

LAW OFFICE
RICHARD H. ROSENTHAL

P.O. BOX 1021, CARMEL VALLEY, CA 93924
(831) 625-5193
FAX (831) 625-0470

460.25.04.07.25.commentletter

8 April, 2025

Board Chairman Glenn Church
County of Monterey Board of Supervisors
11140 Speegle St.
Castroville, CA. 95012

Via Email

Mr. Craig Spencer
Chief of Planning
1441 Schilling Pl., South, 2nd Floor
Salinas, California 93901

Re: Comments of Meyer Community Group on the Harper Canyon Subdivision FSEIR
Hearing Date: April 15, 2025

Chairman Church and Members of the Board:

The Board of Supervisors certified the Harper Canyon (Encina Hills) Subdivision Environmental Impact Report (2015 EIR) and approved the combined development for the proposed subdivision project on April 7, 2015. The legality of the 2015 Board decision was challenged and ultimately resulted in the Sixth District Court of Appeal's opinion that, in violation of the California Environmental Quality Act (CEQA), the EIR lacked any analysis concerning the proposed project's potential impacts to the Toro Creek wildlife corridor and the project's impact on the corridor.

The court of appeal found the EIR legally deficient because: (1) the EIR failed to describe the basic information necessary for a reader of the EIR to understand the wildlife corridor located on and/or in the vicinity of the project, "such as where the wildlife corridor begins and ends, its width, and how far the Project intrudes upon the corridor;" and, (2) "the County appears to have concluded without any study or supporting documentation the layout will be sufficient to maintain the corridor and prevent interference with animal movement." (Opinion p. 45.)

Accordingly, the court of appeal ordered the Board to not to take any further action to approve the project until a legally adequate EIR has been prepared, circulated, and there has been consideration under CEQA of the legally adequate EIR that addresses the wildlife corridor issues discussed in the opinion. (Opinion p. 49.) In response to the order of the court of appeal, the County prepared a Draft Supplemental Environmental Impact Report (DSEIR) and a Final Supplemental Environmental Impact Report (FSEIR).

FOR U.S. MAIL DELIVERY: P.O. BOX 1021, CARMEL VALLEY, CA 93924
FOR EXPRESS MAIL DELIVERY: 26364 Carmel Ranch Lane, Suite 201, CARMEL, CA 93923

For all of the reasons presented below, the FSEIR is legally inadequate. It fails to comply with the directives of the court of appeal opinion and it does not comply with CEQA. Therefore, the Board should not certify the FSEIR or approve the proposed project until an FSEIR has been prepared that meets the directives of the court of appeal opinion and is compliant with CEQA.

I. FAILURE TO COMPLY WITH THE ORDER OF THE COURT

The court ordered the preparation of a Legally Adequate Environment Impact Report. In violation of the directive of the court, the FSEIR fails to identify the location of the wildlife corridor, including its beginning, its ending, and its width, and it does not describe how far the project intrudes upon the corridor. Instead, the FSEIR defers the identification of the wildlife corridor and the impacts of the project on the corridor until after the FSEIR has been certified and the project approved.

The deferral results from a revised mitigation measure in the FSEIR (Revised Mitigation Measure 3.3-8f) that requires the preparation of a “wildlife corridor plan.” (WCP.) However, the WCP will not be prepared until after the FSEIR has been certified and the project has been approved. The WCP requires that “corridors of adequate width...that connect Toro County Park to the east with former Fort Ord/Fort Ord National Monument to the west through the project site” be identified. It also requires that the “[c]orridors identified shall be depicted on the final map and no development shall be permitted within these corridors.” Finally, it provides that “[I]f the corridors render any of the sites undevelopable, the applicant shall eliminate or move lots within the subdivision that conflict with the identified corridor.” (FSEIR p. 3.0-58, 4.0-3)

Because the FSEIR defers the identification of the wildlife corridor and a full assessment of the impacts of the project on the corridor until the WCP is completed (which will not occur until after the FSEIR has been certified and the project approved), the FSEIR clearly cannot and does not comply with the directive of the court.

