



County of Monterey Planning Commission

Item No.2

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

Agenda Item No. 2

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PLN240203 - BERGERON BIG SUR DEVELOPMENT LLC

Public hearing to consider a merger and lot line adjustment of Parcel 1 (34.1 acres), Parcel 2 (74.2 acres), Parcel 3 (0.14 acres), and Parcel 4 (24.8 acres), resulting in three parcels containing 52.6 acres (Parcel A), 40.3 acres (Parcel B), and 40.4 acres (Parcel C), and transfer of a development credit created under PLN060613 ("Donor Site") to a Adjusted Parcel A ("Receiver Site").

Project Location: 48170 Highway 1, Big Sur

Proposed CEQA Action: Find the project Categorically Exempt pursuant to CEQA Guidelines sections 15305(a) and 15325, and no exceptions pursuant to section 15300.2 can be made.

RECOMMENDATION:

It is recommended that the Planning Commission adopt a resolution:

1. Finding that the project qualifies as Class 5 and Class 25 Categorical Exemptions pursuant to CEQA Guidelines sections 15305(a) and 15325, and there are no exceptions pursuant to Section 15300.2; and
2. Approving a Combined Development Permit consisting of:
 - a. A Coastal Development Permit to allow a merger and lot line adjustment of Parcel 1 (34.1 acres), Parcel 2 (74.2 acres), Parcel 3 (0.14 acres), and Parcel 4 (24.8 acres), resulting in three parcels containing 52.6 acres (Parcel A), 40.3 acres (Parcel B), and 40.4 acres (Parcel C); and
 - b. A Coastal Development Permit to designate Proposed Parcel A as the "Receiver Site" of a Transferable Development Credit created under PLN060613, with a resulting development potential of one unit.

Staff has prepared a draft resolution, including findings and evidence, for consideration (**Exhibit A**). Staff recommends approval of the project subject to eight conditions of approval.

PROJECT INFORMATION:

Property Owners: Bergeron Big Sur Development LLC

Agent: Aengus Jeffers, The Law Office of Aengus L. Jeffers

APNs: 420-011-041-000 [Parcels 1, 2 and 4] and 420-171-032-000 [Parcel 3]

Zoning: Watershed and Scenic Conservation, 40 acres per unit, with a Design Control Overlay (Coastal Zone) [Parcels 1, 2, and 4], and Rural Density Residential, 40 acres per unit, with a Design Control Overlay (Coastal Zone) [Parcel 3]

Existing Parcel Sizes: Parcel 1 (34.1 acres), Parcel 2 (74.2 acres), Parcel 3 (0.14 acres), and Parcel 4 (24.8 acres)

Plan Area: Big Sur Coast Land Use Plan, Coastal Zone

Flagged and Staked: Not required because the proposed lot line adjustment does not involve any structural development.

Project Planner: Fionna Jensen, Senior Planner

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SUMMARY/DISCUSSION:

In 2005, the Monterey County Minor Subdivision Committee approved a Coastal Development Permit (PLN040180) to allow a lot line adjustment of four parcels, resulting in four parcels containing 45, 45, 27, and 18 acres (Minor Subdivision Committee Resolution No. 05014). The California Coastal Commission subsequently appealed this decision and found that it presented a substantial issue with respect to compliance with the Coastal Act and the County's certified Local Coastal Plan (LCP) (Big Sur Coast Land Use Plan and Coastal Implementation Plan [Part 3]) (California Coastal Commission Appeal No. A-3-MCO-05-052). The Coastal Commission's appeal specifically cited that two of the adjusted parcels do not conform to the LCPs minimum parcel size requirements (Adjusted Parcels 3 and 4), the lot line adjustment would increase the residential development density beyond what is allowed by the LCP, and the increase in development density will have cumulative adverse impacts on various coastal resources.

The Applicant/Owner withdrew PLN040180 prior to the California Coastal Commission's de novo hearing of the project. Through coordination with Coastal Commission staff and in an effort to resolve the concerns raised in the appeal, the Applicant/Owner proposes to use a purchased Transfer Development Credit and adjust the four parcels to result in three lots. Since the Coastal Commission found a substantial issue and took jurisdiction over the project (PLN040180), Minor Subdivision Committee Resolution No. 05014 null and void.

