



# Monterey County Board of Supervisors

168 West Alisal Street,  
1st Floor  
Salinas, CA 93901  
831.755.5066  
www.co.monterey.ca.us

## Board Order

A motion was made by Supervisor John M. Phillips, seconded by Supervisor Chris Lopez to:

### Resolution No.: 21-028

- a. Deny the appeal by Vista Nadura LLC and Nader T. Agha from the Monterey County Planning Commission's September 30, 2020 determination that a subdivision application filed by Durrel and Nader Agha (PLN990274) was incomplete prior to October 16, 2007 and remains incomplete; and
- b. Find that the application (Agha/PLN990274) for a Standard Subdivision to subdivide three lots totaling 50 acres into 20 lots ranging in size from 1.1 acres to 8.5 acres was not deemed complete prior to October 16, 2007 and continues to be incomplete pursuant to Government Code Section 65943 (the Permit Streamlining Act) and Monterey County Code Chapter 19.03.

PASSED AND ADOPTED on this 26<sup>th</sup> day of January 2021, 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 January 26, 2021.

Dated: January 27, 2021  
Revised Date: February 1, 2021  
File ID: RES 21-015 Agenda  
Item No.: 24

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

  
Julian Lorenzana, Deputy

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

**RESOLUTION NO.: 21-028**

In the matter of the appeal by Vista Nadura LLC and Nader T. Agha of )  
the determination that an application(Agha/PLN990274) for a Standard )  
Subdivision of three lots totaling 50 acres into 20 lots ranging in size )  
from 1.1 acres to 8.5 acres (PLN990274) was not deemed complete )  
prior to October 16, 2007 and continues to be incomplete pursuant to )  
Government Code Section 65943 (the Permit Streamlining Act) and )  
Monterey County Code Chapter 19.03. (Agha/PLN 990274) 8767 )  
Carmel Valley Road, Carmel Valley, Carmel Valley Area Plan (APN )  
169-011-009-000,169-011-014-000,169-011-015-000)..... )

**The appeal by Vista Nadura LLC and Nader T. Agha from the Monterey County Planning Commission’s determination that a subdivision application (Agha/PLN990274) is incomplete came on for public hearing before the Monterey County Board of Supervisors on December 9, 2020 and January 26, 2021. 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:** **JURISDICTION:** The Board of Supervisors has jurisdiction to hear this appeal pursuant to Government Code section 65943 and Monterey County Code Chapter 19.16.
- EVIDENCE:**
  - a) This matter comes before the Board of Supervisors on appeal filed by Vista Nadura LLC and Nader T. Agha (hereafter “Appellants”) from the Monterey County Planning Commission’s September 30, 2020 determination that a subdivision application filed by Durrel and Nader Agha (“applicants”) (PLN990274) was incomplete prior to October 16, 2007 and remains incomplete.
  - b) The Appellants contend that the Board of Supervisors has jurisdiction to hear the appeal as an appeal from a Director’s interpretation pursuant to Chapters 19.16 and 19.17 of the Monterey County Code and contend that the Board does not have jurisdiction pursuant to Government Code section 65943, but they urge the Board to accept the appeal. (Attachment 1 to Notice of Appeal [October 16, 2020 letter from Paul Hart (hereafter “Hart’s Oct. 16 Letter”), at pp. 1-5; the Notice of Appeal and its attachments are Attachment C to the December 9, 2020 staff report to the Board of Supervisors and incorporated herein by reference.) The Board finds that it has jurisdiction of the appeal pursuant to Government Code section 65943 and Monterey County Code Chapter 19.16, based on the facts, documents, and analysis that follows. (Unless otherwise noted, citations to exhibits are to numbered exhibits which are attached to Attachment A of this resolution.)

- c) By letter dated May 11, 2017, Paul Hart, an attorney representing Mr. Nader Agha, requested that the Director of the County Resource Management Agency (RMA) provide a “written opinion” pursuant to Monterey County Code section 21.82.040.B to determine whether Mr. Agha’s subdivision application was deemed complete prior to October 16, 2007. (Exhibit 18.)
- d) By letter dated January 24, 2018, the Deputy Director of RMA summarized the reasons why County staff had previously determined that the application was incomplete and provided the applicant the options of submitting the missing information or appealing the determination as an administrative interpretation of the County’s subdivision ordinance pursuant to Section 19.17.040 of the Monterey County Code. (Exhibit 19.)
- e) By letter dated March 19, 2019, Mr. Hart responded by providing records which he contended support a “Director’s Interpretation/Opinion” that the application was complete prior to October 16, 2007 and requested that “the Director identify, to the extent possible, the actual or approximate date on which County Staff should have deemed the Application complete.” (Exhibit 20.)
- f) By letter dated April 1, 2020, the Deputy Director of RMA confirmed the staff determination that the subdivision application is incomplete pursuant to Government Code section 65943. The letter provided the applicant the option of submitting the information required to make the application complete or appealing the determination pursuant to subdivision (c) of Government Code section 65943, which is part of the Permit Streamlining Act. (Exhibit 22.)
- g) On July 31, 2020, Mr. Hart, representing “Vista Nadura LLC,” appealed from the April 1, 2020 staff determination that the subdivision application was incomplete prior to October 16, 2007 and remains incomplete. (Appellants’ attorneys informed staff that Vista Nadura LLC is the current owner of the property and that Mr. Agha is an authorized representative of Vista Nadura LLC.) The appeal was characterized as an appeal from “the Director’s Interpretation/Opinion” pursuant to section 19.17.010 of the Monterey County Code. (Exhibit C to September 30, 2020 staff report to the Monterey County Planning Commission.)
- h) On September 30, 2020, the Monterey County Planning Commission held a duly noticed public hearing to consider Vista Nadura’s appeal of the April 1, 2020 incompleteness determination. On a vote of 8 to 0 (with one member absent and one member recused), the Planning Commission denied the appeal and determined that the application was incomplete as of October 16, 2007 and remains incomplete. (Monterey County Planning Commission Resolution No. 20-031). The resolution recites that the appeal was heard pursuant to Government Code section 65943 and that pursuant to that section, the decision is final because the applicant had not agreed to extend the time under the Permit Streamlining Act in order to allow applicant to appeal the determination to the Board of Supervisors. Resolution No. 20-031 was mailed to appellant on or about October 15, 2020.

- i) On or about October 16, 2020, Vista Nadura LLC and Nader T. Agha, represented by Mr. Hart, filed the instant appeal with the Clerk of the Board of the Supervisors. The appeal begins with the issue of jurisdiction, urges the Board to accept the appeal, and contends that the Planning Commission decision is appealable pursuant to Monterey County Code sections [sic] 19.16 and 19.17 as a Director's Interpretation/Opinion. (Hart's Oct. 16 Letter, at pp. 1-3.)
- j) The Board of Supervisors conducted a duly noticed public hearing on the appeal on December 9, 2020. The Board adopted a motion of intent, by a vote of 5 to 0, to find that the Board had jurisdiction over the appeal and that the application was incomplete as of October 17, 2007 and remains incomplete. The Board continued the hearing to January 26, 2021 for staff to provide a resolution with findings and evidence to support the determination.
- k) The Board of Supervisors has jurisdiction to hear the appeal pursuant to Government Code section 65943. Government Code section 65943(c) requires counties to provide a process for appeal of a determination that an application is incomplete and requires a final written determination on the appeal within 60 days of receipt of the appeal, unless the applicant agrees to extend the time. The Planning Commission heard the appeal and rendered a decision on September 30, 2020, within 60 days of applicant's appeal from staff's April 1, 2020 determination. At the Planning Commission hearing, appellant's attorney was provided the opportunity to agree to extend the time for applicant to appeal the Planning Commission's decision to the Board of Supervisors, but appellant's attorney declined at that hearing to agree to an extension of time; however, the appellant then filed an appeal of the Planning Commission's decision to the Board of Supervisors on or about October 16, 2020. The Board of Supervisors finds that, by filing the appeal, appellants by their actions agreed to extend the time for County to consider appellants' appeal under the Permit Streamlining Act and waived the 60-day deadline.

The Board finds that it also has jurisdiction of the appeal based on Chapter 19.16 of the County Code. Appellant contends variously that the appeal is filed pursuant to Monterey County Code Chapters 19.16 or Chapter 19.17 of Title 19 of the Monterey County Code. These grounds for the appeal are not inconsistent with Government section 65943. Title 19 is the County's subdivision ordinance for the non-coastal portion of the County. Chapter 19.17 provides a process for a person to request a Director's interpretation or administrative decision in connection with the County's subdivision ordinance, to appeal that determination to the Planning Commission, and thereafter to appeal the Planning Commission decision to the Board of Supervisors pursuant to appeal procedures set forth in Chapter 19.16. RMA's January 24, 2018 letter to appellant provided a right of appeal pursuant to Chapter 19.17, while the April 1, 2020 letter, from which appellant appealed, provided a right of appeal pursuant to Government Code section 65943(c). (See, Exhibits 19 and 22.) The



issue in the appeal is whether the application is complete, a determination specific to an application based on its particular facts. As such, the determination falls squarely under section 65943 as an application incompleteness determination. It is not an interpretation of County regulations with general applicability, as would be typical of a “Director’s interpretation.” For this reason, the April 1, 2020 letter provides a right of appeal pursuant to Government Code section 65943. However, the two bases for appeal can be reconciled because section 65943 requires the County to provide a process for an applicant to appeal an incompleteness determination. (Gov’t Code §65943(c).) Chapter 19.16 of Title 19 provides the procedures for appeal of a Planning Commission decision under the subdivision ordinance, and appellants have availed themselves of that process. Accordingly, Chapter 19.16, whether as the process for implementing Government Code section 65943(c) or as the process for appeal of a Director’s interpretation or both, provides the grounds for the Board of Supervisors to accept and hear the appeal. Furthermore, the other questions on which Appellants state they are seeking a Director’s opinion are not separable from the completeness date issue. Appellants assert that they are seeking an opinion not merely on the completeness date but also concerning five questions: 1) the characterization of applicant’s submittals in 1999, 2001, and 2002; 2) the date on which applicant “submitted” various applications; 3) whether the application has been deemed complete by operation of law; 4) the date the application was deemed complete by operation of law; and 5) the rules that apply to processing the application. (Hart’s Oct. 16 Letter, at pp. 2-3.) However, these questions identified by appellant as to the status of various submissions all relate to the single issue of whether the application was deemed complete and if yes, on what date. The question Appellant raises of what rules will apply to the processing of the application is derivative of the completeness date determination because the Subdivision Map Act (Government Code section 66474.2) provides that, with some exceptions, the County shall apply the local ordinances, policies and standards in effect when a subdivision application is deemed complete. These issues are not separable from the application completeness determination.

Pursuant to Chapter 19.16, the hearing on the appeal is de novo. Section 19.16.045 states that the appropriate authority shall consider and render a decision on the appeal within 60 days. County’s longstanding interpretation and implementation of this provision and similar language in the County’s zoning ordinances is to bring the appeal to hearing within 60 days, unless an extension of time is agreed upon, with the Board retaining discretion to take such additional time as is reasonably needed to reach a decision on the appeal. The hearing of this appeal complies with the timeframe because the hearing at the Board was held within 60 days of receipt of the appeal. The Board conducted the hearing on December 9,

within 60 days of receipt of the appeal of the Planning Commission's decision, provided an opportunity for appellants and the public to testify, and continued the hearing to January 26, 2021 for staff to return with a written resolution with findings and evidence to support the Board's decision.

**2. FINDING:**

**APPLICATION BACKGROUND:** The subdivision application (Agha/PLN990274) proposes to subdivide three lots totaling 50 acres into 20 lots ranging in size from 1.1 acres to 8.5 acres..

**EVIDENCE:**

- a) The Vista Nadura application (PLN 990274) is a proposed 20 lot standard subdivision of 50 acres located north of Los Arboles Road in mid Carmel Valley in the unincorporated non-coastal area of the County. The property is located at 8767 Carmel Valley Road (APN 169-011- 009-000,169-011-014-000,169-011-015-000). The subdivision is known as the Vista Nadura subdivision. The original application was made in the name of Durrel and Nader Agha. Ownership of the subject property has changed hands within the Agha family and related trust several times since 2002. Appellant's attorneys have informed staff that Vista Nadura LLC is the current owner of the property and that Mr. Agha is an authorized representative of Vista Nadura LLC. The appeal to the Planning Commission was filed by Vista Nadura LLC. This appeal to the Board of Supervisors was filed in the name of Vista Nadura LLC and Nader Agha.
- b) The application completeness date is relevant to which County General Plan and Carmel Valley Master Plan will apply to the project. Government Code section 66474.2 provides that subdivision applications are subject to the local ordinances, policies, and standards in effect when the application is deemed complete, except that the local agency may apply later adopted plans and ordinances if the agency has initiated proceedings and published notification of the proposed change in the applicable plans or ordinances. (Gov't Code §66474.2(b).) In this case, pursuant to that exception, Policy LU-9.3 of the 2010 General Plan provides that subdivision applications deemed complete on or before October 16, 2007 are subject to the County plans and regulations in effect when the applications were deemed complete, and subdivision applications deemed complete after October 16, 2007 are subject to the 2010 General Plan and the ordinances, policies, and standards enacted pursuant to the 2010 General Plan. Accordingly, if the application were deemed complete on or before October 16, 2007, the 1982 General Plan and former Carmel Valley Master Plan would apply to the project, unless the applicant were to elect to go under the 2010 General Plan or a general plan amendment were required. If the application was not complete as of October 16, 2007, the 2010 General Plan and updated Carmel Valley Master Plan apply. Differing policies apply depending on if the project is evaluated against the 1982 General Plan or the 2010 General Plan and the former or updated

Carmel Valley Master Plan.

The determination in this appeal that the application is incomplete is not a decision on the project application itself and is not a denial of the project application. The determination that the application is incomplete does not prevent the applicant from supplying the missing information, whereupon the County would conduct appropriate environmental review under the California Environmental Quality Act and process the application to hearing before the appropriate County decision-makers.

**3. FINDING:**

**APPLICATION INCOMPLETE:** The Board of Supervisors finds that Vista Nadura subdivision application (Agha/PLN990274) was not deemed complete prior to October 16, 2007 and continues to be incomplete pursuant to Government Code Section 65943 (the Permit Streamlining Act), and County Subdivision regulations (Chapter 19.03 of the Monterey County Code). The Board makes this finding based on all of the documentary evidence, the testimony, the responses to appeal contentions herein, and the administrative record as a whole, including Attachment A and its exhibits, which is attached to this resolution and incorporated herein by reference.

**EVIDENCE: a)**

The evidence supporting the determination that the application is incomplete includes the following:

June 10, 1999: Durrel and Nader Agha submitted an Application Request form (also known as “pre-application” form). (Exhibit 1b) [As stated above, unless otherwise noted, citations to exhibits are to numbered exhibits which are attached to Attachment A of this resolution.]

September 2000: Board adopted an ordinance adding Section 19.03.015.L.3.A to Title 19 (non-coastal subdivision ordinance) of the Monterey County Code which requires that “Prior to an application being deemed complete, a hydrogeologic report based on a comprehensive hydrological investigation shall be prepared by a certified hydrogeologist, selected by the County and under contract with the County, at the applicant’s expense.” This section took effect on June 26, 2000. Subdivision applications deemed complete prior to June 26, 2000 were not subject to these new provisions.

July 6, 2001: County staff provided applicant an application checklist dated 7/6/2001 identifying the information and materials required to submit an application (Exhibit 1a). A nominal fee is required for an Application Request to cover time for staff to visit the site and develop an application checklist.

August 26, 2002: Applicant filed their application (PLN990274) and paid a filing fee of \$15,958 on 8/26/2002. (Exh. 1b (showing planner’s handwritten notation of received date of 8/26/2002). The

application did not include a hydrogeologic report prepared by a certified hydrogeologist selected by the County, and that report still has not been submitted. In the 1999-2002 period, the Board of Supervisors adopted various resolutions (99-379, 01-133, and 02-024) affecting subdivision processing, including Resolution No. 02-024 which implemented Policy 39.3.2.1 of the former Carmel Valley Master Plan by stating a qualified policy of denying new subdivisions in Carmel Valley between Route 1 and Morse Dr, which includes the subject property. Since Resolution 02-024 did not prohibit accepting subdivision applications for processing, County accepted the Vista Nadura subdivision application on 8/26/2002.

September 26, 2002: By letter dated September 26, 2002, staff informed the applicant that the application was incomplete due to missing information, and staff provided a list of the additional information required. (Exh. 1.)

November 4, 2002: The County Environmental Health Office provided the applicant with a supplemental letter restating and detailing the hydrogeological study required by the Subdivision Regulations. (Exh. 2.)

Over the succeeding years, the applicant submitted additional missing information to render the application complete, except for hydrogeologic information required by the County's subdivision regulations (Section 19.03.015.L.3.A of the Monterey County Code). The Environmental Health Bureau (EHB) consistently determined and informed the applicant that unless the hydrogeologic information is submitted, the application is not complete. The correspondence includes letters before and after the October 16, 2007 date informing the applicant of the information needed to render the application complete. See, for example, Exhibit 8 [RMA letter dated August 3, 2006], Exhibit 9 [Nov. 30, 2007 letter from EHB to applicant]. The course of correspondence shows that applicant has still not submitted information required to analyze water supply. (See. e.g, Exhibits 17 and 21.)

- b) Response to appeal contentions: Appellants' appeal filed with the Board of Supervisors incorporates its contentions from its appeal to the Planning Commission and also provides a five-point summary of appellants' contentions. This resolution begins with response to the contentions in their appeal to the Planning Commission and then addresses the five summary points stated in the appeal to the Board of Supervisors.
- c) The appeal at the Planning Commission raised 17 contentions, which are listed and addressed as follows:

1. Contention: *The Director's Interpretation/Opinion is not supported by facts and evidence.*

Response: Attachment A provides a chronology of events and

documents (exhibits to Attachment A) which show that the application was incomplete prior to October 17, 2007 and remains incomplete. See also the following responses to appeal contentions.

2. Contention: *The Director's Interpretation/Opinion misinterprets applicable laws, ordinances, and procedures, and is contrary to law.*

Response: The determination that the application is incomplete is required by and complies with a 2000 amendment to the County Subdivision Regulations. In September, 2000, the County Board of Supervisors adopted a "Proof of Water" ordinance, Ordinance Number 4082, requiring that all proposed subdivision applications prove that an adequate source of water was available to the property prior to a subdivision application being deemed complete. The ordinance amended portions of Monterey County Code, Title 19, County's subdivision ordinance, and stated that these new provisions were not retroactive to projects for which an application had already been deemed complete prior to June 26, 2000. Per the ordinance adopted in September 2000, County regulations require submission of a hydrogeological report for a subdivision application to be complete. Section 19.03.015.L.3.A of Title 19, enacted by Ordinance No. 4082, states, in part: "*Prior to an application being deemed complete, a hydrogeologic report based on a comprehensive hydrological investigation shall be prepared by a certified hydrogeologist, selected by the County and under contract with the County, at the applicant's expense, if required by this Section.*" (Monterey County Code, section 19.03.015.L.3.A, emphasis added). This requirement has been in place since before the Vista Nadura application was filed on August 26, 2002. The application request form submitted on June 10, 1999 does not excuse applicant from complying with this regulation because an application request form is not an application. The application checklist provided to the applicant on July 6, 2001, stated that applicant must provide hydrogeological evidence of water quality and quantity and proof of an assured, long term water supply. (Exhibit 1a.) After the applicant submitted his application, the County has consistently advised the applicant, beginning on September 26, 2002 that this key requirement of a subdivision application had not been submitted. (See Exhibit 1b and 1 (letter dated 9/26/2002). On November 4, 2002, the County Environmental Health Office provided the applicant with a supplemental letter restating and detailing the hydrogeological study required by these Subdivision Regulations. (Exhibit 2.)

3. Contention: *The Director's Interpretation/Opinion fails to recognize that Monterey County deemed the Vista Nadura application complete prior to October 16, 2007, and County is bound by this determination.*

Response: The record shows a consistent series of letters to the applicant stating the application was incomplete, and remains

incomplete. as detailed in Attachment A and the documents attached thereto.

4. Contention: *The Director's Interpretation fails to recognize that the applicant proposed to utilize available public sewer capacity for wastewater, and provided a can and will serve letter to that effect, eliminating any need for a hydrogeological report related to the potential impact of wastewater discharge associated with septic systems or discharge of wastewater into the soil.*

Response: The record shows that a sewer service "can and will serve" letter has not been received. The County has requested documentation to confirm that the proposed project will be allowed to connect to the Carmel Area Wastewater District (CAWD), which may first require that the project site be annexed into the CAWD service area. Provided sewer service is assured, the project hydrogeological report would not need to assess potential impacts of onsite wastewater discharge from septic systems, but the requirement for information about water supply would remain.

5. Contention: *Director's Interpretation/Opinion fails to recognize that the hydrogeological report was not required by Section 19.03.015L.3.A of the Monterey County Codes (Title 19 Subdivisions, non-coastal), as the County never indicated in writing such a report would be required prior to the application being deemed complete by that section.*

Response: The application checklist required "hydrological evidence ... to show evidence of water quality and quantity" and "proof of an assured long-term water supply in terms of sustained yield and adequate quality" for the proposed lots, and a description of the proposed water source. (Exhibit 1a.) See also letters dated 9/26/2002 and 11/4/2002, stating the hydrogeological report was required and had not been submitted. Exhibits 1 and 2.

6. Contention: *Director's Interpretation/Opinion fails to recognize applicant's use of existing water credits and entitlements and deeded water rights from Cal Am's predecessor in interest to provide water... and that, therefore, no hydrogeological report is required.*

Response: Section 19.03.015L.1.A.1 requires the Water Use Nitrate Loading Impact Questionnaire to be accompanied by verification of legal water rights to the quantity of water necessary to assure an adequate and reliable drinking water supply. The record shows that water rights verification has been requested repeatedly and remains outstanding. Water rights information would be evaluated in the hydrogeologic report. Applicant must identify the source of water for the proposed project in order for the County to evaluate the impacts of the

project. As explained to applicant in 2002, because the Initial Water Use and Nitrate Impact Questionnaire indicated that the project would result in an increase in water use, the hydrogeologic report is needed to demonstrate the existence of a long term water supply for the proposed project. (Exhibit 2.)

7. Contention: *Director's Interpretation/Opinion fails to acknowledge that various County representatives asserted numerous false, inaccurate and changing grounds in support of their claims the appellant's application was not complete.*

Response: Applicant has not provided evidence that County staff asserted false or inaccurate or changing grounds for application incompleteness. The County consistently informed the applicant that the project application was not complete. In 2006, 2007, 2008, and 2010, staff was still requesting the outstanding water supply information. (Exhibits 8, 10, 12, 13, 14, and 15.) In an effort to resolve the bottleneck in processing the project, In 2006, County staff offered to proceed to prepare an EIR for the application and the County selected an EIR consultant, but the applicant did not respond or submit the required deposit to begin the work. (Exhibits 23 and 24.) See generally Attachment A and exhibits thereto.

8. Contention: *Director's Interpretation/Opinion fails to recognize that there were County representatives who expressly told appellant's agents that they would never allow appellant to obtain a permit, regardless of the applications merits.*

Response: The County has no record of this allegation. After adoption of the 2010 General Plan, County staff outlined options for proceeding, but staff did not refuse to process the application. (Exhibit 24.) Because the application remains incomplete, it has not been processed to hearing before the County decision-makers, so any allegation about a decision County will make on the application itself is premature and speculative. County is willing to process the application but requires information from the applicant to do so, as County has stated repeatedly.

9. Contention: *The County approved and issued final development and subdivision permits for their friend and ally, on a project about one mile away from appellant's project, with less information and evidence as to water rights and wastewater discharge than presented by appellant in its application.*

Response: Appellants are referring to the September Ranch subdivision (PC95062), which they contend was not required to provide proof of water supply before being deemed complete for processing. Appellant attaches a copy of *Save Our Peninsula Committee v. Monterey County Board of Supervisors*, 87 Cal. App 4<sup>th</sup> 99 (2001), a published decision about the 1995 September

Ranch application, but draws the wrong lesson from that case. The original September Ranch subdivision application (PC95062) was submitted and deemed complete in 1995. The EIR was revised subsequently (PLN050001) as a result of the litigation referenced above, but since the revision of the EIR was to satisfy the court directives, the September Ranch project retained its original completion date and was processed under the pre-2000 Subdivision regulations. Nonetheless, a very thorough analysis of water supply and water demand was required and done for the September Ranch project prior to the Board's approval of the September Ranch subdivision application in 2010 (Resolution No. 10-312).

Appellant cites the *Save Our Peninsula Committee* opinion to show the level of water information which County required to deem an application complete at that time. However, the Agha application was submitted years after the September Ranch application, after County had amended Title 19 regulations to require a hydrogeologic report. Different regulations applied in 1995 when the September Ranch application began as compared to 2002 when Mr. Agha submitted his application. By 2002, the Board of Supervisors had amended Title 19 to require a hydrogeologic report, prepared by a hydrogeologist under contract to the County at applicant's expense, as a prerequisite for finding a subdivision application complete. Moreover, the *Save Our Peninsula Committee* decision itself –issued in 2001 before the Agha application was submitted-- held that County's EIR analysis of water issues for the first September Ranch project had been deficient. The court emphasized the importance of identifying and substantiating the baseline water conditions, based on substantial evidence, as necessary for an EIR to meaningfully analyze the environmental impacts of a project.

The County's ensuing processing of the September Ranch application after the issuance of the *Save Our Peninsula Committee* opinion in fact demonstrates that County is not singling out Mr. Agha for extra burdensome treatment or requesting more information of Mr. Agha than County ultimately needed to process the September Ranch process successfully. Following the court decision referenced above, in roughly the same early 2000s time frame as when Mr. Agha's application was deemed incomplete, the County required an extensive hydrogeologic analysis for the September Ranch application. The County then certified a new EIR for the September Ranch project and approved a modified September Ranch project in 2006. The 2006 September Ranch EIR was also challenged in litigation, and the court required additional analysis to support the water demand calculation. The County then prepared an extensive water demand analysis for the September Ranch EIR, certified the augmented EIR, and approved the project



again in 2010. The history of the September Ranch application and the court decision in *Save Our Peninsula Committee v. Monterey County Board of Supervisors* support County's requirement for applicant Agha to provide adequate hydrogeologic information in order for County to process and prepare environmental review of his subdivision application; it does not support reducing County's information requirements at the application stage, as appellant appears to argue.

10. Contention: *Director's Interpretation/Opinion fails to recognize that the County lost and misplaced the vast majority of its file and documents related to appellant's application and then claimed that there was no evidence that the requested information had been timely provided by appellant in conjunction with its application.*

Response: In November and December 2007, EHB acknowledged in letters to the applicant that the multiple documents were not available in EHB records and confirmed receipt of a packet of documents reported by the applicant to have been furnished previously. The letter went on to clarify that the documentation did not satisfactorily address the outstanding information identified in the 2002 or 2006 incomplete memos from EHB and reiterated the outstanding information necessary to make a complete application. (Exhs. 9 and 10.)

11. Contention: *The Director's Interpretation/Opinion fails to recognize and acknowledge that the County failed to timely act upon and respond to the full and complete information submitted by appellant in conjunction with its application, waiving any right of the County to claim that the application was incomplete and waiving any right to deny appellant the permits and approvals requested.*

Response: The record shows that the County has consistently responded to the information submitted by the applicant. (Attachment A and exhibits thereto.)

12. Contention: *The Director's Interpretation fails to recognize and acknowledge that appellant provided the County with a hydro-geological report and survey, provided proof of vested water rights, provided the County with well tests and reports, and provided the County with all other information required to establish the application as complete.*

Response: The record shows that a hydrogeologic report has not been prepared under contract with Monterey County, nor has the County determined that one would not be required, in accordance with Section 19.03.015.L.1.B. Section 19.03.015.L explicitly requires an independent hydrogeologic report, prepared under contract with the County, paid for by applicant; a report prepared by applicant or applicant's agents does not

satisfy the requirement set forth in County regulations The record shows that water rights verification has been requested repeatedly and remains outstanding. The record shows that some water quality testing has been completed but that source capacity testing remains outstanding.

13. Contention: *The Director's Interpretation/Opinion fails to recognize and acknowledge that appellant was not provided with an application checklist that identified any information that the appellant did not provide to the County as part of the application.*

Response: The application checklist required, among other things, evidence of water quality and quantity, "proof of an assured long-term water supply in terms of sustained yield and adequate quality" for the proposed lots, and a description of the proposed water source. Exhibit 1a. The County has consistently advised the applicant, beginning on 9/26/2002, that this key requirement of a subdivision application had not been submitted. (See Exhibit 1, letter dated 9/26/2002). On 11/4/2002 the County Environmental Health Office provided the applicant with a supplemental letter restating and detailing the hydrogeological study required by the Subdivision Regulations. (See Exhibit 2.) See also, Exhibit 8 (8/3/2006 letter to applicant from RMA listing missing information required by Environmental Health Bureau to deem application complete); Exhibit 10 (12/27/07 letter to applicant listing in detail the missing information related to water supply and other issues).

14. Contention: *The Director's Interpretation/Opinion fails to recognize and acknowledge that the County at times failed and refused to accept and/or consider documents and information submitted and provided by the appellant in conjunction with its application on improper and wrongful grounds.*

Response: The County is unaware any refusal to accept documents and information. See 12/2007 and 3/2008 letters from Environmental Health. (Exhibits 10 and 12.)

15. Contention: *The Director's Interpretation/Opinion fails to recognize and acknowledge that the County failed to follow its own policies, ordinances, rules, regulations, procedures and practices in conjunction with the application, as well as state laws, rules, regulations, procedures and practices.*

Response: The County has followed state law and its own rules and regulations.

16. Contention: *The Director's Interpretation/Opinion fails to recognize and acknowledge that the County treated appellant's application less favorably than it treated the applications*

*submitted by others and imposed hurdles, impediments and other conditions upon appellant's application that were not imposed on other applicants, for the purpose and intent of discriminating against and harming appellant and impeding the application.*

Response: The County denies that it treated this applicant less favorably than or different than other applicants. There has been no discrimination or intent to discriminate against this applicant, and applicant has not provided evidence of intent to discriminate based on protected class status, nor has appellant, a limited liability corporation, supplied proof of intent to discriminate against the corporation. The reason for County's actions, which is well documented in two decades of correspondence and explained multiple times to applicant, is that applicant failed to provide the information which County regulations require of subdivision applications to deem the application complete. The County required the hydrogeologic report in accordance with County's regulations (Title 19, as cited above), and the County's requirements applied equally to this applicant as to other subdivision applicants. For example, other subdivision applications during the relevant time frame which were required to include the hydrogeologic report include: Harper Canyon (PLN000696), Madison (PLN020186), Pacific Mist (PLN 040691) and Heritage Oaks, (PLN 980503). If this contention is meant to refer to the September Ranch application, see Response 9 above.

17. Contention: *The Director's Interpretation/Opinion fails and refuses to fairly consider and acknowledge the validity of the facts, law and information submitted in conjunction with appellant's extensive submissions in support of its request for a Director's Interpretation/Opinion regarding the completion of appellant's application and the date thereof.*

Response: The entire record shows that the County staff has consistently reviewed applicant's submissions and found they do not meet the requirements of the Subdivision Regulations. See Attachment A and exhibits thereto; see also responses above.

- d) The Monterey County Board of Supervisors held a duly noticed public hearing on the Vista Nadura application completeness appeal on December 9, 2020. After testimony from the appellant and public, the Board of Supervisors voted unanimously to adopt a motion of intent to find the application incomplete and continued the hearing to January 26, 2021 wherein the Board adopted this resolution and the findings herein. In addition to the 17 contentions raised in the Planning Commission appeal, responded to above, the Board responds as follows to the five summary contentions appellant states in its appeal to the Board of Supervisors:

1. Contention: *The County mis-identified the date of the applicant's Application which was filed on 8/1/01 and that the Application was complete prior to October 16, 2007, and [staff] misapplied section 19.03.15.L.3 of the Monterey County Code;*

Response: Correspondence from applicant's representative from August 23, 2002 shows that County and applicant were communicating about the requisites for application submittal in August 2002, which shows applicant contemporaneous recognition that the application had not yet been submitted as of August 23, 2002. (Exhibit E to Hart's Oct. 16 letter.)

Response: Appellant contends the subdivision application should not have been deemed incomplete due to the failure to include the information required by section 19.03.15.L.3 of the Monterey County Code. Appellant contends this was not the proper procedure or standard in place at that time, rather, the application should have been deemed complete before October 16, 2007, when the applicant pointed to a proposed source of water supply. Appellant asserts that the actual sufficiency and viability of the water supply was not a precondition of deeming the application complete, rather it was an issue to be evaluated and examined during the project review, environmental review process under CEQA, and approval/denial process. However, in requiring a hydrogeologic report before deeming the application complete, EHB was implementing County regulation. Section 19.03.015.L.3.A of Title 19 (non-coastal subdivision ordinance) of the Monterey County Code requires that "Prior to an application being deemed complete, a hydrogeologic report based on a comprehensive hydrological investigation shall be prepared by a certified hydrogeologist, selected by the County and under contract with the County, at the applicant's expense." In the Project Referral Sheet accompanying the September 26, 2002 incomplete letter, ERB staff notes that the hydrogeologic report is necessary because the Initial Water Use Questionnaire indicates that the proposed project could result in intensification of water use. (Exhibit 1.) In 2006, 2007, 2008, and 2010, staff was still requesting the outstanding water supply information. (Exhibits 8, 10, 12, 13, 14, and 15.) In 2006, staff offered to proceed to prepare an EIR for the project and selected an EIR consultant, but the applicant did not pursue this opportunity. (Exhibits 23 and 24.)

2. Contention: *The County failed to accept applicant's Application when submitted on 8/23/02 requiring communication from Applicant's legal counsel;*

Response: County staff correspondence dated August 21, 2002 shows that County informed applicant that County was preparing the application checklist so that applicant could submit its application (Exhibit E to Hart's Oct. 16 Letter), and the County did accept the application on August 26, 2002. (Exhibit 1b.)

3. Contention: *The County failed to timely notify applicant in writing within 30 days after submission of its application of the completeness*

*of the application, rendering the application complete by operation of law pursuant to Government Code section 659443(b);*

Response: The documents show that a planner accepted the application on August 26, 2002 and sent a letter dated September 26, 2002 stating that the application is incomplete. (Exhs. 1b and 1.) September 26 is 31 days after the application submittal. Government Code section 65943(a) provides that if the written determination that the application is incomplete is not made “within 30 days after receipt of the application, and the application includes a statement that it is an application for a development permit, the application shall be deemed complete.” However, the statute of limitations to challenge application incompleteness on this basis has long since passed (Gov’t Code §§65009 and 66499.37 [90 day statute of limitations]). The applicant did not challenge the missed deadline within the statute of limitations and continued to communicate with staff thereafter, acquiescing in staff’s determination. Moreover, the provision of the incomplete letter on the 31<sup>st</sup> day, rather than the 30<sup>th</sup> day, 18 years ago is not prejudicial, as applicant had ample opportunity since then – and before the October 16, 2007 date on which applicant is focused – to provide the information required to render the application complete and still has the opportunity to provide the required information to render the application complete.

4. Contention: *The Planning Commission failure to timely provide a written determination on the appeal within 60 days of the filing of the appeal on August 3, 2020 renders the application complete by operation of law pursuant to Government Code Section 65943(c); Appellant contends that the County missed this deadline because the Planning Commission's resolution on its appeal was mailed on October 15, 2020, after the 60 days.*

Response: Government Code section 65943(c) requires a final determination in writing on the appeal of application incompleteness within 60 days of the filing of the appeal, or the application is deemed complete by operation of law. The County Planning Commission heard the appellant's application completeness appeal and made its final determination on September 30, 2020, within 60 days from the filing of the appeal.

The written staff report and resolution, which the Commission adopted with one alteration made orally at the hearing, were provided to the applicant at or before the September 30, 2020 hearing date. Therefore, applicant received the written determination within the 60 days. Clerical finalization of the resolution (recording the vote and obtaining the Chair's signature) and mailing of the resolution are ministerial functions, so the fact that the resolution was mailed on October 15, 2020, does not trigger the automatic completion date. In

any event, applicant has appealed the Planning Commission's determination, so the Board's determination will control.

*5. Contention: The Application was determined complete by the County but recommended for denial.*

*Response: Appellant is referring to a memo dated July 12, 2011 from EHB to RMA stating the application is complete with recommendation for denial because applicant has not provided information demonstrating a long-term sustainable water supply. (Exhibit G to Appeal.) However, there is a second, later memo dated November 15, 2011 from EHB to RMA stating the application is incomplete with recommendation for denial for the same reasons. (Attachment A, Exhibit 16.) These contradictory memoranda are not conclusive proof, but in any event, if the July memo were the basis for a completeness determination, it would be evidence for a July 2011 completeness date, not an earlier date.*

- 4. FINDING:** The application status determination is not a project under CEQA Guidelines Section 15378(b)(5).
- EVIDENCE:**
- a) Application completeness determination does not constitute approval of the subdivision application or commit the County to approval of the subdivision. Environmental review of the application would occur during the processing of the application.
  - b) The determination is an administrative activity that will not result in direct or indirect physical changes in the environment.

