. Instead, it found the project to be inconsistent with certain select policies of the General Plan, and those findings are not supported by the evidence as explained in Section [b] above.*

*If allowed to stand, the Commission's action would result in a taking of the owners' property since it would deny all economically viable use of the property and/or frustrate the owners' distinct investment backed expectations.*

*The Commission's denial of the project was arbitrary and irrational and not reasonably related to a legitimate government interest. It thereby deprives the owners of their constitutionally-protected right to due process.*

*The Commission's denial of the project failed to treat the owners in a manner comparable to that of other similarly situated property owners. Thus, the Commission's action deprived the owners of their right to equal protection under the law.*

**County's Response c):** The Appellant contends that the Planning Commission's findings that the project was inconsistent with the

General Plan are not supported by the evidence. See County Response 1b above.

The Appellant contends that the Planning Commission's action would result in a taking of the owner's property. The County disagrees with this contention. The Commission's action to deny the project, if upheld by the Board, would not deny the applicant of all economically viable use of the property for the following reasons:

The property that is the subject of the Harper Canyon Subdivision application is a 344-acre remainder lot created when the County approved a lot line adjustment that resulted in the remainder lot and fourteen (14) existing lots of record ("Broccoli lots or parcels") that are located adjacent to the project site (see Exhibit MR2-1 - **Attachment B-3** in the April 7, 2015 staff report). These 14 lots of record are owned by the project applicant, and were recorded in their current configuration in 1993. Fifteen (15) lots on this property existed prior to 1993, but were adjusted via a major lot line adjustment approved by the County Minor Subdivision Committee. Denial of the Harper Canyon Subdivision application would not impede development of the other 14 lots owned by the Applicant. The approval of the 1993 lot line adjustment contained several conditions of approval, and the approval was subject to the environmental and planning review procedures per the County's process in place at the time. A negative declaration was prepared, considered and approved as part of the Committee's action.

These 15 legal lots of record, owned by the applicant, already exist. As such, the lots could be developed at any time if the conditions of approval of the lot line adjustment are met and once proposed development (home sites) satisfy the County review and permit process. At any time the property owner could improve and extend Meyer Road and provide utility extensions to the existing 14 lots consistent with the terms of their approval. The development of the Broccoli lots is not dependent upon the approval of the Harper Canyon/Encina Hills Subdivision nor dependent upon access easements, as all lots in question are held in single ownership. The 1993 lot line adjustment was approved with the understanding that the lots would be accessed by an improved Meyer Road.

The action to deny would not deny all economically viable use of the property, as the property held in title by the applicant includes not only the 344-acre remainder lot, but also the 14 existing lots of record. In addition, denial of this subdivision application does not mean that the County would deny other applications for development on the remainder lot, such as a single family dwelling on the property.

The Appellant contends that the Commission's denial of the project was arbitrary and irrational and not reasonably related to a legitimate government interest and it thereby deprives the owners of their constitutionally-protected right to due process. The County disagrees with this contention. See County Response 1a and 1b above.

The Appellant contends that the Commission's denial of the project

failed to treat the owners in a manner comparable to that of other similarly situated property owner and thus, the Commission's action deprived the owners of their right to equal protection under the law. The County disagrees with this contention. The Appellant provided no evidence of similarly situated property owners to support this contention.

Although County disagrees with these contentions, the contentions are also moot, in that the Board of Supervisors is approving the project.

### DECISION

NOW, THEREFORE, BASED ON THE ABOVE FINDINGS AND EVIDENCE, BE IT RESOLVED, THAT THE Board of Supervisors does hereby:

- a. Certify that: the Final EIR for the Harper Canyon (Encina Hills) Subdivision Project (SCH #2003071157) has been completed in compliance with CEQA; that the Final EIR was presented to the Board of Supervisors and that the Board of Supervisors reviewed and considered the information contained in the EIR prior approving the project; and that the Final EIR reflects the County's independent judgment and analysis;
- b. Adopt the findings and the Statement of Overriding Considerations set forth above;
- c. Uphold the appeal by Harper Canyon Realty LLC from the Planning Commission's denial of their application for a Combined Development Permit consisting of a Vesting Tentative Map for the subdivision of 344 acres into 17 lots and associated Use Permits; and
- d. Approve the Combined Development Permit consisting of a 1) A Vesting Tentative Map (**Attachment 2**) for the subdivision of 344 acres into 17 residential lots ranging in size from 5.13 acres to 23.42 acres on 164 acres with one 180-acre remainder parcel; 2) Use Permit for the removal of approximately 79 Coast live oak trees over six inches in diameter for road and driveway construction; 3) Use Permit for development on slopes in excess of 30 percent; 4) Use Permit for the creation of a public water system with a stand-alone treatment facility (Option B); and 5) grading for net cut and fill of approximately 2,000 cubic yards, in general conformance with the attached Vesting Tentative Map (**Attachment 2**) and subject to the attached conditions of approval (**Attachment 1**), all being attached hereto and incorporated herein by reference; and
- e. Adopt the attached Mitigation Monitoring and Reporting Plan (**Attachment 1**).

**PASSED AND ADOPTED** this 7th day of April, 2015 upon motion of Supervisor \_\_\_\_\_, seconded by Supervisor \_\_\_\_\_, by the following vote:

AYES:

NOES:

ABSENT:

I, Gail T. Borkowski, 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 of Minute Book\_\_\_\_ for the meeting on \_\_\_\_\_.

Dated:

Gail T. Borkowski, Clerk of the Board of Supervisors  
County of Monterey, State of California

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