At this time, staff only recommends the granting of the Combined Development Permit to allow the merger, lot line adjustment, and designation of Proposed Parcel A as a receiver site of a Transferable Development Credit. Future development on the adjusted parcels would be required to conform to the Monterey County Code requirements in effect at the time and obtain all necessary permits. For clarity, this staff report describes the existing properties with numbers (1-4) and the proposed/adjusted parcels with letters (A, B, and C).

Site Development Standards

Parcels 1, 2, and 4 are zoned Watershed and Scenic Conservation, 40 acres per unit, with a Design Control Overlay (Coastal Zone) [WSC/40-D (CZ)]. Parcel 3 is zoned Rural Density Residential, 40 acres per unit, with a Design Control Overlay (Coastal Zone) [RDR/40-D(CZ)]. Proposed Parcels A and B will be zoned WSC/40-D (CZ) and Parcel C will be split zoned WSC/40-D (CZ) and RDR/40-D(CZ). No rezones are proposed.

Per the WSC and RDR zoning districts, the minimum lot size is one acre and five acres, respectively. Parcels 1, 2, and 4 currently comply with the 1-acre minimum in the WSC zoning district. Parcel 3 is less than 5 acres and currently does not conform to the minimum lot size for the RDR zoning district. As proposed, the adjusted lots will comply with the applicable minimum lot size requirements and each resulting property will contain more than 40 acres; 52.6 acres (Parcel A), 40.3 acres (Parcel B), and 40.4 (Parcel C). There is an existing single

family dwelling on Parcel 2 (74.2 acres). Although Parcels 1 (34.1 acres), 3 (0.14 acres), and 4 (24.8 acres) are vacant, they do not conform to the maximum development density of 40 acres per unit. Implementation of the proposed project will reconfigure the existing non-conforming lots and result in three lots that conform to the minimum lot size and maximum density requirements. Proposed Parcels A and C will remain vacant, while Proposed Parcel B will retain the existing residence and other site improvements.

The LLA would not create new lots (i.e., would not subdivide the existing parcels), and would not intensify the combined level of development allowed on the parcels, bracketing the transfer of development credit, because only three developable parcels will continue to exist and none of the resulting parcels contain over 80 acres. This is discussed in more detail below.

Existing Development Potential

Big Sur Coast LUP Policy 5.4.2.5 considers existing parcels to be “buildable parcels” suitable for development if all resources protection policies can be fully satisfied, there are adequate building areas of less than 30% slope, and all other provisions of the Coastal Implementation Plan (CIP) can be met. Applicable other provisions of the CIP require at least one acre and less than 30% slopes for on-site septic systems, proof of adequate water support and quality, development to be sited and designed to conform to site topography and minimize the hazards of geologic instability, and encourages that existing roads be utilized.

Parcel 1 (34.1 acres): Although a majority of Parcel 1 contains slopes in excess of 30%, an adequate building area in the southeast corner of the parcel was identified during a site visit with California Coastal Commission’s staff. This identified area contains slopes less than 30% (approximately 22% to 28%) and has access to Coastlands Road (hairpin turn abuts a portion of the property). Parcel 1 could be served potable water via an on-site well located on Parcel 2. Parcel 1 is not located within an 1/8 mile of an active fault but is identified to contain “relatively unstable uplands” per Monterey County GIS. Future development of Parcel 1 would be required to obtain geotechnical and geological analyses and be built in accordance with the California Building Code to address potential seismic and soil hazards. Therefore, Parcel 1 is considered a buildable parcel pursuant to BSC LUP Policy 5.4.2.5.

Parcel 2 (74.2 acres): Parcel 2 is already developed with a single-family dwelling, which is located on slopes less than 30%, has adequate existing on-site wastewater treatment and water service via a Coastlands Water System connection, and direct access to Coastland Road via an existing private driveway and access easement. Additionally, Parcel 2 is developed with an on-site well that has a pumping capacity of 6 gallons per minute, which would provide adequate water service to two additional residential units. Although Parcel 2 could be developed with an Accessory Dwelling Unit, it could not be developed with additional single-family dwellings due to the lot size. Therefore, the on-site well could be used to serve Parcels 1 or 3, if development were to be proposed. Parcel 2 is not located within an 1/8 mile of an active fault but is identified to contain “relatively unstable uplands” per Monterey County GIS. Future development of Parcel 2 would be required to obtain geotechnical and geological analyses and be built in accordance with the California Building Code to address potential seismic and soil hazards. Therefore, Parcel 2 is considered a buildable parcel pursuant to BSC LUP Policy 5.4.2.5.