II. GENERAL COMMENTS

SDEIR only addresses and revises portions of the 2015 EIR. (SEIR 1.0-5.) The SDEIR states that a supplemental EIR is the appropriate level of CEQA determination to comply with the ruling as “only minor additions or changes would be necessary to make previous EIR adequately apply to the project in the changed situation. (SDEIR 1.0-6.) Despite the statements in the SDEIR, the SDEIR makes major changes to the 2015 EIR.

Foremost, the FSEIR concludes that the project will cause significant adverse environmental impacts to the wildlife corridors and revises a mitigation measure in an attempt to mitigate the impact. In contrast, the 2015 EIR lacked discussion of wildlife corridors or wildlife movement in the project vicinity and did not find that the project would cause a significant impact on wildlife. The finding of significant impact in the FSEIR is a major change to the 2015 EIR.

Furthermore, the California Department of Fish and Wildlife (CDFW) states in its comments on the SDEIR that the wildlife corridor is vital to wildlife movement because it is the sole remaining migratory pathway between Fort Ord and Toro Park and that a majority of the subdivision is directly within the migratory pathway (CDFW p.3, Attachment 1, Figures 1&2.) and “the proposed Project footprint would permanently disrupt wildlife movement between Fort Ord and Toro Park, resulting in limited genetic diversity and gene flow, less resilient populations, and potentially a loss of populations over time.” (CDFW p.4, Attachment 1, Figures 1&2.) The 2015 EIR had no discussion of the significant impacts of the project on wildlife and wildlife movement that are identified by CDFW.

The court ordered a legally adequate environmental impact report that addresses wildlife issues discussed in the opinion. The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.” (Pub. Resources Code, § 21061.) An EIR is the heart of CEQA and is referred to as an alarm bell whose purpose is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return. The integrity of the process is dependent on the adequacy of the EIR. (*County of Inyo v. Yorty* (1973) 32 Cal. App. 3d. 797, 810.) The FSEIR is legally inadequate.

In sum, the FSEIR skirts its obligations to conduct a legally adequate EIR by improperly deferring identification of the wildlife corridor(s) until after certification of the FSEIR, by not providing an adequate environmental setting, a stable project description, an adequate environmental impact assessment, adequate and feasible mitigation measures, nor an assessment of the cumulative impacts of the project and by relying on alternatives identified in the 2015 EIR which did not assess the project’s impacts on the wildlife corridors and wildlife movements in the vicinity of the project.

III. THE FSEIR DOES NOT COMPLY WITH CEQA

A. The Environmental Setting is Legally Inadequate

CEQA Guidelines section 15125 (a) provides in pertinent part as follows:

An EIR must include a description of the environment in the vicinity of the project, as it exists before the commencement of the project, from both a local and regional perspective. The description shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.”

Concerning the regional setting, CEQA Guidelines section 15125 (c) provides in pertinent part:

Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are unique to that region or be affected by the project.

Under CEQA, the first step in the EIR process is to undertake an assessment of the environmental setting. The environmental setting or “baseline” is a description of the conditions that exist before the project. The potential impacts of the project are then assessed within the context of the baseline conditions. An environmental setting that is in compliance with court’s opinion would include an identification of the beginning, middle and end of the wildlife corridor on and in the vicinity of the project, the habitat contained therein, and it would also describe the nature and magnitude of wildlife movement in the vicinity of the project site.

The SEIR’s environmental setting section implies that it has complied with the court’s order to identify and document the wildlife corridor. On page 3.3-19, the SEIR states that “all the lots in the project are located within a documented wildlife corridor and that the development of the project would discourage, interrupt or otherwise impact the use of the corridor”. (Underlining added for emphasis.)

