

Attachment B

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**ATTACHMENT B
DRAFT RESOLUTION**

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

In the matter of the application of:

**STATE OF CALIFORNIA/ELKHORN SLOUGH
NATIONAL ESTURINE RESEARCH RESERVE
(PLN100351)**

RESOLUTION NO. 15 - _____

Resolution by the Monterey County Board of Supervisors:

- a. Denying the appeal by Nina Beety of the Monterey County Planning Commission's adoption of a Mitigated Negative Declaration and approval of a Combined Development Permit (Elkhorn Slough National Estuarine Research Reserve /PLN100351);
- b. Certifying that the County has considered the Mitigated Negative Declaration adopted by the California Department of Fish and Wildlife; and
- c. Approving the Combined Development Permit consisting of: 1) a Coastal Development Permit to allow oak woodland and freshwater habitat restoration within 100 feet of an environmentally sensitive habitat; and 2) a Coastal Development Permit to allow the removal of 1,225 existing Eucalyptus trees (ranging in size from 6 to over 37 inches in diameter); and
- d. Adopting a Mitigation Monitoring and Reporting Plan

[PLN100351, State of California, 1700 Elkhorn Road, Royal Oaks, North County Land Use Plan (APN: 131-051-001-000, 131-051-023-000, & 131-051-067-000)]

The Appeal by Nina Beety of the Monterey County Planning Commission's approval of an application for a Combined Development Permit (Elkhorn Slough National Estuarine Research Reserve - PLN100351) came on for public hearing before the Monterey County Board of Supervisors on September 29, 2015. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Board of Supervisors finds and decides as follows:

FINDINGS

- 1. FINDING:** **PROJECT DESCRIPTION** – The proposed project is a Combined Development Permit consisting of: 1) a Coastal Development Permit to allow oak woodland and freshwater habitat restoration within 100 feet of an environmentally sensitive habitat; and 2) Coastal Development Permit to allow the removal of 1,225 existing Eucalyptus trees (ranging in size from 6 to over 37 inches in diameter).
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 PLN100351.

2. FINDING: PROCESS – The subject Combined Development Permit (PLN100351) (“project”) has been processed consistent with all applicable procedural requirements.

- EVIDENCE:**
- a) On December 21, 2011, Elkhorn Slough National Estuarine Research Reserve (ESNERR) (applicant) filed an application for a Combined Development Permit consisting of: 1) a Coastal Development Permit to allow oak woodland and freshwater habitat restoration within 100 feet of an environmentally sensitive habitat; and 2) a Coastal Development Permit to allow the removal of 1,225 existing Eucalyptus trees (ranging in size from 6 to over 37 inches in diameter).
 - b) Consistent with the Land Use Advisory Committee (LUAC) Procedures adopted by the Monterey County Board of Supervisors, the application was reviewed by the North County Coastal LUAC. On February 7, 2012, the LUAC unanimously recommended approval (4-0 vote).
 - c) The LUAC meeting on February 7, 2012 was noticed consistent with the LUAC Guidelines adopted by the Board of Supervisors. The meeting was posted in two locations: the Full Gospel Church (meeting location) and the Moss Landing Post Office. A notice was mailed to neighbors within 300 feet of the project location. On May 2, 2012, the project was found complete by RMA- Planning, North County Fire Protection District, Parks, RMA-Public Works, RMA-Environmental Services, Environmental Health Bureau, and Water Resources Agency.
 - d) The Lead Agency, California Department of Fish and Wildlife (CDFW) prepared and circulated the Mitigated Negative Declaration to responsible agencies, trustee agencies, and interested parties, including the State Clearinghouse (SCH No. 2014121035). The public review and comment period for this document was from December 16, 2014 to January 23, 2015. CDFW adopted the Mitigated Negative Declaration on March 23, 2015.
 - e) On July 8, 2015, at a duly noticed public hearing, the Planning Commission considered the Mitigated Negative Declaration adopted by the California Department of Fish and Wildlife, and approved the Combined Development Permit with a vote of 9-1..
 - f) On July 31, 2015, the appellant, Nina Beety, timely filed an appeal of the Planning Commission decision. The hearing before the Board of Supervisors was duly noticed for September 29, 2015. A notice of public hearing was placed in the Monterey County Weekly on September 17, 2015 and mailed to interested persons and property owners within 300 feet on the same date.
 - g) 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 PLN100351; project-related materials on file with the Clerk of the Board of Supervisors.