Parcel 3 (0.14 acres): Parcel 3 has direct access to Coastlands Road via a private driveway and has the right to an inactive or latent Coastlands water connection. As mentioned above, Parcel 3 could also utilize Parcel 2's on-site well, if needed. Although Parcel 3 does not meet the 1-acre minimum for on-site wastewater treatment systems, Parcel 3 is identified as Lot 20 of the Coastlands Tract No. 1 residential subdivision and therefore was contemplated as a buildable residential lot in 1927, prior to the establishment of the 1-acre minimum. Parcel 3 is not located within an 1/8 mile of an active fault but is identified to contain "relatively unstable uplands" per Monterey County GIS. Future development of Parcel 3 would be required to obtain geotechnical and geological analyses and be built in accordance with the California Building Code to address potential seismic and soil hazards. Therefore, Monterey County staff consider Parcel 3 a buildable parcel pursuant to BSC LUP Policy 5.4.2.5. Coastal Commission staff view this parcel as undevelopable due to its size and limitations in meeting septic requirements. To address the Coastal Commission's previous appeal contentions and to resolve staff's differing opinions, it is assumed for the purpose of the following analysis that Parcel 3 is undevelopable. Similarly, the Draft Resolution (Exhibit A) also assumes that Parcel 3 is unbuildable.

Parcel 4 (24.8 acres): Parcel 4 does not have direct access to Highway 1 or Coastlands Road. The entirety of Parcel 4 contains slopes in excess of 30 percent (average slope grade of 60%). Thus, developing this lot with a single-family dwelling, water and wastewater treatment infrastructure, and an access road would require development on slopes in excess of 30%, which would conflict with BSC LUP Policy 5.4.2.5, but may be considered with the granting of a Coastal Development Permit pursuant to CIP section 20.145.140.A.4. Parcel 4 is not located within an 1/8 mile of an active fault but is identified to contain "relatively unstable uplands" per Monterey County GIS. For the above reasons, strict application of the BSC LUP may preclude Parcel 4 from being developed and Parcel 4 is rendered unbuildable when considering the requirements of BSC LUP Policy 5.4.2.5.

Based on the above evidence, although all four lots are residential lots of record, this Combined Development Permit assumes that only two lots are considered "buildable," per strict application of Big Sur Coast LUP Policy 5.4.2.5. As buildable parcels, Parcels 1 and 2 have a maximum development potential of one residential unit per lot. Whereas Parcels 3 and 4 are unbuildable and do not have development potential. Therefore, the current combined development potential is two units. However, it should be noted that only one new unit could be developed on Parcel 1 as Parcel 2 is currently developed with a single-family dwelling but could be re-developed in the future.

Proposed Development Potential

The number of existing buildable lots is important when considering Big Sur Coast LUP Policy 5.4.3.H.4, which discourages lot line adjustments that create new or additional developable lots. The creation of new lots in Big Sur is discouraged due to the finite resources available to supply residential development and as a means to limit the overall buildout of the Big Sur Coast Land Use Plan area. Reconfiguring four lots with two buildable parcels to result in three buildable parcels that comply with applicable policies and meet the definition of "buildable" would be inconsistent with Policy 5.4.3.H.4 because the development potential would increase from two units to three units. However, reconfiguring four lots with two buildable parcels into three

buildable parcels while concurrently receiving a Transferable Development Credit (TDC) would not be inconsistent with Policy 5.4.3.H.4 because the increased development potential (two units to three units) is the direct result of receiving the TDC, not the reconfiguration of parcels. In this case, the proposed merger and reconfiguration simply facilitate future use of the TDC by siting the foreseeable building site in an area that complies with applicable requirements relating to steep slopes, septic, water, and access.