**NOW THEREFORE BE IT RESOLVED**, the Board of Supervisors of the County of Monterey does hereby:

1. Certify that the above findings are true and correct based on all of the documentary evidence, the testimony, the responses to appeal contentions herein, and the administrative record as a whole, including Attachment A and its exhibits, which are attached to this resolution and incorporated herein by reference.
2. Deny the appeal by Vista Nadura LLC and Nader T. Agha from the Monterey County Planning Commission's September 30, 2020 determination that a subdivision application filed by Durrel and Nader Agha (PLN990274) was incomplete prior to October 16, 2007 and remains incomplete; and
3. Find that the application (Agha/PLN990274) for a Standard Subdivision to subdivide three lots totaling 50 acres into 20 lots ranging in size from 1.1 acres to 8.5 acres was not deemed complete prior to October 16, 2007 and continues to be incomplete pursuant to Government Code Section 65943 (the Permit Streamlining Act) and Monterey County Code Chapter 19.03.

PASSED AND ADOPTED on this 26<sup>th</sup> day of January 2021, 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 January 26, 2021.

Dated: February 1, 2021  
File ID: RES 21-015  
Agenda Item No.: 24

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

  
Julian Lorenzana, Deputy

# Attachment A



This page intentionally left blank.

## Vista Nadura Subdivision Application

### KEY DATES/ACTIONS

- 6/10/1999 Application Request submitted, assigned case number PLN990274  
09/2000 BOS adopts Ordinance 4082 amending MCC Chapters 19.03 and 19.04 setting forth procedures for a tentative map, including a hydrogeological report required prior to an application being complete.
- 6/10/1999 Application Request Form Submitted Exhibit 1b.  
7/6/2001 Application request "Given Out" Exhibit 1a.  
8/26/2002 Application Submitted Exhibit 1b.  
9/26/2002 Incomplete letter issued noting 1) the subdivision is located in water sub basins 31 and 32. Sub basin 32 is subject to a subdivision prohibition adopted by the County in Feb. 1983, 2) no documentation of source of water supply, 3) Lack of soils study and report for each lot, and 4) Project description is not complete. Exhibit 1
- 11/4/2002 Supplemental letter from Environmental Health Office reiterating that the applicant must provide map overlays showing the proposed subdivision location in the two sub basins, and related soil percolation test results. Also reiterated was the requirement for a project-specific hydrogeological report to demonstrate the existence of a long-term water supply for the subdivision. The report was to be prepared by a hydrogeologist under contract with the County. It was specifically stated the application would be deemed incomplete until such report was completed and accepted by Environmental Health. Exhibit 2
- 4/15/2003 Letter from Bestor Engineers (Applicant's engineer) urging reconsideration of requirement of the hydrogeological report to demonstrate long range water supply. based on historic land use of the property and their related water consumption. Health Department notes they have no record of this letter and marked it received on November 9, 2007. Exhibit 3
- 3/18/2005 Letter from attorney Robert E Rosenthal withdrawing proposed 172 unit multifamily rezoning and discussing status of Vista Nadura subdivision application. Exhibit 4
- 4/6/2006 Bestor Engineers submits supplemental data for water system. Exhibit 5  
4/20/2006 Letter from County Planning regarding additional information needed. Exhibit 6
- 7/10/2006 Letter from Bestor Engineers responding to county request for additional information. Exhibit 7
- 8/3/2006 Letter from County Planning stating all departments have deemed the application complete except the Health Department. Health Department requires information on 1) Complete project description related to sub basins, 2) Additional soils information, 3) Documentation of water supply, 4) Method of sewage disposal and proposed Community Septic System not acceptable. Exhibit 8
- 11/9/2007 Information submitted by applicant to Health Department addressing required data. (Same letter dated 7/10/2006).
- 11/30/2007 Detailed letter from Health Department identifying incomplete information for: wastewater management, water supply, project description, and related tentative map requirements. Exhibit 9
- 12/27/2007 Revised letter from County Health Department reiterating the application is incomplete due to lack of information listed in their referral of 7/31/2006.(listed in County Planning letter of 8/3/2006). Exhibit 10
- 2/21/2008 Bestor Engineers submits response to County Health Department letter of 12/27/2007. Response clarified the project description is to include 7 inclusionary housing units on lot 20; 1982 map showing subdivision location in sub watersheds; soil and percolation testing reports, well pump test, drain-field and septic information. Exhibit 11

- 3/18//2008 County Health Department letter to applicant stating Bestor Engineers had updated the project description but other required application information had not been submitted. Exhibit 12
- 6/4/2008 County Health Department letter to applicant summarizing required information on the: sub basins overlaid by the subdivision proposed septic fields, wastewater management, water supply verifying water rights for existing well and other data as detailed in March 18,2008 letter. Exhibit 13
- 9/4/2008 Letter from Health Department to applicant confirming a phone conversation of 8/28/2008 wherein applicant stated he wished to address sewage issues by deleting drain fields and connecting to Carmel Area Wastewater District (CAWD). Letter stated Can and Will Serve Letter from CAWD required to be documented. Water supply issues still not addressed. Exhibit 14
- 12/17/2010 Letter from Environmental Health Department documenting phone conversation regarding letters sent to applicant by the Planning Department. Staff was directed by the Board of Supervisors to recommend denial of all proposed subdivisions in Carmel Valley. On October 26, 2010, the Board of Supervisors adopted the 2010 Monterey County General Plan, under which Carmel Valley subdivision project applications that remain incomplete as of Oct.16, 2007 are to comply with the 2010 General Plan policies LU-1.19, CV- 1.6,CV-2.18, CV- 2.19 and CV-5.5. Previously documented reports and technical information remain outstanding. Regarding wastewater disposal, an Oct 23, 2008 letter from the Carmel Area Wastewater District stated the project will have to apply to amend the CAWD Sphere of Influence in order to be annexed into the district. Exhibit 15
- 11/15/2011 Memorandum from Roger Van Horn, Environmental Health Dept. to Robert Schubert, Planning Department stating that Environmental Health considers the project incomplete with recommendation for denial due to lack of proof of a sustainable long-term potable water supply. Exhibit 16  
This memorandum is identical to the July 12, 2011 memorandum except that the November 2011 memo changes the word “complete” to “incomplete.” Exhibit 16a.
- 5/31/2016 Project Referral Sheet from Environmental Health Bureau stating the application is incomplete. Can and Will Serve Certification from CAWD has not been submitted by the applicant to show CAWD will provide sewer service to the project. Proof of Long-Term Sustainable Water Supply and Adequate Water Supply System pursuant to General Plan

- policy PS 3.2 has not been submitted. Exhibit 17
- 5/11/2017 Letter from Paul Hart of Moncrief and Hart, attorney for applicant, requesting a written opinion on whether the application for Vista Nadura was, or should have been, deemed complete prior to October 16, 2007. Exhibit 18
- 1/24/2018 Letter from John M Dugan, RMA Deputy Director summarizing the history of the project and requesting evidence that the Environmental Health Bureau information requirements had been met to deem the project application complete. Exhibit 19
- 3/19/2019 Letter from Paul Hart responding to the letter of 1/24/18 and requesting a Director's Interpretation which would find the application complete prior to October 16, 2007. Documentation provided which applicant contends supports their contention that the application should have been deemed complete sometime in 2002 or 2003. Exhibit 20
- 11/4/2019 Memorandum from Bryan Escamilla Environmental Health Bureau restating and partially revising (ie, reducing) items required to be addressed prior to the project being deemed complete under the 2010 General Plan. Exhibit 21
- 4/1/2020 Letter to Paul Hart from John Dugan stating prior staff determinations are accurate and application remains incomplete. Exhibit 22.

Additional letters:

- 12/22/2006 Letter from Bob Schubert to Nader Agha concerning selection of EIR Consultant. December 22, 2006 Exhibit 23
- 10/28/2010 Letter from Bob Schubert to Nader Agha stating options for processing the subdivision and stating RMA had not received a response about selecting an EIR Consultant. Exhibit 24.

# Exhibit 1

This page intentionally left blank.

# MONTEREY COUNTY



## PLANNING AND BUILDING INSPECTION DEPARTMENT

- 240 CHURCH STREET, SALINAS, CA 93901 PLANNING: (831) 755-5025 BUILDING: (831) 755-5027 FAX: (831) 755-5487  
MAILING ADDRESS: P. O. BOX 1208, SALINAS, CA 93903
- COASTAL OFFICE, 2620 1<sup>st</sup> Avenue, MARINA, CALIFORNIA 93933 PLANNING: (831) 883-7500 BUILDING: (831) 883-7501 FAX: (831) 384-3281

SCOTT HENNESSY, DIRECTOR

September 26, 2002

Nader Agha  
542 Lighthouse Ave.  
Pacific Grove, CA. 93950

**Subject: Vista Nadura Subdivision (PLN990274)**

Dear Mr. Agha:

This is to notify you that a staff review of your application finds it to be incomplete, and more information is necessary. A list of the additional information required is attached and must be received in this office and found adequate by the Planning and Building Inspection Department before processing can begin.

Copies of all interdepartmental review comments and requirements are attached for your information. Some of these sheets indicate additional materials are necessary before the project can be deemed complete.

Should you have any questions, please call me at (831) 883-7560.

Sincerely,

Patrick Kelly, AICP  
Associate Planner

## Project Referral Sheet

Planning & Building Inspection Department  
Coastal Office  
2620 First Ave  
Marina, California  
(831) 883-7500

**TO: FIRE DEPARTMENT      ~~HEALTH DEPARTMENT~~**  
**PUBLIC WORKS        WATER RESOURCES AGENCY**  
**PARKS DEPARTMENT    OTHER: \_\_\_\_\_**

Please Submit your recommendations for this application by: **Monday, September 23, 2002**

**Project Title:** AGHA DURELL D TR

**File Number:** PLN990274

**File Type:** SUB

**Planner:** KELLY

**Location:** Carmel Valley Road

**Assessor's No:** 169-011-009-000-M

**Project Description:**

Standard Subdivision Tentative Map for the subdivision of an existing lot of record of 50 acres into 20 lots ranging in size from 1.1 acres to 5.2 acres, including grading for the construction of 20-foot wide access road; and a Use Permit for development on slopes greater than 30 percent (access road). The property is located north of Los Arboles Road (Assessor's Parcel Number 169-011-015), Mid Carmel Valley area, Carmel Valley Master Plan area.

**Status:** ~~COMPLETE~~/INCOMPLETE (highlight one)

**Recommended Conditions:**

The Health Department has reviewed the above referenced application and has considered the application incomplete. The following reports and/or information are needed prior to considering the application complete.

- 1) Provide a map of the proposed subdivision. Upon receipt of the map, the project's location in the Carmel Valley Wastewater Study (Montgomery Study) will be determined and additional information or requirements may apply.
- 2) Provide to the Director of Environmental Health certification and any necessary documentation that California American Water Company can and will supply sufficient water flow and pressure to comply with both Health and fire flow standards.
- 3) Provide evidence to the satisfaction of the Director of Environmental Health that the water source for the mutual system meets applicable State and County standards for water quantity and quality.
- 4) Since the Initial Water Use Questionnaire submitted indicates an intensification of water use, a determination shall be made by a hydrogeologist under contract to the County as to the requirement for any additional water resources information. If any hydrologic or hydrogeologic reports are deemed necessary, the County will contract directly with qualified consultants, at the applicant's expense, upon request of the applicant. A written request to the Division of Environmental Health is necessary to commence with the preparation of a scope of work.
- 5) Please contact Roger Beretti at 755-4570 to arrange an on-site visit to determine septic system feasibility of the proposed project as per Chapter 15.20 MCC (Septic Ordinance) and "Prohibitions", Central Coast Basin Plan, RWQCB.
- 6) Soil excavations must be performed on each lot and witnessed by a representative of the Division of Environmental Health. Contact Roger Beretti at 744-4570 to schedule and determine the scope of work.
- 7) Submit two copies of a soils and percolation testing report for review and approval by the Division of Environmental Health to prove that the site is suitable for the use and that it meets the standards found in Chapter 15.20 MCC (Septic Ordinance), and "Prohibitions", Central Coast Basin Plan, RWQCB. Contact the Division prior to proceeding to determine the scope of work and to oversee soil testing. The testing and report format shall be completed as per the adopted soil report policies of the Department.

**Signature:** Roger Beretti via email

**Date:** September 23, 2002

Please return original to Planning & Building Inspection and make a copy for your records.



# **Exhibit 1a**

This page intentionally left blank.





Monterey County Planning and Building Inspection Department

240 Church Street, Room 116

P.O. Box 1208

Salinas, CA 93902

755-5025

Water

Nitrates

Instructions and Development Project Application Procedure for Minor Subdivisions (Tentative Parcel Map) and Standard Subdivisions (Tentative Map)

The following materials, data and reports are required for submittal of your development project application where noted. This form must be returned with your application.

- 1. Filing Fee See attached
2. 10 Copies of a completed development project application...
3. 10 Copies of the tentative map or tentative parcel map...
4. Two copies of a slope density analysis map...
5. Two copies of a slope analysis map...
6. One copy and the original of the Inclusionary Housing Compliance Form.
7. One transparency of each page of the tentative parcel map...
8. A photocopy of the Assessor's parcel page(s)...
9. A list of the names, addresses, and Assessor's parcel numbers...
10. Sets of pre-addressed stamped envelopes...
11. Two copies of preliminary title report...
12. Four copies of a preliminary soils report...
13. Septic If sewage disposal...
14. If water for the subdivision will be provided...



applicant shall also provide proof of an assured, long-term water supply in terms of sustained and adequate quality for all lots which are proposed to be created through subdivisions. The water must meet both water quality and quantity standards expressed in Title 22 of the California Administrative Code and Title 15.04 of the Monterey County Code subject to review of the Director of Environmental Health. (See attached information from the Health Department).

4

✓

15. <sup>two</sup> Four copies of a detailed geological report prepared in conformance with California Division of Mines and Geology standards, that addresses seismic hazards, faulting, slope stability and liquefaction potential and contains measures recommended by the geologist for any geologic hazards that are shown as a result of the report. The report shall be prepared by a California registered geologist. The report shall be subject to the approval of the Director of Planning and Building Inspection. In the case of a minor subdivision, a preliminary geologic report shall be required where it is determined that the subject project lies within a zone IV to VI geologic hazard.

See below

16. Three copies of an archaeological report prepared by a certified archaeologist (SOPA, Society of Professional Archaeologists) where the proposed project is located in a "moderate or high sensitivity" archaeological zone as shown on an archaeological sensitivity map of the General Plan, Area Plan or Coastal Land Use Plan.

17. In the event the proposal is for the conversion of a mobile home park to another use, a report as prescribed by Government Code Section 66427.4 shall be submitted to address the impact of the conversion upon displaced residents of the mobile home park to be converted.

18. ✓ A description of prior development activity on the site such as the removal of any vegetation, grading, etc. which may affect the proposed subdivision. <sup>Concept grading</sup>

X

19. Other: <sup>REPORT</sup> TRAFFIC, <sup>REPORT</sup> ARCHAEOLOGY, <sup>REPORT</sup> DRAINAGE, <sup>Forest managt.</sup> LAND USE, WATER SOURCE, GEOLOGY - SOILS, HISTORIC RESOURCES, ETC. WILL BE ASSESSED IN AN INITIAL STUDY/SCOPING FOR THIS PROJECT. ALL INFO AVAILABLE WILL BE CONSIDERED.

**Tentative Map/Tentative Parcel Map: Form and Contents**

The tentative map or tentative parcel map shall be prepared in a manner acceptable to the Director of Monterey County Planning and Building Inspection by a registered civil engineer or licensed land surveyor and shall be submitted to the Planning and Building Inspection Department along with all required fees. The tentative map or tentative parcel map shall be clearly and legibly drawn and contain the following:

1. ✓ Title block located in the lower right corner of the map which shall contain the name "Tentative Map" or "Tentative Parcel Map" and the type of development proposed.
2. ✓ Name and address of legal owner, subdivider, and person preparing the map (including registration number if applicable).
3. ✓ Assessor's parcel number(s) of the subject property.
4. ✓ Date prepared, north arrow, scale 1" = 100' and contour interval. The scale of the map may be varied by the Director of Planning and Building Inspection if it is found that the project can be effectively illustrated at a different scale.
5. ✓ A vicinity map scale (1" = 2000') showing roads, towns, major creeks, railroads and other data sufficient to locate the proposed subdivision and show its relation to the community and the current surrounding land uses.
6. ✓ Existing topography of the proposed site, including but not limited to: The contour of the land at intervals of 5 feet of elevation up to 5% slope, or lesser contour intervals as may be approved by the Director of Planning and Building Inspection. Contours shall be indicated on contiguous property for a distance of 200 feet. Every fifth contour shall be a heavier weight line.
7. ✓ The approximate location and height of major vegetation and existing structures on the property and on adjacent parcels which might affect solar access to the site(s) proposed for development. Applicants shall indicate how many of the housing units in the proposed subdivision have full southwall solar access and any other information pertinent to solar access. Structures and trees to be removed shall be so indicated. (Tentative Maps Only.)
8. ✓ The location of the floodway and/or floodway fringe boundaries as well as the approximate location of all areas subject to inundation or storm water overflow and the location, width and direction of flow of each water course.
9. ✓ The location, pavement and right-of-way width, grade and name of existing streets or highways.
10. ✓ The widths, location and type of all existing easements.
11. ✓ The location and size of existing sanitary sewers, water mains, and storm drains. The approximate slope of existing sewers and storm drains shall be indicated. The location of existing overhead utility lines on peripheral county or private roads.
12. ✓ Proposed improvements shall be shown including but not limited to:
  - A. The location, grade, centerline radius and arc length of curves, pavement and right-of-way width and proposed name of all streets. Typical sections of all streets shall be shown as well as an indication if they will be offered for dedication.
  - B. The location and radii of all curb returns and cul-de-sacs.
  - C. The location, width and purpose of all easements.
  - D. The approximate lot layout and the approximate dimensions of each lot. The number of each lot shall be indicated and shall be numbered consecutively.



- E. Proposed recreation sites, trails and parks for private or public use and other dedicated or reserved areas.
- F. Proposed common areas and areas to be dedicated to public open space. Common areas and open space parcels shall be indicated by letter designation.
- G. The location and size of proposed sanitary sewers, water mains, and storm drains and stormwater detention ponds. Proposed slopes and approximate elevations of sanitary sewers and storm drains shall be indicated.
- H. Approximate location of all rivers, watercourses, drainage channels, drainage structures and reservoirs.

13.  A subdivider's statement describing the existing and proposed use(s) of the property. The subdivider's statement shall contain the following information and shall be on the face or first sheet of the tentative map or tentative parcel map or on a separate statement to be included with the application.

- A. Existing zoning and proposed uses of the land;
- B. Measures proposed regarding erosion control;
- C. Proposed source of water supply and name of water system, method of sewage disposal and the name of sewage utility system, if sewered;
- D. Indicate type of tree planting or removal proposed;
- E. Proposed public areas to be dedicated and common area or scenic easements proposed. If common areas are proposed method of maintenance shall be stated;
- F. Proposed height of all structures;
- G. Proposed type development of lots or unit and whether they are for sale as lots or fully developed units.

14.  The name or names of any geologist or soils engineer whose services were required in the preparation of the design of the tentative map or tentative parcel map.

15.  If the subdivider plans to develop the site as shown on the tentative map in phases, a description of the proposed phases indicated on the map by a heavier weight line or included by reference in the subdivider's statement.

16. \_\_\_\_\_ Other: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**NOTE: Your development project application will not be accepted for review unless all the applicable materials, data, and reports accompany the application.**

**An application for a discretionary permit does not entitle or grant the land use for which the application has been made.**

The Director of Planning and Building Inspection may modify any of the foregoing tentative map or tentative parcel map requirements whenever the Director of Planning and Building Inspection finds that the type of subdivision is such as not to necessitate compliance with these requirements, or that other circumstances which justify such modifications.

Instructions and Procedures Given By: *M. Whitney* Date: 7-6-01

Received by: \_\_\_\_\_ Date: \_\_\_\_\_

**Advisory Committee Notice**

The Monterey County Planning Commission has appointed various citizen advisory committees to comment and recommend on development project applications. It is in your best interest to contact and attend the committee meeting.

Your application will be referred to the *Carmel Valley* Advisory Committee. The contact person for this committee is \_\_\_\_\_ at \_\_\_\_\_, if you wish to attend.

**PLEASE NOTE: It is your responsibility to contact the Advisory Committee.**

This page intentionally left blank

# **Exhibit 1b**

This page intentionally left blank.



# MONTEREY COUNTY

## Planning and Building Inspection Department

240 Church St.; P.O. Box 1208, Salinas CA 93902 (831) 755-5025; Fax: (831) 755-5487



RECEIVED

JUN 10 1999

MONTEREY COUNTY  
PLANNING AND BUILDING  
INSPECTION DEPARTMENT

### APPLICATION REQUEST FORM

Upon submittal of this Application Request Form, a planner will contact you to discuss your proposed application. In order to assist the planner in preparing for the appointment, please submit the information listed below with a \$168.00 check payable to the County of Monterey. This fee will be credited to your application if the application is submitted within 6 months.

1. Owner(s)

Name: Durrel & Nader Agha 594-9711  
Nader  
Address: 592 Light House Av (Holman Bldg)  
City: Pacific Grove State: Ca Zip: 93950 Phone: 646-1877  
Fax: 646 0898 Email: \_\_\_\_\_

2. Representative(s)/Applicant(s)

Name: Curt Hooper (Bestor Engineers Inc)  
Address: 2701 Blue Lakesport Lane  
City: Mary State: \_\_\_\_\_ Zip: \_\_\_\_\_ Phone: 373-2941  
Fax: 649 4118 Email: 01423-7681

3. Property Address/Location: Camel Valley Road, east of Camel Valley Manor

4. Assessor's Parcel Number(s): 169 011 009, 014 & 015

5. Describe Proposal: Subdivide 50 acres into 20 lots

6. Submit a Conceptual Plot Plan indicating:

- ◆ Parcel Size, Dimensions, & Access
- ◆ Existing and/or Proposed Buildings
- ◆ Existing and/or Proposed Setbacks
- ◆ Proposed Height of Structures
- ◆ Contours (if applicable)
- ◆ Existing and/or Proposed Use of Buildings
- ◆ Existing/Proposed Wells & Septic Systems
- ◆ Proposed Tree Removal (Size and Type)
- ◆ Proposed Grading Estimate (cut & fill)
- ◆ Other: \_\_\_\_\_

Applicant Signature: [Signature]

Date: 10 June 1999

Department Use Only	
File #: <u>990274</u>	Planner Assigned: <u>Whitney</u>
Zoning: <u>LDR/2.5-D-S</u>	Date Submitted: <u>6-10-99</u>
Area Plan: <u>CVMP</u>	Submitted To: <u>WIS / 6-10-99</u>
Planning Team: <u>Inland</u>	Given Out by: <u>WIS / 6-10-99</u>
Permits Required: <u>Standard Subdivision (20 lots)</u>	
Comments: _____	



Received by [redacted] Kelly 8/26/02 - Mon. Co. Planning



MONTEREY COUNTY PLANNING AND BUILDING INSPECTION DEPARTMENT  
SALINAS OFFICE ~ P.O. BOX 1208 SALINAS, CA. 93902  
(831) 755-5025 FAX (831) 755-5487  
COASTAL OFFICE ~ 2620 FIRST AVENUE, MARINA, CA. 93933  
(831) 883-7500 FAX (831) 883-3261

does not  
certify that materials  
submitted are as  
described or adequate, only that  
they were  
submitted.

Instructions and Development Project Application Procedure  
for Minor Subdivisions (Tentative Parcel Map) and  
Standard Subdivisions (Tentative Map)

The following materials, data and reports are required for submittal of your development project application where noted. This form must be returned with your application.

1.  Filing Fee 15,958
2. 27 Copies of a completed development project application as prescribed by the Director of Planning and Building Inspection.
3. 27 Copies of the tentative map or tentative parcel map. All maps shall be folded to an approximate size of 8 1/2" x 11". If multiple pages, the maps shall also be stapled and collated.
4.  Two maps per applicant - not verified  
Two copies of a slope density analysis map of the proposed project that shows the following slope categories and a tabulation of the total area (acres or square feet) within each category as specified by the Monterey County General Plan and any amendments to the Plan including Coastal Land Use Plans as certified by the State of California. The categories for the countywide General Plan are as follows: 0-19.9%, 20-29.9%, and 30%+. The following categories shall apply to the Big Sur Land Use Plan area east of State Highway 1; under 15%, over 30%. The map shall be of the same scale of the tentative map or tentative parcel map.
5. ~~Two copies of a slope analysis map indicating all areas greater than 25% slope (North County Land Use Plan Area Only). The map shall be the same scale as the tentative map or tentative parcel map.~~
6. \_\_\_\_\_ One copy and the original of the Inclusionary Housing Compliance Form.
7. \_\_\_\_\_ One transparency of each page of the tentative parcel map or tentative map (Maximum size: 8 1/2" x 11").
8.  A photocopy of the Assessor's parcel page(s) showing the parcel involved and parcels within 300' of the subject property. Applicants must indicate on the Assessor's map which parcels are included on the list of property owners.
9.  A list of the names, addresses, and Assessor's parcel numbers of all property owners within 300 feet of the property, including the owner of the subject property for which this application is filed. The list shall be taken from the most recent records of the Monterey County Assessor. If the project is located in the Coastal Zone the list must include tenants within 300 feet of the subject property.
10. \_\_\_\_\_ Sets of pre-addressed stamped envelopes to be sent (no return address) to all persons listed on the Assessor's parcel page within 300 feet of the subject property, including the applicant, owner, representative and tenants (Coastal Zone Only).
11.  Two copies of preliminary title report showing the legal owners at the time of submittal of the tentative map application.
12.  Four copies of a preliminary soils report by a registered civil engineer based upon adequate test borings. If the preliminary soils report indicates the presence of critically expansive soils or other soils problems which, if not corrected, would lead to structural defects, the Director of Planning and Building Inspection may require a soils report investigating each lot within the subdivision. This soils investigation report shall recommend corrective action which is likely to prevent structural damage to each structure proposed to be constructed in the area where such soils problems exist as well as precautions required for erosion control and prevention of sedimentation and damage to adjacent property. (See attached information from the Health Department).
13.  Septic, per applicant  
If sewage disposal for the proposed subdivision will be provided by a public or private entity, a letter or document shall be submitted from the entity to the Division of Environmental Health and the Director of Planning and Building Inspection stating that the entity can and will serve the proposed subdivision. The public entity must comply with all state and county allocation and capacity requirements. The letter or document shall also state the expiration date of such a commitment. In the event that an individual sewage disposal system will be utilized, preliminary percolation testing and soil profile analysis shall be required to be submitted along with a tentative map application. The report shall analyze at least one soil profile analysis test per lot and one percolation test hole per two lots. Soil profile analysis may be reduced if conformity to a given soil type can be established. The report submitted shall demonstrate the feasibility of the proposed lot design and density and shall address nitrate loading of subsoil surfaces when septic systems are proposed. The soil tests and percolation tests shall meet the standards of the Division of Environmental Health. The applicant shall also provide proof that sewage disposal systems, both individual and package, for all lots which are proposed to be created through subdivision will not exceed nitrate and chemical loading levels in aquifers pursuant to the Regional Water Quality Control Basin Plan. If wastewater reclamation is proposed for a subdivision, the reclamation system must comply with the Basin Plan and the California Administrative Code subject to the review of the Director of Environmental Health. (See attached information from the Health Department).
14.  If water for the subdivision will be provided by a public utility or existing water system, a letter or document from the utility or water system shall be submitted to the Director of Division of Environmental Health indicating that the utility can and will serve the proposed subdivision. The public entity must comply with all state and county allocation and capacity requirements. The letter or document shall also state the expiration date of such a commitment. Hydrological evidence shall be submitted to the Director of Division of Environmental Health to show evidence of water quality and quantity. The



applicant shall also provide proof of an assured, long-term water supply in terms of sustained yield and adequate quality for all lots which are proposed to be created through subdivisions. The water supply must meet both water quality and quantity standards expressed in Title 22 of the California Administrative Code and Title 15.04 of the Monterey County Code subject to review of the Director of Environmental Health. (See attached information from the Health Department).

15. 4 ✓ Four copies of a detailed geological report prepared in conformance with California Division of Mines and Geology standards, that addresses seismic hazards, faulting, slope stability and liquefaction potential and contains measures recommended by the geologist for any geologic hazards that are shown as a result of the report. The report shall be prepared by a California registered geologist. The report shall be subject to the approval of the Director of Planning and Building Inspection. In the case of a minor subdivision, a preliminary geologic report shall be required where it is determined that the subject project lies within a zone IV to VI geologic hazard.
16. \_\_\_\_\_ Three copies of an archaeological report prepared by a certified archaeologist (SOPA, Society of Professional Archaeologists) where the proposed project is located in a "moderate or high sensitivity" archaeological zone as shown on an archaeological sensitivity map of the General Plan, Area Plan or Coastal Land Use Plan.
17. \_\_\_\_\_ In the event the proposal is for the conversion of a mobile home park to another use, a report as prescribed by Government Code Section 66427.4 shall be submitted to address the impact of the conversion upon displaced residents of the mobile home park to be converted.
18. \_\_\_\_\_ A description of prior development activity on the site such as the removal of any vegetation, grading, etc. which may affect the proposed subdivision.
19. \_\_\_\_\_ Other: TRAFFIC REPORT,

#### Tentative Map/Tentative Parcel Map: Form and Contents

The tentative map or tentative parcel map shall be prepared in a manner acceptable to the Director of Monterey County Planning and Building Inspection by a registered civil engineer or licensed land surveyor and shall be submitted to the Planning and Building Inspection Department along with all required fees. The tentative map or tentative parcel map shall be clearly and legibly drawn and contain the following:

1. \_\_\_\_\_ Title block located in the lower right corner of the map which shall contain the name "Tentative Map" or "Tentative Parcel Map" and the type of development proposed.
2. \_\_\_\_\_ Name and address of legal owner, subdivider, and person preparing the map (including registration number if applicable).
3. \_\_\_\_\_ Assessor's parcel number(s) of the subject property.
4. \_\_\_\_\_ Date prepared, north arrow, scale 1" = 100' and contour interval. The scale of the map may be varied by the Director of Planning and Building Inspection if it is found that the project can be effectively illustrated at a different scale.
5. \_\_\_\_\_ A vicinity map scale (1" = 2000') showing roads, towns, major creeks, railroads and other data sufficient to locate the proposed subdivision and show its relation to the community and the current surrounding land uses.
6. \_\_\_\_\_ Existing topography of the proposed site, including but not limited to: The contour of the land at intervals of 5 feet of elevation up to 5% slope, or lesser contour intervals as may be approved by the Director of Planning and Building Inspection. Contours shall be indicated on contiguous property for a distance of 200 feet. Every fifth contour shall be a heavier weight line.
7. \_\_\_\_\_ The approximate location and height of major vegetation and existing structures on the property and on adjacent parcels which might affect solar access to the site(s) proposed for development. Applicants shall indicate how many of the housing units in the proposed subdivision have full southwall solar access and any other information pertinent to solar access. Structures and trees to be removed shall be so indicated. (Tentative Maps Only.)
8. \_\_\_\_\_ The location of the floodway and/or floodway fringe boundaries as well as the approximate location of all areas subject to inundation or storm water overflow and the location, width and direction of flow of each water course.
9. \_\_\_\_\_ The location, pavement and right-of-way width, grade and name of existing streets or highways.
10. \_\_\_\_\_ The widths, location and type of all existing easements.
11. \_\_\_\_\_ The location and size of existing sanitary sewers, water mains, and storm drains. The approximate slope of existing sewers and storm drains shall be indicated. The location of existing overhead utility lines on peripheral county or private roads.
12. \_\_\_\_\_ Proposed improvements shall be shown including but not limited to:
  - A. The location, grade, centerline radius and arc length of curves, pavement and right-of-way width and proposed name of all streets. Typical sections of all streets shall be shown as well as an indication if they will be offered for dedication.
  - B. The location and radii of all curb returns and cul-de-sacs.
  - C. The location, width and purpose of all easements.
  - D. The approximate lot layout and the approximate dimensions of each lot. The number of each lot shall be indicated and shall be numbered consecutively.



- E. Proposed recreation sites, trails and parks for private or public use and other dedicated or reserved areas.
- F. Proposed common areas and areas to be dedicated to public open space. Common areas and open space parcels shall be indicated by letter designation.
- G. The location and size of proposed sanitary sewers, water mains, and storm drains and stormwater detention ponds. Proposed slopes and approximate elevations of sanitary sewers and storm drains shall be indicated.
- H. Approximate location of all rivers, watercourses, drainage channels, drainage structures and reservoirs.

13. \_\_\_\_\_ A subdivider's statement describing the existing and proposed use(s) of the property.

The subdivider's statement shall contain the following information and shall be on the face or first sheet of the tentative map or tentative parcel map or on a separate statement to be included with the application.

- A. Existing zoning and proposed uses of the land;
- B. Measures proposed regarding erosion control;
- C. Proposed source of water supply and name of water system, method of sewage disposal and the name of sewage utility system, if sewered;
- D. Indicate type of tree planting or removal proposed;
- E. Proposed public areas to be dedicated and common area or scenic easements proposed. If common areas are proposed method of maintenance shall be stated;
- F. Proposed height of all structures;
- G. Proposed type development of lots or unit and whether they are for sale as lots or fully developed units.

14. \_\_\_\_\_ The name or names of any geologist or soils engineer whose services were required in the preparation of the design of the tentative map or tentative parcel map.

15. \_\_\_\_\_ If the subdivider plans to develop the site as shown on the tentative map in phases, a description of the proposed phases indicated on the map by a heavier weight line or included by reference in the subdivider's statement.

16. \_\_\_\_\_ Other: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**NOTE: Your development project application will not be accepted for review unless all the applicable materials, data, and reports accompany the application.**

**An application for a discretionary permit does not entitle or grant the land use for which the application has been made.**

The Director of Planning and Building Inspection may modify any of the foregoing tentative map or tentative parcel map requirements whenever the Director of Planning and Building Inspection finds that the type of subdivision is such as not to necessitate compliance with these requirements, or that other circumstances which justify such modifications.

Instructions and Procedures Given By:

\_\_\_\_\_ Date: \_\_\_\_\_

Received by:

\_\_\_\_\_ Date: \_\_\_\_\_

**Advisory Committee Notice**

The Monterey County Planning Commission has appointed various citizen advisory committees to comment and recommend on development project applications. It is in your best interest to contact and attend the committee meeting.

Your application will be referred to the \_\_\_\_\_ Advisory Committee.

The contact person for this committee is \_\_\_\_\_ at \_\_\_\_\_, if you wish to attend.

**PLEASE NOTE: It is your responsibility to contact the Advisory Committee.**

# **Exhibit 2**

This page intentionally left blank.

*Vista Nadera*

November 4, 2002

Nader Agha  
542 Lighthouse Avenue  
Pacific Grove, CA 93950

**Subject: PLN 990274, Standard Subdivision**

Dear Mr. Agha:

This letter is a follow up to our telephone conversation of October 23, 2002. During that conversation it was explained to you that, based on the Board of Supervisors Resolution dated February 15, 1983, subdividing is not allowed in Sub-Basin 32 as defined in the Carmel Valley Wastewater Study. A copy of the resolution was sent to you by facsimile. The proposed subdivision lies in sub basin 32 and 31. As previously mentioned sub basin 32 is closed for subdivisions. A map of the subdivision would have to be submitted to this Office with an overlay of the two sub basins so a determination of the possibilities of subdividing in sub basin 31 could be evaluated. Upon completion of our evaluation, a determination of what would be required for soils and percolation tests could then be discussed.

Additionally, the Initial Water Use and Nitrate Impact Questionnaire indicated an increase in water use. As discussed, the increase in water use triggers the need for a project specific hydrogeological report to demonstrate the existence of a long-term water supply for any proposed project. This report will have to be prepared by a hydrogeologist under contract with the county at the applicant's expense. Your application will remain incomplete until a hydrogeologist makes a determination that a long-term water supply exists for the proposed project.

If you have any questions I can be reached at 755-4570.

Sincerely,

Roger Beretti, R.E.H.S.  
Environmental Health Specialist III  
Land Use Program

Cc: Bestor Engineers, Carl Hooper

This page intentionally left blank



# **Exhibit 3**

This page intentionally left blank.