The County contracted with Denise Duffy and Associates (DD&A) to conduct a wildlife camera trapping study focused on the site of the proposed project. The objective of the study was to develop a baseline inventory of wildlife usage on the project site. (SEIR p. 3.3-6.) (The wildlife study conducted by DD&A is appended to the SEIR.) Wildlife activity captured during the DD&A study suggests that the project site provides suitable habitat and movement corridors for all the study’s focal species, as well as for various other wildlife species. (SDEIR p. 3.3-15) Also, the SEIR discusses the results of a 2010 publication, “Connectivity for Wildlife” prepared by the “*Central Coast Connectivity Project Northern Monterey County Linkages: Report on the Mount Toro to Fort Ord Reserve Study 2008-2009* for the Big Sur Land Trust,” (CCCP Study) (SEIR p. 3.3-19) but a wildlife corridor on or in the vicinity of the project site is neither identified on a map nor discussed in the relevant portion of the study. (The CCCP Study is not attached to the SEIR.)

Neither the DD&A study, the CCCP Study or the FSEIR distill or interpret data provided by studies into a map or an adequate description of the wildlife corridor(s) on or in the vicinity of the project site and how the project intrudes the corridor or wildlife movement. Thus, the SEIR contains inadequate information to support of the crucial conclusion that the wildlife corridor has been documented. Moreover, the SEIR’s conclusion that the wildlife corridor has been documented is clearly inconsistent with the fact that identification of the wildlife corridor is deferred until the WCP is completed.

Although the SEIR states that it focuses on analyzing the wildlife corridors in the vicinity of the proposed project and evaluates the potential impacts the proposed project may have on these corridors (SDEIR p. 1.0-5), neither the DD&A study nor the CCCP Study delineate wildlife corridors in the vicinity of the proposed project or evaluate the potential impacts the proposed project may have on these corridors . (Underlining added for emphasis.) Thus, the environmental setting in the FSEIR is inadequate.

In addition to the fatal deficiencies in the FSEIR described above, the environmental setting in the FSEIR fails to describe or acknowledge the critical regional environmental importance of the wildlife corridor. As noted, CDFW states in its comments on the SDEIR that the wildlife corridor is vital to wildlife movement because it is the sole remaining migratory pathway between Fort Ord and Toro Park and that a majority of the subdivision is directly within the migratory pathway (CDFW p.3, Attachment 1, Figures 1&2.) and “the proposed Project footprint would permanently disrupt wildlife movement between Fort Ord and Toro Park, resulting in limited genetic diversity and gene flow, less resilient populations, and potentially a loss of populations over time.” (CDFW p.4, Attachment 1, Figures 1&2.) Therefore, in violation of CEQA, the FSEIR’s environmental setting does not address the regional importance of the wildlife corridor.

Moreover, the environmental setting in the FSEIR does not identify the adjacent Broccoli lots that were approved in the 1990’s. (See maps attached as Exhibits 1 and 2.)¹ The development of these 14 lots is dependent on the development of the proposed project’s infrastructure which will serve the Broccoli lots. (AR:5383-5384.)² Moreover, it appears likely that the Broccoli lots are located within the migratory pathway noted by CDFW and will contribute to the disruption of wildlife movement between Fort Ord and Toro Park. (CDFW p.3, Attachment 1&2.)

Furthermore the environmental setting fails to discuss the special status of the mountain lions detected in the camera trapping study. CEQA Guidelines section 15125 (c) requires special emphasis on environmental resources that are rare or unique to the region. Mountain lions were recently granted full protection as a threatened species by the California Fish and Game Commission. (CDFW p. 5.)

Without an accurate and complete environmental setting, the SFEIR cannot and does not adequately investigate and discuss the environmental impacts of the development project’s impacts on the wildlife corridor(s) and wildlife movement.

¹ Exhibit 1 depicts the Broccoli 14 lots and the Harper Canyon boundary line that was the 15th lot when a major lot line adjustment was undertaken in the 1993. Exhibit 2 depicts the ability of wildlife to move within the immediate vicinity of the project site and the adjacent Broccoli lots and is Attachment 1, Figure 2 to the CDFW comment letter.

