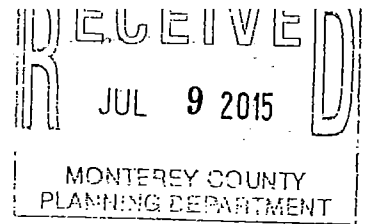


Attachment M

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Jane Haines

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July 9, 2015

County of Monterey - Planning
Attn: Mike Novo, Director of Planning
Contact Person: Luis Osorio, Senior Planner
168 West Alisal Street, 2nd floor
Salinas, CA 93901

CEQA_comments@co.monterey.ca.us
signed hard copy to follow by mail

Re: Revised Negative Declaration for amendment of Combined Development Permit (PLN 120650) condition 99 for Moro Cojo affordable housing project

Dear Mr. Osorio,

My comments on the Revised Negative Declaration are the following:

1. **The project description is legally inadequate.** CEQA Guidelines Section 15378 defines 'Project' as meaning the whole of an action which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Here, the 'whole of the action' includes the effect of North Monterey County Land Use Plan policy 4.3.6.D.a on any amendment of condition 99. North County LUP policy 4.3.6.D.a states the County 'shall' protect existing affordable housing in North Monterey County coastal area from loss, and in the event affordable units are converted, the County shall require replacement on a one by one basis. The Revised Negative Declaration describes the project as merely amendment of condition 99 to convert affordable units to market rate. However, merely amending condition 99 is not the 'whole of the action.' The project description must be revised to include 'whole' of the action, which includes replacing the 161 converted units on a one by one basis.
2. **Omission of one to one replacement in the Project Description leads to faulty analysis of the project's environmental impacts.** Examples of this include the following:
 - a. 'Hydrology/Water Quality' on page 5 and pages 15 and 16 of the Initial Study are checked 'no impact.' However, the water plan for Monterey County at <http://www.waterplan.water.ca.gov/previous/b160-93/b160-93v2/CCR.cfm> estimates water use of 150 gallons per person per day. Thus, assuming 3 residents per replacement home, that would be an increase of 72,450 gallons of daily increase water use from construction of 161 homes. That's over 26 million gallons of water yearly, which could not be said to have 'no impact' on the overdrafted Salinas Valley groundwater basin.

- b. 'Public Services' on pages 5 and 22 are checked 'no impact.' However, the waste management plan for Salinas at <https://www.wm.com/location/california/monterey-county/areas/index.jsp> estimates 1 cubic yard of waster per household per week. For 161 replacement homes, that's an additional 161 cubic yards of waste to the landfill weekly.
- c. Similarly, sub findings (a) through (e) of 'Public Services' on page 22 state that project would cause no impact from increased need for fire protection, police protection, schools, parks or other public facilities. One hundred and sixty-one new homes could cause substantial impacts to such services. The Initial Study offers no evidentiary basis to support the 'no impact' conclusion for sub findings (a) through (c).
- d. Sections 15, 16 and 17 of the Initial Study conclude 'no impact' from 161 replacement homes on 'Recreation,' 'Transportation,' and 'Utilities and Service System.'

Including one to one replacement of 161 affordable homes in the project description changes all the above conclusions to 'Potentially significant impact' and thus requires adoption of mitigation measures.