**BESTOR ENGINEERS, INC.**  
CIVIL ENGINEERING - SURVEYING - LAND PLANNING  
9701 BLUE LARKSPUR LANE, MONTEREY, CALIFORNIA 93940  
(831) 373-2941 • SALINAS 424-7681 • FAX 648-4118

15 April 2003

MONTEREY COUNTY HEALTH DEPARTMENT  
1270 Natividad Road  
Salinas, CA 93906  
Via Fax: 755-4880

Attn: Roger Beretti

Re: **Vista Nadura, PLN 990274**  
**Carmel Valley (Agha)**

Dear Mr. Beretti:

In your letter to Nader Agha dated 11/4/02, you stated in paragraph two that a hydrogeologic report would be required to demonstrate the existence of a long term water supply. Mr. Agha urges you to reconsider that requirement, on the basis of the historic land uses on the site, and their related water consumption:

- a. Domestic water has been supplied to the property by Cal-Am for many decades. A letter from Stephanie Locke at the Water Management District dated 3/1/99 (copy attached) stated that the District was satisfied that historic Cal-Am use over an eight-year period established an average annual use of 2.43AF/yr.
- b. The existing well was drilled by Salinas Pump Company in 1978 (750 feet plus deep, ceased to 750, perforated 310 to 750, and equipped with a 40gpm pump). It has been used for most of the intervening 25 years for irrigation and for dust suppression in the riding rings and paddocks. Most probable usage has been five to seven acre feet per year. This well produces water at 870 ppm TDS, slightly high in sulfate (280) and iron (0.83). It is intended to be used for irrigation and sub-potable interior uses (primarily for toilets) at an average of 0.217AF/yr., whereas the Cal-Am water supply can be used at an annual average of 93gpd per residence for drinking, cooking, showering, and laundry purposes (0.103AF/yr per residence).

Gross use will thus remain within the current and historic total use of about 0.32AF/yr. per dwelling, or a total of 6.4AF/yr. for the 20-lot project. There is a potential net reduction of 1 to 3AF/yr.

Note that the well perforations start at 310, below the shales and clays that occur from 158 to 288, a potentially effective aquaclude that could prevent annual variations in shallower aquifers from having any effect. The sands that provide water to this well then extend for more than 440 feet of thickness. This also affects the total absence of nitrates as exhibited in the 1979 report.

Sincerely,  
BESTOR ENGINEERS, INC.

Carl L. Hooper

cc: Nader Agha

This page intentionally left blank

# **Exhibit 4**

This page intentionally left blank.

BOHNEN, ROSENTHAL & DUSENBURY  
AN ASSOCIATION OF LAW PARTNERSHIPS

THOMAS P. BOHNEN  
ROBERT E. ROSENTHAL  
DOUGLAS K. DUSENBURY  
ROGER D. BOLGARD  
BARBARA J. MAY

555 ABREGO STREET  
SECOND FLOOR  
POST OFFICE BOX 1111  
MONTEREY, CALIFORNIA 93942  
TELEPHONE (831) 649-5551  
FACSIMILE (831) 649-0272  
MTRYLEGAL.COM

March 18, 2005

Monterey County  
Planning and Building Department  
2620 First Avenue  
Marina, CA 93933

*Req. to withdraw  
172 unit Plan*

Re: Vista Nadura Subdivision, Carmel Valley

Gentlemen:

Following the March 3, 2005, meeting at the planning office regarding the above project, Mrs. Durell Agha, based upon the advice she has received from her representatives and the County Staff's recommendations, determined that the subject application (rezoning for 172 multi-family dwellings) should be withdrawn. She requests that fees submitted with that application in July 2004 be refunded. On her behalf, please consider this the formal withdrawal of that application and notwithstanding, I would request that multi-family uses be considered as an alternative in the preparation of environmental documentation.

The subject meeting was attended by Scott Hennessy and Alana Knaster of Planning, Efren Iglesias representing County Counsel, Robert Rosenthal and Carl Hooper representing Mrs. Durell Agha. At that meeting, staff position was that there existed inadequacies in water supply, sewage disposal and traffic capacity of sufficient magnitude that the application cannot be processed. Staff position also indicated that the original 20-lot subdivision Tentative Map (PLN 99-02f74) could only proceed to be considered with the agreement and understanding that only the number of dwellings that can be served with the existing water rights that have been acknowledged by the Monterey Peninsula Water District (i.e., 2.49 AF per year) could be improved and developed, and the balance of the 20 lots in the processed Tentative Map will be permitted to be improved and developed only when adequate future water supply is available.

As you know, the 20-lot Tentative Map currently shows a six-lot first increment, to be followed upon clearance of traffic limitations by a subsequent increment. That application was submitted prior to completion of the Carmel Valley Road Safety Improvements in 2003, which included construction of a two-way left turn lane along project frontage and to the east. That traffic improvement should be considered adequate to relieve the limitation to pre-project traffic generation rates.

That Tentative Map (99-0274) also shows a dual water source, consisting of the 2.49 AF per year resultant from cessation of equestrian uses, plus use of the existing onsite 40gpm well to supply subpotable landscape water. Fire protection would be provided by extension

*3/22/05  
PZ*

March 18, 2005  
Page 2

from Cal Am mains. I do not agree that it is proper to preclude use of the onsite well, and I ask that environmental review include consideration of the dual source water supply.

Sincerely,

BOHNEN, ROSENTHAL & DUSENBURY

ROBERT E. ROSENTHAL

RER/ihl

cc: Dale Ellis  
client



# **Exhibit 5**

This page intentionally left blank.



**BESTOR ENGINEERS, INC.**  
CIVIL ENGINEERING - SURVEYING - LAND PLANNING  
9701 BLUE LARKSPUR LANE, MONTEREY, CALIFORNIA 93940  
(831) 373-2941 • SALINAS 424-7681 • FAX 649-4118

375

06 April 2006

MONTEREY COUNTY PLANNING AND BUILDING INSPECTION  
168 Allsal Street, 2nd Floor  
Salinas CA 93901

**Re: Vista Nadera - Carmel Valley Water Data**

Attn: Bob Schubert

Dear Bob:

Mr. Agha informs me that you are awaiting supplemental data regarding the water system. Enclosed is a duplicate package of the information provided to Mimi Whitney in 2001, and to John Hodges in 2004.

As you know, the proposal was for 20 lots of single family homes, i.e. 63 occupants. If onsite inclusionary is added, it could result in seven additional multi family dwellings (rentals) of two bedroom units, potentially 28 additional occupants, or 91 total persons. Assuming that Cal-Am's potable system is limited to kitchen sink and lavatory use (probable 15 gpd/person, or about 1,400 gpd = 1.6 AF/year) and that non-potable well source system provides the remainder, 60 gpd/person or 6,000 gpd = 6.72 AF/year, plus irrigation of one half acre per d.u., or 13.5 acres at 2.0 ft/yr = 26 AF/yr or grand total well use of 32.7 AF/yr (an average of 29,200 gpd). This would require well operation at 40 gpm for 730 minutes per day average - which is 12.2 hours of operation per day. (i.e.: 60 minutes on, 60 minutes off, average)

Please note that the intent of drilling the deep well in 1978 was to show that this is an independent source, not affecting Cal-Am's Carmel Valley aquifer. Note that the well penetrated 44 feet of "chalk rock", 114 feet of sands that were cased off, then 130 feet of clays and shales (also cased off), and another 35 feet of good sand (also cased off) before reaching top of perforations at 310 feet. Production levels (perforated) then extended from 310 to 750 feet, at the bottom of the perforations.

Also, note on the E-log the results of the grab samples at various depths, which showed TDS measurements ranging from 700 to 860 in the perforated (310 to 750 feet) zone. This is compared to the 200-300 TDS levels in Cal-Am's higher zones. Our hydrogeologist, Dick Thorup, and our driller, Aaron Thornton, both stated in 1978 that this marked differential, plus the existence of the non-perforated upper 310 feet, were positive proof that this was a water source independent of, and unaffected by, the Cal-Am production aquifer.

We are certain that you and the outside consultants that will prepare the EIR will agree with that conclusion.

Sincerely,  
BESTOR ENGINEERS, INC.

Carl L. Hooper

cc: Nader Agha

This page intentionally left blank

# **Exhibit 6**

This page intentionally left blank.

# MONTEREY COUNTY

## RESOURCE MANAGEMENT AGENCY

---



PLANNING & BUILDING INSPECTION DEPARTMENT, Scott Hennessy, Director

168 W. Alisal St., 2<sup>nd</sup> Floor  
Salinas, CA 93901

(831) 755-5025  
FAX (831) 757-9516

April 20, 2006

Mr. Nader Agha  
542 Lighthouse Avenue  
Pacific Grove, CA 93950

Subject: Vista Nadura Subdivision (PLN990274)

Dear Mr. Agha:

On January 18, 2006 we met to discuss additional information that is needed for the EIR consultant to complete a proposal for the Vista Nadura Subdivision. On April 11, 2006, I received a letter from Bestor Engineers with some of the information (i.e., regarding the water system) that was identified at that meeting. However, several of the items that were identified at the meeting have not been submitted. The additional information that is still required is as follows;

1. AMBAG 2003 air photograph for this area;
2. Update of 1978 geotechnical report covering only the current 50 acre project area;
3. Tree location map;
4. Data showing that the proposed drainage system will meet County standards;
5. Statement regarding the number of horses currently at the site;
6. Sewer generation estimates for the 172-unit alternative; and
7. List of all technical studies that have been prepared for the project and submitted to the County.

Please submit the above information so that the consultant can complete a proposal to prepare the EIR. If you decide not to submit the information, please me know. As we discussed at the meeting, this would result in additional costs to prepare the EIR.

Sincerely,

Bob Schubert, AICP  
Senior Planner

Cc: Carl Hooper, Bestor Engineers  
Andi Culbertson  
Mike Novo  
Alana Knaster  
Dale Ellis

This page intentionally left blank



# Exhibit 7

This page intentionally left blank.



# BESTOR ENGINEERS, INC.

CIVIL ENGINEERING - SURVEYING - LAND PLANNING  
9701 BLUE LARKSPUR LANE, MONTEREY, CALIFORNIA 93940  
(831) 373-2941 • SALINAS 424-7681 • FAX 649-4118

10 July 2006

MONTEREY COUNTY  
PLANNING & BUILDING INSPECTION  
168 Alisal Street, 2nd Floor  
Salinas CA 93901  
**Via Hand Delivery**

Attn: Bob Schubert

**Re: Vista Nadura Subdivision (PLN 99-0274)**

Dear Bob:

In response to your 4/20/06 letter to Mr. Agha, we herewith provide responses. First, we have added the on-site inclusionary housing in the form of seven rental units, or 26% of the new total of 27 dwellings (20 single family lots, one acre minimum, plus seven low income rentals). This still falls within the slope density allowable of 27.3 dwellings.

The rental units will be two bedroom (intended for occupancy by three persons per dwelling) and the apartment is one bedroom (limited to two occupants). Total occupancy will thus be 20 persons. This will produce 1,500 gpd of wastewater, to be handled by a single 3,000-gallon septic tank. This parcel is 7.3 acres, suitable for up to 2,200 gallons per day at 300 gpd per acre. Percolation tests made in November 2002 on three representative areas of this 7.3-acre parcel, showed percolation rates of 2.08 to 2.76 inches per hour, more than ample for the proposed use.

We have also increased water storage capacity for the mutual water company, now showing 36,000 gallons (versus probable 19,000 gpd usage). Fire protection will be by Cal-Am, as will the potable water needs (at 15 gpd x 20 persons = 300 gpd, or 0.34 acre feet per year).

Please note that the density bonus of seven dwellings is within the Section 65915(a)(1) requirement which states that the bonus shall be increased by 1.5% for each unit above the basic 20%, up to a maximum of 35%. Hence our usage of 7/20 = 35% above the basic 2.5-acre dwelling unit RDR/2.5 zoning classification.

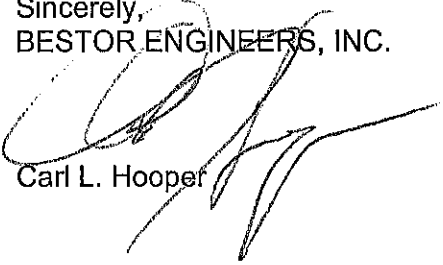
Our responses to specific requests in you 4/20/06 letter are:

1. AMBAG mapping: enclosed at 1"=150'.
2. Geotechnical Report: The report by Geoconsultants (Jeremy Wire) covered the entire 1,300 acres, but it is applicable to the southerly 50 acres. We feel that an "update" is unnecessary.
3. Tree Locations: Are shown on the Tentative Map, just as they have been since the mid 1990s.

4. Drainage Analysis: The 2001 report has been revised, primarily due to the addition of the inclusionary housing on Lot 21.
5. Horse Operation: Mr. Agha reports that the current number of horses stabled on the property is 25.
6. Sewer: The sewer for the alternate 172 multi-family dwellings is outlined in the 7/12/06 letter to Mr. Agha (copy attached). This outlined four possible solutions:
  - a. High level treatment (probably micro-filtration with underground disposal).
  - b. Normal treatment (with spray disposed on adjacent land).
  - c. Raw sewage pumped to Carmel Valley Ranch (Cal-Am).
  - d. Raw sewage pumped to Carmel Area Wastewater District (at existing main from Del Mesa Carmel).All alternatives would reach \$10,000 to \$12,000 per dwelling unit in 2004 costs, which are not out of line with the probable value of the dwelling units.
7. Prior studies provided to the county include:
  - a. Tentative Map for 20 dwelling units
  - b. Attached Tentative Map adding seven inclusionary units
  - c. 2003 Tentative Map for 172 multi-family units.
  - d. Percolation tests, including maps, test results and correspondence regarding results of Montgomery study.
  - e. Prior drainage analysis, supplemented here (Hooper)
  - f. Preliminary Soils Report (Hooper)
  - g. Preliminary Traffic Analysis (Hooper)
  - h. 1978 Geotechnical Study by Geoconsultants
  - i. 1979 EIR by Larry Seeman Associates

We hope that you will find this information satisfactory to qualify as a completed filing so preparation of the EIR may continue.

Sincerely,  
BESTOR ENGINEERS, INC.

  
Carl L. Hooper

cc: Nader Agha

**VISTA NADURA  
PRELIMINARY DRAINAGE ANALYSIS  
W.O. 3782.01  
3 MARCH 2001  
Revised 7 July 2006**

Vista Nadura is a proposed 20-lot subdivision on 50 acres in Carmel Valley, Monterey County California. It lies northerly of, and wraps around Carmel Valley Manor. It contains three small sub-watersheds that drain to the south, and abuts the larger Canada de la Ordena to the east. Each sub-watershed is analyzed below.

Design rainfall for improvements in Monterey County is the 10-year rainfall, defined by Plate 25 of County Standard Details to be:

2 year intensity = 0.62 iph

10 year = 1.48 x 2 yr. = 0.91 iph

Peak intensity for the three westerly watersheds is assumed to about time of concentration = 20 minutes, when intensity is 1.58 iph. (Canada de la Ordena would be at 45 minutes, I = 1.04 iph.)

Runoff from impervious surfaces is estimated to be 95%.

Additional runoff in a 10-year storm, which is the basis for detention required, is then derived to be  $Q = AIR = 1.58 \times 0.95 A = 1.50 A$  or 1.5 cubic feet per second per acre of impervious surfaces.

The watershed above the three westerly creeks is all quite similar, with the upper ridge in the range of 400 to 500 feet above the project and 2,000 to 2,500 feet distant. All are heavily wooded, with mid slopes as steep as 25 to 30%, yielding probable runoff coefficient of 10 – 15%, rising to as high as 30 to 35% in a 100 year storm with substantial precedent rainfall.

The derived natural runoff from these small sub-watersheds is then:

10 year  $Q = AIR = 0.125 (1.04) A = 0.130$  cfs/acre

100 year  $Q = 0.32 (1.61) A = 0.517$  cfs/acre

The Canada de la Ordena watershed, on the contrary, is more than half mile of gentle grassy slope, at 4 to 5%, recently (1998) deeply incised by a 10 to 15 foot wide, 8 to 10 foot deep ravine. It has more than 1,000 acres of watershed, including much grassy area, and a few wooded areas. Its probable runoff coefficient is 8 to 10% in a 10-year storm, rising to 25 to 30% in a 100-year storm. It will not be directly detained by the east (Lot 15 – 19) detention pond but house and street runoff will be impounded prior to creek entry.

Watershed areas for detention ponds are:

Pond	Watershed Acres	Homes	Street sf. X 1,000	Total added impervious, acres	Additional Runoff, cfs	Natural Runoff, 10 yr.	Final Runoff	Detention 10 yr.	100 yr Spillway
West	8.0	4*	18.8**	1.07	1.35	1.80	2.35	0.11	6.3
Center	62.0	10	48.0	2.70	3.63	14.70	21.00	0.27	44.0
East	16.0	5	19.5***	1.25	1.68	2.27	3.83	0.13	11.5
Ordona	1002	0	0	0	0	93.8			422.0
West Drive	33.2	0	0	0	0	4.32			14.1
Lot 20/21	8.5	3 equiv.	12.0	0.76	1.01	2.01	3.03	0.08	9.1

\* At average 7,000 sf impervious

\*\* Including entry drive

\*\*\* Including Doud to Carmel Valley Road

Detention required is calculated as 3 hour runoff from impermeable, 84% x 1.46 inches = 4450 cu ft per acre impervious

The creek at the west drive (Lots 2 & 3) drains 33 acres, which should yield a 10 year peak flow of about 4.0 cfs after diversion of part of Lot 4 to the detention pond. This is shown to dissipate above Carmel Valley Road. This is apparent on the USGS quad, where it naturally curves east through the Movahedi property. Detailed topo in 1978 shows it to be diverted onto the St. Dunstan property by a low earth berm. Whether it can continue along that route will be determined in final design, it may be necessary to pipe it to Carmel Valley Road. This would require a 12" RCP or 10" plastic pipe. The flow through that pipe will actually be a reduction from natural flow, since most of Lot 4 runoff, and all of the developed area, will be diverted for detention. Outflow from the detention pond will be at very reduced rate onto the Church parking lot.

The pond on Lot 5 will include a spillway to discharge runoff from the area above the homes as sheet flow, just as it presently flows through Wodecki and De Puy, but at a reduced rate.

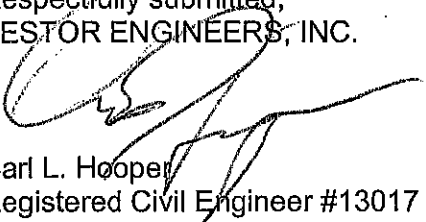
The creek between Lot 14 and Lot 15 will continue to discharge the approximately 7.5 to 8.0 cfs that naturally flows at that point behind the carports on Carmel Valley Manor. No onsite runoff will be directed to that location.

The runoff from the approximate 15 acres above homesites on Lots 15-19, roughly 2 cfs, will join with the 3 cfs from those lots for detention at the east pond. This pond will be constructed separately from the Canada de la Ordena 36" culvert, so that only reduced rate discharge from the pond will flow to the main creek. Since Canada de la Ordena is to be affected only by the 350 feet of Doud Road improvements, and since Pond 15/19 intercepts some natural flow that would otherwise reach the creek, there is no perceptible increase in downstream flow to Coastal Cypress.

The Koretsky King "Monterey County Master Drainage Plan" dated 1975 showed watershed 14 (Canada de la Ordena) to be enhanced with structure 23 b., for extension direct to the Carmel River. That structure was intended to be a double 48-inch culvert with 1,600 lineal feet of channel improvements. The Master Plan did not site any specific source of funding for that very costly improvement (estimated at \$15,000 in 1975, but more probably in excess of \$1.0 million in today's market). The 1,300-foot downstream right-of-way for a 10' wide bottom, 4.5' deep, 30' wide top channel would require at least 1.5 acres. Including crossings to serve several adjacent homes, this land acquisition alone could exceed \$500,000.

Construction would be at least \$300,000 to 350,000. This should be a public project funded from flood control sources, not a private project. If the 1,200 acres of Canada de la Ordena was to be developed at a reasonable density, then perhaps it could be partially funded by that developer.

Respectfully submitted,  
BESTOR ENGINEERS, INC.



Carl L. Hooper  
Registered Civil Engineer #13017  
State of California  
Expires: 31 March 2005

This page intentionally left blank



# **Exhibit 8**

This page intentionally left blank.

MONTEREY COUNTY  
RESOURCE MANAGEMENT AGENCY



PLANNING & BUILDING INSPECTION DEPARTMENT, Scott Hennessy, Director

168 W. Alisal St., 2<sup>nd</sup> Floor  
Salinas, CA 93901

(831) 755-5025

FAX (831) 757-9516

RECEIVED

AUG - 7 2006

Bestor Engineers

August 3, 2006

Mr. Nader Agha  
542 Lighthouse Avenue  
Pacific Grove, CA 93950

RECEIVED

DWP / ENH

Subject: Vista Nadura Subdivision (PLN990274)

Dear Mr. Agha:

The County has reviewed the additional information and revised plan for the subject project that was submitted on July 10, 2006. All of the County Department have now deemed the application complete with the exception of Environmental Health (see the attached memorandum dated July 31, 2006). The information requested from Environmental Health must be submitted before the subject application (PLN990274) can be deemed complete.

If you have any questions regarding the requested information that has been requested by Environmental Health, please contact Roger Van Horn at (831) 755-4763.

Sincerely,

Bob Schubert, AICP  
Senior Planner

Cc: Carl Hooper, Bestor Engineers  
Mike Novo  
Burke Peas

# Project Referral Sheet

Planning & Building Inspection Department  
168 W Alisal St 2nd Floor  
Salinas, CA 93901  
(831) 755-5025

w.u.v.3@better.com

649-4118

TO: FIRE DEPARTMENT                      HEALTH DEPARTMENT  
PUBLIC WORKS                              WATER RESOURCES AGENCY  
PARKS DEPARTMENT                      OTHER: \_\_\_\_\_

PLEASE SUBMIT YOUR COMMENTS FOR THIS APPLICATION BY: Monday, July 31, 2006

**Project Title:** AGHA DURELL D TR  
**File Number:** PLN990274  
**File Type:** SUB  
**Planner:** SCHUBERT  
**Location:** N OF LOS ARBOLES RD CARMEL VALLEY  
**Assessor's No:** 169-011-009-000-M

**Project Description:**

STANDARD SUBDIVISION TENTATIVE MAP FOR THE SUBDIVISION OF AN EXISTING LOT OF RECORD OF 50 ACRES INTO 20 LOTS RANGING IN SIZE FROM 1.1 ACRES TO 5.2 ACRES, INCLUDING GRADING FOR THE CONSTRUCTION OF 20-FOOT WIDE ACCESS ROAD; AND A USE PERMIT FOR DEVELOPMENT ON SLOPES GREATER THAN 30 PERCENT (ACCESS ROAD). THE PROPERTY IS LOCATED NORTH OF LOS ARBOLES ROAD, CARMEL (ASSESSOR'S PARCEL NUMBERS 169-011-009-000, 169-011-014-000 AND 169-011-015-000), MID CARMEL VALLEY AREA.

**Status:** ~~COMPLETE~~/INCOMPLETE (circle one)

**Recommended Conditions:**

The Health Department has reviewed the above referenced application and has considered the application incomplete. The following reports and/or information are needed prior to considering the application complete.

**PROJECT DESCRIPTION**

1. A full and complete description of the project needs to be submitted for approval. Upon receipt of project description, the specific location of the project in the Carmel valley Wastewater Study (Montgomery Study) will be determined and if additional information is requirement the applicant will be notified.

**SEPTIC SYSTEM ISSUES**

2. Please contact Mr. Roger Van Horn at 831-755-4763 to arrange an on-site visit to determine septic system feasibility of the proposed project as per Chapter 15.20 MCC (Septic Ordinance) and "Prohibitions", Central Coast Basin Plan, RWQCB.
3. Additional soils and percolation testing are required on the proposed lots for review and approval by the Division of Environmental Health to prove that the site is suitable for the use and that it meets the standards found in Chapter 15.20 MCC (Septic Ordinance), and "Prohibitions", Central Coast Basin Plan, RWQCB. Contact the Division prior to proceeding to determine the scope of work and to oversee soil testing. The testing and report format

**Signature:** Roger Van Horn                      **Date:** July 31, 2006

# Project Referral Sheet

Planning & Building Inspection Department  
168 W Alisal St 2nd Floor  
Salinas, CA 93901  
(831) 755-5025

TO: FIRE DEPARTMENT                      HEALTH DEPARTMENT  
PUBLIC WORKS                              WATER RESOURCES AGENCY  
PARKS DEPARTMENT                      OTHER: \_\_\_\_\_

PLEASE SUBMIT YOUR COMMENTS FOR THIS APPLICATION BY: Monday, July 31, 2006

shall be completed as per the adopted soil report policies of the Department.

4. Information to determine conformance with the Carmel Valley Wastewater Study, Montgomery Study, is necessary for determination of the feasibility of the wastewater disposal.

## WATER ISSUES

5. In the event that the development meets the definition of a water system and will require the establishment of a permitted water system and if a individual well or wells are to be used, water quality and quantity information meeting all applicable State and County requirements shall be submitted to the Director of Environmental Health for review and approval as evidence that an adequate water supply exists for the project. The well or wells shall first undergo a minimum of a 72-hour continuous pump test to determine the yield of the well to meet the required quantity. The pump tests shall be made no earlier than June 1 of each year and no later than the first significant rainfall event of the wet season. A representative of the Division of Environmental Health shall witness the pump tests.
6. Please refer to the attached "Water System Completeness Requirements" check sheet. This is provided to further detail the requirements of MMC Title 19, Subdivision Ordinance. The items listed may or may not be necessary depending on your final project description.
7. Since Initial Water Use Questionnaire submitted indicates an intensification of water use, a determination shall be made by a hydrogeologist under contract to the County as to the requirement for any additional water resources information. If any hydrologic or hydrogeologic reports are deemed necessary, the County will contract directly with a qualified consultant, at the applicant's expense, upon request of the applicant. A written request to the Division of Environmental Health is necessary to commence with the preparation of a scope of work.
8. The Monterey Peninsula Water Management District (MPWMD) needs to be advised of this project so they may make comments regarding any specific concerns they might have as to water intensification usage. Please contact Henrietta Stern at the MPWMD for information regarding requirements. MPWMD has requested MCDDEH to advise applicants to enter the MPWMD "Preapplication Conference".

Signature: Roger Van Horn

Date: July 31, 2006

2

This page intentionally left blank

# **Exhibit 9**

This page intentionally left blank.



# MONTEREY COUNTY



DEPARTMENT OF HEALTH LEN FOSTER, Director

ADMINISTRATION  
ANIMAL SERVICES  
BEHAVIORAL HEALTH

CLINIC SERVICES  
COMMUNITY HEALTH  
EMERGENCY MEDICAL SERVICES

ENVIRONMENTAL HEALTH  
OFFICE OF THE HEALTH OFFICER  
PUBLIC ADMINISTRATOR/PUBLIC GUARDIAN

November 30, 2007

Nader Agha  
Carl L. Hooper

Bestor Engineers, Inc.  
9701 Blue Larkspur Lane,  
Monterey, CA 93940

**RE: Vista Nadura Subdivision Proposal, PLN990274, Carmel Valley**

Dear Mr. Agha,

Environmental Health Division (EHD) would like to expedite your project's planning review and to do that we need sufficient information to assess your project's impact on public health and safety. You indicated that the information that we had requested in the Incomplete Notices of September 23, 200~~5~~<sup>2</sup> & July 31, 2006 had already been submitted to EHD. Unfortunately, this information must have been lost or misplaced since staff was unable to find the needed information in the project file, for this we apologize.

The incomplete notices had requested the following information:

1. Submit a complete project description.
2. Provide a map of the proposed subdivision in relation to the Carmel Valley Wastewater Study that was conducted by Montgomery Engineers (i.e. a map of the proposed project with an overlay of the pertinent sub basins).
3. Submit a soils and percolation testing report.
4. Conduct a source capacity test (i.e. 72-hour pump test) on the well or wells that will provide the water supply for the proposed water system.
5. Provide information regarding the proposed water supply required by Monterey County Code Title 19.

On November 9, 2007 a packet of documents was submitted to Environmental Health at a meeting with Planning Department and Environmental Health to discuss the status of your project. This packet was to replace the missing records in our file.

Staff have reviewed the information provided at the November 9, 2007 meeting. The following identifies, 1) those issues that have insufficient information to consider the application complete and proceed with the EIR preparation; and 2) those issues that must be addressed in the EIR.

**I: Project Description.**

The Permits Plus Program currently describes the project as follows:

*Standard Subdivision Tentative Map For The Subdivision Of An Existing Lot Of Record Of 50 Acres Into 20 Lots Ranging In Size From 1.1 Acres To 5.2 Acres, Including Grading For The Construction Of 20-Foot Wide Access Road; And A Use Permit For Development On Slopes Greater Than 30 Percent (Access Road). The Property Is Located North Of Los Arboles Road, Carmel (Assessor's Parcel Numbers 169-011-009-000, 169-011-014-000 and 169-011-015-000), Mid Carmel Valley Area.*

Documents have been submitted indicating that you are proposing seven inclusionary housing units, which is not reflected in the project description. If the project includes seven inclusionary housing units, the project description should be modified to include the inclusionary housing units. This revision was requested in the July 31, 2006 Incomplete Notice and as yet to be accomplished.

**II: Wastewater.**

The July 6, 2006 tentative map indicates an individual septic system on each lot and a community septic system on Lot 21 for seven inclusionary housing units. Monterey County Code (MCC), 19.03.015 Tentative map--Additional data and reports (k) reads as follows:

*If sewage disposal for the proposed subdivision will be provided by a public or private entity, a letter or document shall be submitted from the entity to the Division of Environmental Health and Director of Planning and Building Inspection stating that the entity can and will serve the proposed subdivision. The public entity must comply with all State and County allocation and capacity requirements. The letter or document shall also state the expiration date of such a commitment. In the event that an individual sewage disposal system will be utilized, preliminary percolation testing and profile analysis shall be required to be submitted along with a tentative map application. **The report shall analyze at least one soil profile analysis test per lot and one percolation test hole per two lots.** Soil profile analysis may be reduced if conformity to a given soil type can be established. **The report submitted shall demonstrate the feasibility of the proposed lot design and density and shall address nitrate loading of subsoil surfaces when septic systems are proposed.** The soil tests and percolation shall meet the standards of the Division of Environmental Health. The applicant shall also provide evidence proof that sewage disposal systems, both individual and package, for all lots which are proposed to be created through subdivision will not exceed nitrate and chemical loading levels in aquifers pursuant to the Regional Water Quality Control Basin Plan. ...*

- A) It is recommended that the applicant investigate the feasibility of connecting to the Carmel Area Wastewater District (CAWD) or to the adjacent sewer system of Canada Woods. September Ranch will be connecting to CAWD and may provide opportunities for connection CAWD. EHD will be recommending that the EIR discuss the feasibility of the potential connection to the Carmel Area Waster Water District or the Canada Woods wastewater system.

- B) The July 2006 map shows a community septic system on lot 21. EHD has indicated since November 17, 1980 in a letter to Carl Hooper from Roger Ponessa that a community septic system is not acceptable. This was also discussed at several meetings with the applicant on January 18, 2005, July 31, and August 1, 2006. Community septic systems have proven to be problematical and have a high rate of failure. Also, EHD's experience with community septic systems demonstrates that maintenance of these systems is extremely difficult. The community septic system that is being proposed is for the affordable housing units. The residents for this type of housing are usually financially challenged and are the least likely to be able to support the Technical, Managerial, and Financial resources needed to assure a safe and properly functioning system.
- C) The nitrate loading from onsite disposal must be evaluated in a Hydrogeologic report per MCC 19.03.015 of MCC. This is required in order to consider the application complete .
- D) The lot that the well exists on shall be a minimum of 2.5 gross acres if onsite wastewater disposal is proposed.
- E) Soil Borings and Percolation Tests: MCC 15.20.C.(1)(a) requires that all test results be presented to the Health Department and the test report shall include the following:

*(d) A report of all test results must be presented to the Health Department. Such report shall include a topographic map showing property lines, any adjacent wells, recorded well lots, springs, water courses, or drainage channels within 100 feet of the property lines, reservoirs within 200 feet of property lines, as well as within property lines. Such report shall indicate the locations of existing and proposed structures on the property and easements on the property. The Assessor's Parcel Number shall be placed on both the map and the reports. The test report shall contain the following information:*

- 1) Assessor's Parcel Number*
- 2) Minor Subdivision Number or Major Subdivision Name*
- 3) Date or Period of Testing*
- 4) Soil Logs*
- 5) Person Performing Test and License or Registration Number*
- 6) Percolation Test Results*
- 7) Conclusions and Recommendations: This section shall specifically state whether the lot(s) meet(s) the standards found in this Chapter. Specific recommendations shall be made about the location and design of the septic tank system(s).*

The test results that were presented to the Health Department do not constitute a soils analysis and percolation report that conforms to MCC 15.20. The document that was submitted to EHD in a letter from Mr. Hooper to Roger Beretti on October 1, 2003 was raw data and a summary sheet of testing results. It did not include analysis, conclusions or specific recommendations for septic design for each proposed lot.

The percolation test results indicate that several of the lots were very close to failing, either too slow or too fast. When tests fail or are marginal retesting is needed to confirm the

testing results to assure the validity of septic disposal feasibility review. A complete report of all soils analyses must be submitted to EHD for review and approval prior to considering the application as complete.

- F) Montgomery Wastewater study/ Carmel Valley Master Plan Sub basin 32 issues. On February 15, 1983 the Monterey County Board of Supervisors adopted a resolution that sub basin 32 (and others) was deemed to have been saturated as far as safe wastewater disposal was planned, thus no further subdivisions were allowed for this sub basin. This was the conclusion as evaluated in the Carmel Valley Wastewater Study prepared by James M. Montgomery Consulting. The Carmel Valley Wastewater Study was adopted as part of the Carmel Valley Master Plan. The proposed project appears to include lots within the sub basin 32, which cannot have any further subdivision with onsite wastewater disposal.

A map was requested to be submitted to the Health Department that depicts the proposed lots and an overlay of sub basin 32. This has been requested on several occasions as well as in the incomplete notices that were sent to the applicant. A map was submitted to Roger Beretti of EHD on October 1, 2002, however that map did not supply the information that was requested.

In a letter from Mr. Hooper to Roger Beretti on April 14, 2003, Mr. Hooper discusses the sub basin 32 issues and attached a "1'- 400' markup". This information was also unsatisfactory and not responsive to EHD requests. To date the Health Department has not received a map with the requested information. The Health Department cannot approve of any lots within sub basin 32 being served by onsite wastewater system.

EHD acknowledges the receipt of letters from Bestor Engineers, (Carl Hooper to Mary Anne Dennis) on June 5, 2003 and October 1, 2003 to Roger Beretti in which Mr. Hooper contends that the Carmel Valley Wastewater Study should not apply to this project. It is not within the purview of EHD to change this requirement. The Carmel Valley Master plan was predicated on this document. Thus, other issues such as traffic and the total number of lots allowed for creation would need to be reevaluated if the findings in this report were modified.

- G) In March of 2007, Regional Water Quality Control Board directed Monterey County to conduct a new study and develop an Onsite Wastewater Management Plan for Carmel Valley. The Regional Board's direction is a result of concern for the urbanization of that portion of Carmel Valley that uses individual sewage disposal systems and potential impact to public health and water quality. Any reconsideration of the Montgomery Engineers' Report would be done during the study that would then be the basis for developing an Onsite Wastewater Management Plan for Carmel Valley. The results of this study would have to be considered for inclusion into the Carmel Valley Master Plan.

### **III: Tentative Map Requirements.**

- A) The July 2006 proposed tentative map indicates a Plan line on the map for expansion of Carmel Valley Road. This further reduces the availability of space for drain fields. Drain

fields may not be proposed within this Plan line. The Plan line must be discussed in the EIR and the Public Works Department must comment on this issue.

- B) Prior to commencement of the EIR EHD must see a map that identifies either the plan to connect to an existing wastewater system or adequate to dispose of waste. The proposed septic areas must be demonstrated to conform to the requirements of the Montgomery report (areal application rate of sewage per acre and the design application rate of the individual leach lines), the RWQCB and MCC 15.20.
- C) Scenic Easements are identified on the July 2006. Tentative map proposal. The acreage assigned to them does not appear to correspond with the acreage assigned to the buildable portion of the property. For example, lots 12, 13, and 14 appear to be mislabeled based on a visual comparison of the size of the two areas. The map should identify road cuts that may impact the location of a leach field area. Slope issues must be evaluated in an EIR.

#### IV: *Water Supply.*

- A) MCC 15.04.040 and MCC 19.03.015 require documentation of water rights prior to consideration of the application as complete. This information has not been provided as of this date.
- B) Should the water rights be proven, the Monterey County General Plan, 1982 encourages consolidation of systems and MCC 19.03.015 requires that investigation of consolidation with another system be evaluated in order to consider an application as complete.
- C) A proposed water system of this size is classified according to the State of California as a Public Water System. The system is proposed as a "Mutual Water Company". The State of California adopted a requirement that all new water systems document how the technical, managerial and financial (TMF) aspects of any new water system would be addressed. The TMF requirements are in place to insure that new public water systems have the financial, technical expertise and the managerial experience to comply with current laws. This is intended to ensure the long-term viability of a system and the source of supply. The TMF requirements may be located on the following link... <http://www.cdph.ca.gov/certlic/drinkingwater/Pages/TMF.aspx> This report is required prior to consideration of the application as complete. As of this date this information has not been submitted.
- D) One aspect of the TMF report is a Source Water Assessment. The onsite wastewater system of the Carmel Valley Manor must be identified in this report. Discussion and analysis of this system on the potable water source for the project must be addressed in the hydrogeology report.
- E) It appears that this proposed system is in the service area of the Cal Am water system service area. In which case, the MCC 18.43 would apply. This ordinance states that no subdivisions in the Cal-Am service area can be approved unless the subdivision can show no intensification over historical water use and demonstrate a 10% reduction.