Proposed Parcel A: As proposed, Parcel A will comply with applicable Big Sur Coast LUP policies and Title 20 Zoning Ordinance requirements. Parcel A will be capable of supporting a single family residence, with access to an existing domestic well, the potential for an on-site wastewater treatment system, and access to Coastlands Road. A draft septic envelope exhibit has been prepared and confirms that adequate areas exist on Parcel A to construct a single-family dwelling and install an on-site wastewater treatment system on slopes less than 30% (**Exhibit C**). Additionally, Condition No. 8 has been applied to require that an access, well, and water system easement be applied over portions of Proposed Parcel B to allow Proposed Parcel A access to the existing private driveway and on-site well. Parcel A is proposed to be designated as the “Receiver Site” of a TDC. This designation makes the proposed lot line adjustment consistent with the Big Sur Coast LUP with respect to creating three buildable lots where two buildable lots had existed. The "Receiver Site" designation would not double the allowable density on Parcel A because the TDC is only additive to the baseline or underlining development potential, which as discussed above is two. Application of the TDC to Parcel A would result in a development potential of one unit, or a total combined development potential of three units on Parcels A, B, and C. The below Transferable Development Credit discussion details Parcel A’s ability to be designated as a receiver site.

Proposed Parcel B: As proposed, Parcel B will continue to comply with applicable Big Sur Coast LUP policies and Title 20 Zoning Ordinance requirements. Parcel B will be developed with the existing residence, which is served by an existing water connection and on-site wastewater treatment system and has access to Coastlands Road.

Proposed Parcel C: As proposed, Parcel C will comply with applicable Big Sur Coast LUP policies and Title 20 Zoning Ordinance requirements. Parcel C will be capable of supporting a single-family residence, with access to an existing domestic well, the potential for an on-site wastewater treatment system, and access to Coastlands Road. A draft septic envelope exhibit has been prepared and confirms that adequate areas exist on Proposed Parcel C to construct a single-family dwelling and install an on-site wastewater treatment system on slopes less than 30% (**Exhibit C**). Condition No. 8 has been applied to require that an access, well, and water system easement be applied over portions of Parcel B to allow Parcel C access to the existing private driveway and on-site well.

In summary, Parcels A and C will each have the potential to be developed with one residential unit, while Parcel B will retain the existing development comprising of the established single-family dwelling. Although the Proposed Project would increase the development potential from two units to three units, the increase is directly correlated to the transfer of a development credit, and therefore is an allowed and planned intensification. The proposed reconfiguration and merger better meet the goals and policies of the Big Sur Coast LUP by conforming to the minimum parcel size (40 acres) and lot size for on-site septic systems (1

acre) and ensuring future building sites contain slopes less than 30% and have adequate water and road access.

Future development of Parcels A, B, and C will be subject to Big Sur Coast Land Use Plan Policy 3.3.2.3, which requires the granting of a conservation and scenic easement over portions of the property containing environmentally sensitive habitat areas. No development is proposed as part of this project and therefore Policy 3.3.2.3 does not apply at this time. However, the Applicant/Owner has voluntarily offered to place all portions of the property containing sensitive habitat and slopes in excess of 30% into a permanent conservation easement to ensure that these parcels are not subdivided in the future and all natural resources are protected in perpetuity (Condition No. 10).

Transfer of Development Credit

A Transfer of Development Credit (TDC) is the right to transfer the right to develop a residential building site from a donor site to a receiver site within the Big Sur Coast Land Use Plan area. One credit or TDC would equal the right to develop one residential building site on an eligible parcel designated as a receiver site.

In 2007, a residentially zoned property located at 41730 Pfeifer Ridge Road (Assessor's Parcel No. 419-311-012-000) was determined to be "unbuildable" because it was entirely located in the Critical Viewshed and subject to the strict constraints of the Big Sur Coast LUP viewshed policies. Recognizing these constraints, Monterey County Planning Commission Resolution No. 07031 (HCD-Planning File No. PLN060613/Lipman) designated the 4.75-acre property located at 41730 Pfeifer Ridge Road (Assessor's Parcel No. 419-311-012-000), Big Sur, as a "Donor Site" in exchange for two Transferable Development Credits (TDCs). In 2009, the Board of Supervisors accepted an "Offer to Dedicate an Irrevocable Open Space and Easement Deed in Exchange for Transferable Development Credits" (Offer to Dedicate) (Document No. 2009047903) (**Exhibit D**).