3. **Findings in the Initial Study are not supported by evidence.** For example, the finding of no significant effect on the environmental because there will be no substantial adverse effects on human beings is contradicted by the 2009-2014 Monterey County Housing Element, page 3, which states: "Overall, there is a great need for affordable housing in Monterey County even with the recent market changes." Thus, approving a request to convert 161 permanently affordable homes to market rate homes would have a substantial adverse effect on all members of the 161 households who will no longer be able to afford a home, which is at least several hundred people. Findings must be supported by evidence. The finding there will be no significant effect on the environment because there will be no substantial adverse effects on those several hundred people who would be affected by amendment of condition 99 is unsupported by evidence. Plus, there is overwhelming evidence, including the Monterey County Housing Element, to the contrary.
4. **The Initial Study erroneously states that findings required by Chapter 19.08.015.A.7 are addressed in Section VI.9 of the Initial Study, and page 3 of the Initial Study states that the proposed amendment to Condition 99 requires the findings addressed in "Section VI.9 (Land Use)" of the Initial Study.** However, Section VI.9 on page 16 of the Initial Study is entitled 'Hydrology and Water Quality.' It addresses none of the seven findings required by Chapter 19.08.015.A.7. Assuming the reference to Section V.9 of the Initial Study is a typo and was intended to refer instead to Section VI.10, which is entitled 'Land Use and Planning,' the findings contained in Section 19.08.015.A.7 still are not addressed.

Section 19.08.015.A.7 of the Monterey County Code states the following:

"After a final or parcel map is filed in the Office of the County Recorder, it may be amended by a certificate of correction or an amending map for any of the following purposes:

1. To correct an error in any course or distance shown thereon;
2. To show any course or distance that was omitted therefrom;
3. To correct an error in the description of the real property shown on the map;
4. To indicate monuments set after the death, disability or retirement from practice or replacement of the engineer or surveyor charged with responsibilities for setting monuments;
5. To show the proper location of any monument which has been changed in location, or character, or originally shown at the wrong location or shown incorrectly as to its character.
6. To correct any other type of map error or omission as approved by the County Surveyor which error or omission does not affect any property right. Errors and omissions may include, but are not limited to, lot numbers, acreage, street names and identification of adjacent record maps. Error does not include changes in courses or distances from which an error is not ascertainable from the data shown on the final or parcel map.
7. To make modifications to a final map or parcel map where there are changes which make any or all of the conditions of the map no longer appropriate or necessary provided the modifications do not impose any additional burden on the present fee owner of the property, nor alter any right, title or interest in the real property reflected on the recorded map. The modification shall be considered at consecutive public hearings by the appropriate decision making body(s) that approved or recommended approval the original tentative map or the tentative parcel map. The appropriate decision making body shall confine the hearing to consideration of, and action on, the proposed modification.”

Discussion on pages 17-20 of the Initial Study fails to address the seven findings listed in Monterey County Code Chapter 19.08.015.A.7. That omission must be corrected so that the reader can understand what the Initial Study means on page 3 when it states:

“The proposed amendment to Condition 99 constitutes an amendment to the approved subdivision and therefore would be subject to the provisions of California Government Code Section 66472.1 and Chapter 19.08.015.A.7 of the Monterey County Subdivision Ordinance. These provisions require certain findings to be made to approve the proposed amendment. These findings are addressed in Section VI.9 (Land Use) of the Initial Study.”

The seven findings in Chapter 19.08.015.A.7 are NOT addressed. Furthermore, page 3 of the Initial Study states that the Planning Commission hearing ‘for recommendation to the Board of Supervisors’ will be to consider the criteria of Section 19.08.015.A.7. A Planning Commission hearing is currently scheduled for August 12, 2015. However, before that hearing can be held, the Revised Negative Declaration must address the findings required by Section 19.08.015.A.7.



