

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

RESOLUTION NO. 22 – 104

- Resolution of the Monterey County Board of Supervisors to:)
- a. Approve a Professional Services Agreement with Denise Duffy & Associates, Inc. to provide environmental review consultation services for the Harper Canyon/Encina Hills Subdivision Project, in a not to exceed amount of \$19,885 and for a term commencing with the signing of the Agreement until December 31, 2024;)
- b. Approve a Reimbursement Agreement with Harper Canyon Realty, Inc. related to the processing and services environmental review documentation focused on wildlife corridors for the Harper Canyon/Encina Hills Subdivision project, to take effect only upon execution of the agreement by the parties and for a term to expire upon Board of Supervisors approval or until final disposition of all litigation challenging such an action of the Board; and)
- c. Authorize the County Housing and Community Development Director, or designee, to execute the Agreements with Denise Duffy & Associates, Inc. and Harper Canyon Realty, LLC and future amendments or extensions to the agreements where the amendments or extensions do not significantly alter the scope of work, agreement amounts or affect the County’s obligation.)

WHEREAS, on May 4 and 6, 2015, LandWatch Monterey County and Meyer Community Group (collectively, “Petitioners”) filed separate but related challenges to the County’s approval of the Project in Monterey County Superior Court (Case Nos. M131893 and M131913).

WHEREAS, on December 3, 2018, the Superior Court issued its Final Statement of Decision and Ruling on Remedy in the case. The County and Harper appealed the Superior Court’s judgment and argued that substantial evidence supported the County’s determinations regarding the Project’s wildlife corridor impacts. The County and Harper also appealed the Superior Court’s decision that CEQA requires recirculation of the FEIR on groundwater resources. Petitioners filed cross-appeals asserting that the trial court erred in rejecting their claims that the FEIR was legally inadequate in its discussion of the Project’s setting and its cumulative effect on groundwater resources.

WHEREAS, on March 29, 2021, the Court of Appeal issued its opinion. The Court of Appeal denied Petitioners cross-appeal and found that the County's analysis of groundwater resources in the Draft EIR was adequate. The Court of Appeal also held that CEQA did not mandate recirculation of the FEIR on the topic of groundwater resources prior to approval of the Project. The Court of Appeal agreed with the trial court's conclusion that the FEIR's analysis of the Project's impact on wildlife corridors was deficient and not supported by substantial evidence. The Court of Appeal remanded the matter to the trial court with directions to vacate its original order, and to issue a new writ of mandate ordering the Board to vacate Resolution No. 15-084, and to vacate the Board's approval and certification of the EIR for the Project only as it relates to wildlife corridor issue.

WHEREAS, on July 1, 2021, the Superior Court issued its Second Amended Judgment Granting Peremptory Writ of Mandate ("Writ of Mandate"), and Second Amended Peremptory Writ of Mandate. The writ requires the Board do the following:

1. Set aside the portions of Resolution No. 15-084 certifying the FEIR for the Project as to project wildlife corridor issues only and reconsider the non-CEQA approvals in Resolution No. 15-084 and set them aside only to the extent they are dependent on project wildlife corridors issues.
2. To not take any further action to approve the Project without the preparation, circulation and consideration under CEQA of a legally adequate EIR with regard to the wildlife corridor issues discussed in the Court of Appeal Opinion.
3. Make and file a return to this writ within 60 days of taking such action, setting forth what it has done to comply.

WHEREAS, the Board of Supervisors expressed its desire to comply fully with the Second Amended Peremptory Writ of Mandate issued by the Court.

WHEREAS, On July, 27, 2021, the Board of Supervisors adopted a Resolution, including but not limited to, setting aside Resolution No. 15-084 for the purpose of reconsidering whether the Project as designed and previously approved would result in a significant impact to wildlife corridors and to not take any further action to approve the Project without the preparation, circulation and consideration under CEQA of a legally adequate EIR with regard to the wildlife corridor issues discussed in the Court of Appeal Opinion.

WHEREAS, the project applicant requests the County to contract with a qualified environmental consultant to prepare an update to the Draft Environmental Impact Report focused solely on wildlife corridor issues and circulate for public review and comment.

WHEREAS, additional environmental support services are necessary to prepare California Environmental Quality Act (CEQA) documentation, including an update to the Final EIR focusing on wildlife corridors.

WHEREAS, the Parties wish to engage Denise Duffy & Associates, Inc. (Contractor), to complete the CEQA documentation and related services rather than the former contractor.

WHEREAS, additional funding and time are necessary to perform the additional services.

WHEREAS, approval of this resolution will allow the Director of Housing and Community Development, or designee, to execute the agreements on behalf of the County for the services needed to complete the work and to be reimbursed for said work.

NOW, THEREFORE, BE IT RESOLVED, THAT the Board of Supervisors of the County of Monterey hereby resolves to:

- a. Approve a Professional Services Agreement with Denise Duffy & Associates, Inc. to provide environmental review consultation services for the Harper Canyon/Encina Hills Subdivision Project, in a not to exceed amount of \$19,885 and for a term commencing with the signing of the Agreement until December 31, 2024;
- b. Approve a Reimbursement Agreement with Harper Canyon Realty, Inc. related to the processing and services environmental review documentation focused on wildlife corridors for the Harper Canyon/Encina Hills Subdivision project, to take effect only upon execution of the agreement by the parties and for a term to expire upon Board of Supervisors approval or until final disposition of all litigation challenging such an action of the Board; and
- c. Authorize the County Housing and Community Development Director, or designee, to execute the Agreements with Denise Duffy & Associates, Inc. and Harper Canyon Realty, LLC and future amendments or extensions to the agreements where the amendments or extensions do not significantly alter the scope of work, agreement amounts or affect the County's obligation.

PASSED AND ADOPTED on this 22nd day of March 2022, by roll call vote:

AYES: Supervisors Alejo, Phillips, Lopez, Askew and Adams

NOES: None

ABSENT: None

(Government Code 54953)

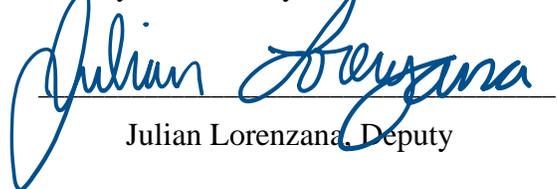
I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting March 22, 2022.

Dated: March 24, 2022

File ID: RES 22-071

Agenda Item No.: 45

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California



Julian Lorenzana, Deputy