- F) The applicant has submitted a letter dated, March 1, 1999 from Stephanie Locke Pintar of the Monterey Peninsula Water Management District, (MPWMD). This letter identifies that there may be potential water credits for the subdivision, however this letter needs to be reviewed and updated by MPWMD due to new information about the proposed subdivision and the changes in the regulations and guidelines regarding water credits in the Carmel Valley basin. Their original letter only addressed the closing of the commercial use at the Nadura property and an existing residence. All new information regarding the subdivision needs to be sent to the MPWMD. Ms. Pintar requested EHD notify applicants of the District's pre-application meeting procedures so that MPWMD staff could review the most recent proposal. Roger Van Horn had indicated in the Incomplete Notice of July 31, 2006 that the applicant contact MPWMD to discuss the latest proposal. Their website is [www.mpwmd.dst.org](http://www.mpwmd.dst.org)
- G) AS per MCC 15.04.040 and 19.03.015 and California Code of Regulations Section 64563, a source water capacity test must be performed in conformance with EHD and MPWMD requirements and protocol. This test must be performed at the appropriate time of the year. Please contact the Supervising Environmental Health Specialist for the Drinking Water Program, Cheryl Sandoval at 831-755-4552 for more information regarding this requirement. This must be completed in order to consider the application as complete. This has not been done as of this date.
- H) Any subdivision of 20 or more lots is required to have a back up source of potable water supply. The back up source for this proposal has not been identified. This well will need to undergo the same testing and evaluation as the existing onsite well.
- I) All sources of supply must have a current chemical analysis meeting Title 22 requirements. This sample must be taken by a state certified laboratory and the chain of custody for the sample must be submitted with the report. This information is required prior to consideration of the application as complete and is also to be analyzed in the hydrogeologic report. As of this date a current chemical analysis that meets Title 22 requirements have not been submitted.
- J) A certified hydrogeologist or other qualified professional then further evaluates the source capacity information in a hydrogeologic report to determine if there is a long-term water supply. This can be done as part of the EIR process.
- K) EHD is in receipt of the April 15, 2003 letter from Mr. Hooper to Roger Beretti. This letter discusses the well construction and requests that the requirement for a Hydrogeologic Investigation be waived. This is not in conformance with the requirements of MCC 19.03.015 for a hydrogeologic report as discussed in item II. J) above.
- L) In conformance with MCC 19.03.015, please submit a Water Use and Nitrate Impact Questionnaire (WUNIQ), which was requested in the July 31, 2006 Incomplete Notice. This form is used to project a water balance. The demand figures used in this report must be consistent with the accepted demand figures of the MPWMD.

I hope this clarifies the EHD issues. The requested information will greatly facilitate the review of your project. Please feel free to contact Mary Anne Dennis (755-4557) or Roger Van Horn (755-4763) if you have any questions.

Richard LeWarne, R.E.H.S.  
Assistant Director of Environmental Health

cc: Allen Stroh, Director of Environmental Health  
Henrietta Stern and Stephanie Pintar, Monterey Peninsula Water Management District  
Bob Schubert, Planning Department  
Howard Franklin, Tom Moss, Water Resources Agency  
Cheryl Sandoval, Environmental Health

This page intentionally left blank



# **Exhibit 10**

This page intentionally left blank.

# MONTEREY COUNTY



DEPARTMENT OF HEALTH LEN FOSTER, Director

ADMINISTRATION  
ANIMAL SERVICES  
BEHAVIORAL HEALTH

CLINIC SERVICES  
COMMUNITY HEALTH  
EMERGENCY MEDICAL SERVICES

ENVIRONMENTAL HEALTH  
OFFICE OF THE HEALTH OFFICER  
PUBLIC ADMINISTRATOR/PUBLIC GUARDIAN

HEALTH DEPARTMENT

RECEIVED

December 27, 2007

Nader Agha  
c/o Jim Wurz  
Bestor Engineers, Inc.  
9701 Blue Larkspur Lane,  
Monterey, CA 93940

JAN 06 2010

DEC 31 2007

ENVIRONMENTAL HEALTH

Bestor Engineers

**RE: Vista Nadura Subdivision Proposal, PLN990274, Carmel Valley**

Dear Mr. Agha,

The Environmental Health Division (EHD) would like to expedite your project's planning review and to do that we need sufficient information to assess your project's impact on public health and safety. You indicated that the information that we had requested in the Incomplete Notices of September 23, 2003 & July 31, 2006 had already been submitted to EHD. Unfortunately, some of this information may have been lost or misplaced since staff was unable to find the needed information in the project file, for this we apologize.

However, to expedite your project at this time, we will need to re-create any missing documentation and clarify or add to the documentation that we do have in your file. Prior Incomplete Notices that had been sent to you requested the following information:

1. Submit a complete project description.
2. Provide a map of the proposed subdivision in relation to the Carmel Valley Wastewater Study that was conducted by Montgomery Engineers (i.e. a map of the proposed project with an overlay of the pertinent sub basins).
3. Submit a soils and percolation testing report.
4. Conduct a source capacity test (i.e. 72-hour pump test) on the well or wells that will provide the water supply for the proposed water system.
5. Provide information regarding the proposed water supply required by Monterey County Code, Title 19.

On November 9, 2007, a packet of documents was submitted to Environmental Health at a meeting with Planning Department and Environmental Health staff to discuss the status of your project. The purpose of this packet was an attempt to satisfy the requests contained in our previous Incomplete Notices and to update any missing information in our current file.

Staff reviewed the packet in hopes that the missing information would be contained in the documents provided at the November 9, 2007 meeting. Unfortunately, after reviewing the

Sept. 26, 2002 →

documents, some of the information and reports that have been requested were not contained in the documents. This letter will identify:

1. Those issues that have insufficient information to consider the application complete and proceed with the EIR preparation; and
2. Those issues that must be addressed in the EIR.

**I: Project Description.**

The Permits Plus Program currently describes the project as follows:

*Standard Subdivision Tentative Map For The Subdivision Of An Existing Lot Of Record Of 50 Acres Into 20 Lots Ranging In Size From 1.1 Acres To 5.2 Acres, Including Grading For The Construction Of 20-Foot Wide Access Road; And A Use Permit For Development On Slopes Greater Than 30 Percent (Access Road). The Property Is Located North Of Los Arboles Road, Carmel (Assessor's Parcel Numbers 169-011-009-000, 169-011-014-000 and 169-011-015-000), Mid Carmel Valley Area.*

Documents have been submitted indicating that you are proposing seven inclusionary housing units, which is not reflected in the project description. If the project includes seven inclusionary housing units, the project description should be modified to include the inclusionary housing units. This revision was requested in the July 31, 2006 Incomplete Notice and as yet to be accomplished.

**II: Wastewater.**

The July 6, 2006 tentative map indicates an individual septic system on each lot and a community septic system on Lot 21 for seven inclusionary housing units. Monterey County Code (MCC), 19.03.015 Tentative map--Additional data and reports (k) reads as follows:

*If sewage disposal for the proposed subdivision will be provided by a public or private entity, a letter or document shall be submitted from the entity to the Division of Environmental Health and Director of Planning and Building Inspection stating that the entity can and will serve the proposed subdivision. The public entity must comply with all State and County allocation and capacity requirements. The letter or document shall also state the expiration date of such a commitment. In the event that an individual sewage disposal system will be utilized, preliminary percolation testing and profile analysis shall be required to be submitted along with a tentative map application. The report shall analyze at least one soil profile analysis test per lot and one percolation test hole per two lots. Soil profile analysis may be reduced if conformity to a given soil type can be established. The report submitted shall demonstrate the feasibility of the proposed lot design and density and shall address nitrate loading of subsoil surfaces when septic systems are proposed. The soil tests and percolation shall meet the standards of the Division of Environmental Health. The applicant shall also provide evidence proof that sewage disposal systems, both individual and package, for all lots which are proposed to be created through subdivision will not exceed nitrate and chemical loading levels in aquifers pursuant to the Regional Water Quality Control Basin Plan. ...*

WWD Done  
CANNED

A) Given recent area-wide concerns regarding septic system density effects on water basins in Monterey County by the State Water Resources Board and the Regional Water Control Board, it is recommended that the applicant investigate the feasibility of connecting to the Carmel Area Wastewater District (CAWD) or to the adjacent sewer system of Canada Woods. September Ranch will be connecting to CAWD and may provide opportunities for connection to CAWD. EHD will be recommending that the EIR discuss the feasibility of the potential connection to the Carmel Area Wastewater District or the Canada Woods wastewater system.

B) The July 2006 map shows a community septic system on lot 21. EHD has indicated since November 17, 1980 in a letter to Carl Hooper from Roger Ponessa that a community septic system is not acceptable. This was also discussed at several meetings with the applicant on January 18, 2005, July 31, 2006, and August 1, 2006. Community septic systems have proven to be problematical and have a high rate of failure. Also, EHD's experience with community septic systems in general has demonstrated that maintenance of these systems is extremely difficult even in the best of circumstances. The community septic system that is being proposed is for the affordable housing units. In relatively small subdivisions, such as this, it is generally difficult for the eventual residents to sustain the necessary Technical, Managerial, and Financial ability required to assure a safe and properly functioning system. The Regional Water Quality Control Board does not support the use of community septic systems.

C) The nitrate loading from onsite disposal must be evaluated in a Hydrogeologic report per MCC 19.03.015 of MCC. This may be evaluated in the Hydrogeological Report during the EIR process. Keeping in mind a connection to a sewer system would not require a nitrate loading study.

D) Soil Borings and Percolation Tests: MCC 15.20.070C(1)(d) requires that all test results be presented to the Health Department and the test report shall include the following:

*(d) A report of all test results must be presented to the Health Department. Such report shall include a topographic map showing property lines, any adjacent wells, recorded well lots, springs, water courses, or drainage channels within 100 feet of the property lines, reservoirs within 200 feet of property lines, as well as within property lines. Such report shall indicate the locations of existing and proposed structures on the property and easements on the property. The Assessor's Parcel Number shall be placed on both the map and the reports. The test report shall contain the following information:*

- 1) Assessor's Parcel Number*
- 2) Minor Subdivision Number or Major Subdivision Name*
- 3) Date or Period of Testing*
- 4) Soil Logs*
- 5) Person Performing Test and License or Registration Number*
- 6) Percolation Test Results*

*7) Conclusions and Recommendations: This section shall specifically state whether the lot(s) meet(s) the standards found in this Chapter. Specific recommendations shall be made about the location and design of the septic tank system(s).*

Staff have performed an in depth review of the document that was submitted to EHD in a letter from Mr. Hooper to Roger Beretti on October 1, 2003 which contained soil logs and percolation test results with a summary sheet of testing results. The following items need to be addressed to facilitate staff's review for onsite wastewater disposal feasibility for each lot and determination of completeness:

1. The test results that were presented to the Health Department do not constitute a soils analysis and percolation report that conforms to MCC 15.20. It did not include analysis, conclusions or specific recommendations for onsite wastewater treatment systems for each proposed lot as required by MCC 15.20. Please submit a soils report that includes conclusions and recommendations for onsite wastewater treatment systems for each lot.
  2. Please submit a subdivision map that depicts:
    - a. Septic and building envelopes in each lot. The septic envelopes must conform to setback requirements of the Central Coast Basin Plan and MCC 15.20.
    - b. Location of soils and percolation tests in relation to the present subdivision proposal.
    - c. An overlay of Sub Basin 32 (See section II E, below).
  3. Percolation test results on lots 5, 8, 9, 15 and 17 are questionable because original percolation test results are crossed out and replaced with other numbers. Lot 9 has a notation that indicates, "do not use too shallow". This notation is not clear as to its relevance or meaning to the percolation test. These lots must be retested to be sure of the test results and assure a valid review of test results. It must be noted that the lots that have been called out may not represent the present lot configuration. Contact EHD prior to proceeding to determine the scope of work and scheduling of testing so that EHD staff can be on site and oversee the soil testing.
  4. Lot 5 also needs a twenty-two foot soil boring to determine if there is ground water above this depth.
- E) The 1982 Carmel Valley Wastewater Study prepared by James M. Montgomery Consulting divided that portion of the Carmel Valley served by onsite wastewater disposal systems into sub basins. The study concluded that Sub Basins 7, 9, 30 & 32 were saturated in terms of future safe wastewater disposal. This conclusion of the Carmel Valley Wastewater Study precipitated the Monterey County Board of Supervisor's action on February 15, 1983 during a duly publicly noticed hearing, which adopted a resolution that Sub Basins 7, 9, 30 & 32 could have no further subdivisions. In addition, the Carmel Valley Wastewater Study was adopted as part of the Carmel Valley Master Plan. The proposed project may include lots within the Sub Basin 32 where any further subdivisions served by onsite wastewater disposal are disallowed through the Board of Supervisors' direction.

However, for accuracy the Health Department continues to request that a map be submitted that depicts the proposed lots with an overlay of sub basin 32. This request has been made

by the EHD on several occasions as well as in the Incomplete Notices that were sent to the applicant. The recent documents that you submitted indicate that two maps were submitted to Roger Beretti of EHD on October 1, 2002 and on April 14, 2003. The maps are of a small scale and do not show any detail in regards to the location of the proposed lots in relation to Sub Basin 32. To date the Health Department does not possess in its files a map with sufficient details to distinguish the proposed lots in relation to where Sub Basin 32 overlays the property. Our Division has recently developed the Montgomery Sub Basin Map into a GIS overlay. To assist you in producing a map with a Sub Basin 32 overlay, our Department would gladly provide you with a copy of this overlay. Contact Janna Faulk at 755-4549.

Since the Health Department cannot approve of any lots within Sub Basin 32 being served by onsite wastewater disposal systems, connection to a sewer service would solve the issue of creating lots in sub basin 32.

The documents that you submitted indicate that Carl Hooper of Bestor Engineers sent two letters to EHD dated June 5, 2003 and October 1, 2003 in which Mr. Hooper contends that the Carmel Valley Wastewater Study should not apply to this subdivision. The ability to exempt a proposed subdivision served by onsite wastewater disposal systems that is in Carmel Valley from the Carmel Valley Wastewater Study parameters, which have been incorporated into the Carmel Valley Master Plan is not within the authority of EHD.

- G) In March of 2007, Regional Water Quality Control Board directed Monterey County to conduct a new study and develop an Onsite Wastewater Management Plan for Carmel Valley. The Regional Board's direction is a result of concern for the urbanization and density of that portion of Carmel Valley that uses individual sewage disposal systems and potential impact to public health and water quality. Any reconsideration of the Carmel Wastewater Study would be done during a new study that would then be the basis for developing an Onsite Wastewater Management Plan for Carmel Valley as directed by the Regional Board. The Regional Board would not be supportive of weakening the parameters for onsite sewage disposal in an area of Monterey County where they currently have concerns regarding potential impact to public health and water quality due to the increasing density of onsite sewage disposal systems.

### ***III: Tentative Map Requirements.***

- A) The July 2006 proposed tentative map indicates a Plan line on the map for expansion of Carmel Valley Road. This may further reduce the availability of space for drain fields, which may not be proposed within the Plan line. The possible encroachment into the Plan line must be discussed in the EIR and the Public Works Department must comment on this issue.
- B) Prior to commencement of the EIR, EHD must be provided with a map that identifies either the plan to connect to an existing wastewater system or adequate wastewater disposal area in each lot. The proposed wastewater disposal areas must be demonstrated to conform to the requirements of the Montgomery report (areal application rate of sewage per acre and

the design application rate of the individual sewage disposal design), the RWQCB and MCC 15.20. The map must also identify road cuts that may impact the location of a leach field area. As of this date EHD does not have a map that demonstrates the requirements as stated. Please provide a map with these requirements, which will facilitate our review.

**IV: Water Supply.**

- A) MCC 15.04.040 and MCC 19.03.015 require documentation of water rights prior to consideration of the application as complete. Copies of official documents verifying water rights were not included in your previous submittal. Should the water rights be verified through the submittal of documents, the Monterey County General Plan, 1982 encourages consolidation of systems and MCC 19.03.015 requires that the applicant perform an investigation and evaluation of the feasibility of consolidating with another water system in order to consider an application complete. This has not been provided as of this date. Please provide this evaluation.
- B) A proposed water system of the size is classified according to the State of California as a Public Water System. The water system currently being proposed is a "Mutual Water Company". The State of California adopted a requirement that all new water systems document how the technical, managerial and financial (TMF) aspects of any new water system would be addressed. The TMF requirements are in place to insure that new public water systems have the financial, technical expertise and the managerial experience to comply with current laws. This is intended to ensure the long-term viability of a system and the source of supply. The TMF requirements may be located on the following link... <http://www.cdph.ca.gov/certlic/drinkingwater/Pages/TMF.aspx> A "TMF Report" is required prior to consideration of the application as complete by EHD. As of this date this information is not in our files and needs to be submitted or resubmitted.
- C) One requirement of the TMF report is a Source Water Assessment. This assessment will require that the onsite wastewater system of the adjacent Carmel Valley Manor must be identified in this report. In addition discussion and analysis of the potential impact of the Carmel Valley Manor's wastewater system on the potable water source for the project must be addressed in the hydrogeology report, which can be done during the EIR.
- D) It appears that this proposed water system is in the service area of the Cal Am water system; therefore, MCC 18.43 would apply. This ordinance states that no subdivisions in the Cal-Am service area can be approved unless the subdivision can demonstrate no intensification over historical water use and can further demonstrate a 10% reduction from historical water use.
- E) In a letter dated, March 1, 1999 submitted by the applicant from Stephanie Locke Pintar of the Monterey Peninsula Water Management District, (MPWMD). This letter identifies that there may be potential water credits for the subdivision, however this letter needs to be reviewed and updated by MPWMD in light of the current proposed subdivision and the changes in the regulations and guidelines regarding water credits in the Carmel Valley basin. Their original letter only addressed the closing of the commercial use at the Nadura



property and an existing residence. All updates regarding the subdivision needs to be sent to the MPWMD. Ms. Pintar requested EHD notify applicants of the District's pre-application meeting procedures so that MPWMD staff could review the most recent proposal. Roger Van Horn had requested in the Incomplete Notice of July 31, 2006 that the applicant contact MPWMD to discuss the latest proposal as of that date. Their website is [www.mpwmd.dst.org](http://www.mpwmd.dst.org). Stephanie Pintar's telephone number is 658-5601.

- F) In conformance to MCC 15.04.040 and 19.03.015 and the California Code of Regulations (CCR) Section 64563, a source water capacity test must be performed in conformance with EHD and MPWMD requirements and protocol. This test must be performed at the appropriate time of the year (June 1<sup>st</sup> – November 30<sup>th</sup> or the 1<sup>st</sup> significant rainfall event). Please contact the Supervising Environmental Health Specialist for the Drinking Water Program, Cheryl Sandoval at 831-755-4552 for more information regarding this requirement. This must be completed in order to consider the application complete. The test has not been completed and reported to us as of this date.

A certified hydrogeologist or other qualified professional will then further evaluate the source capacity information in a hydrogeologic report to determine if there is a long-term water supply. Mr. Hooper requested in a letter dated April 15, 2003 to EHD that the Hydrogeologic Investigation be waived. Unfortunately, this request cannot be granted as it would not be in conformance with the requirements of MCC 19.03.015 for a hydrogeologic report. However, this may be done as part of the EIR process.

- G) Any subdivision of 20 or more lots is required to have a back up source of potable water supply. Based on the documentation we currently have, the back up source for this subdivision has not been identified. Please be advised that a backup well will need to undergo the same testing and evaluation as the existing onsite well.
- H) All sources of supply must have a complete and current chemical analysis meeting CCR Title 22 requirements. A state certified laboratory must take the sample and perform the chemical analysis. Please be advised that documentation verifying the chain of custody for the sample must also be submitted with the report. This information is required before the application can be determined as complete. As of this date a current and complete chemical analysis that meets CCR Title 22 requirements have not been submitted.
- I) In conformance with MCC 19.03.015, please submit a Water Use and Nitrate Impact Questionnaire (WUNIQ), which was requested in the July 31, 2006 Incomplete Notice. This form is used to project a water balance. The demand figures used in this report must be consistent with the accepted demand figures of the MPWMD.

I hope this clarifies what additional information and documentation that the EHD will need to determine this project complete. The timely submission of the requested information will greatly facilitate the review of your project. We are certainly available to meet with you if you feel that you need additional clarification of any of our requests for documentation and information. You may call me at (831) 755-4539. In addition, for quick answers to any technical questions, you may

also call Mary Anne Dennis at (831) 755-4557 or Roger Van Horn (your EHD project manager) at (831) 755-4763.

Sincerely,

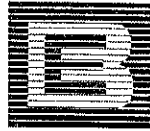


Allen J. Stroh, R.E.H.S., M.P.H.  
Director of Environmental Health

cc: Richard LeWarne, Assistant Director of Environmental Health  
Cheryl Sandoval, Supervisor Environmental Health  
Mary Anne Dennis, Supervisor Environmental Health  
Roger VanHorn, Environmental Health  
Alana Knaster, Deputy Director of Resource Management Agency  
Bob Schubert, Planning Department  
Howard Franklin, Tom Moss, Water Resources Agency  
Henrietta Stern, Monterey Peninsula Water Management District  
Stephanie Pintar, Monterey Peninsula Water Management District  
Nader Agha  
Bob Rosenthal  
Susan Goldbeck

# **Exhibit 11**

This page intentionally left blank.



# BESTOR ENGINEERS, INC.

CIVIL ENGINEERING - SURVEYING - LAND PLANNING  
9701 BLUE LARKSPUR LANE, MONTEREY, CALIFORNIA 93940  
(831) 373-2941 • SALINAS 424-7681 • FAX 649-4118

21 February 2008

ENVIRONMENTAL HEALTH  
FEB 22 7:08  
HEALTH DEPARTMENT

MONTEREY COUNTY  
DEPARTMENT OF HEALTH  
1270 Natividad Road, #301  
Salinas, CA 93906

Attn: Allen J. Stroh

**Re: Response to Vista Nadura Subdivision Proposal, PLN 990274, Carmel Valley**

Dear Mr. Stroh:

This is in response to your letter dated 12/27/07 concerning alleged incomplete items for our application PLN 990234 for Vista Nadura Subdivision in Carmel Valley. The numbering corresponds to numbers in your letter.

1. Project Description: The original 20 lot subdivision is revised to include 7 total rental units (1 existing) located within the original Lot #20. This is to meet current requirements for onsite provision of inclusionary dwelling units, which replaces the 1999 regulation, which allowed payment of monetary "in lieu" fees. These units are shown by the Vesting Tentative Map to occupy 7.3 acres within the former 8.5 acre Lot 20. Please note that these seven inclusionary dwellings are intended as rental units, remaining in the ownership of Mr. Agha, the developer.
2. A copy of the original (1982) Montgomery Engineer's Map is enclosed. It shows the presently proposed 50-acre subdivision as a portion of sub-water shed 32, 28 and 31.
3. Soil and Percolation Testing Report: As previously submitted, our original 2003 report provided complete information. The 2006 update was fully in compliance with your requirements. The adjacent wells (south and west of Vista Nadura) are all 100 or more feet from the Vista Nadura well and from all proposed septic drain fields. The cover letter specifically stated that all test holes passed, with one exception that was 0.96 inches per hour. Note that all lots exceed 1.5 acres versus the 1.0 acre minimum required.

Also, please note that 3 holes were tested within the seven acre "inclusionary" lot. All exhibited more than twice the required one inch per hour percolation rates. Also, please note that the seven dwelling units will remain as a single ownership for rental only, so your stated fears of difficulty in having maintenance provided are wholly unwarranted.

4. 72-hour Pump Test: The sub-potable well was tested in 1979. It has since been used as an irrigation well for most of the 29 years to this date.

Please note that this well and the separate distribution system is intended to serve ONLY the non-potable needs of the 26 dwellings plus 1 existing dwelling for a total of 27 dwellings. California American Water Company will serve all kitchen and wash basin uses, as well as fire protection needs. Non-potable needs are: baths, toilets, laundry facilities and outside irrigation. Cal-Am Water is therefor limited to approximately 20 gpd per person. Population is estimated at 3.2 persons per household, or 87 persons. Total potable (Cal-Am) consumption is thus 1,740 gallons per day, or approximately 1.9 acre feet per year (versus  $.85 \times 2.48$  Acre-feet = 2.10 Acre-feet allowable). The non potable uses are estimated at  $(50 \text{ gpd/person}) + (21 \text{ lots} \times 0.4 \text{ acres} \times 7/12 \times 18''/\text{yr})$  or 4.87 Acre-feet + 7.35 Acre-feet = 12.22 Acre-feet per year or 4,350 + 6,560 gallons average day or about 27,275 gallons peak day at 2.5 peaking factor (assumes 0.4 acres of irrigated ground on each lot including the multi-

family lot of 18" per year for 210 days per year). These 27,275 gallons per day is produced using a 40 gpm pump for an average of 682 minutes per day. Therefore, a second well will only be necessary for standby.

III – Vesting Tentative Map Comments:

- A. Regarding the plan line as shown on the inclusionary lots, it will not encroach on the Lot 21 drain field area. It may slightly reduce the size of that lot, but will not affect the drain fields. Furthermore, the left turn lane for entry to the subdivision, plus the further restrictions proposed for the upper Carmel Valley will undoubtedly eliminate any further expansion and therefore the need for a four lane road in this area.
- B. We analyzed the need for sewer extension about 15 years ago. The proposal was for 172 dwellings on 50 acres, 50% of this was affordable housing. The 172 dwellings are still to be considered an alternative to the current Tentative Map. Extension of CSD lines was examined, as well as pumping up to Carmel Valley Ranch. Both were rejected as too costly to support 172 units. It is obvious that service of 27 units would be far too expensive.

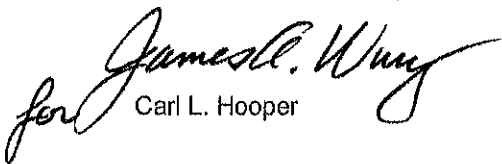
The reason for considering on-site septic tanks is that Montgomery restrictions have been proven unnecessary. We could not approach the Board of Supervisors about relief from those restrictions without EDH concurrence. But Montgomery is now 26 years old and only 0.1 ppm nitrates have been observed. We considered that you would concur a change to be warranted.

IV – Water Supply:

You were furnished a copy of Ms. Pintar's letter outlining the available credits. Since the horse operations are intended to be closed upon construction of the residential application completion, the 2.48 acre feet of credit obviously will be used. We propose supplementing that potable supply using the well, with documentation that was long ago submitted. The existence of several hundred feet of saturated sands and gravel below the confined Carmel Valley Aquifer (separated by nearly 100 feet of cased off aquaclude) was all discussed in our 1978 EIR, which you are well aware of.

This lower aquifer will be our source of sub-potable water. I think you are fully aware of Cal-Am's peninsula wide use of the potable supply that we intend for use in kitchens and wash basins and that you are fully advised on its quality. So asking us to supply copies of their data is totally redundant.

Very truly yours,  
BESTOR ENGINEERS, INC.

  
for Carl L. Hooper

cc: Richard LeWarne, Assistant Director of Environmental Health  
Cheryl Sandoval, Supervisor Environmental Health  
Mary Anne Dennis, Supervisor Environmental Health  
Roger VanHorn, Environmental Health  
Alana Knaster, Deputy Director of Resource Management Agency  
Bob Schubert, Planning Department  
Howard Franklin, Tom Moss, Water Resources Agency  
Henrietta Stern, Monterey Peninsula Water Management District  
Stephanie Pintar, Monterey Peninsula Water Management District  
Nader Agha  
Bob Rosenthal  
Susan Goldbeck

W.O. 3782.01  
CLH/jf.L:/3782/378201/Docs/080121 Allen Stroh.doc

# **Exhibit 12**

This page intentionally left blank.



# MONTEREY COUNTY



DEPARTMENT OF HEALTH LEN FOSTER, Director

ADMINISTRATION  
ANIMAL SERVICES  
BEHAVIORAL HEALTH

CLINIC SERVICES  
COMMUNITY HEALTH  
EMERGENCY MEDICAL SERVICES

ENVIRONMENTAL HEALTH  
OFFICE OF THE HEALTH OFFICER  
PUBLIC ADMINISTRATOR/PUBLIC GUARDIAN

March 18, 2008

Nader Agha  
c/o Jim Wurz  
Bestor Engineers, Inc.  
9701 Blue Larkspur Lane,  
Monterey, CA 94940

HEALTH DEPARTMENT  
JAN 06 2008  
ENVIRONMENTAL HEALTH

RECEIVED

MAR 24 2008

Bestor Engineers

Re: Letter from Carl Hooper, February 21, 2008  
Vista Nadura Subdivision Proposal, PLN 990274, Carmel Valley

Dear Mr. Agha:

The Environmental Health Division (EHD) has received a response from your project engineer Carl Hooper dated February 21, 2008. Mr. Hooper has updated the project description as requested but unfortunately has not provided EHD with any of the other information or initiated any of the actions that were requested in our letter of December 27, 2007. My staff is very anxious to complete the processing of this proposed project, so it would certainly help expedite our review if all of the remaining actions are completed and required information is submitted to EHD as soon as possible.

To assist you, the following is a list in italics of the major request areas contained in my letter dated December 27, 2008, followed by a status report of whether:

- required actions were or were not completed;
- requested information has not yet been received;
- requested information was received and is complete;
- requested information was received in part, but is still incomplete.

1. *Submit a complete project description.*

Complete. We are in receipt of your complete project description.

2. *Provide a map of the proposed subdivision in relation to the Carmel Valley Wastewater Study that was conducted by Montgomery Engineers (i.e. map of the proposed project with an overlay of the pertinent sub basins).*

Incomplete. We are in receipt of a small-scale map which lacks necessary detail; and which is a copy of the original map that was included in the Montgomery Engineers' report. The map as

Nader Agha  
March 18, 2008  
Page two

submitted does not show a detailed, comprehensive view of the proposed subdivision as requested. It only depicts the property boundaries in which the subdivision is being proposed and the sub basins in and around the subject parcel. Please provide the detailed map as described in my letter dated December 27, 2007 and per the restatement in this letter (#2). If you are not clear regarding what details are required for an acceptable map, please contact Roger Van Horn at (831) 755-4763 for further explanation of what is required on the map.

### 3. *Wastewater*

**Incomplete.** Mr. Hooper's response still lacks critical information and fulfillment of action items to enable EHD to move this project forward with regard to wastewater. Please submit the following information and complete or schedule the required actions as follows:

- Submit a soils and percolation testing report that conforms to the requirements of the Monterey County Code 15.20.070(C)(1)(d).
- Submit an updated proposed subdivision map that depicts the following detail:
  - Septic envelopes within the proposed lots;
  - Location of soil borings and percolation tests on the most current lot configuration;
  - Indicate on the map that the size of the proposed lots are in conformance to the areal application rate as denoted in the Montgomery Engineers' Report;
  - Indicate on the map that the septic system disposal field designs for each lot will be in conformance to the design application rates of the appropriate sub basin as denoted in the Montgomery Engineers' Report;
  - Depict any proposed road cuts or other cuts that may impact sewage disposal fields within the proposed lots.
- Provide a clarification regarding the notation on lot 9 as requested in my December 27, 2007 letter. (This was not included in Mr. Hooper's last submittal.)
- Schedule a date with the Environmental Health Division (EHD) to witness percolation tests on proposed lots 5, 8, 9, 15, and 17. (This action has not been completed as yet.)
- Schedule a date with EHD to witness a 22-foot soil boring on lot 5 (This action also has not been completed as yet.)

Roughly, two thirds of the subject property appears to be in sub basin 32, which has a prohibition on any further subdivisions. As indicated in our letter of December 27, 2008 sewerage the project may be a solution to this concern. Unfortunately, Mr. Hooper's response did not update the previous and rather dated analyses of sewerage options.

### 4. *Water Supply*

**Incomplete.** Mr. Hooper's response still lacks critical information and fulfillment of action items to enable EHD to move this project forward with regard to water supply. Please submit the following information and complete or schedule the required actions as follows:



Nader Agha  
March 18, 2008  
Page three

- Submit copies of official documents verifying water rights;
- Submit documentation of the Technical, Managerial, and Financial resources for the project;
- Contact the Monterey Peninsula Water Management District (MPWMD) for their review of the most recent subdivision proposal as they had previously requested; and then provide an updated letter from MPWMD to EHD with the results of their review. A current MPWMD analysis of the project must be completed and submitted to EHD before the EIR can be commenced.
- Perform a pump test that could potentially be up to 72 hours depending on the production rate. The pump test must conform to the guidelines of the Health Department on the primary and backup wells. The tests must be performed between June 1<sup>st</sup> – November 30<sup>th</sup> or the first significant rainfall event and witnessed by EHD staff. The pump tests have been requested in our incomplete notices that have been previously sent to you.
- Submit a Water Use and Nitrate Impact Questionnaire.

Mr. Hooper proposes in his letter of February 21, 2008 that the well on the property is intended to supply non-potable water for baths, toilets, laundry facilities and outside irrigation. He further proposes that potable water for kitchens, washbasins and fire protection will be supplied by connections to Cal-Am.

These proposals raise two major concerns:

1. Dual plumbing systems are not permitted in any residential developments due to the potential of cross-connections per the California Plumbing Code, California Code of Regulations Title 24, Part 5, Chapter 6, 601.1; and;
2. As you are aware the Carmel Valley River Basin is adjudicated. Therefore Cal-Am does not have any additional water connections that are available to new subdivisions. Cal-Am cannot even honor will-serve letters that they had issued prior to the adjudication.

So that the writing of the Environmental Impact Report can begin as soon as possible, please submit the preceding requested information and schedule and complete the requested actions. If for some reason you are unable to provide the needed information and/or complete the required actions, then EHD has the option of completing our file with a recommendation for denial in order to keep the processing of your project moving; this would allow your proposed project to be heard at the appropriate hearing body. Please communicate your wishes to Roger Van Horn at your earliest convenience.

Sincerely,



Allen J. Stroh, REHS, MPH  
Director of Environmental Health

C: Richard LeWarne, Assistant Director of Environmental Health  
Cheryl Sandoval, Supervisor Environmental Health  
Mary Anne Dennis, Supervisor Environmental Health  
Roger VanHorn, Environmental Health  
Alana Knaster, Deputy Director of Resource Management Agency  
Bob Schubert, Planning Department  
Howard Franklin, Tom Moss, Water Resources Agency  
Henrietta Stern, Monterey Peninsula Water Management District  
Stephanie Pintar, Monterey Peninsula Water Management District  
Nader Agha  
Bob Rosenthal  
Susan Goldbeck

# **Exhibit 13**

This page intentionally left blank.

# MONTEREY COUNTY



DEPARTMENT OF HEALTH LEN FOSTER, Director

ADMINISTRATION  
ANIMAL SERVICES  
BEHAVIORAL HEALTH

CLINIC SERVICES  
COMMUNITY HEALTH  
EMERGENCY MEDICAL SERVICES

ENVIRONMENTAL HEALTH  
OFFICE OF THE HEALTH OFFICER  
PUBLIC ADMINISTRATOR/PUBLIC GUARDIAN

June 4, 2008

Nader Agha  
c/o Jim Wurz  
Bestor Engineers, Inc.  
9701 Blue Larkspur Lane,  
Monterey, CA 94940

**Re: Meeting to review items still needed  
Vista Nadura Subdivision Proposal PLN990274**

Dear Jim:

This formal letter is a follow up to our meeting on April 30, 2008 with you, Nicki Silva and myself, regarding the items that are still outstanding or need greater clarification for the Vista Nadura Subdivision. Following are the items with reference to our letter dated March 18, 2008:

1. Complete
2. Montgomery Study map – Still need subdivision lots and septic envelopes on Montgomery Study map overlay. Also, show sub-basins by number (sub basin 32 does not allow further subdivision)
3. Wastewater – Please refer to March 18 letter, all items still need to be addressed. Also, a new analysis/feasibility study for the possibility of connecting to CAWD should be addressed.
4. Water Supply –
  - Official documents verifying water rights for the existing well due to location within Carmel River Basin.
  - Submit Technical, Managerial and Financial resources for the project.
  - Updated letter from MPWMD.
  - New 72-hour pump and chemical test for existing well.
  - Submit WUNIQ.

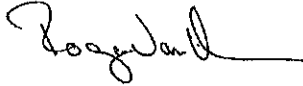
Again I want to make it clear, EHD does not permit dual plumbing systems with the potential of a cross-connection in any residential developments under the guidelines of the California Plumbing Code, California Code of Regulations Title 24, Part 5, Chapter 6, 601.1

1270 Natividad Road, Rm. 301, Salinas, CA 93906 PHONE (831) 755-4507 FAX (831) 755-8929  
<http://www.co.monterey/health/EnvironmentalHealth/>

Unfortunately, the Environmental Impact Report cannot move forward until the above requested information is submitted and the actions requested performed.

If you have any question please feel free to call me at 755-4763.

Sincerely,



Roger Van Horn, R.E.H.S.  
Senior Environmental Specialist

Cc: Allen Stroh, Director, Environmental Health  
Richard LeWarne, Assistant Director, Environmental Health  
Mary Anne Dennis, Supervisor EHRS



# **Exhibit 14**

This page intentionally left blank.