3. FINDING: CONSISTENCY/SUITABILITY – The Project, as conditioned, is consistent with the applicable plans and policies of the area, and is physically suitable for the proposed 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;
 - North County Land Use Plan;
 - Monterey County Coastal Implementation Plan - Part 2;
 - Monterey County Zoning Ordinance (Title 20);
 - b) The project is accessed at 1700 Elkhorn Road, Royal Oaks (Assessor's Parcel Numbers 131-051-001-000, 131-051-023-000 and 131-051-067-000), North County Land Use Plan. The parcels, approximately 889 acres, are zoned "RC (CZ)" [Resource Conservation (Coastal Zone)], which allows the restoration and management programs for fish, wildlife, or other physical resources (Section 20.36.040.B of Title 20 (Coastal Zoning Ordinance)). The outcome of the subject project will restore four of the 13 remaining eucalyptus groves, approximately 13.6 acres, back to oak woodland which historically dominated the area and provides better habitat to bird and amphibian species found on the properties. Therefore, the project is an allowed development for this site.
 - c) The project has been reviewed for site suitability by the following departments and agencies: RMA- Planning, North County Fire Protection District, Parks, RMA-Public Works, RMA-Environmental Services, Environmental Health Bureau, and Water Resources Agency. There has been no indication from these departments/agencies that the site is unsuitable for the proposed development.
 - d) The restoration of oak woodlands is consistent with the California Fish and Game Code, Section 1360-1372 which defines the importance of oak woodlands and necessity to support and encourage restoration and protection efforts. California Public Resources Code Section 21083.4 provides criteria for the loss of oak woodland. The project proposes restoration of oak woodland on properties owned by the State of California within an ecological reserve managed by the Elkhorn Slough National Estuarine Research Reserve staff.
 - e) Pursuant to the Forest Resources Chapter of the North County Coastal Implementation Plan, 75 of the 1,225 eucalyptus trees to be removed are considered landmark (over 36 inches in diameter), and therefore, requires a Coastal Development Permit (Section 20.144.050.A.1.a, North County Coastal Implementation Plan (Title 20, Part 2)). The rest of the eucalyptus trees to be removed are exempt because they are a non-native species and are less than 36 inches in diameter. Consistent with Section 20.144.050.C.1 of the North County Coastal Implementation Plan, the landmark eucalyptus trees to be removed are not historically significant and the removal of the trees will not impact rare, endangered or threatened species. The eucalyptus trees are an invasive species that were planted in the early 1900s for timber and use as a wind break which contributed to the loss of coast live oak woodlands that naturally occurred on the properties. The timing of tree removal will occur outside of the nesting and roosting season for birds, amphibians and reptiles, and monitoring by a qualified biologist will be provided before and during tree removal activities. See Finding 6 for more information regarding environmentally sensitive habitat areas.
 - f) The project planner conducted a site inspection on February 7, 2012 and

verified that the project on the subject parcels conform to the plans, listed above.

- g) The following reports have been prepared:
- “Elkhorn Slough Estuarine Sanctuary: Cultural Resource Management” (LIB110488) prepared by John Michael King, dated 1982;
 - “Preserving Upland Habitat and Restoring Ground Water at Elkhorn Slough National Estuarine Research Reserve – Assessment of Biological Impacts” (LIB110487) prepared by Antonia D’Amore, PhD, Royal Oaks, CA, dated April 2011.

The reports indicate that the project conforms to applicable plans, regulations and policies listed above; and therefore, would not make the site unsuitable for the habitat restoration plan.

- h) 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 PLN100351.

4. FINDING:

CEQA (Mitigated Negative Declaration) - On the basis of the whole record before the Monterey County Board of Supervisors, there is no substantial evidence that the proposed project as designed, conditioned and mitigated, will have a significant effect on the environment. The Board of Supervisors, as the decision-making body of a Responsible Agency, has reviewed and considered the information contained in the Lead Agency’s Mitigated Negative Declaration prior to approving the Combined Development Permit.

EVIDENCE:

- a) The Lead Agency, California Department of Fish and Wildlife (CDFW) prepared and circulated the draft Initial Study to responsible agencies, trustee agencies, and interested parties, including the State Clearinghouse (SCH No. 2014121035). The public review and comment period for this document was from December 16, 2014 to January 23, 2015.
- b) The County, a Responsible Agency, reviewed the draft Initial Study during the review period and did not submit any substantive comments regarding the adequacy of the environmental document.
- c) The environmental document analyzed biological resources, cultural resources, geology/soils, greenhouse gas emissions, hazards/hazardous materials, hydrology/water quality, and noise. Findings conclude that with the proposed mitigation measures (see Condition No. 5 for mitigation measures), all potential impacts will be reduced to a level of less than significant.
- d) CDFW adopted the Mitigated Negative Declaration on March 23, 2015 and filed a Notice of Determination on March 25, 2015.
- e) CDFW adopted a Mitigation Monitoring and Reporting Plan to ensure compliance during project implementation. The mitigation measures are summarized, as follows (full mitigation language is found in Condition No. 5 of the Condition Compliance and Mitigation Monitoring Reporting Plan):
- Bio-1: ESNERR staff will flag the single Pajaro Manzanita found in the Cattail Swale grove prior to tree removal and inform tree removal personnel of its location.

- Bio-2: All stumps shall be left in the ground to hold soil in place.
- Bio-3: Any existing vegetation, other than invasive vegetation species, shall not be removed. Monitoring by ESNERR staff will be required to ensure compliance.
- Bio-4: Any exposed soil shall be broadcast with a mixture of native and annual barley seed to prevent any potential erosion.
- Bio-5: At least 15 days prior to the onset of activities, ESNERR shall submit name and credentials of all biologists who will help conduct activities specified in the mitigation measures to the US Fish and Wildlife Service (USFWS). No work can occur until written approval is received from USFWS.
- Bio-6: Prior to any tree removal activities, all USFWS approved biological monitors shall conduct a worker education training program for all personnel involved with the tree removal activities.
- Bio-7: A USFWS approved biologist shall survey all trees before tree removal activities and conduct monitoring during tree removal activities. If a special status species is identified during the tree removal process, the monitor shall relocate the species to the nearest known habitat.
- Bio-8: All existing logs within the eucalyptus removal sites on the ground prior to tree removal activities shall not be removed due to possibility of harboring a special status species.
- Bio-9: Tree removal activities shall be completed between August 1 and November 1. If activities occur after the specific date, USFWS shall be contacted to obtain authorization.
- Bio-10: 2.7 acres of eucalyptus shall remain uncut at the South Marsh site to serve as alternative suitable habitat.
- Bio-11: ESNERR staff shall instruct tree removal personnel to use the California Oak Mortality Task Force's Best Management Practices Guidelines for Forestry before entering the Reserve, which includes disinfecting machinery, vehicles, equipment and shoes before being used in the Reserve.
- Bio-12: ESNERR staff shall flag the salt marsh habitat prior to tree removal activities and inform removal personnel of its location to ensure protection of the salt marsh.
- Bio-13: ESNERR staff shall remove all eucalyptus resprouts and saplings, as well as invasive weeds, within the project areas using manual and chemical methods for three years following initial tree removal.