² AR: refers to the Administrative Record in the trial court proceeding.

B. The Project Description in the FSEIR is Legally Inadequate

The courts have ruled that "[A]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR" and that "[a] curtailed, enigmatic or unstable project description draws a red herring across the path of public input." The FSEIR lacks a stable and finite project description.

The SDEIR states that the information contained in the SDEIR does not result in any changes to the proposed project description or the project footprint described in the 2015 EIR. (SDEIR p. 1.0-6.) In conflict with this statement, Revised Mitigation Measure 3.3-8f provides that after certification of the FSEIR and approval of the tentative map, the project may be changed by the subsequent elimination or relocation of lots if the WCP determines any of the lots depicted on the tentative map conflict with an identified wildlife corridor. (FSEIR 4.0-3.) Thus, the density and configuration of the project may be changed after the FSEIR has been certified and the project has been approved. Consequently, in violation of CEQA, the project description which describes the location of the project's lots in the FSEIR is not stable or finite.

In order for the FSEIR to present a stable and finite project description, the WCP should be undertaken prior to the certification of the FSEIR and the final configuration of lots depicted on the tentative map. Only after the location of the wildlife corridor(s) are known, and thereafter, with the goal of mitigating or avoiding impacts of the project on the wildlife corridor(s), the number of lots and their location established, and where on each lot a residence can be constructed, can the FSEIR present an accurate analysis of the impacts of the subdivision lots on the identified wildlife corridor(s). Without a stable and finite project description, the public is denied an opportunity to meaningfully comment on the FSEIR and the Board cannot accurately balance the proposed project's benefits against its environmental costs, consider appropriate mitigation measures, properly weigh alternatives to the project, consider cumulative impacts and to assess the advantages of terminating the proposal.

C. The Environmental Impact Assessment in the FSEIR is Legally Inadequate

As noted above, the California Supreme Court has found that, under CEQA, an environmental impact assessment is a fundamental purpose of an EIR. The FEIR's impact assessment is legally inadequate for several reasons including the three discussed below.

First, the wildlife corridor(s) have not been adequately described and delineated in the FSEIR contrary to the directive of the appellate of the Court. Without an adequate description of the wildlife corridor(s) in the vicinity of the project the FSEIR lacks a description of baseline conditions against which an assessment can be performed to determine whether the project intrudes upon the corridor and, if so, whether that intrusion is significant. Therefore, under

CEQA, the impact assessment must be undertaken only after the wildlife corridor(s) have been identified. Therefore, the FSEIR's environmental impact assessment cannot and does not adequately assess the impacts of the project on wildlife, nor does it assess its impacts in combination with the adjacent Broccoli lots.

Second, as noted above, CDFW determined that the project's footprint would permanently disrupt wildlife movement between Fort Ord and Toro Park resulting in a loss of populations over time, especially for wildlife species that are less mobile or have large home ranges. (CDFW p.3) This significant impact is likely to be exacerbated by the development of the adjacent Broccoli lots. The FSEIR does not adequately assess this significant adverse impact.

Third, the FSEIR does not adequately assess the impacts of noise generated by the construction activities associated with the development of residential lots. Such noise will discourage wildlife from using the corridor. (FSEIR 3.3-19.) The project's lots will be developed at different times by individual landowners instead of at one time by the project proponent which will prolong the period when noise will be generated. The impacts on wildlife caused by the prolonged generation of noise were not adequately analyzed in the FSEIR. Also, the FSEIR does not discuss the cumulative impacts resulting from the project together with the noise generated by the construction of residences on the adjacent Broccoli lots. Therefore, the FSEIR's characterization of the significant noise impacts from the project on the corridor minimizes the potential devastation to wildlife movement between Fort Ord and Toro Park.