# MONTEREY COUNTY



DEPARTMENT OF HEALTH LEN FOSTER, Director

ADMINISTRATION  
ANIMAL SERVICES  
BEHAVIORAL HEALTH

CLINIC SERVICES  
COMMUNITY HEALTH  
EMERGENCY MEDICAL SERVICES

ENVIRONMENTAL HEALTH  
OFFICE OF THE HEALTH OFFICER  
PUBLIC ADMINISTRATOR/PUBLIC GUARDIAN

September 4, 2008

Nader Agha  
542 Lighthouse Avenue  
Pacific Grove, CA 93950

**Re: Phone conversation with Nader Agha  
Vista Nadura Subdivision Proposal PLN990274**

Dear Nader:

This letter is a follow up to document our phone conversation on Thursday August 28, 2008, regarding your decision to connect to CAWD for your project, Vista Nadura Subdivision's, wastewater disposal. As I stated during our conversation, by connecting with CAWD, this alleviates EHD's concerns regarding the impact of the subdivisions wastewater affluent on the Nitrate loading within the Carmel Valley water shed/Caramel River Basin. Also as we discussed, we will need a Can and Will serve letter from CAWD and will also need engineered plans for the pipe line and connections to CAWD's mains.

We still need to take care of the water supply issues for the project, as listed below, by working together I think that we may be able to accomplish a workable solution. Items that need to be accomplish:

- Official documents verifying water rights for the existing well due to location within Carmel River Basin.
- Submit Technical, Managerial and Financial resources for the project.
- Updated letter from MPWMD regarding water credits.
- New 72-hour pump and chemical test for existing well.
- Submit WUNIQ.

Again I want to make it clear, EHD does not permit dual plumbing systems with the potential of a cross-connection in any residential developments under the guidelines of the California Plumbing Code, California Code of Regulations Title 24, Part 5, Chapter 6, 601.1

1270 Natividad Road, Rm. 301, Salinas, CA 93906 PHONE (831) 755-4507 FAX (831) 755-8929  
<http://www.co.monterey/health/EnvironmentalHealth/>

Unfortunately, the Environmental Impact Report cannot move forward until the above requested information is submitted and the actions requested performed.

If you have any question please feel free to call me at 755-4763.

Sincerely,

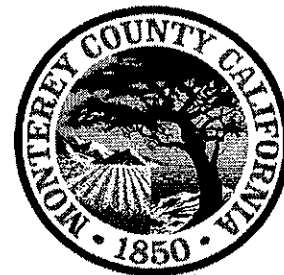
Roger Van Horn, R.E.H.S.  
Senior Environmental Specialist

Cc: Allen Stroh, Director, Environmental Health  
Richard LeWarne, Assistant Director, Environmental Health  
Mary Anne Dennis, Supervisor EHRS  
Jim Wurz, Bestor Engineers, Inc.  
Bob Schubert, Planning and Building Department

# **Exhibit 15**

This page intentionally left blank.

# MONTEREY COUNTY



DEPARTMENT OF HEALTH Ray Bullick, Director

ANIMAL SERVICES  
BEHAVIORAL HEALTH  
CLINIC SERVICES

EMERGENCY MEDICAL SERVICES  
ENVIRONMENTAL HEALTH

PUBLIC HEALTH  
PUBLIC ADMINISTRATOR/PUBLIC GUARDIAN

December 17, 2010

Nader Agha  
542 Lighthouse Avenue  
Pacific Grove, CA 93950

Re: Vista Nadura Subdivision Proposal PLN990274

Dear Mr. Agha:

This letter is to document our phone conversations regarding letters sent to you by Bob Schubert at the Planning Department, dated Oct 28, 2010 and Nov 8, 2010, concerning your Vista Nadura Subdivision proposal. As stated in the Oct 28 letter, while Resolution No.02-024 remains in effect, staff was directed by the Board of Supervisors to recommend denial of all proposed subdivisions in Carmel Valley which includes yours. Additionally, the Board of Supervisors adopted the 2010 Monterey County General Plan on October 26, 2010. Policy LU-9.3 requires projects that were deemed complete after Oct 16, 2007 to be governed by the plan, policies, ordinances and standards that are enacted as a result of the 2010 General Plan. Carmel Valley projects that remained incomplete as of Oct 16, 2007 shall comply with the following sections of the 2010 General Plan: LU-1.19, Policies CV-1.6, CV-2.18 CV-2.19 and CV-5.4. Environmental Health Bureau (EHB) first deemed your project incomplete on July 31, 2006, the status remains unchanged.

Since 2006, EHB has met with, exchanged letters and had numerous phone conversations with you and your representatives at Bestor Engineers regarding the outstanding items needed before EHB could deem the project complete. Specifically, EHB sent you a letter dated Sept 4, 2008, with a list of outstanding items needed in order to deem your project complete. As of this date only one item, a partial chemical test dated Feb 2009, has been submitted. An 8 hour pump test was conducted on Sept 18, 2008, which was not the required 72 hour test as detailed in the Sept 4, 2008 letter.

The following items/reports/technical information remains outstanding and must be supplied to EHB before a complete determination can be on this project:

- Official documents verifying water rights for the existing well due to location within Carmel River Basin.
- Technical, Managerial and Financial resources for the project.
- Updated letter from MPWMD regarding water credits.
- New 72-hour pump and chemical test for existing well.

1270 Natividad Rd., Salinas, CA 93906

(831) 755-4507

(831) 796-8680 FAX

- Initial Water Use and Nitrate Impact Questionnaire (WUNIQ).
- Also, in the chemical test dated Feb 12, 2009, the Fluoride results were 6 mg/L (three times the MCL of 2 mg/L) subsequently, quarterly conformation samples for Fluoride should have been taken to demonstrate Fluoride thresholds.

Regarding wastewater disposal, a letter from Sanford Veile of the Carmel Area Wastewater District (CAWD), dated Oct 23, 2008, stated that the project will have to apply to amend the CAWD Sphere of Influence in order to be annexed into the district. He also noted that in recent applications for annexation, LAFCO staff has taken a much closer look at extension of CAWD services beyond the existing Sphere of Influence. Since the proposed Vista Nadura subdivision is planning to connect to CAWD, LAFCO may raise concerns about your proposal.

Due to the directive from the Board of Supervisors as mentioned above, EHB is unable to make a favorable recommendation even if all of the above items are supplied and are satisfactory to EHB. Please refer to Bob Schubert's letters dated Oct 28 and Nov 8, 2010 for further explanation on the Board directives.

If you have any question please feel free to call me at 755-4763.

Sincerely,



Roger Van Horn, R.E.H.S.  
Senior Environmental Specialist

Cc: John Ramirez, Director, Environmental Health  
Richard LeWarne, Assistant Director, Environmental Health  
Nick Silva, Acting Supervisor EHRS.  
Mike Novo, Director of Planning  
Bob Schubert, Planning and Building Department  
Jim Wurz, Bestor Engineers, Inc



# **Exhibit 16**

This page intentionally left blank.



**COUNTY OF MONTEREY**  
**HEALTH DEPARTMENT**

**MEMORANDUM**

ENVIRONMENTAL HEALTH BUREAU

Nov 15, 2011

**To: Bob Schubert, Planner**  
**Monterey County Planning Department**

**From: Roger Van Horn, R.E.H.S.**  
**Environmental Health Review**

**Subject: PLN990274, Vista Nadura**

**The Environmental Health Bureau considers the above referenced project as incomplete with recommendation for denial due to lack of proof of a sustainable long-term, potable water supply as defined in Monterey County Code, Title 19 Subdivision Ordinance, 19.02.143 Long Term Water Supply.**

- Official documents verifying water rights for the existing well due to location within Carmel River Basin have not been supplied to EHB. The Monterey Peninsula Water Management District (MPWMD) needs to be advised of this project so they may make comments regarding any specific concerns they might have as to water intensification usage. Please contact Henrietta Stern at the MPWMD for information regarding requirements. MPWMD has requested EHB to advise applicants to enter the MPWMD "Pre-application Conference".
- Chemical test dated Feb 12, 2009, the Fluoride results were 6 mg/L (three times the MCL of 2 mg/L) subsequently, quarterly conformation samples for Fluoride should have been taken to demonstrate Fluoride thresholds. After a meeting with the applicant in April 2011, a conformation sample was taken, the result was 3.48 mg/L, still over the MCL. Quarterly conformation samples are still required.

This page intentionally left blank

# Exhibit 16a

This page intentionally left blank.

**COUNTY OF MONTEREY  
HEALTH DEPARTMENT**

MEMORANDUM ENVIRONMENTAL HEALTH BUREAU



JULY 12, 2011

**To: Bob Schubert, Planning Director Monterey  
County Planning Department**

**From: Roger Van Horn, R.E.H.S.  
Environmental Health Review**

**Subject: PLN990274, Vista Nadura Subdivision**

**The Environmental Health Bureau considers the above referenced project as complete with recommendation for denial due to lack of proof of a sustainable long-term, potable water supply as defined in Monterey County Code, Title 19 Subdivision Ordinance, 19.02.143 Long Term Water Supply.**

- Official documents verifying water rights for the existing well due to location within Carmel River Basin have not been supplied to EHB. The Monterey Peninsula Water Management District (MPWMD) needs to be advised of this project so they may make comments regarding any specific concerns they might have as to water intensification usage. Please contact Henrietta Stem at the MPWMD for information regarding requirements. MPWMD has requested EHB to advise applicants to enter the MPWMD "Pre-application Conference".
- Chemical test dated Feb 12, 2009, the Fluoride results were 6 mg/L (three times the MCL of 2 mg/L) subsequently, quarterly conformation samples for Fluoride should have been taken to demonstrate Fluoride thresholds. After a meeting with the applicant in April 2011, a conformation sample was taken, the result was 3.48 mg/L, still over the MCL. Quarterly conformation samples are still required.

This page intentionally left blank



# **Exhibit 17**

This page intentionally left blank.

# Project Referral Sheet

Monterey County RMA Planning  
168 W Alisal St 2nd Floor  
Salinas, CA 93901  
(831) 755-5025

**TO:** FIRE DEPARTMENT  
PUBLIC WORKS  
PARKS DEPARTMENT

HEALTH DEPARTMENT  
WATER RESOURCES AGENCY  
OTHER: \_\_\_\_\_

PLEASE SUBMIT YOUR COMMENTS FOR THIS APPLICATION BY: Tuesday, May 31, 2016

**Project Title:** AGHA DURELL D TR

**File Number:** PLN990274

**File Type:** PC

**Planner:** SCHUBERT

**Location:** 8767 CARMEL VALLEY RD CARMEL

**Assessor's No:** 169-011-009-000-000-M

**Project Description:**

Combined Development Permit consisting of: 1) a Standard Subdivision Tentative Map of a 50 acre property into 20 lots ranging in size from 1.1 acres to 8.5 acres, including grading for the construction of a 20-foot wide access road, and 2) a Use Permit for development on slopes greater than 25% (access road). The property is located at 8767 Carmel Valley Road, Carmel (Assessor's Parcel Numbers 169-011-009-000, 169-011-014-000 and 169-011-015-000), Carmel Valley Master Plan.

**Status:** COMPLETE/INCOMPLETE (highlight/circle one)

**Recommended Conditions:**

The Environmental Health Bureau has reviewed the above referenced application and has considered the application incomplete. The following reports and/or information are needed prior to considering the application complete.

An updated map has been received by EHB. It appears that the only change of substance to this application is that wastewater will now be served by Carmel Areas Wastewater District (CAWD). As such, please provide certification to EHB that CAWD can and will provide sewer service for the proposed property/project. Also, please provide information and or agreements as to how the sewer main will be connected to this project (both financially and logistically). Note these lots were not included in the most recent Carmel Area Wastewater District 2016 Sphere of Influence & Annexation Proposal (REF160026 LAFCO 16-01). Thus, further LAFCO annexation and environmental review will be necessary on the wastewater expansion.

Note: as the only document submitted was a revised map with changes to the wastewater, a full file status was not completed on this application. However, in November 2011, EHB made a determination of recommendation for denial on this project due to lacking water rights and Fluoride in excess of the state maximum contaminate level. These concerns have yet to be resolved. Please provide an update with documentation as to the status of these issues (see attached memo).

Please note that this project is subject to the current General Plan. As such, this project will require proof of a Long Term Sustainable Water Supply and an Adequate Water Supply System pursuant to General Plan policy PS 3.2. This review can be done through a contracted Hydrogeologic Geologic Report through RMA or through the EIR process. Please contact your planner to learn more on this subject.

It is unknown at this time if there are any other EHB concerns outstanding on this project. Prior to moving forward with a comprehensive review, EHB needs information from the applicant in regards to the requested direction. Please contact Janna Faulk at 755-4549 or [faulkjl@co.monterey.ca.us](mailto:faulkjl@co.monterey.ca.us) to discuss.

**Signature:** Janna L. Faulk

Please return a copy to RMA Planning

**Date:** May 31, 2016

This page intentionally left blank

# **Exhibit 18**

This page intentionally left blank.

PAUL W. MONCRIEF  
L. PAUL HART  
DENNIS J. LEWIS  
KOREN R. MCWILLIAMS  
LINDA N. SUNDE

# MONCRIEF & HART

A PROFESSIONAL CORPORATION

16 W. GABILAN STREET  
SALINAS, CALIFORNIA 93901  
PH: (831) 759-0900  
FX: (831) 759-0902  
*MoncriefHart.com*

May 11, 2017

File No. 6377.002

Mr. Carl Holm, Director  
Monterey County Resource Management Agency  
168 W. Alisal Street, 2<sup>nd</sup> Floor  
Salinas, CA 93901

**RE: Vista Nadura Subdivision, Carmel Valley (PLN990274)**

Dear Mr. Holm:

My firm represents Mr. Nader Agha and we respectfully request a written opinion from the Director of the Resource Management Agency pursuant to Monterey County Code 21.82.040 B to determine whether or not Mr. Agha's project was deemed complete prior October 16, 2007 and the adoption of the 2010 Monterey County General Plan. We believe that this application should have been deemed complete prior to October 16, 2007 and should be governed by the plans, policies, ordinances and standards in effect at that time.

Mr. Agha's property is located at 8767 Carmel Valley Road (APNs 169-011-009, 014 and 015) in Carmel Valley and proposes a twenty lot subdivision on a 50 acre parcel (PLN990274).

As you are aware, this project was first proposed and deemed complete in 1978. A Final Environmental Impact Report for the project was prepared by Larry Seeman Associates, Inc. on behalf of the County in May 1979. At that time, the project proposed a subdivision of the property for 259 single family dwellings (78-055) over what was a 1300 acre parcel at the time. Mr. Agha acquired interest in the 1300 acre parcel in 1978. In 1985, Mr. Agha acquired the existing 50 acre parcel.

The project was resubmitted as it exists today by our client on August 1, 1999 and at that time proposed a 20 lot residential subdivision of the property. This application was considered by the Carmel Valley Land Use Advisory Committee in 1999 and again on September 23, 2002 and October 7, 2002.



Throughout the years, the project was delayed due to Board of Supervisor's Resolutions 99-379, 01-133, and 02-024 requiring residential and commercial subdivisions proposed in the Carmel Valley Master Plan Area be denied pending the construction of left turn pockets on Carmel Valley Road, construction of capacity increasing improvements to State Highway 1 and the adoption of the Master Plan policies relating to level of service on Carmel Valley Road. The historical record for this project shows that Mr. Agha was routinely informed his project would be denied because of this moratorium.

One of the ongoing issues related to this project is related to water rights and credits for the property. In March 1999, the Monterey Peninsula Water Management District provided a letter documenting the historical usage on the property as 2.43 acre/feet per year. While a credit was not issued at that time, a determination regarding water availability was made. Mr. Agha had worked with MPWMD since 1996 to obtain this determination. It was after this determination that Mr. Agha submitted his application for the subdivision on August 1, 1999.

Project Planner, Robert Schubert released a Request for Proposals for the Environmental Impact Report on the 20 lot residential subdivision with proposals due on July 21, 2006. EMC Planning Group was selected to prepare the EIR for this project. On July 31, 2006, Environmental Health provided a Project Referral Sheet considering the application incomplete with comments related to wastewater and water. As early as 2002, the record shows that Bestor Engineers worked to address the wastewater and water quality issues as requested by Environmental Health. And as previously noted, Mr. Agha had worked with MPWMD to establish a determination for water credits on his property as early as 1997.

On July 12, 2011 Roger Van Horn prepared a Memorandum to Bob Schubert regarding the completeness of the Vista Nadura project and notes that the project is "complete with recommendation for denial". While this memorandum occurs after October 16, 2007 we submit that no additional information had been provided that would have changed this determination of completeness prior to 2007.

A variety of factors have prohibited this project from moving forward for most of the past thirty years, many of which were beyond Mr. Agha's control and we believe that this project should have been deemed complete prior to October 16, 2007. We appreciate your consideration of this very important matter.

Yours Truly,

A handwritten signature in black ink, appearing to read "Paul Hart", written over the typed name.

Paul Hart



# **Exhibit 19**

This page intentionally left blank.

# MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

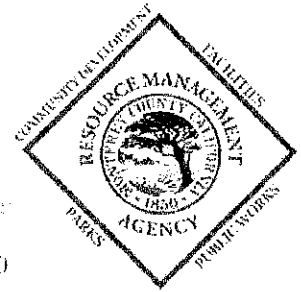
Carl P. Holm, AICP, Director

LAND USE & COMMUNITY DEVELOPMENT | PUBLIC WORKS & FACILITIES | PARKS

1441 Schilling Place, South 2<sup>nd</sup> Floor  
Salinas, California 93901-4527

(831)755-4800

[www.co.monterey.ca.us/rma](http://www.co.monterey.ca.us/rma)



January 24, 2018

Mr. Paul Hart  
Moncrief & Hart  
16 W. Gabilan Street  
Salinas, CA 93901

RE: Vista Nadura Subdivision, Carmel Valley (PLN990274)

Dear Mr. Hart:

Mr. Carl Holm, Director of the RMA for Monterey County asked me to review your letter and file materials related to application completeness of the above-referenced proposed subdivision. I found a letter dated August 3, 2006 to Mr. Nader Agha, the property owner, from Bob Schubert, Senior Planner with RMA stating that "All of the County Departments have now deemed the application complete, with the exception of Environmental Health." He referenced an attached memorandum from Environmental Health dated July 31, 2006 which stated the application was incomplete due to 8 itemized issues to do with project description, septic system, and water supply. A subsequent letter to Mr. Agha dated October 28, 2010 from Bob Schubert reiterates his letter of August 2006. It seems the Environmental Health issues had not yet been addressed as of that date.

I note your citation of a memorandum dated July 12, 2011 from Roger Van Horn of the Monterey County Environmental Health Department to Bob Schubert noting the project is "complete with recommendation for denial." I also found a subsequent memorandum from and to the same staff members dated November 15, 2011 stating the project is "incomplete with recommendation for denial due to a lack of proof of a sustainable long-term potable water supply as defined in Monterey County Code, Title 19 Subdivision Ordinance, 19.02.14." The memo states that "Official documents verifying water rights for the existing well due to location within Carmel River Basin have not been supplied EHB," and also requesting additional Fluoride sample tests, as the initial test results showed Fluoride levels in excess of state maximums.

The most recent communication from the Health Department is dated May 31, 2016 from Jana L. Faulk of the Health Department to Bob Schubert, Senior Planner, which still states the project application is still incomplete and refers to the previously cited November 15, 2011 memorandum stating, "these concerns have not yet been resolved."

The issues raised by the Health Department are valid and based on requirements for application submittal in the Monterey County Subdivision Ordinance.

In support of your assertion that the subdivision application should be deemed complete prior to October 16, 2007, please submit to me your information addressing the Health Department issues listed in the memorandum of July 31, 2006.

Alternatively, if you believe the Health Department has made an incorrect administrative determination concerning the completeness of the application, this letter will confirm that your application is currently incomplete. You may file an appeal of this administrative interpretation of the Subdivision Ordinance with the Planning Commission pursuant to section 19.17.040 of the Monterey County Code:

**19.17.040 - Application.**

- A. Appeals pursuant to this Chapter may only be taken from the written decision or opinion of the Director of Planning, or the Health Officer as applicable.
- B. Requests for a written decision or opinion from the Director of Planning shall be made in writing. Requests must be specific and in sufficient detail to provide a clear basis for issuing the requested decision or opinion.
- C. Upon receipt of an appropriate request, the Director of Planning shall respond in writing within ten (10) days setting forth the decision of the Director of Planning. Said response shall also include the statement "Should you wish to appeal this decision, the appeal must be filed with the Secretary to the Planning Commission no later than 5:00 p.m. (on date) or no subsequent appeal on this issue may be heard." The Director of Planning shall provide a minimum of ten (10) days from the date of mailing the letter for filing an appeal.
- D. The appeal shall set forth in detail:
  1. The identity of the appellant and interest in the decision;
  2. The identity of the decision appealed;
  3. A clear, complete, but brief statement of the reasons why, in the appellant's opinion, the administrative decision or interpretation is unjustified or inappropriate because:
    - a. The findings, interpretation and decision are not supported by the evidence, or
    - b. The decision or interpretation is contrary to law.
  4. The specific reasons the appellant disagrees with the decision or interpretation.
- E. The appeal shall not be accepted by the Secretary to the Planning Commission unless it is complete and complies with all requirements.

(Ord. 4082, 2000; Ord. 3797, 1994)

(Ord. No. 5135, § 89, 7-7-2009)

**19.17.050 - Action by the Planning Commission.**

- A. The Planning Commission shall consider the appeal and render a decision thereon within sixty (60) days after the receipt thereof.
- B. The Planning Commission may, after its consideration of the administrative decision or interpretation, affirm, reverse or modify the interpretation.
- C. In so acting on an administrative decision or interpretation, the Planning Commission shall indicate the reasons for its affirmation, reversal or modification of the administrative interpretation.
- D. The decision of the Planning Commission may be appealed to the Board of Supervisors pursuant to

(Ord. 3797, 1994)

**19.17.060 - Fees.**

The fee for such appeal shall be set from time to time by the Board of Supervisors, by resolution. No part of such fee shall be refundable.  
(Ord. 3797, 1994)

Please let me know how you wish to proceed.

Respectfully,



John M. Dugan, AICP  
Monterey County RMA  
Deputy Director of Land Use  
[duganji@co.monterey.ca.us](mailto:duganji@co.monterey.ca.us)  
(831) 759-6654



John Ramirez  
Monterey County Environmental Health  
Director, Environmental Health Bureau  
[ramirezjl@co.monterey.ca.us](mailto:ramirezjl@co.monterey.ca.us)  
(831) 755-4539

Enclosures: Five (5)

cc: Carl P. Holm  
Bob Schubert

**Project Referral Sheet**  
Planning & Building Inspection Department  
168 W Alisal St 2nd Floor  
Salinas, CA 93901  
(831) 755-6026

TO: FIRE DEPARTMENT                      HEALTH DEPARTMENT  
     PUBLIC WORKS                         WATER RESOURCES AGENCY  
     PARKS DEPARTMENT                    OTHER: \_\_\_\_\_

PLEASE SUBMIT YOUR COMMENTS FOR THIS APPLICATION BY: Monday, July 31, 2006

**WATER ISSUES**

5. In the event that the development meets the definition of a water system and will require the establishment of a permitted water system and if a individual well or wells are to be used, water quality and quantity information meeting all applicable State and County requirements shall be submitted to the Director of Environmental Health for review and approval as evidence that an adequate water supply exists for the project. The well or wells shall first undergo a minimum of a 72-hour continuous pump test to determine the yield of the well to meet the required quantity. The pump tests shall be made no earlier than June 1 of each year and no later than the first significant rainfall event of the wet season. A representative of the Division of Environmental Health shall witness the pump tests.
6. Please refer to the attached "Water System Completeness Requirements" check sheet. This is provided to further detail the requirements of MMC Title 19, Subdivision Ordinance. The items listed may or may not be necessary depending on your final project description.
7. Since Initial Water Use Questionnaire submitted indicates an intensification of water use, a determination shall be made by a hydrogeologist under contract to the County as to the requirement for any additional water resources information. If any hydrologic or hydrogeologic reports are deemed necessary, the County will contract directly with a qualified consultant, at the applicant's expense, upon request of the applicant. A written request to the Division of Environmental Health is necessary to commence with the preparation of a scope of work.
8. The Monterey Peninsula Water Management District (MPWMD) needs to be advised of this project so they may make comments regarding any specific concerns they might have as to water intensification usage. Please contact Henrietta Stein at the MPWMD for information regarding requirements. MPWMD has requested MCDDEH to advise applicants to enter the MPWMD "Preapplication Conference".

Signature: Roger Van Horn  
Please return a copy to Planning & Building Inspection Department  
IDR Comments Due Date: 07/31/2006  
Date IDR Referral Sheet Printed: 07/14/2006

Date: July 31, 2006

**Project Referral Sheet**  
Planning & Building Inspection Department  
188 W Alisal St. 2nd Floor  
Salinas, CA 93901  
(831) 755-6026

TO: FIRE DEPARTMENT  
PUBLIC WORKS  
PARKS DEPARTMENT

HEALTH DEPARTMENT  
WATER RESOURCES AGENCY  
OTHER: \_\_\_\_\_

PLEASE SUBMIT YOUR COMMENTS FOR THIS APPLICATION BY: Monday, July 31, 2006

**SUBDIVISION APPLICATION**  
**WATER SYSTEM COMPLETENESS REQUIREMENTS**

The Monterey County Subdivision Ordinance, section 19.03.015 *Tentative Map: Additional Data and Reports, subsection L. 2. Evaluation of Public Health and Safety Impacts*, (discussed herein separately from Hydrogeologic report requirements) requires that prior to an application for subdivision being deemed complete, the following information shall be submitted:<sup>1</sup>

N/A ?

- Water System Consolidation Letter - Monterey County Code (MCC) 15.04.040; MCC 19.03.016
  - To include the identification of all existing public water systems located within one mile and the feasibility of incorporating into the existing system or being owned, operated or managed by a satellite agency.
- Valid "Can and Will Serve" Letter, and Financial Arrangements secured. - MCC 19.03.015
  - Documents ability to serve with expiration date in place.
- Water Rights - MCC 16.04.040; MCC 19.03.016
  - Deed of Trust for well, and/or;
  - Documentation of Surface Water Rights
  - Identification of any other water rights issues
- Additional Technical, Managerial and Financial (TMF) Water System Requirements as Summarized below: - MCC 16.04.040, MCC 19.03.015, Health and Safety Code (H&SC) 116540
  - Source Water Assessment Program (SWAP) evaluation including a map of potential contaminating activities that could affect the system, i.e. onsite wastewater systems.
  - Description of type of ownership
  - Operator certification
  - How legal, engineering and other professional services will be provided
  - Budget projection including revenues, expenditures, and rate structure.
  - Equipment replacements reserve and prioritized plan.
- Water Source Capacity Requirements (Pump tests) - MCC 15.04.140 and 19.03.015, California Code of Regulations (CCR) Section 64583
  - Witnessed and performed in accordance with MCEHD requirements.
  - Minimum of three (3) gallons per minute (gpm) for individual wells.
  - Safe yield determination from water management agency and MCEHD.
- Complete Source Water Quality Analysis<sup>2</sup> (see attached Matrix) - MCC 15.04.030, H&SC 116555, CCR Title 22
  - Meets all Title 22 water quality parameters
  - Independent re-sampling to confirm contaminants as necessary
  - Best Available Treatment technology plan with estimated start-up and operating costs

**Notes:**

<sup>1</sup> Water Supply Policy and Permit Procedure Manual, page 4: *No provision in a county code can be substituted for the issuance of the water supply permit pursuant to the CHSC, Sections 115525 through 116550.*

<sup>2</sup>CDHS policy states, *"Drinking water quality and public health shall be given greater consideration than costs or cost savings when evaluating alternative drinking water sources or treatment processes."*

9/05

Signature: Roger Van Horn  
Please return a copy to Planning & Building Inspection Department  
IDR Comments Due Date: 07/31/2006  
Date IDR Referral Sheet Printed: 07/14/2006

Date: July 31, 2006

Formatted: Bullets and Numbering

## Project Referral Sheet

Monterey County RMA Planning  
168 W Alisal St 2nd Floor  
Salinas, CA 93901  
(831) 766-6026

TO: FIRE DEPARTMENT  
PUBLIC WORKS  
PARKS DEPARTMENT

HEALTH DEPARTMENT  
WATER RESOURCES AGENCY  
OTHER: \_\_\_\_\_

PLEASE SUBMIT YOUR COMMENTS FOR THIS APPLICATION BY: Tuesday, May 31, 2016

**Project Title:** AGHA DURELL D TR

**File Number:** PLN990274

**File Type:** PC

**Planner:** SCHUBERT

**Location:** 8767 CARMEL VALLEY RD CARMEL

**Assessor's No:** 169-011-009-000-000-M

**Project Description:**

Combined Development Permit consisting of: 1) a Standard Subdivision Tentative Map of a 50 acre property into 20 lots ranging in size from 1.1 acres to 8.5 acres, including grading for the construction of a 20-foot wide access road, and 2) a Use Permit for development on slopes greater than 25% (access road). The property is located at 8767 Carmel Valley Road, Carmel (Assessor's Parcel Numbers 169-011-009-000, 169-011-014-000 and 169-011-015-000), Carmel Valley Master Plan.

**Status:** COMPLETE/~~INCOMPLETE~~ (highlight/circle one)

**Recommended Conditions:**

The Environmental Health Bureau has reviewed the above referenced application and has considered the application incomplete. The following reports and/or information are needed prior to considering the application complete.

An updated map has been received by EHB. It appears that the only change of substance to this application is that wastewater will now be served by Carmel Areas Wastewater District (CAWD). As such, please provide certification to EHB that CAWD can and will provide sewer service for the proposed property/project. Also, please provide information and or agreements as to how the sewer main will be connected to this project (both financially and logistically). Note these lots were not included in the most recent Carmel Area Wastewater District 2016 Sphere of Influence & Annexation Proposal (REF160026 LAFCO 16-01). Thus, further LAFCO annexation and environmental review will be necessary on the wastewater expansion.

Note: as the only document submitted was a revised map with changes to the wastewater, a full file status was not completed on this application. However, in November 2011, EHB made a determination of recommendation for denial on this project due to lacking water rights and Fluoride in excess of the state maximum contaminate level. These concerns have yet to be resolved. Please provide an update with documentation as to the status of these issues (see attached memo).

Please note that this project is subject to the current General Plan. As such, this project will require proof of a Long Term Sustainable Water Supply and an Adequate Water Supply System pursuant to General Plan policy PS 3.2. This review can be done through a contracted Hydrogeologic Geologic Report through RMA or through the EIR process. Please contact your planner to learn more on this subject.

It is unknown at this time if there are any other EHB concerns outstanding on this project. Prior to moving forward with a comprehensive review, EHB needs information from the applicant in regards to the requested direction. Please contact Janna Faulk at 755-4549 or [faulkjl@co.monterey.ca.us](mailto:faulkjl@co.monterey.ca.us) to discuss.

**Signature:** Janna L Faulk

Please return a copy to RMA Planning

**Date:** May 31, 2016





**COUNTY OF MONTEREY**  
**HEALTH DEPARTMENT**  
ENVIRONMENTAL HEALTH BUREAU

**MEMORANDUM**

Nov 15, 2011

**To: Bob Schubert, Planner**  
**Monterey County Planning Department**

**From: Roger Van Horn, R.E.H.S.**  
**Environmental Health Review**

**Subject: PLN990274, Vista Nadura**

**The Environmental Health Bureau considers the above referenced project as incomplete with recommendation for denial due to lack of proof of a sustainable long-term, potable water supply as defined in Monterey County Code, Title 19 Subdivision Ordinance, 19.02.143 Long Term Water Supply.**

- Official documents verifying water rights for the existing well due to location within Carmel River Basin have not been supplied to EHB. The Monterey Peninsula Water Management District (MPWMD) needs to be advised of this project so they may make comments regarding any specific concerns they might have as to water intensification usage. Please contact Henrietta Stern at the MPWMD for information regarding requirements. MPWMD has requested EHB to advise applicants to enter the MPWMD "Pre-application Conference".
- Chemical test dated Feb 12, 2009, the Fluoride results were 6 mg/L (three times the MCL of 2 mg/L) subsequently, quarterly conformation samples for Fluoride should have been taken to demonstrate Fluoride thresholds. After a meeting with the applicant in April 2011, a conformation sample was taken, the result was 3.48 mg/L, still over the MCL. Quarterly conformation samples are still required.

MONTEREY COUNTY  
RESOURCE MANAGEMENT AGENCY



PLANNING DEPARTMENT, Mike Novo, Director

168 W. Alisal St., 2<sup>nd</sup> Floor  
Salinas, CA 93901

(831) 755-5025  
FAX (831) 757-9516

October 28, 2010

Mr. Nader Agha  
542 Lighthouse Avenue  
Pacific Grove, CA 93950

Subject: Vista Nadura Subdivision (PLN990274)

Dear Mr. Agha:

The purpose of this letter is to outline the options for processing the Vista Nadura Subdivision which is within the Carmel Valley Master Plan Area. Resolution No. 02-024 states that it is the policy of the Board of Supervisors that residential subdivisions in the Carmel Valley Master Plan Area be denied, pending the construction of left turn pockets on Segments 6 and 7 of Carmel Valley Road (from Robinson Canyon Road to Rancho San Carlos Road) and the construction of capacity-increasing improvements to State Highway 1 between its intersections with Carmel Valley Road and Morse Drive. While the policy established in Resolution No. 02-024 remains in effect, staff is directed by the Board of Supervisors to recommend denial of proposed subdivisions in Carmel Valley, including the subject application.

On October 26, 2010, the Board of Supervisors adopted the General Plan Update. Policy LU-9.3 in the General Plan Update states that applications for subdivision maps that were deemed complete after October 16, 2007 shall be governed by the plans, policies ordinances and standards that are enacted as a result of the General Plan Update. All of the County departments have deemed the application complete with the exception of the Environmental Health Bureau (see memorandum from Environmental Health dated July 31, 2006). Since the subject application is incomplete, it is subject to the following requirements of the adopted General Plan Update:

- a. LU-1.19 requires all development outside of designated Community Areas and Rural Centers to be subject to a Development Evaluation System with evaluation criteria that must meet a minimum passing score.
- b. Policy CV-1.6 in the General Plan Update limits new residential subdivisions in Carmel Valley to the creation of 266 new units with preference to projects including at least 50% affordable housing units. As of this time Monterey County has three applications in Carmel Valley with a total of 268 lots that have been deemed complete (i.e., Rancho Canada Village Specific Plan with 247 residential lots, Delfino with 19 residential lots and Miller with 2 residential lots) that could precede this project in the buildout accounting. Again, the maximum unit count that could be approved under the General Plan Update is 266 units. If these projects are approved, there would not be any units remaining for the Vista Nadura Subdivision.

Mr. Nader Agha  
October 28, 2010  
Page 2

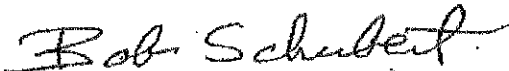
- c. Policy CV-5.4 requires the establishment of regulations for Carmel Valley that limit development to vacant lots of record and already approved projects, unless additional water supplies are identified.
- d. Policies CV-2.18/CV-2.19 include a specified list of road improvements along Carmel Valley Road and Laureles Grade within the Carmel Valley Master Plan Area, proposed amendments to the Carmel Valley Master Plan, consideration of several interim improvement options for one intersection, a change in LOS standard for one segment (Segment 3), and a proposed update of traffic impact fees to pay for the proposed improvements through collection of fees from new development.

Options that are available to you for the Vista Nadura Subdivision are as follows:

1. Withdraw the application.
2. Request that the project be put on hold until such time that Resolution No. 02-024 is rescinded by the Board of Supervisors. The project would still need to comply with the requirements of General Plan Policy LU-1.19 and Carmel Valley Master Plan Policies CV-1.6, CV-5.4 and CV-2.18/CV-2.19.
3. Proceed with the preparation of an EIR. On September 28, 2006, the Planning Department sent you a copy of the proposal from the firm (EMC) that was selected by the County to prepare an EIR for the Vista Nadura Subdivision. On December 22, 2006, the Planning Department sent you a letter asking that you review the proposal and let us know whether you agree to pay for the EIR. Since we never received a response or deposit from you, work on the EIR was never started. For the reasons stated above, staff does not recommend that an EIR be prepared. Staff would recommend denial of the project which would not require an EIR. If you decide to pursue this option, there could be considerable time and expense involved with completion of an EIR regardless of the conclusions.

Please let me know how you wish to proceed within 30 days of the date of this letter. If we do not hear from you, staff will schedule the project for hearing and recommend denial. Feel free to call me at (831) 755-5183 if you have any questions.

Sincerely,



Bob Schubert, AICP  
Senior Planner

Cc: Durell Agha  
Richard LeWarne  
Tom Moss  
Chad Alinio  
Les Girard

MONTEREY COUNTY  
RESOURCE MANAGEMENT AGENCY



PLANNING & BUILDING INSPECTION DEPARTMENT, Scott Hennessy, Director

168 W. Alisal St., 2<sup>nd</sup> Floor  
Salinas, CA 93901

(831) 755-5025  
FAX (831) 757-9516

August 3, 2006

Mr. Nader Agha  
542 Lighthouse Avenue  
Pacific Grove, CA 93950

Subject: Vista Nadura Subdivision (PLN990274)

Dear Mr. Agha:

The County has reviewed the additional information and revised plan for the subject project that was submitted on July 10, 2006. All of the County Department have now deemed the application complete with the exception of Environmental Health (see the attached memorandum dated July 31, 2006). The information requested from Environmental Health must be submitted before the subject application (PLN990274) can be deemed complete.