CDFW, as Lead Agency, will be responsible to implement this plan. As a Responsible Agency for permitting, the County is adopting a Mitigation Monitoring and Reporting Program and conditioning the project to require CDFW to provide evidence that these measures are implemented and have the intended effect (Condition No. 5 of the Condition Compliance and Mitigation Monitoring Reporting Plan).

- f) Evidence that has been received and considered includes: the application, technical studies/reports (see Finding 2/Site Suitability), staff reports that reflect the County's independent judgment, and information and testimony presented during public hearings. These documents are on file in RMA-Planning (PLN100351) and are hereby

incorporated herein by reference.

5. FINDING: PUBLIC ACCESS – The project is in conformance with the public access and recreation policies of the Coastal Act (specifically Chapter 3 of the Coastal Act of 1976, commencing with Section 30200 of the Public Resources Code) and County’s certified Local Coastal Program, and does not interfere with any form of historic public use or trust rights.

- EVIDENCE:**
- a) Policy 6.3.2 (20) of the Public Access Chapter in the North County Land Use Plan identifies the parcels as an existing secondary public access, which allows limited public access due to natural resource or constraints on-site. The existing secondary access allows low intensity passive recreational trails to the Elkhorn Slough through the Elkhorn Slough Estuarine Sanctuary for nature observation, research and education purposes. Access is managed by the Elkhorn Slough National Estuarine Research Reserve. This restoration plan will not affect any of the trails through the reserve.
 - b) Pursuant to Chapter 20.144.150.A of the North County Coastal Implementation Plan, an Access Management Plan is not required because that project does not require or propose new or additional access points or trails, and will not conflict with existing secondary public access.
 - c) See preceding and following Findings and Evidence.

6. FINDING: ESHA – The subject project minimizes impact on environmentally sensitive habitat areas in accordance with the applicable goals and policies of the applicable area plan and zoning codes.

- EVIDENCE:**
- a) Section 20.36.030, Resource Conservation Chapter of Title 20 requires a Coastal Development Permit for development within 100 feet of mapped or field identified environmentally sensitive habitats (EHSA). In accordance with the regulation, a Coastal Development Permit is required because the proposed restoration project is located within 100 feet of EHSA, the Elkhorn Slough.
 - b) Section 20.144.040.A.1.c of the North County Coastal Implementation Plan requires a Biological Survey for any development that is or may potentially be located within 100 feet of an environmentally sensitive habitat, and/or has potential to negatively impact the long-term maintenance of the habitat, as determined through staff’s project review. A biological survey was submitted (as stated in Finding 1, Evidence g of this resolution), and additional survey information was provided in the Mitigated Negative Declaration (MND) prepared by the California Department of Fish and Wildlife (see Finding 4 of this resolution regarding the MND).
 - c) Section 20.144.040.B.2 of the North County Coastal Implementation Plan states, “development on parcels containing or within 100 feet of environmentally sensitive habitats...shall not be permitted to adversely impact the habitat’s long-term maintenance, as determined through a biological survey.” This project is consistent with this policy. (See evidence d and e below).
 - d) The biological survey identified the following special status species or habitats may be affected by the tree removal activities:

- Monarch butterfly (No Federal or State listing)
- Santa Cruz long-toed salamander (Federally listed as endangered, State listed as Endangered, fully protected by the State)
- California red-legged frog (Federally listed as threatened, California species of concern)
- Western pond turtle (California species of concern)
- White-tailed kite (nesting) (Fully protected by the State)
- Double-crested cormorant (rookery site) (CDFW Watch List)
- Salinas harvest mouse (no Federal or State listing)

Southern sea otter (Federally listed as threatened, protected under the Marine Mammal Protection Act, fully protected by the State)

- e) This is a Habitat restoration project which seeks to enhance the native habitat, and not introduce development inconsistent with the natural setting. Mitigation measures, have been incorporated into the project to provide avoidance and minimization techniques that will protect ESHA. With the implementation of all mitigation measures (Condition No. 5), restoration is considered a less-than-significant impact to ESHA and will not negatively impact the long-term maintenance of identified habitats.
- f) The biological survey and MND concludes that eucalyptus tree removal required to restore oak woodland and freshwater habitat will have a less-than-significant impact on ESHA, provided the mitigation measures are implemented. The eucalyptus trees are an invasive species that were planted in the early 1900s which contributed to the loss of coast live oak woodlands that naturally occurred on the properties. The eucalyptus trees currently threaten to displace freshwater ponds known to serve as habitat for listed special status species, including the Santa Cruz long-ted salamander and California red-legged frog. Therefore, the long-term effect of the four groves being restored back to oak woodland habitat is anticipated to have a beneficial of existing freshwater habitats that occur on the properties.
- g) See preceding and following Findings and Evidence.