In 2018, the Applicant/Owner for this project purchased one of the Transferable Development Credits that was created by PLN060613. Per the 2009 Offer to Dedicate, once the Planning Commission designates a "Receiver Site" and transfers one or both of the TDCs granted by PLN060613, the Open Space and Scenic Easement on the Donor Site property (APN: 419-311-012-000) becomes irrevocable and will run in perpetuity.

To be an eligible "Receiver Site" of a TDC, Title 20 section 20.64.190 requires:

1. The receiver site has the potential for development consistent with the policies of the Big Sur Coast LUP except for the maximum development otherwise allowed by the Big Sur LUP and implementing zoning;
2. The new residential building sites made possible by the receipt of TDCs have the minimum feasible number of common driveway access onto Highway 1;
3. The new development on the receiver site meets the septic, viewshed protection, resource protection, water supply, and geologic safety criteria specified in the Big Sur Coast Land Use Plan;
4. The receiver site is not permitted to be developed to an overall density of more than one residential unit per net acre; and
5. The increase in residential density on the receiving property does not exceed twice that

which is specified by the Development Policies of the Big Sur Coast LUP or the environmental impact analysis reveals that the site is suitable for more units.

With implementation of the proposed lot reconfiguration, Parcels A, B, and C will have the potential for development consistent with the policies of the Big Sur Coast LUP. Specific to the required TDC findings, the Parcel A will conform to the applicable site development standards of the County's Zoning Ordinance, including the minimum lot size (1 acre) and maximum density (40 acres per unit), and provide an adequate building area where future development and an on-site wastewater treatment system will not impact slopes in excess of 30%. Parcel A will also not require new driveway access to Highway 1 as it will retain access to the existing private driveway. Additionally, future development of Parcel A (52.6 acres) will not exceed one unit per acre and will not exceed twice the density currently allowed by the subject zoning district, WSC/40-D(CZ), as it will be limited to one residential unit. As conditioned, an access, well and water system easement will be recorded to ensure that Parcel A has access to the on-site well located on Parcel B. Although future development of Parcel A may be located within 100 feet of Environmentally Sensitive Habitat Areas or within 50 feet of a Coastal Bluff, the future development locations are not anticipated to result in a significant disruption to habitat value or bluff stability. Condition No. 10 ensures that future development is not sited on slopes in excess of 30% or within environmentally sensitive habitat areas. Further, adhering to the requirements of future geotechnical and geological analyses and building in accordance with the California Building Code would address potential seismic and soil hazards.

This project is complicated by rules that do not allow for a lot line adjustment that creates more developable lots than currently exist. The TDC is intended to allow a third developable lot from a scenario where two developable lots currently exist. In other words, the TDC only represents one unit and does not double the density of the property, as it would normally. To illustrate a point, if the TDC were to be applied to a buildable parcel, such as Parcel 2, prior to the proposed lot line adjustment and merger, a second single family dwelling would be allowed on that lot (additive to the density of the existing lot as a receiver site). The four existing lots could then be adjusted to place the three units on three separate lots. In the end, and as proposed, three units would be allowed on the three lots created by the lot line adjustment and the building sites configured through the lot line adjustment better complies with the goals, policies, and text of the Big Sur Coast LUP and ensures future development complies with applicable requirements relating to steep slopes, septic, water, and access.

Public Comment

Public members have inquired as to whether the proposed lot line adjustment would affect existing access paths used by other residences and are concerned that the Proposed Project would impact the resources managed by Coastal Mutual Water Company, specifically water and roads. Additionally, a member of the public raised concerns about rezoning the properties and merging of "Coastlands" and "Non-Coastlands" parcels (**Exhibit E**). As described above, Parcels A and C could be provided water from the existing well on Parcel B, which produces a long-term yield of approximately 6 gallons per minute. This would be considered as the conversion from a single connection well to a small water system and would require approval of appropriate entitlements. Thus, the use of the latent water connection on Parcel 3 is not required for future development of Parcel C. Simply put, merging Parcels 2 and 3 into Parcel C would place no additional water demand on the

Coastal Mutual Water Company. With regards to access, Parcels 2 and 4 have access rights to Highway 1 via Coastlands Road per 1927 and 1928 access easements. The Applicant/Owner has accessed Parcel 1 from a hairpin turn in Coastlands Road that passes the property since it was purchased in 1931 and claims latent prescriptive easement access to Highway 1 via Coastlands Road. Upon creation of the Coastlands Subdivision, Parcel 3 was granted direct access to Coastlands Road. No documentation has been submitted that indicates that the walking or access paths across Parcel 1 used by properties under separate ownership are formally granted access easements. Further, per the submitted comment letter, the informal access path has not been used for “decades”. The Proposed Project would therefore not interfere with any existing deeded access easements. No rezones are proposed, and all existing zoning will remain in effect.