D. Mitigation Measures in the FSEIR are Legally Inadequate

CEQA requires that an EIR propose and describe mitigation measures to minimize the significant environmental effects identified in the EIR. The FSEIR acknowledges that the project will have a significant adverse impact on the wildlife corridor; thus, the FSEIR revises a mitigation measure (Revised Mitigation Measure 3.3-8f) and concludes that this revised measure in combination with the mitigation measures identified in the 2015 EIR reduces the project's impacts to less than significant. (FSEIR, pp. 3.0-56 to 59.) However, Revised Mitigation Measure 3.3-8f requires the preparation of the WCP which will not be prepared until after the FSEIR has been certified and the project approved. The revised mitigation measure calls for the WCP to identify wildlife corridor(s) and prescribe mitigation measures (including eliminating or relocating lots) to minimize or avoid the impacts of the project on wildlife. (FSEIR p. 4.0-3.) Under CEQA, it is unacceptable to defer formulation of mitigation to the future, unless it is impractical or infeasible to specify the details of mitigation during the EIR review process.

The FSEIR asserts that it is infeasible to specify the details of mitigation in the FSEIR because, in the future, landowners who have purchased the project's lots will submit applications to develop each of the project's lots with a single-family residence; therefore, because the details of the development of each individual lot are not known at this time, it is not practical or feasible to

develop the WCP now. (FSEIR p. 3.0-58.) This assertion in the FSEIR is utterly without merit and conflicts with California law. The WCP should be completed before an FSEIR is certified.

The FSEIR itself makes it clear why the assertion makes no sense. Under the rationale of the assertion, before the WCP can be prepared, lots must be sold, applications submitted, and mitigation measures developed before a final map is approved and recorded. Such actions violate California law which absolutely prohibits the sale of the project's individual lots until a final map has been approved and recorded. (California Government Code section 66499.30(a). Therefore, the FSEIR's assertion justifying deferral not only conflicts with the law, but also, in accordance with the assertion, it is infeasible to implement Revised Mitigation Measure 3.3-8f.

Importantly, the FSEIR finds that Revised Mitigation Measure 3.3-8f in combination with the mitigation measures identified in the 2015 EIR reduces the project's impacts to less than significant. (FSEIR, pp. 3.0-56 to 57.) Since Revised Mitigation Measure 3.3-8f cannot be implemented, the conclusion in the FSEIR that the project's impacts are reduced to less than significant is not supported by evidence. Therefore, to comply with CEQA, the FSEIR must identify other mitigation measures that reduce or eliminate the project's significant impacts on the wildlife corridor.

Moreover, as a practical matter, it could take years to sell the lots and, as noted in the FSEIR, the approximate location of the homesite on each lot is already known since it is shown on the tentative map; (FSEIR, p. 3.0-58.) there is no need to await the submission of development applications from individual landowners homeowners in order to know the locations of residences on the project's lots. Also if the WCP is completed prior to the certification of the FSEIR, the WCP will identify the location where a building envelope can be located on each lot.

The preparation of the WCP should not be improperly deferred. It is feasible, rational, necessary and consistent with the applicable law to undertake the WCP prior to the certification of the FSDEIR. Only after the WCP has been conducted, can the impacts of the project (in combination with the Broccoli lots) on the wildlife corridor(s) be adequately assessed and described and mitigation measures identified to minimize any identified significant environmental effects on the wildlife corridor(s) be adequately described.

In addition to the improper deferral of mitigation, the CDFW is concerned that the mitigation measures proposed in the SDEIR are not adequate to mitigate for impacts to wildlife connectivity. By way of example, CDFW notes that in the absence of identifying the location of the wildlife corridor(s), it cannot be determined that the 180-acre open space identified in the SDEIR to mitigate for wildlife connectivity impacts and protect corridor areas identified in the CCCP will be effective mitigation since it does not incorporate any of the movement pathways modeled in Attachment 1, Figures 1 and 2. (CDFW p.4).