7. **FINDING:**

APPEAL – Upon consideration of the appeal, documentary evidence, the staff report, the oral and written testimony, and all other evidence in the record as a whole, the Board makes the following findings in regard to the Appellant’s contentions:

- a) *Appellants’ Contention No. 1– Removal of 1225 or 1255 trees -there is uncertainty on the real number --p. 6 versus p. 161. It seems to be 1255 trees. There are other examples of conflicting numbers in the MND.*

Response to Appellants’ Contention: The County analysis has consistently used 1225 as the number for removal of eucalyptus trees. The background information prepared for the permitting identifies that this is an approximation. The important fact here is that approximately 1225 eucalyptus trees will be removed. Not all of these are protected trees. Only 75 of them require a permit for removal due to their landmark status. The permits are related to impact on ESHA in close proximity to the removal of the non-native eucalyptus trees, and to the removal of certain large (landmark eucalyptus trees.) Based upon this there is no discrepancy related to the project description.

EVIDENCE: b) *Appellants' Contention No. 2– It is in violation of the North County Land Use Plan. The project is not compatible with the North County Land Use Plan. The North County Land Use Plan focuses on protecting habitat and environmentally sensitive habitat areas and does not distinguish between native and non-native species. This project does not protect and preserve, but seeks to impose a specific template and to disrupt an existing working and healthy ecosystem, with no guarantee of success or profit.*

Response to Appellants' Contention:

The project is consistent with the North County Land Use (LUP) and related Coastal Implementation Plan (CIP). Policy 2.3.4.5 of the LUP states, "*The County should encourage the restoration of sensitive plant habitats on public and private lands. A program to control invasive non-native vegetation should be developed in conjunction with the State Department of Parks and Recreation, State Department of Fish and Game, U.S. Forest Service and the County.*" The project is located on the ESNSRR on land owned by the State of California. The outcome of the project will restore four of the 13 remaining eucalyptus groves back to oak woodland which historically dominated the area. By removing non-native eucalyptus trees and replacing them with oak woodland the project seeks to accomplish the objective of this policy which is to remove invasive non-native vegetation in favor of re-establishment of native vegetation. Oak Woodlands are a sensitive habitat.

Chapter 20.144.050 (Forest Resources Development Standards) of the CIP does not protect non-native or planted trees, such as the eucalyptus trees except when they are ridgeline trees or landmarks trees as defined in Section 20.144.050.D.1. However, the 75 landmark eucalyptus trees proposed for removal are not considered historic. Between 1900s-1930s, eucalyptus trees were planted on the property for timber and used as wind breaks in association with agricultural uses. Consistent with the requirements to remove landmark trees, biological resources were evaluated and mitigation measures will be applied to ensure the removal would not impact nesting or roosting of rare, endangered, or threatened species. This project will only remove a portion of the existing eucalyptus groves (4 of 13). Most of the existing eucalyptus groves will remain in place so that the existing habitat will not be adversely affected.

See preceding and following Findings and Evidence for more information.

- c) *Appellants' Contention No. 3: It is ideologically driven and flawed with a lack of science demonstrating benefits.*
- 1. The California Invasive Plant Council (Cal-IPC) re-classified Eucalyptus globules from "widespread" to "limited invasiveness", yet the Mitigated Negative Declaration calls eucalyptus "invasive". The expansiveness of the eucalyptus trees is not supported by historic photos.*
 - 2. Cutting down the trees will impact air quality and increase greenhouse gas emissions. Emissions analysis is not consistent*

- with Monterey County Air District or Climate Action Plan.
3. Research done by ESNERR during the preparation of the MND lacks peer-review. Data is presumed. CDFW contradicts the elimination of eucalyptus trees, by stating that native trees are currently co-mingling with eucalyptus.
 4. Water saving by removing eucalyptus trees is misplaced.
 5. Dead trees left as snags create fire hazards.

Response to Appellants' Contention:

The project was designed by the ESNERR in consultation with the California Department of Fish and Wildlife, U.S. Fish and Wildlife Service, North County Fire Protection District and the County of Monterey. The analysis in the Mitigated Negative Declaration (MND) prepared by the California Department of Fish and Wildlife (CDFW) was circulated and reviewed by applicable States and local agencies, such as the California Coastal Commission, State Water Regional Control Board, Department of Pesticide Regulation and the Monterey Bay Unified Air Pollution Control District. All agencies that reviewed the project and MND concur with the analysis in the MND and the mitigation measures and conditions applied. Therefore, the project and MND was adequately peer-reviewed consistent with State and local regulations.

In regards to the invasiveness and expansiveness of eucalyptus trees, the North County Land Use Plan identifies that eucalyptus trees are non-native and are not protected unless they are landmark or impact ridgelines. As stated in the response by ESNERR staff, Cal-IPC did recently revise its *E. globulus* (eucalyptus) state-wide ranking, after the MND was complete, changing it from "Moderate" to "Limited." Limited is defined as "invasive, but their ecological impacts are minor on a state-wide level or there was not enough information to justify a higher score." In explaining the change, Cal-IPC writes, "this change is due to evaluating *E. globulus* across the entire state, rather than focusing on coastal areas where it is most prone to spreading. Although not all *E. globulus* stands are expanding, those in moist coastal habitats often expand at a significant rate." An aerial photo analysis tracking six eucalyptus stands in the Elkhorn Slough watershed between 1931 and 2001 showed a 50-400% increase in eucalyptus stand size, and is supported by observations in the field of spread of groves via seedlings.