5. **Instead of 'assumptions,' uncertainties about the project stated in the Initial Study on pages 18-20 should be mitigation measures to mitigate significant environmental impact to less than significant.** For example, page 18 states that because Policy 4.3.6.D.1 is not clear, "we assume that the units would be constructed within the County of Monterey and would not be units required by another government program." (underlining added.) Page 19 states that "it is speculative to determine where the replacement units may be constructed" (underlining added) and the "assumption for this analysis is that construction would occur prior to the release of an equivalent number of units from the income restriction on Moro Cojo houses." These assumptions should be made into mitigation measures. For example, a mitigation measure might be that the replacement units must be constructed within the County of Monterey and may not be units required by another government program or already-entitled specific plan." Another mitigation measure might be that "construction must occur prior to the release of an equivalent number of units from the income restriction on Moro Cojo houses and must be constructed within the next [set number] of years." However, converting these assumptions into mitigation measures will necessitate revising the Negative Declaration into a Mitigated Negative Declaration.
6. **CEQA Guidelines Section 15074 requires the Housing Advisory Committee to consider the Revised Negative Declaration.** Subdivision (a) of CEQA Guidelines Section 15074 requires "any advisory body of a public agency making a recommendation to the decision making body shall consider the proposed negative declaration or mitigated negative declaration before making its recommendation." Thus, since the earlier Negative Declaration has been replaced by this July 2 Negative Declaration, and because the Housing Advisory Committee had only the prior Negative Declaration at the time it made its recommendation, it must hold another hearing after first considering this Revised Negative Declaration before making its recommendation to the Board of Supervisors.
7. **I hereby repeat my March 16, 2015 comments regarding page 23.** My March 16, 2015 comments still apply to page 25, except that on March 16 current page 25 was then page 23. My March 16 comments state:

"Toward the bottom of page 23 there's a "Note" citing multiple references, including 13 sections of the Public Resources Code, 5 cases involving CEQA, and a Government Code section. There is no explanation for why the 'Authority cited' includes the cited sources. For example, I looked up the first source, Public Resources Code section 21083; it defines the duty of the California Office of Planning and Research. I see no relevance of section 21083 to any issue discussed on page 23."

Toward the bottom of current page 25, the same authorities are still cited, also including Public Resources Code section 21083. Section 21083, subdivision A states: "(a) The Office of Planning and Research shall prepare and develop proposed guidelines for the implementation of this division by public agencies. The guidelines shall include objectives and criteria for the orderly evaluation of projects and the preparation of environmental impact reports and negative declarations in a manner consistent with this division." What is the relevance of Section 21083 to issues discussed on page 23?

My March 16 comments also state: "Under issue b) regarding whether the project has cumulatively considerable impacts, the Discussion/Conclusion/Mitigation on page 23 states that the "proposed project does not include any physical development that could affect." The sentence ends after 'affect.' Could affect what?"

I repeat my March 16 question: 'Could affect what?'

8. **The Coastal Commission must be listed as a responsible agency because it has responsibility for approving the application to amend condition 99 in the event of an appeal.** CEQA Guidelines 15381 defines a responsible agency to include all public agencies other than the Lead Agency which have discretionary approval power over the project. The Coastal Act requires the Coastal Commission "to ensure that coastal development permit conditions existing as of January 1, 2002, relating to affordable housing are enforced and do not expire during the term of the permit." (Public Resources Code § 30614.) Condition 99 is a condition of a coastal development permit existing as of January 1, 2002 relating to affordable housing. Thus, in the event condition 99 is amended and that amendment is appealed to the Coastal Commission, the Coastal Commission will have discretionary approval power to overturn amendment of condition 99. The opening page of the Revised Negative Declaration lists only County of Monterey as the responsible agency. Thus, it must be amended to also list California Coastal Commission as a responsible agency because in the event of an appeal of an amendment to the Combined Coastal Development Permit, the Coastal Commission will have discretionary approval power over the proposed project. (See attached 4/6/15 letter from Coastal Commission staff.)

In sum, the Revised Negative Declaration must be rewritten to include the 161 replacement units in the project description. After that, the remaining sections must be adjusted accordingly.