If you have any questions regarding the requested information that has been requested by Environmental Health, please contact Roger Van Horn at (831) 755-4763.

Sincerely,

Bob Schubert, AICP  
Senior Planner

Cc: Carl Hooper, Bestor Engineers  
Mike Novo  
Burke Peas

# **Exhibit 20**

This page intentionally left blank.

PAUL W. MONCRIEF  
L. PAUL HART  
DENNIS J. LEWIS  
KOREN R. MCWILLIAMS  
LINDA N. SUNDE

# MONCRIEF & HART

A PROFESSIONAL CORPORATION

16 W. GABILAN STREET  
SALINAS, CALIFORNIA 93901  
PH: (831) 759-0900  
FX: (831) 759-0902  
*MoncriefHart.com*

March 19, 2019

File No. 6377.002

**VIA EMAIL & CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Mr. Carl Holm, Director  
Monterey County Resource Management Agency  
168 W. Alisal Street, 2<sup>nd</sup> Floor  
Salinas, CA 93901

**RE: Request for Final Director's Interpretation  
Vista Nadura Subdivision, Carmel Valley (PLN990274)**

Dear Mr. Holm:

About a year ago, on we began the process of seeking a Director's Interpretation related to the processing of Application PLN990274 ("The Application"), the Vista Nadura Subdivision located at 8767 Carmel Valley Road (APNs 169-011-009, 014 and 015). Prior to rendering a Director's Interpretation you provided a letter from Mr. John M. Dugan's dated January 24, 2018. Mr. Dugan requested that we provide evidence addressing the Health Department issues listed in the memorandum dated July 31, 2006 which relate primarily to wastewater and water. Despite significant difficulty in obtaining the necessary records, we believe that we now have information sufficient to fully respond to this request and to allow you to now render a formal Director's Interpretation.

I have enclosed the most relevant portions of such information herewith and ask that you consider this a formal request for a Director's Interpretation/Opinion on the issues presented, pursuant to applicable rules, and that you render such an Opinion.

Specifically, the Applicant seeks a Director's Interpretation/Opinion, finding that The Application was "Complete" prior to October 16, 2007 and that the Director identify, to the extent possible, the actual or approximate date on which County Staff should have deemed the Application complete.

Applicant submits that the accompany documentation illustrates that Application should have been deemed complete sometime in 2002 or 2003.

Attachment 1 is a timeline referencing the dates of the most pertinent factual and legal occurrences related to The Application. Attachment 2 is a copy of a 2001 Court of Appeals decision related to Monterey County's processing and approval of the September Ranch subdivision and development application. And Exhibits A – J are the most relevant documents related to The Vista Nadura Application.



## **I. Central Issue/Problem**

The problem here is that County Staff appear to have imposed on The Applicant the burden of providing all information and documentation necessary to prove compliance with the then existing County Requirements of “Final Project Approval” as a prerequisite to deeming The Application “Complete”. In this regard, Staff imposed an improper standard in its evaluation of whether the Application was Complete. This led them to the wrong result, and to incorrectly conclude that the Application was not complete, simply because it did not contain all evidence that would ultimately be required for the project to be approved.

Applicant asks that the Director, re-evaluate the materials submitted by Applicant, under the proper standards as the existed at that time, applicable to a “Completed Application”, rather than the standards required for Final Approval.

During the relevant time frame, there existed a dramatic distinction between the amount of information that an applicant needed to submit in order to have an application deemed complete, and the amount of information that an applicant needed to provide in order to obtain final approval. This was particularly true with regard to projects like the Vista Nadura project, where it was universally understood that an EIR and CEQA analysis would be required prior to any consideration or determination of Project Approval. The September Ranch Opinion illustrates the significant disparity between these two standards, as they existed and were applied by the County during the relevant time frame (as discussed below).

Applicant acknowledges that, over the last decade plus, The County has implemented policies which have steadily increased the amount of information that that an applicant must submit at the outset of the process in order for an Application to be complete. As such, today the gap between what is necessary for an application to be deemed complete and what is necessary for final approval has significantly narrowed.

But, for the purposes of considering this requested Director’s Interpretation, it is important that Director evaluate the sufficiency of the information submitted by Applicant under the standards that existed nearly two decades ago, not under today’s heightened application standards. For example, there can be little dispute that Applicant was entitled to have the existing 2003 rules applied to the County’s consideration of such submissions in 2003, without regard to heightened submission standards (be they formal or informal within the Department) implemented thereafter.

## **II. Save Our Peninsula / September Ranch Case**

This Opinion is important and helpful to the Director in evaluating this matter in several respects. First, it illustrates the standard being applied by the County with regard to deeming applications of this type “Complete” during the relevant time period. Second, it illustrates the magnitude of the, then existing, distinction between the level of information necessary to deem an application





“Complete”, as opposed to the level of information necessary to obtain “Final Approval” of a project.

The Opinion is particularly relevant because the Application was submitted in the same time frame, the application is for a subdivision and project similar to the Vista Nadura project, and the September Ranch property is on the same road, only a mile or two away from Vista Nadura, so it faced the same hurdles and regulatory issues that were faced by the Vista Nadura project, specifically: 1) Water Supply and 2) Waste Water Management.

The Opinion reveals the following:

Applicant’s June 1995 *initial application proposed Cal Am as supplying potable water.*

Less than a month later, the State Water Board precluded Cal Am from providing water to the project. Applicant changed its proposal/project, and *Applicant now proposed potable water supply from an existing on-site well* (via a small mutual water system)

The application was deemed complete and submitted for an initial study in August 1995. The Draft EIR was published over 2 years later in October 1997.

It appears that no historical water use data was submitted prior to the application being deemed complete. Historical water use data related to the well was submitted as part of the draft EIR, but only for the years 1991-1996. The records provided by applicant in conjunction with the EIR revealed *historical water use ranging from 4 acre feet/yr (1995) to 40.68 acre feet/yr (1993).*

Applicant’s *proposed project* sought approval of 117 residences and was calculated as *requiring an estimated 61.15 acre feet of water per year.*

Thereafter Applicant revised its water supply plans multiple times, and submitted multiple different theories and methods in support of its position that there was sufficient water supply for the proposed project, including each of the following:

1. Applicant ran irrigation non-stop on the Property, consuming 43 acre feet of water in a 3 month period, allegedly to irrigate 21 acres of pasture, attempting to demonstrate existing water use entitlement
2. Applicant asserted that MPWMD standard tables set an existing water use entitlement of 2 acre feet per year for each acre of pasture and 3 acre feet per year for the equestrian center, resulting in an established entitlement of about 46 acre feet per year, leaving them only about 15 acre feet short of the amount needed for the proposed project, arguing that the extra 15 acre feet per years was not significant



3. Applicant bought another parcel, with an alleged entitlement to 30 acre feet per year plus of water supply, and offered to reduce the use on that property as necessary to offset any perceived requirement by the County, associated with approval of this project.

Notably, none of this information was submitted or required as part of the application process, nor submitted or required by The County as part of the EIR. Much of it was not submitted until after the EIR, and then was only submitted directly to the Board of Supervisors just prior to the BOS hearing and the BOS's "Final Approval" of the project.

The trial court and the court of appeals overturned the BOS' approval of the project. But they did so only because the water supply information relied upon in items #1,2, and 3 above were not submitted to the EIR consultant in a timely manner, so as to be evaluated and considered in conjunction with the EIR process, as required by law.

Ultimately, applicant did so, as directed by the Court of Appeals, and the BOS approved the project after the new/revised EIR properly took such information into consideration.

Most relevant here are the fact that:

- 1) The initial application provided very little information related to water supply. It simply communicated that the Applicant intended to supply potable water for the Project either thru Cal Am or via the existing on site well. As it turns out, the Application the County "Deemed Complete", did not contain any of the information or any of the documents that the County ultimately relied upon to support its conclusion that the Project had a sufficient and legally entitled water supply to satisfy the Legal and Regulatory Requirements of Final Approval of the project. Yet, the Application was deemed complete.
- 2) Nobody (not staff, not the citizen review board, not the Planning Commission, Not the Board of Supervisors, Not Save Our Peninsula, Not Judge Silver and Not the Court of Appeals) ever asserted that the September Ranch Application was deficient or incomplete. Rather, they all properly focused their discussion and analysis on the sufficiency of the information and documentation related to water supply that was provided and considered in conjunction with the EIR, and in conjunction with Board's Final Approval of the Project.

That is exactly how the Vista Nadura Application should have been handled. It is often (if not always) true that Applications related to substantial subdivisions and development proposals do not contain all of the information necessary to support ultimate approval. They certainly weren't expected to 15-20 years ago. It was understood that complex issues, particularly those related to water and wastewater in Carmel Valley would be flushed out and addressed and modified as part of the CEQA process, the EIR and the project review process. The Project would then be



evaluated at the end, not based upon whether the Applicant provided all of the information and facts required for Final Approval as part of its application.

### **III. The Vista Nadura Application**

The Vista Nadura property is located in Carmel Valley and proposes a twenty lot subdivision on a 50 acre parcel. Like the September Ranch, it has an on-site well and has historically been used as a horse ranch, with an equestrian center.

On August 3, 2006, Mr. Bob Schubert prepared a letter for Applicant stating that “all of the County Department have now deemed the application complete with the exception of Environmental Health” and refers to the July 31, 2006 notice prepared by Mr. Roger VanHorn of the Health Department (Exhibit A).

Mr. VanHorn requests items related primarily to the feasibility of a septic system for the proposed lots and the conformance with the Carmel Valley Wastewater Study (Montgomery Study). **However, on September 23, 2002, the Health Department, through Mr. Roger Beretti, issued their first incomplete letter for this project (Exhibit B) and the record shows that not only did Applicant work diligently and expeditiously to resolve the concerns, we believe the application should have been deemed complete long before Mr. VanHorn’s July 31, 2006 notice.**

#### Water & Wastewater

**Item 1:** Provide a map of the proposed subdivision. Upon receipt of the map, the projects location in the Carmel Valley Wastewater Study (Montgomery Study) will be determined and additional information or requirements may apply.

On October 1, 2002, Bestor Engineers addressed item 1 of the incomplete noticed by providing the Tentative Map for the subdivision as. Mr. Carl Hooper of Bestor Engineers also provided a map of the proposed septic system on the Montgomery study map (Exhibit C).

**Item 2:** Provide to the Director of Environmental Health certification and any necessary documentation that California American Water Company can and will supply sufficient water flow and pressure to comply with both Health and fire flow standards.

**Item 3:** Provide evidence to the satisfaction of the Director of Environmental Health that the water source for the mutual system meets applicable State and County standards for water quantity and quality.

On August 19, 1999 Applicant applied for a Water Use Credit and on March 1, 1999, the Monterey Peninsula Water Management District provided a letter documenting the historical usage on the property as 2.43 acre/feet per year. While a credit was not issued at that time, a



determination regarding water availability was made. Applicant had worked with MPWMD since 1996 to obtain this determination. It was after this determination that Applicant submitted his initial application request for the subdivision on August 1, 1999.

Bestor Engineers repeatedly provided the MPWMD documentation as well as the well driller's log and chemical analysis for the well on the property. The record shows that the first time this information was provided was in a letter to Mimi Whitney on April 25, 2000, where Mr. Carl Hooper provided a detailed description of water use and a proposed mutual water company for the second phase of homes in the subdivision. The same information was sent again to Mimi Whitney on March 6, 2001 (Exhibit D).

In addition, after the County's September 23, 2002 incomplete letter, California-American Water Company provided a can and will serve letter for the property on October 23, 2002 (Exhibit E).

**Item 4.** Since the initial Water Questionnaire submitted indicates an intensification of water use, a determination shall be made by a hydrogeologist under contract to the County as to the requirement for any additional water resources information. If any hydrologic or hydrogeologic reports are deemed necessary, the County will contract directly with qualified consultants, at the applicant's expense, upon request of the applicant. A written request to the Division of Environmental Health is necessary to commence with the preparation of a scope of work.

On April 15, 2003, Bestor Engineers sent a letter to Mr. Beretti requesting a reconsideration of this requirement on the basis of the historic land uses on the site and their related water consumption. We know that the nearby September Ranch project did not provide this level of detail prior to being deemed complete. In addition, as early as December 21, 2000 Mimi Whitney, Senior Planner, advised Mr. Agha that an EIR would be required for the project to address, "traffic and circulation, water availability, biology, visual impacts, grading, drainage, erosion control, geology and soil stability, archaeology, tree removal, public facility impacts and general plan policies related to Carmel Valley". Applicant continually requested that this project be deemed complete based on the information he and his agents had provided and that a determination related to the hydrogeological analysis be made through the Environmental Impact Report. Applicant expected and welcomed the EIR process (Exhibit F).

**Item 5.** Please contact Roger Beretti at 755-4570 to arrange an onsite visit to determine septic system feasibility of the proposed project as per Chapter 15.20 MCC (Septic Ordinance) and "Prohibitions", Central Coast Basin Plan RWQCB.

**Item 6.** Soil excavations must be performed on each lot and witnessed by a representative of the Division of Environmental Health. Contact Roger Beretti at 744-45-70 to schedule and determine scope of work.



**Item 7.** Submit two copies of a soils and percolation testing report for review and approval by the Division of Environmental Health to prove that the site is suitable for the use and that it meets the standards found in Chapter 15.20 MCC (Septic Ordinance) and “Prohibitions”, Central Coast Basin Plan RWQCB. Contact the Division prior to proceeding to determine the scope of work and to oversee soil testing. The testing and report format shall be completed as per adopted soil report policies of the Department.

A month after the initial incomplete letter, on October 28, 2002, Bestor Engineers provided a letter to the Health Department notifying Roger Beretti that percolation test holes scheduled the following week in an effort to address Item 6. Carl Hooper, PE of Bestor Engineers asked for direction on depth of the holes and outlined the number of holes to be drilled on each site.

On November 6, 2002, with seemingly no feedback on hole depth from the Health Department, Bestor Engineers provided a status of the holes bored and the availability of what the engineer believed would be “successful” percolation results.

On October 1, 2003, Bestor Engineers provided all of the Percolation Test data sheets to Mr. Roger Beretti and described the process by which the tests were conducted. He concludes his letter noting the “obviously acceptable drain field tests” and the “proven lack of nitrate problem” as feared in the 1982 Montgomery Report.

Finally, on June 5, 2003, Bestor Engineers provided a letter to Mary Ann Dennis of the Health Department with nitrate testing showing “to be less than 1.0 mg/l, versus allowable of 10 as NO<sub>3</sub>” for the Schulte Road Observation Well noting that the tests were “adequate proof that the Montgomery fears in 1982 were overly cautious” (Exhibit G).

**Based on the evidence in the record, the County’s concerns regarding water and wastewater were addressed and should have been deemed complete at the very latest by October 2, 2003 and as early as November 2002.** Mr. VanHorn’s letter on July 31, 2006 asks for nearly the same data Applicant had already provided through Bestor Engineers and Central Coast Drilling to Roger Beretti in 2001 and 2002.

A memo dated February 4, 2004 from John Hodges, who replaced Roger Beretti at the Health Department, acknowledges all the facts we and Applicant has presented through the years related to wastewater and water (Exhibit H). And while Mr. Hodges notes concerns related to wastewater and water, it is evident that Applicant had done everything he had been asked do to provide the County with the information requested in order to deem the project complete. Mr. Hodges memo clearly shows that this information had been provided.

#### **IV. Comparison Between Vista Nadura and September Ranch Application Handling with Regard To Water Supply**



As illustrated above, the initial Application proposed using an on-site well to supply potable water, but did not provide “proof” of legal entitlement to “sufficient volume” of water for County Staff to even deem the Application Complete. In response, Applicant promptly provided historical well usage records for many years prior, provided evidence that the well was lawfully installed and approved and as to the well’s fitness. Applicant further obtained a letter from MPWMD stating the number of acre feet of entitlement that they determined to exist based upon the historical usage. County Staff continued to insist that this information was insufficient to even deem the Application complete.

Applicant then, in 2002 additionally provided a can and will serve letter from Cal Am. Staff still refused to deem the Application Complete.

By contrast, September Ranch did not provide any data regarding its legal entitlement to a particular “volume” of water in conjunction with its application. It did not even provide such information until after the completion of the initial Draft EIR, more than two years later. Yet that application was deemed complete. Heck, that Project was initially approved with less information and documentation related to water supply sufficiency that Applicant provided in conjunction with its Application which was deemed incomplete.

This disparity in treatment is unjustifiable. And without comment as to the cause of such disparate treatment, Applicant sincerely hopes that Director will act to rectify this situation.

## **V. Conclusion**

Applicant understands that Proposed Project has not supported by certain members of the public. Applicant understands that the Project has not viewed favorably in conjunction with the County’s General Plan update process and that it has been viewed skeptically and/or was disfavored by at least some departments and/or staff members. (Exhibit I). Applicant understands that the turnover of County Staff throughout the years, development moratoriums, the General Plan update and the County’s loss of many of the Project records all impacted the processing of this Application.

But, notwithstanding Applicant’s understanding of these issues, Applicant is unwilling to understand or accept The Application being processed in a manner inconsistent with the rules and inconsistent with the manner in which other applications are treated.

As requested here, Applicant seeks your support in this regard, even if it is retroactive and belated. Thank you.

If you believe additional information, please advise.

Mr. Carl Holm, Director  
March 19, 2019  
Page 9



Sincerely,

MONCRIEFF & HART, PC

A handwritten signature in black ink, appearing to read 'Paul Hart', written over the printed name.

Paul Hart

PH/sld

Enclosures as above

no date	County	Accela Description of PLN980024	Minor subdivision of parcels in Prunedale (seems to be unrelated to this project)	
no date	County	Site Plan - Village A, Village B, Village C		
no date	County	County "Flysheet" for PLN990274	Shows project log	
no date	County	Language from Carmel Valley Master Plan	p.44-49 Implementation of quota and allocation	
no date	County	Section 65915 Government Code	Affordable Housing	
no date	County	Section 15126.6 Code	Consideration of Alternatives EIR	
no date	County	Attachement 2: Specific Topics to be included in EIR		
no date	County	CVMP Subdivision Evaluation Score Sheet	Carmel Valley Master Plan Evaluation Score Sheet (not completed)	
<b>1975</b>		Jun-75 Mo Co Master Drainage Plan Lower Carmel Valley Watersheds Report	Identifies existing drainage structures Structures 23 (a) & 23(b) are culverts on Vista Nadura Property Culverts and drainage inadequate need to be 48 inch	County Report Drainage
<b>1977</b>		Initial Study ZA 3274	Permit to park airstream trailer (Gaylord Jones)	UNRELATED?
<b>1978</b>		January Agha partial ownership 1300 acres		
	County	3/16/1978 Initial Study	Initial Study for Vista Nadura	
	County	3/16/1978 Bestor to Planning	15 prints of prelim map and EA	
	County	3/20/1978 Bestor to Planning	Suggestion of new street names	
	County	3/20/1978 Bestor to Planning	Substitute map submitted	
	County	3/24/1978 Planner to Bestor	Review of proposed street names (McFall Road, Suma Drive and Sierra Trail) acceptable.	
	County	3/28/1978 County Pubic Works to Planning	Reviewed preliminary map; storm drainage; intersection	
	County	3/30/1978 Subdivsion Committee Minutes	Health concerned with septic, proceed with EIR	
	County	3/30/1978 Monterey County Subdivsion Committee	Agenda items	
	County	4/10/1978 PC	Notice of Public Hearing	
	County	4/14/1978 Geoconsultants, Inc.	Preliminary Geological Feasibility Study	
	County	4/16/1978 County Clerk	Notice of Public Hearing	
	County	4/26/1978 Preliminary Subdivsion Map Report	Continuation of Vista Nadura project	
	County	4/26/1978 Environmental Assessment	Initial Study shows potential for increased traffic, air quality, water consumption, visual impact	
	County	5/8/1978 Water Quaality Control Board to PC	Recommendation for denial due to septic concerns	
	County	5/4/1978 Well Engineering Surveys	Electric Log	
	County	5/12/1978 PC	Notice of Public Hearing	
	County	5/15/1978 Well Engineering Surveys	Electric Log	
	County	5/18/1978 Carmel Pine Cone	Declaration of Publication	
	County	5/23/2018 League of Women Voters to PC	Recommends tabling project until Master Plan is complete	
	County	5/28/1978 Subdivsion Data Sheet	Polk Subdivsion 1298 acres into 260 lots (Nader is agent)	
	County	5/31/1978 Permit for Well for Domestic Use	Driller's report/well log	Water Supply
	County	5/31/1978 Permit for Well for Domestic Use	Driller's report/well log	
	County	5/31/1978 PC Resolution 78-344	PC Resolution application of preliminary subdivision map	
	County	5/31/1978 Minutes of PC meeting	Water Control Board recommend denial, growth management a concern; EIR not a commitment to build	
	County	Apr & May 1: Well Drillers Report	New Well Drilled	Appears to be a permit Water
	County	9/22/1978 Planning to Earth Metrics	Submit for proposals of EIR	
	County	11/3/1978 County Planning	Authorization of Contract for EIR	
	County	11/8/1978 BOS	BOS resolution for preparation of EIR	
<b>1979</b>		County Orders EIR		All Topics
	County	3/16/1979 Richard Abbott Public Comment	Public comment - re: water	
	County	4/2/1979 Ground Water Analysis	Identifies chemicals in water	Water & Sewer
	County	4/2/1979 Ground Water Analysis	Identifies chemicals in water	
	County	5/25/1979 Final EIR by Larry Seeman	EIR Document	All Topics
	County	6/26/1979 County PW to County Planning	Received map with certified EIR - w/ comments regarding drainage, traffic	
	County	6/28/1979 Subdivision Committee Minutes	Subdivision Committee Minutes	
	County	7/12/1979 Carmel Valley Outlook	Notice of Publication	
	County	7/25/1979 Robert Downs to PC	Resident mentioning drainage issues on Vista Nadura	
	County	7/25/1979 County PC	Notice of Public Hearing	
	County	8/3/1979 CV to Nader	CV Fire cannot protect subdivsion and may not be able to protect existing development	
	County	11/11/1979 CV Fire to Nader	Reminder of Mid Valley fire BOD meeting	
1980	County	7/14/1980 Soil Boring Log		
1981		1/6/1981 Agha to MPWMD	Wells do not have pumps and no water has been extracted to date	
		1/12/1981 MPWMD Declaration of Reporting Status	for wells existing prior to July 9, 1980	
	County	6/26/1981 County to Carl Hooper	Subdivsion map submitted 7/24/81 cannot be accepted due to Ordinance 2642	
	County	7/20/1981 Planner to Bestor	County is prohibited by court action from accepting tentative map after interim zoning expired	
	County	7/31/1981 Bestor to County	Bestor will retrieve maps and documents to avoid destroyal	
	County	8/12/1981 County to Carl Hooper	Additional material overlooked	
1982		County General Plan Update		REGULATORY
1983		Feb-83 BOS Resolution 9-15-83	Wastewater Study adopted Montgomery Engineers	REGULATORY RESTRICTION Wastewater/Sewer
1984			Prohibit further subdivisions in basins 7,9,30,32	
	County	10/23/1984 Permit 35206	Electrical work for second story loft	
1985			Loft in Barn	
	County	1/17/1985 Permit 35426		
	County	2/18/1985 Grant Deed from Polk to Aghas		
	County	7/30/1985 Building Inspection Form 38572 Issued 5/1/87	Building Inspection for Conversion of Small Barn PCM 85-481; Permit #38572; Receipt # PC-41699 "Categorically Exempt"	
	County	7/30/1985 Building Inspection Form 38572	Submit Subdivsion Plans Informed of Moratorium on Development No applications being accepted or approved *** (same as above)	
1986	County	11/6/1986 Bestor to Durrell	Discussion of pump test and reccomendation for pump and storage tank	
1987		1/6/1987 WMD Permit & Application for fixtures	Approve 4 fixtures for Small Barn Must provide building permit to get WMD permit Permit # 7447	Red Tag
	County	10/14/1987 Dept of Health Recommend Denial Letter from Messenger	File # PC6309 WHAT IS THIS??? Letters of 11/30/72; 3/27/74 and 3/10/77 all state that septic system is not feasible - so recommend	Septic/Sewer



	1/31/2002	Bestor to County	Grading permit request for storm drain with background info of proposal	
County	1/31/2002	Bestor to County	Grading permit request for storm drain with background info of proposal	
County	2/12/2002	Bestor to Building Dept	Four sets of Plans for grading application	
County	3/15/2002	Bestor to Public Works	Reponse to 3/13/02 phone call and storm drain	
County	4/2/2002	Bestor to Planning	Respond to 3/28/02 regarding grading permit and 50 acre lot line	
	4/11/2002	Bestor to Nader	Discussion of proposal of water at Vista Nadura	
	4/12/2002	Bestor Letter to County Planning	Tentative map submitted in 1999	Date of Application
			Need 2.194 AF of water for all 20 homes	Water Supply
			Irrigation from onsite well 40 gpm	
County	4/12/2002	Bestor Letter to County Planning	Discussion of 20 lot proposal and water use, introduction of alternative 100% inclusionary option of 172 units	
County	4/26/2002	Bestor Preliminary Soil Report	Includes Soil Report from 1978 EIR	
County	5/6/2002	Bestor to Public Works	Respond to letter 3/15/2002 related stor drainage	
	6/2/2002	Bestor Fax to Mo Co Planning	No response to 4/12/02 letter in 2 months	Lack of Timely Resp
County	6/2/2002	Bestor Fax to Mo Co Planning	No response to 4/12/02 letter in 2 months	
	8/9/2002	Bestor to Nader	Info to Nader regarding County compromise re: drainage	
County	8/5/2002	Preliminary Title Report	PTR for Vista Nadura Property	
	8/12/2002	Bestor to County	Bestor recommendations for revising plan	
			Single phase, dual water system, inclusionary units, add HDPE drainage pipe	
	8/14/2002	Bestor to County	Proposed compromise for CV drainage	
	8/21/2002	Mo Co letter from Ellis to Rosenthal	Moratorium & GP update apply to Vista Nadura	
			New Planner Pat Kelly assigned	
County	8/23/2002	Rosenthal to County (Ellis)	Concern that application still wasn't accepted after 7/3/2001 Whitney letter and requirements were met	
	8/25/2002	Nader to BoS	Affordable housing	
	8/26/2002	County Receipt for Fees	Payment of \$15,958	
County	8/26/2002	Bestor (Carl Hooper)	Map, zoning, planning, surveyor, water resources, health	
County	8/26/2002	Initial Water Use Questionnaire	Preliminary Soil Report	
County	9/4/2002	County (Kelly) to Nader	Filled out by Nader, Initial water Use/Nitrate Impact Questionnaire - proposes dual water system	
County	9/6/2002	Bestor to County (Kelly)	Request for additional information (road construction, grading, map of trees) to begin interdepartmental review	
	9/11/2002	To County from James Jeffery, P.E.	Response to 9/4/2002 questions	
County	9/11/2002	To County from James Jeffery, P.E.	Response to traffic impacts	
	9/14/2002	From Agha to BoS	Response to traffic impacts	
	9/15/2002	Nader to BoS	Subdivision and Affordable Housing	
	9/16/2002	Interdepartmental Review	Proper noticing of General Plan	
County	9/18/2002	County (PW) to County (P. Kelly)	Incomplete from: Parks; CV Fire; Public Works (traffic)	
	9/19/2002	County to Bestor	Fax cover sheet of "complete traffic study" (traffic study not included)	
	9/23/2002	CV LUAC Minutes	Discharge facilities for drainage - in agreement with proposal except for hold harmless	
County	9/23/2002	CV LUAC Minutes	Motion to continue item	
County	9/23/2002	Water Resources Complete	Complete with conditions	
County	9/23/2002	Health Department Incomplete	Map, Can and Will supply, soil percolation test	
County	9/24/2002	Public Works Incomplete	LOS, ADT, Intersection analysis, left-turn channelization	
	9/25/2002	Archeological Resource Management	Cultural Resource Evaluation of Vista Nadura	
	9/26/2002	County to Nader	Notice of Incomplete with Interdepartmental Review comments	
			Carmel Valley Fire	
			Water Resources (Complete)	
			Health Department (Incomplete)	
			Traffic (Incomplete)	
County	9/26/2002	County to Nader	Notification of incomplete (Public work - traffic, Health - water, septic)	
	10/1/2002	Bestor fax to MO Co Health	Provides overlay of water & sewer for project with	Sewer & Water saf
			Montgomery Study Map	
County	10/1/2002	Bestor fax to MO Co Health	Provides overlay of water & sewer for project	
	10/1/2002	Bestor to Nader	Dual water system idea (Cal Am to provide fire protection and potable water, mutual service for non-potable)	
	10/7/2002	LUAC Minutes	Application Incomplete - Nader would like to go straight to PC	
County	10/7/2002	LUAC Minutes	Application Incomplete - Nader would like to go straight to PC	
County	10/23/2002	Fax from County Health to Nader	BOS Resolution dated 9/15/83 regarding CV Wastewater Study	
***	10/23/2002	Cal Am to Nader	Can and Will Serve letter "under the provisions of the rules, regulations and tariffs... and subject to availability"	
	10/28/2002	Bestor to County Health	Notification of drill perc test holes asking for direction on depth	
County	10/28/2002	Bestor to County Health	Notification of drill perc test holes asking for direction on depth	
	10/31/2002	County to Nader	Carmel Valley Wastewater Study and Traffic Moratoriums	
County	11/6/2002	Bestor to County Health	Status of percolation tests	
County	11/6/2002	County Planning to Bestor	Grading Plan Checklist	
	11/13/2002	Nader to BoS	General Plan comments regarding affordable housing	
	???	County Code 18.64	Implements CV Master Plan 39.1.6	REGULATORY RESTRICTION Traffic
			Exempts "any application ... which has been deemed	
2003				
County	4/15/2003	Bestor letter to MO Co Health	Respond to Health Dept letter of 11/4/02	
	4/15/2003	Bestor letter to MO Co Health	Respond to Health Dept letter of 11/4/02	
	5/28/2003	MPWMD to Carl	Water quality results for well	
County	6/5/2003	Bestor to County Health	Proof of Nitrates at acceptable level - Montgomery fears were overly cautious	
County	6/5/2003	Bestor to County Health	Proof of Nitrates at acceptable level - Montgomery fears were overly cautious	
	10/1/2003	Report provided by Hooper to Beretti on 10/1/03	Stroh letter of 12/27/07 says this report is deficient	Wastewater
		Soil Tests / Perc Tests		
County	10/1/2003	Bestor to County Health	November 2002 boring logs and percolation tests	
County	10/1/2003	Bestor to County Health	November 2002 boring logs and percolation tests	w/supporting documents
	11/17/2003	Bestor to Nader	Reporting on meeting with County Sanitarian (Beretti replacement)	
			Discussion of Montgomery Report	
2004				
	2/4/2004	Memo between County Resource Protection and Land us	Outlines issues with Wastewater, Water	
County	2/4/2004	Memo between County Resource Protection and Land us	Outlines issues with Wastewater, Water	
	5/6/2004	Bestor to County	Estimate of drainage repair \$290,000, Nader offering \$27,000 contribution	
County	5/6/2004	Bestor to County	Estimate of drainage repair \$290,000, Nader offering \$27,000 contribution	
County	5/17/2004	County to Bestor	Response to 5/6/04 letter - discussion of distribution of benefit of new drainage	
	5/20/2004	Rosenthal to Code Enforcement	Status update of Drainage Code Enforcement case	
County	5/20/2004	Rosenthal to Code Enforcement	Status update of Drainage Code Enforcement case	
County	5/27/2004	County Application Request	Application request form (\$381) for alternative project , 171 new dwellings, 50% affordable	
County	5/28/2004	County Receipt	Receipt for \$381 for "appt to Give Appl"	
	6/24/2004	Instructions for Development/Subdivision	County Instructions	
County	7/12/2004	Bestor to Nader	Information regarding dispersion of septic	
	7/15/2004	Development Project Application	172 units 50% market rate/50% affordable	
	7/15/2004	Initial Water Use/Nitrate Impact Questionnaire	dated 8/26/2002 and redated 7/15/2004	
County	7/15/2004	Initial Water Use/Nitrate Impact Questionnaire	dated 8/26/2002 and redated 7/15/2004	
County	7/22/2004	Nader to County	Request for Fee Reduction for affordable housing project	
County	7/23/2004	Fee Waiver Request	Nader completes Fee Waiver Request for 172 unit project 50% affordable	
	7/26/2004	Receipt for Payment of 172 project	\$6,975	

			Denial	
1991	1/4/1991 Letters & Deeds re: Water Rights		Series of letters & deed language re: Agha water rights under deal with Cal Am predecessor Issue is both free water, and entitlement to water Documents show both deal w Cal Am and pre 1914	Water Rights
1992	7/2/1992 L Bestor to Nader re: Well tests in 1979		Summary of 1979 well tests and expected production Final note suggests waiting out CalAm moratorium	
1995	6-Jul-95 State Water Resources Control Board Order No WR 95-10			REGULATORY RESTRICTION Water supply
1996	10/11/1996 Application for PreApplication Conference 8/26/1996 Well Meter Report ??? Experian printout		Paid filing fee of \$473 Active Ag well reported with zero production for year enclosed porch reported / Lanai reported	Water Supply RedTag - Carport
1997	4/7/1997 Groundwater Testing Report Caprock / Barminski 6/30/1997 Agha letter to WMD 9/4/1997 WMD internal memo re water credits 9/16/1997 WMD Letter  10/3/1997 email from MPWMD		Groundwater Sample and results  Identifies 35-40 horses seeks water credit Well reported as inactive 92 & 93 (no response 94,94,96) Will not give water credits for reducing horses water meter required for well Report annual usage Internal memo regarding Nader's explanation of inactive well	Water Supply Water Quantity
1998	4/14/1998 Bestor Engineer Letter 4/15/1998 Bestor to Peifer Plumbing County 4/15/1998 Bestor to Peifer Plumbing 7/16/1998 MPWMD to Nader 8/19/1998 Water Credit Application to WMD 11/12/1998 MPWMD to Nader		Discusses drainage ditch construction/Plan Drainage and culverts Drainage and culverts Response to calculating water credits for property Cal Am Acct 020-782-5850-03-6 Response to Water credit inquiry and credits for irrigation	Drainage
1999	3/1/1999 WMD water credit letter  County 3/1/1999 WMD water credit letter County 6/10/1999 County Application Request Form 10/19/1999 BOS Resolution 99-379		Letter authorizing 2.43 ac/ft use & credit of 2.1 ac/ft year Acknowledges "active commercial use" as horse facility (same as above) Application Request for 20 lot subdivision (See Language Below)	Water Supply Red Tag Use Permi  REGULATORY RESTRICTION COMPLETE MORATORIUM Traffic
2000	County 4/25/2000 Bestor to County (Whitney)  16-May-00 BOS Resolution 99-379 Extended Moratorium  County 9/19/2000 Bestor to County (Whitney) 12/21/2000 County to Nader 12/21/2000 Letter from Planning Dept Whitney  County 12/21/2000 Letter from Planning (Whitney)		Revised Tentative Map for 20 lots Introduction of phased subdivision starting with six lots to meet 2.49 af of water Discussion of perc from 1980 tentative map Residential Subdivisions in Carmel Valley be den... pending construction of left turn lanes ... and improvements between HWY 1 and CV Rd ** Residential subdivision applications submitted before Oct 19, 1999 may proceed, so they may be addressed on their merits Follow up of 4/25/2000 letter, includes tentativ... p and request to proceed with application Moratorium on subdivisions in Carmel Valley due to to traffic Subdivision applications received prior to 10/19/99 can proceed. Your request for application was submitted on 6/10/99 Recommend filing your application knowing that An EIR will be required (same as above)	REGULATORY RESTRICTION COMPLETE MORATORIUM Traffic
2001	3/3/2001 Bestor (Carl Hooper) 3/6/2001 Bestor to County  County 3/6/2001 Bestor County 7/3-7/5 emails bw planning at County  7/3-7/5 emails bw planning and County 7/3/2001 Letter from Planning Whitney  County 7/3/2001 Letter from Planning Whitney County 7/3/2001 Letter from Planning Whitney 7/27/2001 County to All Property Owners 8/1/2001 Project Development Application 8/1/2001 Copy of Check		Preliminary Drainage Analysis (discussion of runoff with data and map) Tentative Map with 6 lots (as they can be approved without increase in traffic) Included driller's log from 1978 Percolation test from 1980 1978 Geotech report Drainage analysis Reference to 1980 EIR (Same as above) Does an application request constitute an application being submitted for purposes of Moratorium/Traffic? They say NO (same as above) an EIR is required to go forward with your project Prior 1979 EIR must be updated You did not file a "formal application" prior to 10/19/99 so our project has been "on hold" Recommend a Formal Application 10 copies of application & Map Filing fees of \$14,465 (same as above) (same as above) with attachments Process for requests for Land Use designation changes Tentative Map (Standard Subdivision) Application \$14,465 Paid for Application fees	
2002	1/15/2002 Bestor to Nader 22-Jan-02 BOS Resolution 02-024  County 1/22/2002 BOS Resolution 02-024		Commenting on Augie Acuna's 1991 site plan of 160 multi-family dwelling plan with regard to water supply CV Master Plan 39.1.6 limits development pending construction of capacity improvement to Hwy 1 CV Master Plan 39.3.2.1 calls for semi annual monitoring of traffic volumes & deferral of development if certain volumes reached On 12/11/01 report indicates critical volume reached on Seg 3 (ford rd to grade) & seg 7 (shulte to san carlos Subdivisions shall be denied pending left turn on segments 6 & 7 Except, Res Subdivision Applications submitted before Oct 19, 1999 may proceed This Augments Resolutions 99-379 & 01-133 (same as above)	