In regards to air quality and greenhouse gas emissions, the construction and operation emissions were modeled by California Emissions Estimator Model (CalEEMod) to estimate the potential impacts of implementation of the project. The analysis was reviewed and found consistent with emissions thresholds in the 2008 Air Quality Management Plan. Air quality was addressed in the MND as no impact. Greenhouse gas emissions were determined to have a less-than-significant impact. As stated in the MND, compared to the current annual inventory of 427,000,000 metric tons in California, the restoration project represents 0.00006 percent of that inventory, which is negligible. (See Findings and Evidence No. 4 for CEQA review consistency)

In regards to water, the restoration improves existing freshwater habitat which is currently being impacted by the eucalyptus groves. Eucalyptus trees require a substantial amount of water to survive which has impacted freshwater ponds known to serve as habitat for listed special status species, including the Santa Cruz long-toed salamander and California red-legged frog. Although the restoration project may have water saving benefits, ESNERR is not attempting to mitigate overdraft of the aquifer with this project.

In regards to fire hazards, the North County Fire Protection District identifies eucalyptus as a fire hazard. Pursuant to a letter to the Board of Supervisors, dated August 4, 2015, the removal of the eucalyptus trees are encouraged and meets the District's requirements for fuel management.

See preceding and following Findings and Evidence for more information.

- d) *Appellants' Contention No. 4: It affects four groves of over 1,200 trees of great environmental value and the wildlife that rely on them*
- 1. Provides habitat for protected and on-protected communities.*
 - 2. Tree removal will displace colonies of birds and add stress to bird communities.*
 - 3. Eucalyptus trees create moisture zones and stay green during drought conditions.*

Response to Appellants' Contention No. 4:

The Mitigated Negative Declaration, prepared and adopted by CDFW, adequately addresses the environmental value at the Reserve and has applied mitigation measures to minimize or avoid impacts to habitats at the Reserve. Reserve staff is proposing to remove only a portion of the site's eucalyptus, restoring the area to oak woodland where appropriate. Where nesting egrets, herons, raptors, and cormorants or monarchs have been documented; eucalyptus will be left in place. But where habitat can be improved for native understory plants, amphibians or insects, eucalyptus are planned for removal. Eucalyptus groves used as rookeries or nesting sites will not be removed. Active nesting areas will not be removed. Regarding moisture zones, data from Reserve monitoring detected very little soil moisture in Reserve eucalyptus groves. More moisture was detected under oaks.

See preceding and following Findings and Evidence for more information.

- e) *Appellants' Contention No. 5: It affects four groves of over 1,200 trees of great environmental value and the wildlife that rely on them*
- 1. Eucalyptus trees provide winter forage for species.*
 - 2. Converting the groves into grassland habitat makes the area more fire-prone. Eucalyptus trees lower the risk of fire hazards.*
 - 3. The removal degrades the current viewshed of the grove.*
 - 4. Herbicides used will be harmful to the Slough.*

Response to Appellants' Contention No. 5:

Regarding herbicides, the project proposes herbicide uses consistent with the Department of Pesticide Regulation, as well as U.S. Fish and Wildlife Service and California Department Fish and Wildlife for use of herbicides within or near sensitive habitat areas. The Mitigated Negative Declaration, prepared by CDFW, provides mitigation measures regarding the use and safety of herbicides and therefore, the impact is considered less-than-significant.

See preceding and following Findings and Evidence for more information.

- f) Appellants' Contention No. 6: There has been inadequate noticing and public hearings
1. *The Land Use Advisory Committee meeting was posted in one place, limiting attendance.*
 2. *Notices for the Mitigated Negative Declaration were posted between December 15, 2014 to January 22, 2015 during the holiday season; typically busy month.*
 3. *The Planning Commission meeting was noticed in the June 25-July 1, 2015 Monterey County Weekly. The notice and agenda do not provide adequate public outreach.*

Response to Appellants' Contention No. 6:

The public has received notice of hearings on the project and has had the opportunity to be heard. The LUAC was noticed in accordance with the LUAC Procedures. The Initial Study/Mitigated Negative Declaration circulated for more than the 30 days required by CEQA and well into January, beyond the holiday season. The Planning Commission considered the Mitigated Negative Declaration adopted by the California Department of Fish and Wildlife, and approved the Combined Development Permit with a vote of 9-1. Appellant appeared at the Planning Commission hearing and had the opportunity to be heard. Appellant also had and exercised the right of appeal of the Planning Commission decision to the Board of Supervisors. For the September 29, 2015 Board of Supervisors' hearing on the project a notice of public hearing was placed in the Monterey County Weekly on September 17, 2015 and mailed to interested persons and property owners within 300 feet on the same date. (See also Finding No. 2.)

The Land Use Advisory Committee (LUAC) meeting on February 7, 2012 was noticed consistent with the LUAC Guidelines adopted by the Board of Supervisors. The meeting was posted in two locations: the Full Gospel Church (meeting location) and the Moss Landing Post Office. A notice was mailed to neighbors within 300 feet of the project location.

According to ESNERR, the noticing of the MND was completed consistent with the CEQA Guidelines. During this time approximately 1,600 people visited the Reserve, using both the Visitor Center and trails, including a San Francisco Chronicle reporter, who included the project in a newspaper story about Elkhorn Slough in January 2015. The ESNERR maintains a website related to the project which informs

any visitors of the restoration project and provides contact information: <http://www.elkhornslough.org/habitat-restoration/eucalyptus/>.