Respectfully submitted,

Jane Haines

Attached: 4/6/15 letter addressed to Luis Osario from Coastal Commission staff

CALIFORNIA COASTAL COMMISSION

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SANTA CRUZ, CA 95060
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April 6, 2015

Luis Osorio
Senior Planner
Monterey County Resource Management Agency – Planning Department
168 W. Alisal Street, 2nd Floor
Salinas, CA 93901

Subject: *Negative Declaration for the Moro Cojo Subdivision Amendment (PLN120650)*

Dear Mr. Osorio:

Thank you for sending the Negative Declaration for the Moro Cojo Subdivision Amendment (PLN120650) for our review. The proposed amendment would change Condition No. 99 of the Combined Development Permit for the Moro Cojo Subdivision Project (SH93001 and SH93002), approved by the County on December 20, 1994. The proposed amendment would change the affordability requirement for 161 of the 175 units from perpetuity to a limited term of 15 years from the date of first sale. The original Combined Development Permit was appealable to the Coastal Commission because the subdivision was a conditional use in the high density residential zoning district, and as such, any amendment to the permit is also appealable to the Coastal Commission. We would like to provide the following comments on the proposed change and the Negative Declaration.

The proposed change would eliminate the requirement that 161 of the 175 units be affordable in perpetuity and would turn these 161 into market rate units. North County Land Use Plan (LUP) Policy 4.3.6.D.1 (for low and moderate income housing) requires the County to “protect existing affordable housing opportunities in the North County coastal area from loss due to deterioration, conversion, or any other reason.” The LUP requires replacement of affordable housing units on a one-to-one basis should existing units be eliminated (4.3.6.D.1.a). Removal of the affordability requirement for 161 existing affordable units would be inconsistent with the LCP requirement to protect such units. And to our knowledge, neither the applicant nor the County has proposed or identified any replacement affordable housing units to replace the loss of these 161 units. We also note that the Negative Declaration does not analyze the proposed change against these applicable LUP policies.

In addition to the LCP requirements, the Coastal Act requires the Commission “to ensure that coastal development permit conditions existing as of January 1, 2002, relating to affordable housing are enforced and do not expire during the term of the permit.” (PRC §30614) Commission staff believes that 161 units is a significant amount of housing for lower-income residents of North Monterey County and the loss of these units would be clearly inconsistent with the LCP and Coastal Act requirements to protect them.

STAFF'S RESPONSE TO COMMENTS SUBMITTED ON THE REVISED INITIAL STUDY

Only one comment letter was submitted on the Revised Initial Study.

Comment No.1: The proposed description is inadequate because it does not include the whole of the action as required in CEQA Guidelines Section 15378. The commenter states that the whole of the action includes the effect of North Monterey County Land Use Policy 4.3.6.D.a on any amendment of Condition 99 of the approval of the Moro Cojo Subdivision permit. The commenter infers that because the proposed amendment of Condition 99 to change the affordability requirement of the subject 161 single-family units in the subdivision would result in their conversion to market-rate units, one-to-one replacement units should be provided per the requirements of the policy and that the provision of replacement units is part of the whole of the action.

Response: The pertinent part of Policy 4.3.6.D.a states: "The County shall protect existing affordable housing opportunities in the North County coastal area from loss due to deterioration, conversion, or any other reason. The County will:

- a) Discourage demolitions, but, require replacement on a one by one basis of all demolished or converted units which were affordable to or occupied by low and moderate income persons.

While Policy 4.3.6.D.a arguably would require provision of replacement units, it does not offer specific guidance as to what constitutes acceptable replacement units (e.g., rental or owner-occupied), where within the County the units can be located (e.g., incorporated cities or unincorporated areas), the timing of their availability, or duration of the replacement units' affordability. In the revised Initial Study, staff has assumed that replacement units would have to be provided and, further, suggested that replacement units could potentially be provided in a number of locations in both incorporated and unincorporated areas in Monterey County. The revised Initial Study (p. 19) states:

"Each [replacement] site that could accommodate replacement units either 1) has already been analyzed in an environmental document, if previously approved, 2) will be analyzed in an environmental document as part of obtaining the entitlement for that project, 3) has already been analyzed as part of an environmental document for a larger project, such as a Specific Plan in either the unincorporated area or within one of the cities of the Salinas Valley, or 4) has been analyzed in General Plan EIRs at a programmatic level. As 161 replacement units spread over such a large geographic area [that] has already or will be analyzed, and as this number of units [is located] in an area that has growth plans that would accommodate thousands of housing units, the impacts of such a development have either already been adequately analyzed or are too speculative as to their potential location."