	7/26/2004	Memo to Planning Director from Planner	Status update of 172 project alternative
County	7/26/2004	Memo to Planning Director from Planner	Status update of 172 project alternative
	7/28/2004	Rosenthal to Public Works	Request to recalculate costs of drainage
County	7/28/2004	Rosenthal to Public Works	Request to recalculate costs of drainage
	8/16/2004	CV LUAC minutes	Deny project due to a variety of things including red tag, traffic, water, sewer
	8/16/2004	Interdepartmental Review	Check sheet
County	8/16/2004	Interdepartmental Review	Check sheet
			Includes Referral sheets - shows Incomplete from WRA, Health, Parks
			Includes LUAC minutes from 8/16/2004
County	8/16/2004	Incomplete Parks Dept	Recreational Requirements
	8/26/2004	County (P. Kelly) to Nader	Letter with departmental review status
County	8/26/2004	County (P. Kelly) to Nader	Letter with departmental review status
	9/28/2004	Bestor to County (Patrick Kelly)	Supplemental data requested in 8/26/04 letter
County	9/28/2004	Bestor to County (Patrick Kelly)	Supplemental data requested in 8/26/04 letter
	10/4/2004	Fax from Laith to T. Schmidt	(Cover Sheet only) Sent EIR, Tentative Map, Plan & Profile, Letter from C. Hooper
County	10/4/2004	Fax from Laith to T. Schmidt	(Cover Sheet only) Sent EIR, Tentative Map, Plan & Profile, Letter from C. Hooper
	10/12/2004	M. Noel to T. Schmidt	Redevelopment Agency Review (Incomplete)
	10/12/2004	M. Noel to T. Schmidt	Redevelopment Agency Review (Incomplete)
County	10/19/2004	County Application Information (Accela)	Grading for Storm Drain applied for 2/12/2002
County	10/22/2004	Incomplete Parks Dept	Recreational Requirements (duplicate from 8/16/2004)
	10/25/2004	Interdepartmental Review	Status - Incomplete (Water Resources, Environmental Health, Fire)
	10/25/2004	Interdepartmental Review	Status - Incomplete (Water Resources, Environmental Health, Fire)
	10/25/2004	Letter from County (Schmidt) to Agha	Completeness Review
County	10/25/2004	Letter from County (Schmidt) to Agha	Completeness Review
	10/27/2004	County Memo to File	Telephone conversation with applicant; re: 172 units of affordable housing
County	10/27/2004	County Memo to File	Telephone conversation with applicant; re: 172 units of affordable housing
	11/1/2004	Bestor to County (Dale Ellis)	Explanation of 172 unit project (on 4 lots) as alternative to 20 unit project
County	11/1/2004	Bestor to County (Dale Ellis)	Explanation of 172 unit project (on 4 lots) as alternative to 20 unit project
	11/22/2004	Nader to County (Dale Ellis)	Request for clarification after change of planners
County	11/22/2004	Nader to County (Dale Ellis)	Request for clarification after change of planners regarding direction given on affordable housing project
	12/23/2004	Bestor to Nader	Bestor demand for payment and explanation of work
2005			
	1/5/2005	Bestor to County (Dale Ellis)	Resend of 11/1/2004 letter that was previously unsigned
County	1/5/2005	Bestor to County (Dale Ellis)	Resend of 11/1/2004 letter that was previously unsigned
	1/18/2005	EIR Project Planning Conference	
County	1/18/2005	EIR Project Planning Conference	Water supply, water quality, wastewater
	1/28/2005		EIR Project Planning Conference Call
	3/9/2005	County to Durell	Reassignment of Planners to Bob Schubert
County	3/18/2005	Rosenthal to County	Formal withdrawal of 172 project, discussion of water, traffic
	9/6/2005	Durell to County (D. Ellis)	Request of refund in the amount \$6975
County	9/6/2005	Durell to County (D. Ellis)	Request of refund in the amount \$6975
	12/22/2005	County Request for Proposals	Request for Proposals for EIR
2006			
	1/8/2006	email Culbertson to Schubert	clarification on RFP for EIR
County	1/8/2006	email Culbertson to Schubert	clarification on RFP for EIR
County	1/9/2006	Certificate of Liability Insurance	Monterey County Officers, Agents and Employees Liability Policy
	1/15/2006	email Culbertson to Schubert	Suggests Nader vet his technical studies through County process then start EIR
County	1/15/2006	email Culbertson to Schubert	Suggests Nader vet his technical studies through County process then start EIR
	1/17/2006	email Culbertson to Schubert	questions regarding conference call
County	1/17/2006	email Culbertson to Schubert	questions regarding conference call
	1/18/2006	email Culbertson to Schubert	questions regarding conference call
County	1/18/2006	email Culbertson to Schubert	questions regarding conference call
	1/20/2006	Bestor Tentative Map (Marked up) and Letter to Nader	Lot 21 showing six triplexes
	1/20/2006	Bestor to Nader	w/CA Planning and Zoning laws describing density bonuses
County	3/20/2006	County (Knaster) to Rosenthal	Response to 2/14 letter and selection of EIR consultant - Nader protesting firm selection from San Diego
	4/6/2006	Bestor to County (Schubert)	Provide duplicate package from 2001 and 2004
County	4/6/2006	Bestor to County (Schubert)	Provide duplicate package from 2001 and 2004
	4/10/2006	Bestor to Lombardo	Rationale for 36" culvert with plans, and detention pond plans if large housing development, includes letter from
	4/19/2006	email Schaffner to Schubert	Coordination of technical studies and outstanding studies
	4/20/2006	County (Schubert) to Nader	Request for additional reports needed for EIR (update of 1978 geotech report, tree location map, AMBAG air ph
County	4/20/2006	County (Schubert) to Nader	Request for additional reports needed for EIR (update of 1978 geotech report, tree location map, AMBAG air ph
	4/27/2006	Lombardo to Lunquist	Drainage issues
	5/9/2006	Bestor to Nader	Inclusionary housing proposal and discussion of water being used from well
	6/12/2006	Fax to Wurz and Nader from County (Onciano)	Copy of 4/20/06 letter from Schubert
	7/6/2006	Tentative Map Provided by Agha	(See Stroh letter of 12/27/07) Includes Inclusionary Housing
		Revised tentative map	
	7/10/2006	Bestor to County (Schubert)	Response to 4/20/06 letter showing inclusionary housing
County	7/10/2006	Bestor to County (Schubert)	Response to 4/20/06 letter showing inclusionary housing
	7/10/2006	County Memo Requesting refund of project fees	
County	7/10/2006	County Memo Requesting refund of project fees	w/ receipt of fees \$6975
County	7/21/2006	Memo to Schubert from Noel	Review of compliance for Inclusionary Housing Ordinance - exceeds requirement
County	7/21/2006	County Request for Proposals	County Request for Proposals for EIR (supercedes 12/22/2005 RFP)
			*project description states application date was 8/1/99 and first deemed incomplete 8/26/99 and remains incon
			*water description states, "water is proposed to be supplied by Cal Am for potable use, and by a mutual water s
			"A key issue to be addressed in the EIR is the integration of water supply considerations in the land use decision
County	7/25/2006	Interdepartmental Review Fire	Complete - with conditions
County	7/27/2006	Pease to Schubert	Clarification on EIR
	7/31/2006	Fax Schubert to S. Shaffner	Revised Competitive Bidding/Vendor Selection EIR
	7/31/2006	Email from Schubert to T. Wissler	Clarification on RFP for EIR
	7/31/2006	Interdepartmental Review Check Sheet	
County	7/31/2006	Interdepartmental Review	List of all projects waiting for review on 7/31/2006
County	7/31/2006	Interdepartmental Review Public Works	Complete - PW previously deemed incomplete, but EIR will satisfy traffic concerns
***	7/31/2006	Interdepartmental Review WRA	Complete - with conditions of approval including water use and well information
County	7/31/2006	Interdepartmental Review Health	Incomplete - Need full description of project + septic + water issues
County	7/31/2006	Interdepartmental Review Parks	Complete - Fees required
	8/2 - 8/9/2006	Fax cover sheets from B. Schubert	(No attachments, only cover sheets to a variety of people)
County	8/2 - 8/9/2006	Fax cover sheets from B. Schubert	(No attachments, only cover sheets to a variety of people)
	8/3/2006	County to Nader	Notice that all items are complete except Environmental Health
County	8/3/2006	County to Nader	Notice that all items are complete except Environmental Health
	8/7/2006	County (Noel) to Nader	Inclusionary housing requirements
County	8/7/2006	County (Noel) to Nader	Inclusionary housing requirements
County	8/18/2006	Culbertson, Adams Assoc to Schubert	Proposal and Budget for Vista Nadura EIR
	8/28/2006	EMC Planning	Proposal and Budget for Vista Nadura EIR
County	8/31/2006	Memo Schubert to PW	Sharing proposals of EIR
County	8/31/2006	Culbertson, Adams Assoc to Schubert	Revised cost estimate for EIR proposal
County	8/31/2006	Memo Schubert to WRA	Sharing proposals of EIR
County	8/31/2006	Culbertson, Adams Assoc to Schubert	Revised cost estimate for Eir proposal. Includes original proposal as well.
	9/8/2006	email Schaffner to Schubert	Revised cost estimate for EIR proposal (no attachment)
County	9/8/2006	email Schaffner to Schubert	Revised cost estimate for EIR proposal (with attachment)
County	11/3/2006	County Activity Workflow History for Grading Permit	Last comment on 11/3/2006 says permit must be renewed and finalized before being cleared.

County	12/22/2006 Schubert to Nader	Follow up from 9/28/2006 regarding EMC selection for EIR
2007	10/29/2007 Email from County (VanHorn) to County (Stroh)	Resent conditions dated 07/31/06
County	11/8/2007 Unknown author	Notes regarding Nov 30th letter to be sent
County	11/9/2007 Development Chronology for Vista Nadura	Provided to County from Bestor
County	11/9/2007 Email From VanHorn to Stroh	Resent conditions dated 07/31/06
County	11/9/2007 Fax Bestor to Nader	Copy of correspondence sent from County to Nader
	11/9/2007 Agha Submitted Packet of Docs at meet	(This is referenced in Stroh letter of 12/27/07
	12/27/2007 Dept of Health Letter Allen Stroh	Prior Incomplete notice of 9/23/03 Prior Incomplete notice of 7/31/06 Agha claims responsive docs to above were provided Some info may have been lost or misplaced Need to recreate missing documents Need 1) Complete proj description 2) Map of project relative to wastewater study 3) Soils & Perc test report 4) 72 hour capacity test on well 5) Water supply info required under Title 19
		EIR will be conducted
		WasteWater Issues (community septic system not acceptable) Report provided by Hooper to Beretti on 10/1/03 had soil logs & perc tests - not sufficient May be able to hook up to Carmel Wastewater Dist *
		Water Supply MCC 15.04.040 & 19.03.015 require documentation of water rights prior to consideration of the application as complete Also requires investigation of feasibility of consolidate with another water system for application to be deemed complete
County	12/27/2007 Dept Health Letter Allen Stroh	Must provide a technical, managerial & financial document prior to an application being complete (same as above)
2008	2/21/2008 Bestor to County (Stroh) Draft Letter 2/21/2008 Bestor to County (Stroh) Final Letter 3/18/2008 County (Stroh) to Nader 3/25/2008 ?? To Nader 4/4/2008 Fax from Bestor to Messenger 5/6/2008 Notice of Violation (Drainage)	Response to 12/27/07 incomplete items  Response to Bestor letter 3/24/08 showing remaining incomplete items and process for completion Summary of Stroh 12/27/07 letter Nader's chronology of events, letter from 12/27/08, letter from Bestor 2/21/08, letter from County 3/18/08, tent 10/15/2004 County first noted violation for construction of drainage 4/29/2008 County inspector observed violation chains (same as above)
County	5/6/2008 Notice of Violation (Drainage) 5/14/2008 Bestor to Nader 6/4/2008 County (VanHorn) to Nader 6/10/2008 email County (Sandoval) to Bestor 6/11/2008 Messenger to Nader	Summary of 4/30/08 meeting with Health Department (water) Follow up of 4/30/08 meeting outlining outstanding incomplete items Provides application for pump test, and proof of long term water supply Notice of conflict of interest, recommendation of other attorneys
County	7/21/2008 email Mack to Herrington 7/31/2008 Salinas Pump Company  9/4/2008 County (VanHorn) to Nader 9/18/2008 Salinas Pump Company	Requesting additional info on compliance of Drainage CE ***shows that Bestor thought the matter had been Invoice for 72 hour pump test Includes County Source Capacity Test Document phone conversation, Nader agrees to connect to CAWD for sewer, water issues remain Pump Test Data Sheet 8 hour pump test
	10/21/2008 Carmel Area Wastewater District to Nader 10/28/2008 Rosenthal to County Counsel	Draft letter of Sewer Service Availability Judge Silver's findings regarding discharge at Carmel Valley Road was historically the natural exit point for drains Court heard case 1/10/2000
2009	2/19/2009 Fax from Bestor to Health 7/7/2009 MCC 19.03.010 Tentative Map Contents Ord 5135 sect 60	Water Quality test results 2/12/2009 Adopt code section listing dozens of required docs and pieces of information for a tentative map Replaced Ord 4082 & 3855 - 1996
2010	10/28/2010 County (Schubert) to Nader 12/17/2010 County (VanHorn) to Nader	Letter reminding moratorium on subdivisions due to traffic General Plan update stating subdivisions must follow new General Plan States that since 2006, EH has been working with Nader to get the project to complete status Do not have can and will from CAD for wastewater, CAD says will have to amend the sphere of influence
2011	2/1/2011 MPWMD to Durell 4/18/2011 ?? 8/30/2011 D. Agha to MPWMD (Pintar) 9/7/2011 fax from Schubert to Aaron Johnson 9/7/2011 fax from Schubert to Aaron Johnson 9/7/2011 Accela Printout 9/13/2011 Aaron to County 10/5/2011 Liz to MPWMD 11/15/2011 County (VanHorn) to County (Schubert) 12/19/2011 MPWMD to Durell	Water credits to be determined with abandonment of use Notes regarding incomplete items Confirmation that property has not changed in use Includes letters from 11/3/2010 and 2006 incompletes Includes 7/12/2011 memo, 12/10/2010 letter, 10/28/2010 County records showing status of project Request to delay initial hearing pending MCWMD Request for water credits Environmental Health considers project Incomplete Same letter as 2/1/2011 (water credits to be determined with abandonment of use)
2012	4/11/2012 L from MPWMD: Water Credit Inquiry Vista Nadura 4/17/2012 L from Durell to Aaron	Response from MPWMD saying that March 1, 1999 letter is not documentation of a Water Use Credit Includes all previous responses from MPWMD back to March 1, 1999 Re: 4/11/2012 reponse from S. Pintar
2013	6/25/2013 Adopt MCC 19.01.025 Technical Review  Adopt Ord 5218 sect 3 Repeal Subdivision Comm	County Staff shall conduct a Technical review of all Subdivisions / Tentative Maps to Recommend designs, improvements, compliance with law to make recommendations to Planning & BOS ** This replaced Minor Subdivision Committee method former 19.01.025 & Ord No 3797 (1994) and Ord No 5135 sect 55 (July 7, 2009)  BOS repeals Standard Subdivision Committee Planning commission named proper decision making body for subdivisions (19.01.035)

8/12/2013 MPWMD Water Credit Inquiry Discussion of how water calculation will be made (Group I Water Use Credit for permanent abandonment of 34 |  
 8/19/2013 MPWMD Water Credit Inquiry cont. Statement that March 1, 1999 letter was not a statement of water credits  
 8/20/2013 Email D. Stoldt MPWMD to Nader Same letter as 8/19/2013

2017 1/3/2017 Records request to P. Silkwood Durrell Agha reviewed 21 boxes in 2003 and files were destroyed with her permission after that review  
 3/6/2017 L from M&H re: request for Director's Interpretation Related timeline and status inquiry with County staff  
 3/21/2017 Internal correspondence re: review of timeline  
 7/19/2017 Memo from C. Holm Supplemental Procedures for Administrative Interpretations

2018 County 3/13/2018 County notes of complaints  
 County 3/15/2018 Ruiz Code Enforcement Documentation

Most recent is current code violations  
 Entire packet of documentation, includes:  
 notes on drainage issue  
 original violation in 2001 was grading without a permit - (I believe grading permit was eventually issued, no addit  
 Request for extension and explanation for carport conversion  
 Do not need business permit in County  
 Request for add'l information on code violation; dispute some claims  
 website info regarding Vista Nadura equestrian center  
 Zoning prior to 1948 to establish commercial stables  
 Extended Compliance date 7/2/2018  
 Permission for Jim Voelka (architect) to address citation  
 Request for dismissal of certain allegations related to CE020016, evidence included  
 Request for dismissal of certain allegations related to CE020016, evidence included  
 Info to property owner to help assist in applying for permits  
 County Counsel response to P. Hart letter June 8, 2018 stating violations exist  
 County Counsel response to P. Hart letter June 8, 2018 stating violations exist  
 Request for code compliance extention  
 Code Compliance for CE020016  
 Extension of Code Compliance Date  
 Records request  
 Information Security Standards

\*\* County 3/21/2018 County Proof of Service  
 County 4/6/2018 Email Agha to Ruiz  
 County 4/9/2018 Email Agha to Ruiz  
 County 4/16/2018 Email Hart to Bolwing/Ruiz  
 County 4/16/2018 vistanadura.com  
 County 5/1/2018 Email Quenga to Hart/Roberts  
 County 5/4/2018 County to Agha  
 County 5/29/2018 Laith to County  
 6/8/2018 Hart to Quenga/Bowling  
 County 6/8/2018 Hart to Quenga/Bowling  
 County 6/8/2018 Permit Process Evaluation  
 6/27/2018 From County (B. Briggs) to Paul Hart  
 County 6/27/2018 From County (B. Briggs) to Paul Hart  
 County 7/2/2018 Email L. Agha to J. Bowling  
 County 7/3/2018 Code Compliance Checklist  
 County 7/3/2018 County to Agha  
 County 7/5/2018 Email P. Hart to J. Dy (County)  
 County Aug-18 County

Go to ▾ Search Document 000

Baseline - water use.

Lead  
Case

1 of 1 | Results list

Carmel Valley - September Ranch  
1995 - 2001**▲ Save Our Peninsula Committee v. Monterey County Bd. of Supervisors, 87 Cal. App. 4th 99****Copy Citation**

Court of Appeal of California, Sixth Appellate District

February 15, 2001, Decided

No. H020900, No. H020930.

**Reporter****87 Cal. App. 4th 99** \* | [104 Cal. Rptr. 2d 326](#) \*\* | [2001 Cal. App. LEXIS 110](#) \*\*\* | 2001 Cal. Daily Op. Service 1412 | 2001 Daily Journal DAR 1721

SAVE OUR PENINSULA COMMITTEE et al., Plaintiffs and Respondents, v. MONTEREY COUNTY BOARD OF SUPERVISORS, Defendant and Respondent; SEPTEMBER RANCH PARTNERS et al., Real Parties in Interest and Appellants. SIERRA CLUB et al., Plaintiffs and Respondents, v. COUNTY OF MONTEREY et al., Defendants and Respondents; SEPTEMBER RANCH PARTNERS et al., Real Parties in Interest and Appellants.

**Subsequent History:** Related proceeding at [Save Our Carmel River v. Monterey Peninsula Water Management Dist.](#), [141 Cal. App. 4th 677, 46 Cal. Rptr. 3d 387](#), 2006 Cal. App. LEXIS 1124 (Cal. App. 6th Dist., 2006)

Related proceeding at [Bernardi v. County of Monterey](#), 2008 Cal. App. LEXIS 1710 (Cal. App. 6th Dist., Sept. 30, 2008)

**Prior History:** [\*\*\*1] Superior Court of California, Monterey County. Superior Court No.: M42412. Monterey County Super. Ct. No. M42485. The Honorable [Richard M. Silver](#) ↵.

**Disposition:** The judgment granting a peremptory writ of mandate is reversed in part and affirmed in part. The matter is remanded to the superior court with directions that the court issue a new writ of mandate ordering the Monterey County Board of Supervisors to vacate Resolution No. 98-500, including the approval of any permits or entitlements for the project described in that Resolution, and to vacate the certification of the Environmental Impact Report prepared in regard to the project. The Board shall be ordered not to take any further action to approve the project without the preparation, circulation and consideration under CEQA of a legally adequate Environmental Impact Report with regard to the water issues discussed in this opinion.

The portion of the superior court's judgment granting a writ of mandate and directing that the Board prepare a revised Environmental Impact Report to include further discussion regarding mitigation of traffic impacts is reversed.

The superior court's order awarding attorney fees is hereby vacated. Upon [\*\*\*2] remand, the court may issue a new order, in light of our disposition herein, or may reinstate the same order.

The parties are to bear their own costs on appeal.

**Core Terms**

baseline, Valley, mitigation, acre-feet, pumping, irrigated, traffic, water use, applicants, riparian right, impacts, conditions, per year, aquifer, Guidelines, offset, mitigation measures, environmental review process, traffic impact, Resources, draft eir, final eir, reduction, estimate, projects, figures, pastureland, segments, parcel, comments

**Case Summary****Procedural Posture**

Respondent environmental groups sought writs of mandate to challenge certification of appellant developers' environmental impact report (EIR) and the respondent board's findings. The Monterey County Superior Court, California, granted the writs, holding the EIR was inadequate under the California Environmental Quality Act (CEQA), [Cal. Pub. Res. Code § 21000 et seq.](#), as to traffic and water issues. Appellants sought review.

## Overview

The EIR initially established a water-use baseline of 45 acre-feet per year, based on the appellants' representation that some of the acreage was irrigated land, without documentation prior to 1997, but ultimately the baseline determination was referred to the board which could choose among various calculations. The figures did not reflect water actually used for irrigating the property. This violated the basic principles of CEQA, which required that an EIR start with a description of the existing environment, preferably before the EIR process began. Thus, the respondent board's decision was not supported by the evidence and was an abuse of its discretion. The impact of transferring water credits as mitigation, and the appellants' asserted riparian rights arose so late in the process, and so changed the EIR, the public was deprived of a meaningful opportunity to comment. Therefore, the trial court's ruling on the water use issues was correct. As to the traffic issues, the EIR acknowledged that the project would cause a significant impact on traffic, and recommended that the impacts be mitigated by payment of in-lieu fees. Thus the traffic discussion in the EIR was adequate.

## Outcome

With regard to the water issues, the judgment granting a peremptory writ of mandate was affirmed and the matter was remanded for a new writ of mandate ordering vacation of the EIR certification, and ordering the preparation, circulation and consideration under CEQA of an adequate EIR. As to the traffic issues, the judgment granting the writ and directing a new EIR to include discussion of traffic mitigation was reversed.

## LexisNexis® Headnotes

Administrative Law > [Judicial Review](#) > [Standards of Review](#) > [General Overview](#)  
Environmental Law > [Natural Resources & Public Lands](#) > [National Environmental Policy Act](#) > [General Overview](#)

### **HN1** Judicial Review, Standards of Review

In a mandate proceeding to review an agency's decision for compliance with the California Environmental Quality Act, [Cal. Pub. Res. Code § 21000 et seq.](#), the scope and standard of appellate review is the same as the trial court's and the lower court's findings are not binding on the appellate court. [More like this Headnote](#)

[Shepardize](#) - [Narrow by this Headnote](#) (10)

Administrative Law > [Judicial Review](#) > [Administrative Record](#) > [General Overview](#)  
[View more legal topics](#)

### **HN2** Judicial Review, Administrative Record

The appellate court reviews the administrative record to determine whether the agency prejudicially abused its discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence. [Cal. Pub. Res. Code § 21168.5](#). "Substantial evidence" is defined in the California Environmental Quality Act Guidelines, [Cal. Code Regs. tit. 14, § 15000 et seq.](#), as enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made is to be determined by examining the entire record. Mere uncorroborated opinion or rumor does not constitute substantial evidence. [Cal. Code Regs. tit. 14, § 15384\(a\)](#). [More like this Headnote](#)

[Shepardize](#) - [Narrow by this Headnote](#) (48)

Administrative Law > [Judicial Review](#) > [Standards of Review](#) > [General Overview](#)  
Environmental Law > [Natural Resources & Public Lands](#) > [National Environmental Policy Act](#) > [General Overview](#)  
Evidence > ... > [Presumptions](#) > [Particular Presumptions](#) > [Regularity](#)

### **HN3** Judicial Review, Standards of Review

The agency is the finder of fact and the appellate court must indulge all reasonable inferences from the evidence that would support the agency's determinations and resolve all conflicts in the evidence in favor of the agency's decision. In reviewing an agency's decision to certify an environmental impact report, the court presumes the correctness of the decision. [More like this Headnote](#)

[Shepardize](#) - [Narrow by this Headnote](#) (35)

Environmental Law > [Natural Resources & Public Lands](#) > [National Environmental Policy Act](#) > [General Overview](#)

### **HN4** Natural Resources & Public Lands, National Environmental Policy Act

The environmental impact report (EIR) is the heart of the California Environmental Quality Act, [Cal. Pub. Res. Code § 21000 et seq.](#), and the integrity of the process is dependent on the adequacy of the EIR. [More like this Headnote](#)

[Shepardize](#) - [Narrow by this Headnote](#) (8)

Environmental Law > [Natural Resources & Public Lands](#) > [National Environmental Policy Act](#) > [General Overview](#)

### **HN5** Natural Resources & Public Lands, National Environmental Policy Act

The ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an environmental impact report (EIR) that does not provide the decision-makers, and the public, with the information about the project that is required by the California Environmental Quality Act, [Cal. Pub. Res. Code § 21000 et seq.](#) The error is prejudicial if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process. [More like this Headnote](#)

[Shepardize - Narrow by this Headnote \(16\)](#)

Administrative Law > [Judicial Review](#) > [Standards of Review](#) > [Abuse of Discretion](#)  
Environmental Law > [Natural Resources & Public Lands](#) > [National Environmental Policy Act](#) > [General Overview](#)

**HN6 Standards of Review, Abuse of Discretion**


When the informational requirements of the California Environmental Quality Act, [Cal. Pub. Res. Code § 21000 et seq.](#), are not complied with, an agency has failed to proceed in a manner required by law and has therefore abused its discretion. [Cal. Pub. Res. Code §§ 21158.5, 21005\(a\)](#). [More like this Headnote](#)

[Shepardize - Narrow by this Headnote \(20\)](#)

Administrative Law > [Judicial Review](#) > [Standards of Review](#) > [General Overview](#)  
Environmental Law > [Natural Resources & Public Lands](#) > [National Environmental Policy Act](#) > [General Overview](#)

**HN7 Judicial Review, Standards of Review**

Although the agency's factual determinations are subject to deferential review, questions of interpretation or application of the requirements of the California Environmental Quality Act, [Cal. Pub. Res. Code § 21000 et seq.](#), are matters of law. While an appellate court may not substitute its judgment for that of the decisionmakers, it must ensure strict compliance with the procedures and mandates of the statute. [More like this Headnote](#)

[Shepardize - Narrow by this Headnote \(19\)](#)  1

Environmental Law > [Natural Resources & Public Lands](#) > [National Environmental Policy Act](#) > [General Overview](#)

**HN8 Natural Resources & Public Lands, National Environmental Policy Act**

Without a determination and description of the existing physical conditions on the property at the start of the environmental review process, the environmental impact report cannot provide a meaningful assessment of the environmental impacts of the proposed project. [Cal. Pub. Res. Code §§ 21100\(a\), 21060.5](#). [More like this Headnote](#)

[Shepardize - Narrow by this Headnote \(8\)](#)  1

Environmental Law > [Natural Resources & Public Lands](#) > [National Environmental Policy Act](#) > [General Overview](#)

**HN9 Natural Resources & Public Lands, National Environmental Policy Act**

Before the impacts of a project can be assessed and mitigation measures considered, an environmental impact report must describe the existing environment. It is only against this baseline that any significant environmental effects can be determined. California Environmental Quality Act Guidelines, [Cal. Code Regs. tit. 14, §§ 15125\(a\), 15126.2\(a\)](#). [More like this Headnote](#)

[Shepardize - Narrow by this Headnote \(8\)](#)

Environmental Law > [Natural Resources & Public Lands](#) > [National Environmental Policy Act](#) > [General Overview](#)

**HN10 Natural Resources & Public Lands, National Environmental Policy Act**

Because the chief purpose of the environmental impact report (EIR) is to provide detailed information regarding the significant environmental effects of the proposed project on the physical conditions which exist within the area, it follows that the existing conditions must be determined, to the extent possible, in the EIR itself. [Cal. Pub. Res. Code § 21060.5](#). [More like this Headnote](#)

[Shepardize - Narrow by this Headnote \(12\)](#)

Environmental Law > [Natural Resources & Public Lands](#) > [National Environmental Policy Act](#) > [General Overview](#)

**HN11 Natural Resources & Public Lands, National Environmental Policy Act**

The agency has the discretion to resolve factual issues and to make policy decisions regarding an environmental impact report. If the determination of a baseline condition requires choosing between conflicting expert opinions or differing methodologies, it is the function of the agency to make those choices based on all of the evidence. [More like this Headnote](#)

[Shepardize - Narrow by this Headnote \(4\)](#)

Environmental Law > [Natural Resources & Public Lands](#) > [National Environmental Policy Act](#) > [General Overview](#)

**HN12 Natural Resources & Public Lands, National Environmental Policy Act**

If an environmental impact report (EIR) presents alternative methodologies for determining a baseline condition, the California Environmental Quality Act, [Cal. Pub. Res. Code § 21000 et seq.](#), requires that each alternative be supported by reasoned analysis and evidence in the record so that the decision of the agency is an informed one. The EIR must set forth any analysis of alternative methodologies early enough in the environmental review process to allow for public comment and response. This is particularly important in a case where water issues are a matter of widespread public concern, and where the determination of the figure for baseline water usage dictates the density of the proposed project. [More like this Headnote](#)

[Shepardize - Narrow by this Headnote \(20\)](#)



**HN13** **Natural Resources & Public Lands, National Environmental Policy Act**

The environmental impacts of the proposed project must be measured against the real conditions on the ground. [More like this Headnote](#)

[Shepardize - Narrow by this Headnote \(6\)](#) 1

Administrative Law > [Judicial Review](#) > [General Overview](#)

Environmental Law > [Natural Resources & Public Lands](#) > [National Environmental Policy Act](#) > [General Overview](#)

**HN14** **Administrative Law, Judicial Review**

Judicial review does not allow for a reweighing of the evidence and determinations in an environmental impact report (EIR) must be upheld if they are supported by substantial evidence. However, an EIR must focus on impacts to the existing environment, not hypothetical situations. And mere uncorroborated opinion or rumor does not constitute substantial evidence. California Environmental Quality Act Guidelines, [Cal. Code Regs., tit. 14, § 15384\(a\)](#). [More like this Headnote](#)

[Shepardize - Narrow by this Headnote \(7\)](#)

Environmental Law > [Natural Resources & Public Lands](#) > [National Environmental Policy Act](#) > [General Overview](#)

**HN15** **Natural Resources & Public Lands, National Environmental Policy Act**

The California Environmental Quality Act, [Cal. Pub. Res. Code § 21000 et seq.](#), requires that the preparers of the environmental impact report (EIR) conduct the investigation and obtain documentation to support a determination of pre-existing conditions. This is a crucial function of the EIR. [More like this Headnote](#)

[Shepardize - Narrow by this Headnote \(2\)](#)

Environmental Law > [Natural Resources & Public Lands](#) > [National Environmental Policy Act](#) > [General Overview](#)

**HN16** **Natural Resources & Public Lands, National Environmental Policy Act**

An adequate environmental impact report requires more than raw data; it requires also an analysis that will provide decision makers with sufficient information to make intelligent decisions. California Environmental Quality Act Guidelines, [Cal. Code Regs., tit. 14, § 15151](#). [More like this Headnote](#)

[Shepardize - Narrow by this Headnote \(4\)](#)

Environmental Law > [Natural Resources & Public Lands](#) > [National Environmental Policy Act](#) > [General Overview](#)

**HN17** **Natural Resources & Public Lands, National Environmental Policy Act**

See [Cal. Code Regs., tit. 14, § 15125\(a\)](#). [More like this Headnote](#)

[Shepardize - Narrow by this Headnote \(0\)](#)

Environmental Law > [Natural Resources & Public Lands](#) > [National Environmental Policy Act](#) > [General Overview](#)

**HN18** **Natural Resources & Public Lands, National Environmental Policy Act**

See [Cal. Code Regs., tit. 14, § 15126.2](#). [More like this Headnote](#)

[Shepardize - Narrow by this Headnote \(0\)](#)

Environmental Law > [Natural Resources & Public Lands](#) > [National Environmental Policy Act](#) > [General Overview](#)

**HN19** **Natural Resources & Public Lands, National Environmental Policy Act**

The significance of a project's impacts cannot be measured unless the environmental impact report first establishes the actual physical conditions on the property. In other words, baseline determination is the first rather than the last step in the environmental review process. [More like this Headnote](#)

[Shepardize - Narrow by this Headnote \(11\)](#)

Environmental Law > [Natural Resources & Public Lands](#) > [National Environmental Policy Act](#) > [General Overview](#)

**HN20** **Natural Resources & Public Lands, National Environmental Policy Act**

For purposes of environmental impact reports, the date for establishing baseline cannot be a rigid one. Environmental conditions may vary from year to year and in some cases it is necessary to consider conditions over a range of time periods. In some cases, conditions closer to the date the project is approved are more relevant to a determination whether the project's impacts will be significant. [More like this Headnote](#)

[Shepardize - Narrow by this Headnote \(12\)](#) 2

Administrative Law > [Judicial Review](#) > [Standards of Review](#) > [Abuse of Discretion](#)

Environmental Law > [Natural Resources & Public Lands](#) > [National Environmental Policy Act](#) > [General Overview](#)

**HN21** **Standards of Review, Abuse of Discretion**

If an environmental impact report (EIR) fails to include relevant information and precludes informed decisionmaking and public participation, the goals of the California Environmental Quality Act, [Cal. Pub. Res. Code § 21000 et seq.](#), are thwarted and a prejudicial



abuse of discretion has occurred. [Cal. Pub. Res. Code § 21005\(a\)](#). The appellate court's role, as a reviewing court, is not to decide whether the board acted wisely or unwisely, but simply to determine whether the EIR contained sufficient information about a proposed project, the site and surrounding area, and the projected environmental impacts arising as a result of the proposed project or activity to allow for an informed decision. [More like this Headnote](#)

[Shepardize](#) - Narrow by this Headnote (21)

Environmental Law > [Natural Resources & Public Lands](#) > [National Environmental Policy Act](#) > [General Overview](#)

**HN22** [Natural Resources & Public Lands, National Environmental Policy Act](#)

An environmental impact report is required to discuss the impacts of mitigation measures. [More like this Headnote](#)

[Shepardize](#) - Narrow by this Headnote (1)

Environmental Law > [Natural Resources & Public Lands](#) > [National Environmental Policy Act](#) > [General Overview](#)

**HN23** [Natural Resources & Public Lands, National Environmental Policy Act](#)

See [Cal. Code Regs. tit. 14, § 15126\(c\)](#) (now found at [Cal. Code Regs. tit. 14, § 15126.4\(a\)\(1\)\(D\)](#)). [More like this Headnote](#)

[Shepardize](#) - Narrow by this Headnote (0)

Environmental Law > [Natural Resources & Public Lands](#) > [National Environmental Policy Act](#) > [General Overview](#)

**HN24** [Natural Resources & Public Lands, National Environmental Policy Act](#)

[Cal. Code Regs. tit. 14, § 15126\(g\)](#), now found at [§ 15126.2\(d\)](#), provided that the growth-inducing impact of the proposed action must be discussed in the environmental impact report, including the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. [More like this Headnote](#)

[Shepardize](#) - Narrow by this Headnote (1)

Environmental Law > [Natural Resources & Public Lands](#) > [National Environmental Policy Act](#) > [General Overview](#)

**HN25** [Natural Resources & Public Lands, National Environmental Policy Act](#)

If, subsequent to the period of public and interagency review, the lead agency adds significant new information to an environmental impact report (EIR), the agency must issue new notice and must recirculate the revised EIR, or portions thereof, for additional commentary and consultation. [Cal. Pub. Res. Code § 21092.1](#); California Environmental Quality Act Guidelines, [Cal. Code Regs. tit. 14, § 15088.5\(a\)](#). The revised environmental document must be subjected to the same critical evaluation that occurs in the draft stage, so that the public is not denied an opportunity to test, assess, and evaluate the data and make an informed judgment as to the validity of the conclusions to be drawn therefrom. [More like this Headnote](#)

[Shepardize](#) - Narrow by this Headnote (7)

Real Property Law > [Water Rights](#) > [Riparian Rights](#)

[View more legal topics](#)

**HN26** [Water Rights, Riparian Rights](#)

A valid riparian right can be established if: (1) the property is contiguous to the water course; (2) the property is within the watershed of the water course; and (3) the riparian right has not been severed through subdivision or separate conveyance. [More like this Headnote](#)

[Shepardize](#) - Narrow by this Headnote (0)

Real Property Law > [Water Rights](#) > [Riparian Rights](#)

[View more legal topics](#)

**HN27** [Water Rights, Riparian Rights](#)

In times of shortage a riparian owner must share water with other riparian users, but its rights are superior to the rights of appropriators.