The notice for the project at the July 8, 2015 Planning Commission was completed consistent with Section 20.84.040, Public Notice Required, Monterey County Zoning Ordinance. A notice was sent 10 days prior to the public hearing to the owner, applicant, all local and reviewing agencies and to neighbors within 300 feet of the project location. The item was posted in the Monterey County Weekly 10 days prior to the public hearing. An Affidavit of Posting was received on June 29, 2015 showing that the notices were posted 10 days before the public hearing and in three public locations.

8. **FINDING:** **APPEALABILITY** - The decision on this project is subject to appeal to the California Coastal Commission.
- EVIDENCE:** a Appeal to California Coastal Commission: Pursuant to Section 20.86.080.A of Title 20, the project is subject to appeal by/to the California Coastal Commission (CCC) because the required entitlement consists of two Coastal Development Permits and the project is located within 100 feet of a wetland, Elkhorn Slough.

DECISION

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

- a. Deny the appeal by Nina Beety of the Monterey County Planning Commission's adoption of a Mitigated Negative Declaration and approval of a Combined Development Permit (Elkhorn Slough National Estuarine Research Reserve /PLN100351);
- b. Certify that the Board of Supervisors considered the Mitigated Negative Declaration adopted by the California Department of Fish and Wildlife;
- c. Approve the Combined Development Permit consisting of: 1) a Coastal Development Permit to allow oak woodland and freshwater habitat restoration within 100 feet of an environmentally sensitive habitat; and 2) a Coastal Development Permit to allow the removal of 1,225 existing Eucalyptus trees (ranging in size from 6 to over 37 inches in diameter), subject to the Conditions of Approval, attached hereto as Exhibit 1 and incorporated herein by reference; and
- d. Adopt the Mitigation Monitoring and Reporting Plan (Exhibit 1) ,

PASSED AND ADOPTED upon motion of Supervisor _____, seconded by Supervisor _____, and carried this 29th day of September, 2015, by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

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 Minute Book _____ for the meeting on September 29, 2015.

Date:

File Number:

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

By _____
Deputy

Monterey County RMA Planning

DRAFT Conditions of Approval/Implementation Plan/Mitigation Monitoring and Reporting Plan

PLN100351

1. PD001 - SPECIFIC USES ONLY

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: This Combined Development Permit (PLN100351) consisting of: 1) a Coastal Development Permit to allow oak woodland and freshwater habitat restoration within 100 feet of an environmentally sensitive habitat; and 2) Coastal Development Permit to allow the removal of 1,225 existing Eucalyptus trees (ranging in size from 6 to over 37 inches in diameter). The property is located at 1700 Elkhorn Slough Road, Royal Oaks (Assessor's Parcel Number 131-051-001-000, 131-051-023-000 and 131-051-067-000), North County Land Use Plan. This permit was approved in accordance with County ordinances and land use regulations subject to the terms and conditions described in the project file. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of RMA - Planning. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. To the extent that the County has delegated any condition compliance or mitigation monitoring to the Monterey County Water Resources Agency, the Water Resources Agency shall provide all information requested by the County and the County shall bear ultimate responsibility to ensure that conditions and mitigation measures are properly fulfilled. (RMA - Planning)

Compliance or Monitoring Action to be Performed: The Owner/Applicant shall adhere to conditions and uses specified in the permit on an ongoing basis unless otherwise stated.

2. PD002 - NOTICE PERMIT APPROVAL

Responsible Department: RMA-Planning

Condition/Mitigation The applicant shall record a Permit Approval Notice. This notice shall state:

Monitoring Measure:

"A Combined Development (Resolution Number 15-039) was approved by the Planning Commission for Assessor's Parcel Numbers 131-051-001-000, 131-051-023-000 and 131-051-067-000 on July 8, 2015. The permit was granted subject to 8 conditions of approval which run with the land. A copy of the permit is on file with Monterey County RMA - Planning."

Proof of recordation of this notice shall be furnished to the Director of RMA - Planning prior to issuance of grading and building permits, Certificates of Compliance, or commencement of use, whichever occurs first and as applicable. (RMA - Planning)

**Compliance or
Monitoring
Action to be Performed:**

Prior to the issuance of grading and building permits, certificates of compliance, or commencement of use, whichever occurs first and as applicable, the Owner/Applicant shall provide proof of recordation of this notice to the RMA - Planning.

3. PD004 - INDEMNIFICATION AGREEMENT

Responsible Department: RMA-Planning

**Condition/Mitigation
Monitoring Measure:**

The property owner agrees as a condition and in consideration of approval of this discretionary development permit that it will, pursuant to agreement and/or statutory provisions as applicable, including but not limited to Government Code Section 66474.9, defend, indemnify and hold harmless the County of Monterey or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees to attack, set aside, void or annul this approval, which action is brought within the time period provided for under law, including but not limited to, Government Code Section 66499.37, as applicable. The property owner will reimburse the County for any court costs and attorney's fees which the County may be required by a court to pay as a result of such action. The County may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his obligations under this condition. An agreement to this effect shall be recorded upon demand of County Counsel or concurrent with the issuance of building permits, use of property, filing of the final map, whichever occurs first and as applicable. The County shall promptly notify the property owner of any such claim, action or proceeding and the County shall cooperate fully in the defense thereof. If the County fails to promptly notify the property owner of any such claim, action or proceeding or fails to cooperate fully in the defense thereof, the property owner shall not thereafter be responsible to defend, indemnify or hold the County harmless. The state's obligation to defend, indemnify and hold the County harmless may be modified by mutual agreement of the State of California and County Counsel.
(RMA - Planning Department)

**Compliance or
Monitoring
Action to be Performed:**

Upon demand of County Counsel or concurrent with the issuance of building permits, use of the property, recording of the final/parcel map, whichever occurs first and as applicable, the Owner/Applicant shall submit a signed and notarized Indemnification Agreement to the Director of RMA-Planning Department for review and signature by the County.