In sum, the impermissible deferral of the preparation of the WCP violates CEQA and results in the piecemealing of the environmental review and deprives the public of an adequate opportunity to understand and comment on the project. Moreover, as noted by CDFW, the mitigation measures identified in the FSEIR are inadequate to avoid significant impacts.

E. The FSEIR Lacks a Legally Adequate Identification of Project Alternatives

CEQA requires that an EIR discuss alternatives even if all the project's significant environmental impacts will be avoided or reduced by mitigation measures. The requirement that EIRs identify and discuss alternatives to the project stems from the fundamental statutory policy that public agencies should require the implementation of feasible alternatives or feasible mitigation measures to reduce the project's significant environmental impacts. (Pub Res C §21002.) The California Supreme Court has described the discussion of mitigation and alternatives as "the core of an EIR." (*Citizens of Goleta Valley v Board of Supervisors* (1990) 52 C3d 553, 564.) Consequently, to be considered a legally adequate EIR, the FSEIR should include a reasonable range of alternatives to the project, including a no project alternative that would reduce or avoid the project's impacts on the wildlife corridor and movement and are sufficient to permit informed decision making and public participation.

Despite the requirements of CEQA, the FSEIR does not identify alternatives to avoid or lessen the project's significant impacts on wildlife. The only alternatives referenced are those identified in the 2015 EIR which the FSEIR claims remain valid, (SFEIR 3.0-57). However, While the FSEIR identifies significant impacts to wildlife corridors and wildlife movement resulting from the project, the 2015 EIR did not discuss or identify any significant impacts to wildlife corridors or movement or have the benefits of the comments from CDFW. The court of appeal made clear that the 2015 EIR failed to describe the basic information necessary for the reader of the EIR to understand the wildlife corridor located on or in the vicinity of the project. (Opinion p. 45) Thus, in conflict with the requirements of CEQA, the alternatives in the 2015 EIR are not alternatives that reduce or avoid the project's impacts on the wildlife corridor and wildlife movement.

F. In Violation of CEQA, the FSEIR fails to present a Cumulative Impact Assessment

Under CEQA, an EIR must discuss the cumulative impacts of a project when the project's incremental effects in combination with another related project are cumulatively considerable. The courts have held that an adequate analysis of cumulative impacts is particularly important when another related project might significantly worsen the project's adverse environmental impacts. The FSEIR does not discuss cumulative impacts.

As described above, the cumulative impacts of the project on the wildlife corridor(s) in combination with the incremental impacts of the adjacent approved 14 lot Broccoli property on

8 April, 2025
Page 10

the corridor(s) and other related projects in the vicinity are not discussed. In violation of CEQA, such cumulative impacts are not addressed in the FSEIR.

IV. Conclusion

In light of the foregoing, the Meyer Community Group strongly urges the Board to not certify the FSEIR or approve the proposed project until an FSEIR has been prepared, circulated and considered that meets the mandates of the court of appeal opinion and is compliant with CEQA.

If there are any questions please feel free to the undersigned.