From the perspective that Policy 4.3.6.D.a does not specify the timing or location of replacement units, staff believes that, if the affordability requirement of the 161 residential units is removed, replacement units could be required as a condition of amending Condition 99 and that replacement units could be provided in several areas, but that it would be speculative to identify specific location. The identification of replacement units is not, therefore, part of the project description.

Comment No. 2: Omission of one to one replacement in the Project Description leads to faulty analysis of the project's environmental impacts. The commenter offers examples of how provision of replacement units could result in potential environmental impacts on Hydrology/Water Quality and Public Services.

Response: The updated discussion, pages 18-20 of the revised Initial Study, suggests several potential locations for replacement units that 1) have already been analyzed in an environmental document, if previously approved, 2) will be analyzed in an environmental document as part of obtaining the entitlement for that project, 3) have already been analyzed as part of an environmental document for a larger project, such as a Specific Plan in either the unincorporated area or within one of the cities of the Salinas Valley, or 4) have been analyzed in General Plan EIRs at a programmatic level. Based on this, the updated discussion concludes that "As 161 replacement units spread over such a large geographic area has already or will be analyzed, and as this number of units in an area that has growth plans that would accommodate thousands of housing units, the impacts of such a development have either already been adequately analyzed or are too speculative as to their potential location. The impact is considered less than significant."

Comment No. 3: The commenter states that the findings in the revised Initial Study are not supported by the evidence because 1) a finding of no significant effect on the environment is contradicted by the statement in the 2009-2014 Monterey County Housing Element that "Overall, there is a great need for affordable housing in Monterey County even with the recent market changes;" 2) converting the subject 161 residential units to market rate units would have a substantial adverse effect on 161 households which will no longer be able to afford a home; and 3) the finding [that] there will be no significant effect on the environment because there will be no substantial effects on those several hundreds of people who would be affected by [the] amendment of condition 99 is unsupported by evidence.

Response: The revised Initial Study does not conclude anywhere that 1) converting the subject 161 residential units to market rate units would not have a substantial adverse effect on 161 households which will no longer be able to afford a home; or that 2) there will be no significant effect on the environment because there will be no substantial effects on those several hundreds of people who would be affected by [the] amendment of condition 99.

Staff believes that the commenter refers to staff's proposed finding on page 7 of the revised Initial Study that the proposed project could not have a significant effect on the environment and that a Negative Declaration will be prepared. This statement is required in an initial Study where, based on the overall conclusion contained therein, there is no evidence of potential significant impacts requiring mitigation. Based on the discussion in the entire Initial Study, staff has concluded that the proposed amendment to Condition 99 would not result in potential significant impacts requiring mitigation and therefore recommends adoption of a Negative Declaration.

Comment No. 4: The Initial Study erroneously states that findings required by Chapter 19.08.015.A.7 [of the Subdivision Ordinance] are addressed in Section VI.9 (Land Use) of the Initial Study and that the discussion on pages 17-20 of the Initial Study fails to address the seven findings listed in Chapter 19.08.015.A.7 are not properly addressed.

Response: The reference in the revised Initial Study to Section VI.9 (Land Use) is partially incorrect in that it should be Section VI.10; this was a typographical error. Still, the reference

directs the reader to the correct Section, Land Use, of the Initial Study where the referenced discussion is located. In regards to the requirements of Chapter 19.08.015.A.7, of the Subdivision Ordinance the commenter refers to the language of Chapter 19. 08.015.A of the Ordinance which states that “After a final or parcel map is filed in the Office of the County Recorder, it may be amended by a certificate of correction or an amending map for any of the following purposes:” (emphasis added). Under this section, the ordinance then lists seven instances where a recorded final or parcel map can be corrected or amended; the inference that findings must be made for the seven instances is incorrect. Item #7 under Chapter 19. 08.015.A refers to the instance when a recorded final or parcel map may be amended to make modifications to the final or parcel map where there are changes which: (1) make any or all of the conditions no longer appropriate or necessary; (2) the modification does not impose any additional burden on the fee owners of the real property that are the subject of the application; and (3) the modification does not alter any right, title or interest in the real property reflected on the final map.