Proof of recordation of the Indemnification Agreement, as outlined, shall be submitted to the RMA-Planning Department.

4. PD006 - CONDITION OF APPROVAL / MITIGATION MONITORING PLAN

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: The applicant shall enter into an agreement with the County to implement a Condition of Approval/Mitigation Monitoring and/or Reporting Plan (Agreement) in accordance with Section 21081.6 of the California Public Resources Code and Section 15097 of Title 14, Chapter 3 of the California Code of Regulations. Compliance with the fee schedule adopted by the Board of Supervisors for mitigation monitoring shall be required and payment made to the County of Monterey at the time the property owner submits the signed Agreement. The agreement shall be recorded. (RMA - Planning)

Compliance or Monitoring Action to be Performed: Within sixty (60) days after project approval or prior to the issuance of building and grading permits, whichever occurs first, the Owner/Applicant shall:

- 1) Enter into an agreement with the County to implement a Condition of Approval/Mitigation Monitoring Plan.
- 2) Fees shall be submitted at the time the property owner submits the signed Agreement.
- 3) Proof of recordation of the Agreement shall be submitted to RMA-Planning.

5. PDSP001 - MITIGATION MONITORING (CDFW)

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: Mitigation Measures:

- Bio-1: ESNERR staff will flag the single Pajaro Manzanita prior to tree removal activities and ensure the flagging remains throughout the duration of the project. ESNERR staff shall inform the tree removal personnel of the location of the Pajaro Manzanita.
 - Bio-2/ Geo-1/Haz-1/WQ-1: All stumps shall be left in the ground with the roots, though dead, holding soil in place.
 - Bio-3/ Geo-2/Haz-2/WQ-2: Any existing vegetation (except cape ivy, periwinkle, eucalyptus seedlings, and other non-native invasive species) shall not be removed, although some may be unavoidably damaged or destroyed in the tree removal process. The roots of this vegetation shall serve as a binder to hold the soil in place. All sites have existing native vegetation in the understory. ESNERR staff shall be on-site to ensure the only eucalyptus trees will be felled and removed.
 - Bio-4/Geo-3/Haz-3/WQ-3: Any exposed soil in the project areas shall be broadcast with a mixture of native and annual barley seed at a rate of 50 pounds per acre and covered with a layer of rice straw. ESNERR staff with the help of volunteers shall scatter the seed and straw upon completion of the tree removal activities and before the first rain of the season.
 - Bio-5: At least 15 days prior to the onset of activities, ESNERR shall submit name(s) and credentials of biologists who would conduct activities specified in the following mitigation measures to the US Fish and Wildlife Service (USFWS). No project activities shall begin until ESNERR staff receive written approval from USFWS that the biologist is qualified to conduct the work. This is a requirement of the USFWS permit.
 - Bio-6: Prior to any tree removal activities, the USFWS approved biological monitor shall conduct a worker education training program for all personnel involved in tree removal activities. The education training shall include: 1) the project boundaries; 2) the special status species that may be present, their habitat, and proper identification; 3) required avoidance measures that shall be incorporated into the project; and 4) proper procedures if a special-status is encountered in an area that would be impacted. Brochures, books and briefings may be used in the training session, provided that a qualified person is on hand to answer any questions.
 - Bio-7: A USFWS approved biologist monitor shall remain onsite during tree removal activities. Prior to tree removal activities each day, the USFWS approved biological monitor shall survey all work areas for special status species. If a Santa Cruz long-toed salamander, California red-legged frog or Western pond turtle is observed during these surveys or any time during tree removal activities, the biological monitor shall relocate them to the nearest appropriate habitat.
 - Bio-8: All logs in all proposed eucalyptus tree removal sites in contact with the ground prior to initial tree removal activities shall not be removed from the sites due to the possibility of harboring a special status species.
 - Bio-9: In order to protect special-status species, tree removal activities shall be completed between August 1 and November 1. Should ESNERR staff demonstrate a need to conduct activities outside this period, the USFWS shall be contacted to obtain authorization for such activities.
 - Bio-10: 2.7 acres of eucalyptus shall remain uncut at the South Marsh site to serve as alternative suitable habitat. Furthermore, the 21 acre eucalyptus grove, a known heron, egret, and cormorant rookery site at ESNERR's Seal Bend property, shall be left uncut as habitat.
- (continued)