OTHER AGENCY INVOLVEMENT:

The following County agencies or departments reviewed this project:

HCD-Engineering Services

HCD-Environmental Services

Environmental Health Bureau

CalFire

LAND USE ADVISORY COMMITTEE

The project was referred to the Big Sur Land Use Advisory Committee (LUAC) for review on October 12, 2021 under the previous file No. PLN040180-AMD1. At this meeting, LUAC members raised concerns relating to water and access rights and the need for conservation and scenic easements outside of the building sites of each parcel. Members of the public raised concerns surrounding water rights, road access, existing easements, and current and future water availability. After discussion, the LUAC continued the item to a date uncertain and requested that staff return with a summary of all active or inactive code enforcement cases on Parcels 1, 2, 3, and 4, and a determination of water availability for each parcel, what easements are in effect, and the specific location of future development (**Exhibit F**). All past code enforcement cases have been closed and the property is in compliance with applicable Monterey County Code. Existing access easements are discussed above, and while there is no specific location established for future development Exhibit C illustrates feasible septic system locations and developable portions of Parcel A through C that do not contain slopes in excess of 30 percent.

On May 9, 2023, the project was referred back to the LUAC. During this meeting, a member of the public disputed the number of buildable lots and the availability of water and road access for each parcel. Although the LUAC was concerned that the proposed project would increase development potential, and residential development size, and property values, the LUAC voted 3-1 (3 ayes, 1 nay) to support the project as proposed (**Exhibit F**).

CEQA:

CEQA Guidelines section 15305(a) categorically exempts minor lot line adjustments not resulting in the creation of any new parcel, and section 15325 categorically exempts the acquisition, sale, or other transfer of areas to preserve existing natural conditions. The applicant proposes a minor lot line adjustment and merger between four legal lots of record; Parcel 1 (34.1 acres), Parcel 2 (74.2 acres), Parcel 3 (0.14 acres), and Parcel 4 (24.8 acres);

resulting in three parcels containing 52.6 acres (Parcel A), 40.3 acres (Parcel B), and 40.4 acres (Parcel C). Therefore, the proposed lot line adjustment and merger meet the criteria of CEQA Guidelines section 15305. Additionally, transferring one of the TDCs created under PLN060313 to Parcel 4 (Proposed Parcel A) is the result of preserving the natural scenic beauty and conditions of 41730 Pfeifer Ridge Road (Assessor's Parcel No. 419-311-012-000), Big Sur. No structural development is contemplated with the transfer of the TDC and therefore, the transfer of the development credit meets the criteria of CEQA Guidelines section 15325. Use of the TDC to develop Parcel A will be subject to separate discretionary and environmental review and approval.

Prepared by: Fionna Jensen, Senior Planner x6407
Reviewed by: Anna Ginette Quenga, AICP, Principal Planner
Approved by: Craig Spencer, Director

The following attachments are on file with the HCD:

Exhibit A - Draft Resolution

- Recommended Conditions of Approval
- Project Plans

Exhibit B - Vicinity Map

Exhibit C - Draft Septic Envelopes

Exhibit D - 2009 Accepted Offer to Dedicate

Exhibit E - Public Comment

Exhibit F - Big Sur LUAC minutes (October 12, 2021 and May 9, 2023)

cc: Front Counter Copy; Planning Commission; California Coastal Commission; CalFire; Environmental Health Bureau; HCD-Engineering Services Works; HCD-Environmental Services; Anna Ginette Quenga, AICP, Principal Planner; Fionna Jensen, Project Planner; Aengus Jeffers, Agent; Bergeron Big Sur Development LLC, Owner; Interested Party Members; Christina McGinnis, Keep Big Sur Wild; Laborers International Union of North America (Lozeau Drury LLP); The Open Monterey Project (Molly Erickson); LandWatch; Planning File PLN240203.