The discussion on page 20 of the revised Initial Study states that “The proposed modification to Condition No. 99 of the approved Moro Cojo Subdivision would constitute an amendment to the recorded Subdivision Map. Therefore, the modification would be subject to the provisions of Chapter 19.08.015 (Correction and Amendment of Recorded Final or Parcel Maps).” This is a correct statement and the proposed amendment of Condition 99 is an amendment to the Moro Cojo Subdivision permit subject to the provisions of Chapter 19.08.015.A.7, of the Subdivision Ordinance as cited in the Initial Study.

Comment No. 5: The commenter states that certain assumptions about the project stated on pages 18-20 of the revised Initial Study should be mitigation measures to mitigate significant environmental impacts; and that converting the assumptions to mitigation measures will necessitate revising the Negative Declaration into a Mitigated Negative Declaration.

Response: The commenter refers to the staff’s analysis of the provisions of Policy 4.3.6.D.1 of the North County Area Plan (LUP) and their applicability to the proposed amendment of Condition 99. As stated under the response to Comment No. 1 above, that analysis provides that While Policy 4.3.6.D.a arguably would require provision of replacement units, it does not offer specific guidance as to what constitutes acceptable replacement units, where within the County the units can be located, the timing of their availability, or duration of the replacement units’ affordability.

Staff has assumed that replacement units would have to be provided and, further, suggests that replacement units could potentially be provided in a number of locations in both incorporated and unincorporated areas in Monterey County that 1) have already been analyzed in an environmental document, if previously approved, 2) will be analyzed in an environmental document as part of obtaining the entitlement for that project, 3) have already been analyzed as part of an environmental document for a larger project, such as a Specific Plan in either the unincorporated area or within one of the cities of the Salinas Valley, or 4) have been analyzed in General Plan EIRs at a programmatic level. Again, staff believes based on the overall analysis that, if the affordability requirement of the 161 residential units is removed, there is no evidence that their conversion to market-rate units would not constitute an environmental impact. And replacement units could be required as a condition of amending Condition 99 in several areas as suggested in the Initial Study.

Comment No. 6: CEQA Guidelines Section 15074 requires the Housing Advisory Committee to consider the Revised Negative Declaration.

Response: The Housing Advisory Committee considered the original Initial Study and made a recommendation to the Board of Supervisors on May 27, 2015.

Comment No. 7: The commenter restates her comment (Comment No. 7 in Comment Letter No.1 to the original Initial Study) on the original Initial Study. The commenter refers to a Note on page 23 of the Initial Study which references multiple sections of the Public Resources Code and legal cases involving CEQA; and states that there is no explanation for why the “Authority Cited” includes the cited sources.

Response: The Note at the bottom of page 23 of the Initial Study is a standard note contained in the template used by RMA-Planning in the writing of all initial studies. The Note is there merely as reference for staff on issues that may be related to the Mandatory Findings of Significance Section of the Initial Study.

Comment No. 8: The Coastal Commission must be listed as a responsible agency because it has responsibility for approving the application to amend condition 99 in the event of an appeal.

Response: The Coastal Commission would consider an appeal of the action by Monterey County in the case that one is filed. The Commission would either uphold or deny the appeal. The Commission is listed as a Reviewing Agency in the “Notice of Completion & Environmental Document Transmittal” submitted to the State Clearinghouse for distribution of the Initial Study. The Coastal Commission was also mailed a copy of the Initial Study and did receive and commented on the Initial Study.