5. PDSP001 - MITIGATION MONITORING (CDFW) (CONTINUED)

Responsible Department: RMA-Planning

**Condition/Mitigation
Monitoring Measure:** PDSP001 - MITIGATION MONITORING (CDFW) CONTINUED:

- Bio-11: ESNERR staff shall instruct tree removal personnel to use the California Oak Mortality Task Force's Best Management Practices Guidelines for Forestry before entering the Ecological Reserve. this shall include cleaning debris from machinery, vehicles, and shoes; disinfecting machinery, vehicles, and shoes with Lysol before entering ESNERR if travelling from known SOD infestation site; conducting operations during the dry season; and utilizing paved and rocked roads and landings to the extent possible.
- Bio-12: ESNERR staff shall flag the salt marsh habitat prior to tree removal activities and ensure the flagging remains throughout the duration of tree removal. ESNERR staff shall inform the tree removal personnel of the location of the salt marsh habitat.
- Bio-13: ESNERR staff shall remove all eucalyptus resprouts and saplings within the project areas using manual and chemical methods for three years following initial eucalyptus tree removal. The California Invasive Plant Council's high rated invasive weeds shall be removed from the project areas using manual or chemical methods for three years following initial eucalyptus tree removal.
- Cul-1: Should any potential artifact be found, all work shall stop until an expert can be called into determine significance and provide appropriate protection measures.
- Haz-4/WQ-4: Herbicide shall not be located or stored where it could spill into water bodies or storm drains, or where it could cover aquatic or riparian vegetation. large quantities of herbicide shall not be at the project location sites (see pg. 48 of MND prepared by CDFW for Spill Prevention and Response Plan).
- Haz-5: Construction crews shall not be allowed to smoke on ESNERR property. ESNERR staff shall instruct crews of this rule and enforce it during construction.
- Haz-6: ESNERR shall hire crews whose construction equipment meets legal fire-safe specifications.
- Haz-7: For fire safety, chainsaw operators shall have a fire extinguisher or shovel available. A 5-gallon backpack water sprayer and 10 gallons of water shall be available on-site.
- Haz-8: A fire plan shall be printed and kept on-site with the herbicide spill response plan. The plan shall include proper protocol to contain a small fire until firefighting personnel arrive from the nearest fire station, 4.7 miles from the Reserve located at 301 Elkhorn Road, Royal Oaks, CA.
- Haz-9: Vehicles and equipment shall not be re-fueled or repaired in the project areas.
- Noise-1: All machinery operators shall wear protective devices against noise. ESNERR staff shall inspect construction crews to ensure the proper protection is being worn. ESNERR staff shall have earplugs on-site.
- Noise-2: Contractors shall limit the use of noisy machinery to the hours between 8am and 6pm. Noisy machine work shall occur mainly when ESNERR is closed to the public, but may occur on any day of the week.

5. PDSP001 - MITIGATION MONITORING (CDFW)

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: Pursuant to the Mitigated Negative Declaration (SCH No. 2014121035) adopted by the California Department of Fish and Wildlife (CDFW) the following mitigation measures were applied to the approval of the project: (see continued language of this condition for mitigation measures)

CDFW, as Lead Agency, will be responsible to implement this plan. As a Responsible Agency for permitting, the County requires that CDFW, with assistance from the Elkhorn Slough National Estuarine Research Reserve (ESNERR), shall provide annual evidence that the measures, above, are implemented and have the intended effect. (RMA-Planning)

Compliance or Monitoring Action to be Performed: Annually, until restoration is fully implemented, CDFW, with assistance from the Elkhorn Slough National Estuarine Research Reserve, shall provide annual evidence that the mitigation measures adopted (SCH No. 2014121035) are implemented and have the intended effect.

6. PWSP001 - CONSTRUCTION MANAGEMENT PLAN

Responsible Department: RMA-Public Works

Condition/Mitigation Monitoring Measure: The applicant shall submit a Construction Management Plan (CMP) to the Department of Public Works for review and approval. The CMP shall include measures to minimize traffic impacts during the construction/grading phase of the project and shall provide the following information:

- Duration of the construction, hours of operation, an estimate of the number of truck trips that will be generated,
- Truck routes, number of construction workers, parking areas for both equipment and workers, and locations of truck staging areas.

Approved measures included in the CMP shall be implemented by the applicant during the Construction/Grading phase of the project.

Compliance or Monitoring Action to be Performed: Prior to the commencement of tree removal, Owner/Applicant/ Contractor shall prepare a CMP and shall submit the CMP to the Department of Public Works for review and approval.

On-going through construction phases Owner/Applicant/Contractor shall implement the approved measures during the construction/grading phase of the project.

7. WRSP1 - FLOODPLAIN NOTICE (NON-STANDARD CONDITION)

Responsible Department: Water Resources Agency

Condition/Mitigation Monitoring Measure: The applicant shall provide a recorded floodplain notice for APN 131-051-023-000 and APN 131-051-067-000, stating: "The property is located within or partially within a Special Flood Hazard Area and may be subject to building and/or land use restrictions." (Water Resources Agency)

Compliance or Monitoring Action to be Performed: 1. Prior to the commencement of tree removal, the owner/applicant shall submit a signed and notarized floodplain notice to the Water Resources Agency for review and approval. When approved, the applicant shall record the notice.

2. A copy of the standard notice can be obtained at the Water Resources Agency or online at: www.mcwra.co.monterey.ca.us.

8. PD006 - CONDITION OF APPROVAL / MITIGATION MONITORING PLAN

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: The applicant shall enter into an agreement with the County to implement a Condition of Approval/Mitigation Monitoring and/or Reporting Plan (Agreement) in accordance with Section 21081.6 of the California Public Resources Code and Section 15097 of Title 14, Chapter 3 of the California Code of Regulations. Compliance with the fee schedule adopted by the Board of Supervisors for mitigation monitoring shall be required and payment made to the County of Monterey at the time the property owner submits the signed Agreement. The agreement shall be recorded. (RMA - Planning)

Compliance or Monitoring Action to be Performed: Within sixty (60) days after project approval or prior to the issuance of building and grading permits, whichever occurs first, the Owner/Applicant shall:

- 1) Enter into an agreement with the County to implement a Condition of Approval/Mitigation Monitoring Plan.
- 2) Fees shall be submitted at the time the property owner submits the signed Agreement.
- 3) Proof of recordation of the Agreement shall be submitted to RMA-Planning.