Sincerely,

LAW OFFICE OF RICHARD H. ROSENTHAL

BY: _____/S/_____
RICHARD H. ROSENTHAL

LAW OFFICE OF GREG JAMES

BY: _____/S/_____
GREG JAMES

Enclosures as noted

Cc: Clerk of the Board, Members of the County of Monterey Board of Supervisors

EXHIBIT 1

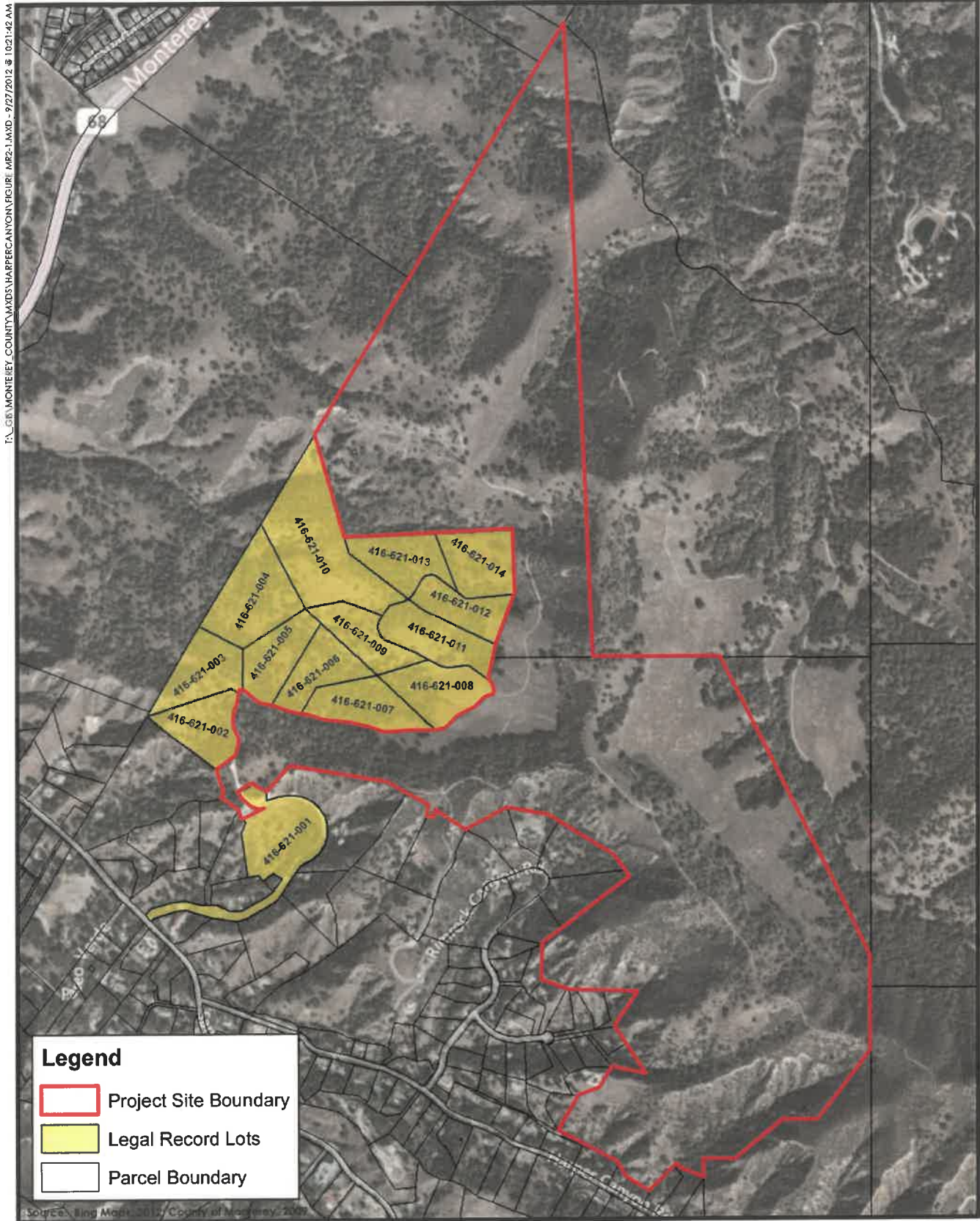


Figure MR2-1
 14 Legal Lots of Record



AR000152

EXHIBIT 2

Craig Spencer, Acting Director
 County of Monterey Housing & Community Development
 May 29, 2024
 Page 16

FIGURE 2 – The Nature Conservancy (TNC) Omniscape Connectivity Web Map dataset depicting the ability for wildlife to travel within the immediate Project site via limited, dispersed, intensified, or channelized movement corridors. Diffused/Dispersed movement areas (blue color) are areas with high flow having open space and limited human modification. The areas within the Project site depict that there are currently minimal barriers to wildlife moving through.