[More like this Headnote](#)

[Shepardize](#) - Narrow by this Headnote (0)

Environmental Law > [Natural Resources & Public Lands](#) > [National Environmental Policy Act](#) > [General Overview](#)

**HN28** [Natural Resources & Public Lands, National Environmental Policy Act](#)

The requirement in [Cal. Pub. Res. Code § 21092.1](#) that an environmental impact report (EIR) be recirculated when significant new information is added is not intended to promote endless rounds of revision and recirculation of EIR's. Recirculation is intended to be the exception, rather than the general rule. [More like this Headnote](#)

[Shepardize](#) - Narrow by this Headnote (6)

Administrative Law > [Judicial Review](#) > [Standards of Review](#) > [Substantial Evidence](#)

Environmental Law > [Natural Resources & Public Lands](#) > [National Environmental Policy Act](#) > [General Overview](#)

Evidence > ... > [Presumptions](#) > [Particular Presumptions](#) > [Regularity](#)

**HN29** [Standards of Review, Substantial Evidence](#)

In an appeal of an agency's approval of an environmental impact report (EIR), the court presumes the correctness of the agency's decision

and the petitioners thus bear the burden of proving that the EIR is legally inadequate or that the record does not contain substantial evidence to support the agency's decision. The substantial evidence rule does not require certainty; substantial evidence is enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. California Environmental Quality Act Guidelines, *Cal. Code Regs. tit. 14, § 15284(a)*. Where the dispute is whether adverse affects could be better mitigated, the appellate court does not weigh the evidence and determine who has the better argument. [More like this Headnote](#)

[Shepardize - Narrow by this Headnote \(43\)](#)

Environmental Law > [Natural Resources & Public Lands](#) > [National Environmental Policy Act](#) > [General Overview](#)

**HN30** [Natural Resources & Public Lands, National Environmental Policy Act](#)

The California Environmental Quality Act (CEQA), *Cal. Pub. Res. Code § 21000 et seq.*, requires that an environmental impact report indicate the ways in which a project's significant effects can be mitigated, by setting forth mitigation measures proposed to minimize significant effects on the environment. *Cal. Pub. Res. Code §§ 21100(b)(3), 21002.1(a), 21061*. The discussion should identify mitigation measures which could reasonably be expected to reduce adverse impacts if required as conditions of approving the project. CEQA Guidelines, *Cal. Code Regs. tit. 14, former § 15126(c), now § 15126.4(a)(1)(A)*. [More like this Headnote](#)

[Shepardize - Narrow by this Headnote \(9\)](#)

Environmental Law > [Natural Resources & Public Lands](#) > [National Environmental Policy Act](#) > [General Overview](#)

**HN31** [Natural Resources & Public Lands, National Environmental Policy Act](#)

Fee-based infrastructure mitigation programs have been found to be adequate mitigation measures under the California Environmental Quality Act (CEQA), *Cal. Pub. Res. Code § 21000 et seq.* The CEQA Guidelines (Guidelines), *Cal. Code Regs. tit. 14, § 15000 et seq.*, also recognize that when an impact is not unique to a single project, but is instead the result of cumulative conditions, the only feasible mitigation may involve adoption of ordinances or other regulations designed to address the cumulative impact. § 15130(c). Section 15130 of the Guidelines now specifically provides that an environmental impact report may determine that a project's contribution to a cumulative impact may be mitigated by requiring the project to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact. § 15130(a)(3). [More like this Headnote](#)

[Shepardize - Narrow by this Headnote \(21\)](#)  1

Business & Corporate Compliance > ... > [Environmental Law](#) > [Land Use & Zoning](#) > [Comprehensive & General Plans](#)

Environmental Law > [Administrative Proceedings & Litigation](#) > [Judicial Review](#)

Governments > [Local Governments](#) > [Employees & Officials](#)

[View more legal topics](#)

**HN32** [Land Use & Zoning, Comprehensive & General Plans](#)

When an appellate court reviews an agency's decision for consistency with its own general plan, it accords great deference to the agency's determination. This is because the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity. Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan's policies when applying them, and it has broad discretion to construe its policies in light of the plan's purposes. A reviewing court's role is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies. [More like this Headnote](#)

[Shepardize - Narrow by this Headnote \(40\)](#)  2

▼ **Headnotes/Syllabus**

**Summary**

**CALIFORNIA OFFICIAL REPORTS SUMMARY**

In separate writ proceedings initiated by opponents of a proposed residential development project, pursuant to the California Environmental Quality Act (CEQA) (*Pub. Resources Code, § 21000 et seq.*), which were consolidated for administrative purposes at trial, the trial court found that the project's environmental impact report (EIR) was legally inadequate and directed the county board of supervisors to vacate certification of the EIR and to prepare and circulate a legally adequate EIR with respect to specified water and traffic issues. (Superior Court of Monterey County, Nos. M42412 and M42485, *Richard M. Silver* v., Judge.)

The Court of Appeal reversed in part and affirmed in part, remanding the matter to the trial court with directions to issue a new writ of mandate ordering the county board of supervisors to vacate the board's resolution and the certification of the EIR. The board was ordered not to take any further action to approve the project without the preparation, circulation, and consideration of a legally adequate EIR with regard to the water issues discussed in the appellate opinion. The court held that the EIR, which addressed the potential adverse impact of the project on the water supply of the surrounding area, was inadequate in its baseline water use discussion in several respects, and, consequently did not comply with CEQA (*Pub. Resources Code, § 21000 et seq.*) in its treatment of several critical water issues. The court also held that the EIR failed to adequately discuss, as a mitigation measure, the impact of an off-site pumping reduction on neighboring property. The court further held that the EIR failed to adequately discuss whether the property had valid riparian rights and could utilize them to support a private water system for the subdivision. The court also held that the EIR was adequate in its discussion of traffic impacts and mitigation, where the traffic analysis complied with the CEQA, substantial evidence supported the board of supervisors' conclusion that traffic impacts would be mitigated, and the board's interpretation of the pertinent master plan policy was within its

discretion and was reasonable. (Opinion by Bamattre-Manoukian ¶, with Premo ¶, Acting P. J., and Wunderlich, J., concurring.)

#### Headnotes

#### CALIFORNIA OFFICIAL REPORTS HEADNOTES

Classified to California Digest of Official Reports

#### CA(12) (1a) CA(12) (1b) Pollution and Conservation Laws § 2.9—California Environmental Quality Act—Proceedings—Standard of Judicial Review.

--In a mandate proceeding to review an agency's decision for compliance with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), the scope and standard of the appellate court's review is the same as the trial court's, and the lower court's findings are not binding on the appellate court. The appellate court reviews the administrative record to determine whether the agency prejudicially abused its discretion, which is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence (Pub. Resources Code, § 21168.5). The agency is the finder of fact and the appellate court must indulge all reasonable inferences from the evidence that would support the agency's determinations and resolve all conflicts in the evidence in favor of the agency's decision. In reviewing an agency's decision to certify an environmental impact report (EIR), the court presumes the correctness of the decision. The project opponents thus bear the burden of proving that the EIR is legally inadequate. Although the agency's factual determinations are subject to deferential review, questions of interpretation or application of the requirements of the CEQA statute are matters of law. While the reviewing court may not substitute its judgment for that of the decision makers, the court must ensure strict compliance with the procedures and mandates of the statute.

#### CA(2) (2) Pollution and Conservation Laws § 2—California Environmental Quality Act—Environmental Impact Reports.

--The overriding purpose of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) is to ensure that agencies regulating activities that may affect the quality of the environment give primary consideration to preventing environmental damage. CEQA is the Legislature's declaration of policy that all necessary action be taken to protect, rehabilitate, and enhance the environmental quality of the state. The environmental impact report (EIR) is the heart of CEQA and the integrity of the process is dependent on the adequacy of the EIR. The ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decision makers, and the public, with the information about the project that is required by CEQA. The error is prejudicial if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process. When the informational requirements of CEQA are not complied with, an agency has failed to proceed in a manner required by law and has therefore abused its discretion (Pub. Resources Code, §§ 21168.5, 21005, subd. (a)).

#### CA(3a) (3a) CA(3b) (3b) CA(3c) (3c) CA(3d) (3d) Pollution and Conservation Laws § 2.3—California Environmental Quality Act—Environmental Impact Reports—Sufficiency—Description of Baseline Water Use.

--An environmental impact report (EIR) concerning a proposed residential development project, which addressed the potential adverse impact of the project on the water supply of the surrounding area, was inadequate in its baseline water use discussion in several respects, and, consequently did not comply with the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) in its treatment of several critical water issues. Specifically, the EIR failed to investigate and present evidence to support the assumption that the preproject use of water on the property was for irrigation; it introduced a new methodology for baseline determination at the end of the environmental review process without any informational discussion or opportunity for public review; and it invited the board to select a baseline among water production figures with no meaningful analysis and no showing that the figures represented water actually used on the property were consistent with historical use. As a result of these inadequacies, the county board of supervisors' decision setting baseline water use at 51 acre-feet per year was not supported by the evidence and was an abuse of discretion.

[See 4 Witkin, Summary of Cal. Law (9th ed. 1987) Real Property, § 59 et seq.]

#### CA(4a) (4a) CA(4b) (4b) Pollution and Conservation Laws § 2—California Environmental Quality Act—Environmental Impact Reports—Determination of Existing Conditions—Investigation—Who Conducts.

--Because the chief purpose of an environmental impact report (EIR) under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) is to provide detailed information regarding the significant environmental effects of the proposed project on the physical conditions that exist within the area, it follows that the existing conditions must be determined, to the extent possible, in the EIR itself (Pub. Resources Code, § 21060.5). On the other hand, the agency has the discretion to resolve factual issues and to make policy decisions. If the determination of a baseline condition requires choosing between conflicting expert opinions or differing methodologies, it is the function of the agency to make those choices based on all of the evidence. If an EIR presents alternative methodologies for determining a baseline condition, CEQA requires that each alternative be supported by reasoned analysis and evidence in the record so that the decision of the agency is an informed one. The EIR must set forth any analysis of alternative methodologies early enough in the environmental review process to allow for public comment and response. CEQA requires that the preparers of the EIR, rather than the agency, conduct the investigation and obtain documentation to support a determination of preexisting conditions. This is a crucial function of the EIR.

#### CA(5) (5) Pollution and Conservation Laws § 2.3—California Environmental Quality Act—Environmental Impact Reports—Sufficiency—Description of Baseline Water Use—At End of Review Process.

--In proceedings under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) concerning a proposed residential development project, which addressed the potential adverse impact of the project on the water supply of the surrounding area, it was not proper to rely on water production figures generated at the end of the environmental review process, rather than at the beginning, to determine a baseline water use figure. As amended, Cal. Code Regs., tit. 14, §§ 15125, subd. (a), and 15126.2, reflect and clarify a central concept of CEQA, widely accepted by the courts, that the significance of a project's impacts cannot be measured unless the EIR first establishes the actual physical conditions on the property as they exist before the commencement of the project. Thus, baseline determination is the first rather than the last step in the environmental review process. However, the date for establishing baseline cannot be a rigid one. Environmental conditions may vary from year to year and in some cases it might be necessary to consider conditions over a range of time periods.

**CA(6) (6) Pollution and Conservation Laws § 2.9—California Environmental Quality Act—Proceedings—Standard of Judicial Review—Environmental Impact Reports.**

--If an environmental impact report (EIR) under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) fails to include relevant information and precludes informed decisionmaking and public participation, the goals of CEQA are thwarted and a prejudicial abuse of discretion has occurred (Pub. Resources Code, § 21005, subd. (a)). The appellate court's role is not to decide whether the decisionmaking agency acted wisely or unwisely, but simply to determine whether the EIR contained sufficient information about a proposed project, the site and surrounding area, and the projected environmental impacts arising as a result of the proposed project or activity to allow for an informed decision.

**CA(7) (7) Pollution and Conservation Laws § 2.5—California Environmental Quality Act—Environmental Impact Reports—Sufficiency—Mitigation Measures—Water Issues—Off-site Water Pumping Reduction.**

--An environmental impact report (EIR) concerning a proposed residential development project, which addressed the potential adverse impact of the project on the water supply of the surrounding area, failed to adequately discuss, as a mitigation measure, the impact of an off-site pumping reduction on neighboring property. The EIR is required to discuss the effects of mitigation measures (Cal. Code Regs., tit. 14, former § 15126, subd. (c) [now § 15126.4, subd. (a)(1)(D)] and former § 15126, subd. (g) [now § 15126.2, subd. (d)]). However, there was no discussion in the EIR of the impacts of transferring water credits because the issue of the water transfer came towards the end of the review process. If, subsequent to the period of public and interagency review, the lead agency adds significant new information to an EIR, the agency must issue new notice and must recirculate the revised EIR for additional commentary and consultation (Pub. Resources Code, § 21092.1; Cal. Code Regs., tit. 14, § 15088.5, subd. (a)). The revised document must be subjected to the same critical evaluation that occurs in the draft stage. In light of the atmosphere of public concern about the water shortage, and the focused concerns expressed in the comments calling for an analysis of the feasibility of any specific offset pumping site to provide actual mitigation, the identification of the neighboring parcel late in the review process warranted further discussion and analysis and an opportunity for public response.

**CA(8a) (8a) CA(8b) (8b) Pollution and Conservation Laws § 2.5—California Environmental Quality Act—Environmental Impact Reports—Sufficiency—Mitigation Measures—Water Issues—Riparian Rights.**

--In writ proceedings under the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.), the trial court properly found that an environmental impact report (EIR) for a proposed residential development project, which addressed the potential adverse impact of the project on the water supply of the surrounding area, failed to adequately discuss whether the property had valid riparian rights and could utilize them to support a private water system for the subdivision. Opponents of the project did not waive their water rights claims, since the issues were adequately raised in briefing and argument before the trial court, and any failure to fully develop arguments could be partly attributed to the fact that the applicants asserted their intent to utilize their riparian rights very late in the review process. The late introduction of this theory and new information resulted in an incomplete analysis in the EIR. Furthermore, there was no opportunity for meaningful public comment and response. A supplemental EIR presented new and significant information regarding the applicants' asserted riparian rights, which raised important water issue questions and should have been recirculated to permit the public to have a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect.

**CA(9) (9) Pollution and Conservation Laws § 2—California Environmental Quality Act—Environmental Impact Reports—Purpose of Public Review.**

--The purpose of requiring public review of an environmental impact report (EIR) is to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action. Public review permits accountability and informed self-government. Public review ensures that appropriate alternatives and mitigation measures are considered, and permits input from agencies with expertise. Thus, public review provides the dual purpose of bolstering the public's confidence in the agency's decision and providing the agency with information from a variety of experts and sources. The primary reason that public comment is solicited is so that potential significant adverse effects of the project can be identified at the earliest possible time. The requirement in Pub. Resources Code, § 21092.1, that an EIR be recirculated when significant new information is added is not intended to promote endless rounds of revision and recirculation of EIR's. Recirculation is intended to be the exception, rather than the general rule.

**CA(10a) (10a) CA(10b) (10b) Pollution and Conservation Laws § 2.5—California Environmental Quality Act—Environmental Impact Reports—Sufficiency—Mitigation Measures—Traffic Issues.**

--An environmental impact report (EIR) concerning a proposed residential development project was adequate in its discussion of traffic

impacts and mitigation, where the traffic analysis complied with the California Environmental Quality Act (CEQA), substantial evidence supported the county board of supervisors's conclusion that traffic impacts would be mitigated, and the board's interpretation of the pertinent master plan policy was within its discretion and was reasonable. The EIR contained a comprehensive traffic analysis, identified problem areas and described the programs designed to address these areas of concern, and recommended mitigation in the form of pro rata fees paid to a traffic impact fee program established by county ordinance and designed to implement road improvements as needed. Further recommended mitigation was construction of safe transit stops, implementation of a trip reduction program, installation of circulation improvements at the entrances to the project site, and dedication of a right-of-way for the widening of a road. Fee-based infrastructure mitigation programs have been found to be adequate mitigation measures under CEQA. The payment of fees and phased improvements was appropriate, at least with respect to traffic impacts that had not yet reached the threshold trigger and the traffic impact mitigation fees were sufficiently tied to the actual mitigation of the impacts of increased traffic.

**CA(11) (11) Pollution and Conservation Laws § 2.9—California Environmental Quality Act—Proceedings—Standard of Judicial Review—Substantial Evidence Rule.**

--In reviewing whether the decisionmaking agency prejudicially abused its discretion by making a decision under the California Environmental Quality Act not supported by substantial evidence, the substantial evidence rule does not require certainty. Substantial evidence is enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached (Cal. Code, Regs., tit. 14, § 15384, subd. (a)). Where the dispute is whether adverse affects could be better mitigated, the reviewing court does not weigh the evidence and determine who has the better argument.

**CA(12a) (12a) CA(12b) (12b) Pollution and Conservation Laws § 2.5—California Environmental Quality Act—Environmental Impact Reports—Sufficiency—Mitigation Measures—Traffic Issues—Consistency with Master Plan.**

--In proceedings under the California Environmental Quality Act pertaining to a proposed residential development project, in which the environmental impact report (EIR) identified traffic impacts and mitigation, the county board of supervisors's determination that the project was consistent with a policy of the master plan was not an abuse of discretion. The policy required the board to limit further development until a specified freeway was under construction. The EIR did not find an inconsistency with this policy because interim improvements were planned to maintain an acceptable level of service pending the construction of the freeway, or another long-term plan, and because the policy required only that further development be limited, not prohibited. The board's resolution did in fact provide limitations, requiring that development of the project be phased to coincide with completion of identified interim improvements. The EIR discussed the policy, and the board expressly found that the project was consistent with that policy. The purpose of the policy was to prevent unacceptable increases in congestion at a specified intersection due to new development until a long-term plan such as the freeway could be implemented. The board was entitled to exercise its discretion to determine what limitations were appropriate in light of its review of current levels of service, approved development, and planned interim improvements.

**CA(13) (13) Pollution and Conservation Laws § 2.9—California Environmental Quality Act—Proceedings—Judicial Review—Consistency of Agency's Decision with General Plan.**

--In reviewing a governmental agency's decision under the California Environmental Quality Act for consistency with its own general plan, the reviewing court accords great deference to the agency's determination. This is because the body that adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity. Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan's policies when applying them, and it has broad discretion to construe its policies in light of the plan's purposes. A reviewing court's role is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies.

**Counsel:** McCutchen, Doyle, Brown & Enersen, [Stephen L. Kostka](#), [Marie A. Cooper](#), [Lombardo & Gilles](#), [Anthony L. Lombardo](#) and [Jacqueline M. Zischke](#) for Real Parties in Interest and Appellants.

[Alexander T. Henson](#); Law Offices of Richard H. Rosenthal, [Richard H. Rosenthal](#) and Gregory James for Plaintiff and Respondent Save Our Peninsula Committee.

[Frances M. Farina](#); Law Offices of Michael W. Stamp, [Michael W. Stamp](#) and Jeanine G. Strong for Plaintiffs and Respondents Sierra Club, Save Our Carmel River and Patricia Bernardi.

No appearance for Defendants and Respondents County of Monterey and Monterey County Board of Supervisors.

**Judges:** Opinion by [Bamatre-Manoukian](#), J., with [Premo](#), Acting P. J., and [Wunderlich](#), J., concurring.

**Opinion by:** [BAMATTRE-MANOUKIAN](#)

## Opinion

[\*107] [\[\\*\\*332\]](#) **BAMATTRE-MANOUKIAN, J.**

In this CEQA [\[1\]](#) case, the project applicants, real parties in interest September Ranch Partners, appeal from a judgment granting two petitions for a writ of mandate. The superior court found that the project's [\[\\*\\*\\*3\]](#) environmental impact report (EIR) was legally inadequate under CEQA

and directed that the Monterey County Board of Supervisors (the Board) vacate certification of the EIR and prepare and circulate a legally adequate EIR with respect to specified water and traffic issues. Appellants argue that the Board's certification of the EIR must be upheld because the Board's determinations regarding the project's water and traffic impacts were supported by substantial evidence.

After reviewing the record, we conclude that the EIR in this case did not comply with CEQA in its treatment of several critical water issues. Because of these inadequacies, the Board's action certifying the EIR and approving the project constituted an abuse of discretion. We further conclude, however, that the EIR was adequate in its discussion of traffic impacts and mitigation. We will therefore affirm in part and reverse in part the judgment in favor of petitioners and direct that the trial court issue a new writ of mandate in accordance with the views expressed herein.

#### **[\*\*333]** BACKGROUND **[2]**

The September Ranch property consists of 891 acres located along Carmel Valley Road approximately 3 miles east of the junction with Highway 1. Most of the property is hilly terrain with south-facing slopes. A level terrace adjacent to Carmel Valley Road of approximately 21 acres contains an **[\*108]** equestrian center, including a barn, outside stalls, a training ring, a residence for employees, and pastureland. A regional park and a small county-owned parcel lie to the west and northwest of the property and to the south is a golf resort and lodge. Otherwise the surrounding area is characterized by residential development. The zoning of the September Ranch property is for residential development. **[\*\*5]** The property is governed by the Carmel Valley Master Plan (Master Plan), which is part of the county's general plan. Under the Master Plan, this amount of acreage would allow for 208 homes.

The September Ranch property is located within the Carmel River watershed. The property's water needs have been served by well water since the early 1930's. A new well was installed in 1990. Additional wells were installed in 1992 for purposes of data collection. A small aquifer, or "sub-basin," underlies the 21-acre terrace on the property. It was originally thought by the owners to be a separate aquifer, isolated from the main Carmel Valley aquifer. However testing during the environmental review for this project determined that this sub-basin was not entirely separate and that there was some water exchange between it and the Carmel Valley aquifer. The Carmel Valley aquifer is a primary source of water for the Monterey Peninsula.

It is well documented that water availability is a critical problem throughout Monterey County (the County) and in Carmel Valley in particular. In 1988, the County passed Ordinance No. 3310, finding that because of expanded water usage "the potential exists that Monterey **[\*\*6]** County's allocation of water will be exhausted so as to pose an immediate threat to the public health, safety, or welfare." In 1995, the State Water Resources Control Board issued Order No. 95-10 and related Decision No. 1632. Order No. 95-10 found that the California-American Water Company (Cal-Am), which was the principal supplier of water to the Monterey Peninsula, had diverted excess water from the Carmel River basin "without a valid basis of right," causing environmental harm. Cal-Am was ordered to substantially limit its diversions, to mitigate the environmental effects of its excess usage and to develop a plan for obtaining water legally. Decision No. 1632 similarly found that "existing diversions from the Carmel River have adversely affected the public trust resources in the river." The Master Plan also recognized the serious water shortage in the Carmel Valley and set the standard for development until a solution was found. In Policy 54.1.7, the Master Plan found that without an additional water supply, such as from a proposed dam project, "development will be limited to vacant lots of record and already approved projects. All development which requires a water supply **[\*\*7]** shall be subject to County adopted water allocation and/or ordinances applicable to lands in the Carmel Valley Master Plan area."

**[\*109]** The Morgens family has owned the September Ranch property since the 1960s. In 1995 James Morgens formed a partnership called September Ranch Partners for the purpose of developing the property. The partnership submitted its development application to the County in June of 1995. The proposal was for 100 single-family lots and 17 moderate income housing units. The application included a September Ranch Water Supply Plan, **[\*\*334]** which called for Cal-Am to supply potable water. However, the month after the project application was submitted, the State Water Resources Control Board adopted Order No. 95-10, which cut back Cal-Am's diversion of water from the Carmel River basin and essentially foreclosed its ability to provide water for new projects.

#### *The Draft EIR*

On August 4, 1995, the County issued its initial study for the September Ranch project, and the notice of preparation of the EIR was filed the same day. The draft EIR was published over two years later, on October 27, 1997.

The draft EIR recognized existing policies regarding **[\*\*8]** water resources in the Carmel River valley. It stated that potable water for the project was to be provided by a small mutual water system, independent of the Cal-Am water system, which would supply water pumped from wells on the September Ranch property. It noted that because there was potential groundwater flow between the September Ranch sub-basin and the adjacent Carmel Valley aquifer, "pumping in the September Ranch basin has the potential to affect water levels in areas of the Carmel Valley alluvium." Furthermore, "any increase in the impacts to the [Carmel Valley] aquifer would be considered an adverse environmental impact given the water supply problems in the Carmel Valley area." Any impact reducing flow to the Carmel Valley aquifer was "potentially significant." As mitigation for this impact, the draft stated that water demand for the project must be limited to existing water use on the property.

The draft EIR included a discussion of "Existing Water Demand" for the property. It stated that there was "limited historic data" to determine actual water usage over the years; however Monterey Peninsula Water Management District (MPWMD) records from 1991 to 1996 showed that **[\*\*9]** water use on the property ranged from a low of 0.40 acre-feet in 1995 to a high of 40.68 acre-feet in 1993. There was no data prior to 1991. The draft reported that the applicants were "establishing pasture on approximately 21 acres" of the property. Irrigation was an allowable use of well water for the property. Based on the assumption that these 21 acres were irrigated, the draft EIR **[\*110]** then determined "for the purposes of assessing impacts" that an estimate of existing water use for the September Ranch property was 45 acre-feet per year. This was based on an estimated 2 acre-feet for each of the 21 acres of pastureland plus 3 acre-feet used by the existing equestrian center and residence. The 2 acre-feet per acre was an estimate for irrigated pastureland taken from MPWMD guidelines for irrigated lands in the area and from a 1985 Pajaro Valley Irrigation Report.

Water demand for the project as proposed for 117 residences was calculated at 61.15 acre-feet per year. This resulted in an increase of approximately 16.15 acre-feet per year over the existing estimated usage of 45 acre-feet per year. The draft EIR explained that the groundwater storage in the September Ranch sub-basin **[\*\*10]** was more than adequate to supply the increased water demand during wet or normal weather conditions. However, the sub-basin supply would be vulnerable during a sustained drought of more than five years, which the draft concluded was a significant impact that must be mitigated. Furthermore, increased pumping on the September Ranch property could delay or reduce subsurface groundwater recharge to the Carmel Valley aquifer. Although this reduction would be a "small percentage" of the overall

groundwater recharge in the Carmel Valley aquifer, the draft EIR acknowledged that "any impact reducing flow to the Carmel Valley aquifer is potentially significant." The draft concluded that in order to mitigate the impact of increased pumping, the project applicants would either have to limit water project demand to the baseline of 45 acre-feet [\*\*\*335] per year--either by reducing density or by instituting conservation measures--or they would have to provide an offsetting pumping reduction of 16.2 acre-feet per year elsewhere within the Carmel Valley basin.

The draft EIR was circulated for public review and comments were received from agencies, associations and members of the public during [\*\*\*11] the 45-day review period. The comments included numerous responses to the baseline water use figure. Letters from local property owners indicated that the pasturelands on the property had not been irrigated historically, but that the applicants had only recently begun irrigating since the application process had commenced. A comment from the Monterey County Department of Health pointed out that the actual amount of pastureland was significantly less than 21 acres and further that the draft EIR had stated only 11.6 acres were currently irrigated.

In their responses to these comments the EIR consultants indicated that the figures regarding water usage were obtained from the project applicants: "This EIR has relied on production information provided by the applicant, [\*111] well production records available in the recent past and the extrapolation of a reasonable estimate of water use based upon irrigated acres of land on the site." The responses further explained that the applicants had "stated that this area has been irrigated in the past, although there is no documentation available to confirm this." The responses acknowledged that "in the recent past only 11.6 acres were irrigated. [\*\*\*12]."

The applicants also submitted further information and studies which indicated that irrigated pastureland actually could require as much as 6 acre-feet per year per acre. Furthermore, they represented that they had recently used approximately 23 acre-feet of water to irrigate approximately 11.6 acres of the terrace for only 14 weeks. This, they calculated, would compute to 95 acre-feet per year for the entire 21-acre pasture. However, according to the MPWMD, "this use would be higher than any other documented pasture irrigation in Carmel Valley."

#### *The Final EIR*

The comments and responses were incorporated into the final EIR, dated March 6, 1998. In its analysis of baseline water usage, the final EIR reiterated that no documentation existed that could confirm historical water usage on the September Ranch. The EIR noted that comments to the draft EIR had suggested both higher and lower amounts than the estimate of 45 acre-feet per year. The final EIR continued to use 45 acre-feet per year as a baseline for purposes of assessing impacts, explaining that "this EIR attempts to provide a reasonable baseline based upon information of historic use provided by the applicant and [\*\*\*13] a water demand factor for irrigated pastureland accepted by local water agencies (2.0 AF/acre, MPWMD)." However, the EIR then suggested that the Board could accept "additional documentation" and could revise this baseline figure higher or lower. Whether the baseline were set higher or lower, mitigation would require that "[n]o post-project water use will be allowed greater than the baseline (or an acceptable offset for this use [will] be required)."

The final EIR included an updated water production data chart compiled from MPWMD records, showing metered water production on the property through 1997. This chart showed that water production had reached a new high of 78.34 acre-feet in 1997. However, the chart explained that approximately 52 of this 78.34 acre-feet were produced during a 47-day period of aquifer testing.

Using the 45 acre-feet per year figure that had been determined to be a "reasonable" baseline figure, the final EIR reached the same conclusions as [\*112] the [\*\*\*336] draft. It found that the project as proposed would result in increased pumping of approximately 16.2 acre-feet over baseline use. Postproject water use greater than identified baseline [\*\*\*14] levels was a significant impact that would require mitigation: either reducing water production for the project to baseline conditions or providing an offsetting pumping reduction within the Carmel Valley basin.

#### *The Supplemental Final EIR*

The County belatedly forwarded the draft EIR to the State Clearinghouse on March 4, 1998, which required a second 45-day review period and generated further comments. The responses to these comments were added as "Volume 2" to the final EIR, dated May 27, 1998. This is also referred to as the "Supplement to Final EIR," or the supplemental EIR. The supplemental EIR included extensive comments by the State Water Resources Control Board (SWRCB) regarding the EIR's conclusions about groundwater recharge. These comments indicated that groundwater recovery under normal conditions would be worse than depicted in the EIR and stated that appropriation of water from the aquifer underlying the September Ranch would be subject to the permitting authority of the SWRCB. In response, the applicants then wrote to the SWRCB asserting that they had riparian rights which could be utilized for the project. The SWRCB's reply indicated the various qualifications [\*\*\*15] under which the project could be considered for riparian rights.

The responses in the supplemental EIR addressed, among other things, these asserted riparian rights, which neither the draft EIR nor the final EIR had discussed. The supplemental EIR explained that "although the project applicants originally identified that they would be using 'percolating groundwater' under the project site, a subsequent letter has clarified their intent to provide water to their proposed project under their 'riparian' rights." The new material went on to explain the differences between groundwater rights, riparian rights and appropriative rights. The supplemental EIR noted that it could not confirm the property's riparian status and that the SWRCB had not yet made a determination as to the validity of any claimed riparian right. A new mitigation measure was added in the supplemental EIR, requiring that the applicants either provide assurance of a valid riparian claim or secure a permit for an appropriative water right from the SWRCB.

On June 22, 1998, after the supplemental EIR was issued, the attorney for the applicants informed the County Planning Department that the applicants had ownership [\*\*\*16] rights to a 10-acre parcel of land along Carmel Valley Road, [\*113] known as the Berube parcel. The applicants had recently purchased the stipulated right to pump approximately 32 acre-feet of water per year from this property. The attorney asserted that pumping on the Berube parcel could be reduced if mitigation of the impact of water use for the September Ranch project were necessary. An appropriative permit is not required in order to use a reduced pumping offset.

#### *Citizen Committees*

Pursuant to local ordinance, the September Ranch project was presented to the Carmel Valley Citizens Subdivision Evaluation Committee to evaluate the project for compliance with the Carmel Valley Master Plan. On May 18, 1998, the Committee gave the project a failing score of 44 percent in the category of water/hydrology. The county's land use advisory committee reviewed the project in June of 1998 and voted for denial because it concluded that the project did not comply with Master Plan policies relating to water supply and traffic.

#### *Planning Commission Decision*

On September 30, 1998, the County Planning Commission (Planning Commission) voted to deny the proposed project, [\*\*\*337]: [\*\*\*17].



based in part on concerns about water impacts. The Planning Commission voted to approve a smaller project with 49 residential units and 7 inclusionary units, which was described as the environmentally superior project in the final EIR. The Planning Commission did not accept the approach used in the EIR to determine baseline use by computing an average estimated use of two acre-feet per year per acre for irrigated pasture. Instead the Planning Commission relied on actual water production records for the September Ranch for the most recent year, namely 1997. It found this figure to be 26.34 acre-feet (a total of 78.34 acre-feet less 52 acre-feet attributed to aquifer testing), and therefore recommended that the project density be reduced accordingly so that there would be no increase in pumping over baseline level. The Planning Commission found that the reduced density project was necessary to ensure that impacts to the Carmel River alluvial aquifer were reduced to a level of insignificance. A hearing for review of the Planning Commission decision was then set before the Monterey County Board of Supervisors for December 1, 1998.

#### *Supplemental Information and Errata*

On November 19, 1998, additional [\*\*\*18] information was submitted by the environmental consultants, entitled "Supplemental Information and Errata [\*114] for the September Ranch Project Environmental Impact Report." This supplemental material discussed the reduced density alternative of 49 units adopted by the Planning Commission, and noted that information provided by the applicants had indicated that this alternative was economically unfeasible.

The errata also contained a further discussion of baseline water usage, recognizing once again that "if the project were to exceed the amount of water used on the site under existing or baseline conditions, a significant unavoidable impact would occur due to potential regional water impacts." It explained that the EIR had determined the baseline of 45 acre-feet per year by using a "standard water demand factor for irrigated pastureland" based on irrigation formulas and representations by the applicants that "there was an established practice of irrigation on the site." The MPWMD and the County Environmental Health Department, however, had requested that the EIR consider an alternative that used only "documented past year water use," which was the approach taken by the Planning [\*\*\*19] Commission. This had resulted in a figure of 26.34 acre-feet per year.

The errata concluded that baseline could be established either by using an assigned water demand factor for irrigated pastureland, as the EIR had done, or by relying on recent records of water production. Referring to a newly updated chart of documented water use from 1991 to 1999, the errata then set forth a calculation of baseline water use for various combinations of years: for 1998-1999, average use was approximately 43 acre-feet per year; for 1997-1999, the figure was 51 acre-feet per year; for 1993-1999, average use was approximately 30 acre-feet per year. The supplemental material again emphasized that the EIR required that "post-development water production from the September Ranch aquifer not exceed identified pre-project baseline levels."

The staff report to the Board was prepared the next day, November 20, 1998, and it attached the Supplemental Information and Errata, as well as the supplemental final EIR, and further supplemental information from the applicants regarding the Berube property. The staff prepared a revised Board resolution, dated December 1, 1998. The staff recommended that the Board [\*\*\*20] modify the subdivision evaluation committee's failing score in the category of water/hydrology and give the project a passing score. This recommendation was based on the fact that the applicants had since identified the Berube property as a source for offset pumping, and the staff had secured evidence from the applicants documenting [\*\*\*21] the availability of water use on the Berube parcel sufficient to provide the necessary mitigation of the impact of pumping water over baseline for the September Ranch property. Because the [\*115] Supplemental Information and Errata and the new information on the Berube property were made available just prior to the Board hearing, the opportunity for public comment and response was limited.

#### *The Decision of the Board of Supervisors*

On December 1, 1998, the Board conducted a public hearing and decided, on separate three-to-two votes, to certify the EIR, to modify the failing score of the subdivision evaluation committee, and to adopt the findings and conditions of approval for a modified project. Rather than 100 market-rate units and 17 inclusionary units as initially proposed, the Board approved 94 market-rate units and 15 inclusionary [\*\*\*22] units. Recognizing the requirement that project water use be limited to baseline conditions, the Board "selected 51 acre-feet per year as the baseline water use amount." This figure was derived from an average of water use on the property during the past three reporting years--1997, 1998, and 1999--and was based on the updated chart and information provided in the Supplemental Information and Errata. The Board found that the water demand of the reduced-density project as approved was 57 acre-feet per year. Thus only 6 acre-feet per year were needed to offset the increase over baseline. As a condition of approval of the project, the applicants were to provide an offsetting reduction in pumping on the Berube parcel to ensure that water demand on the Carmel Valley aquifer did not increase as a result of the project.

On December 21, 1998, a county clerk published the findings and conditions of the Board in resolution No. 98-500. This resolution contained several changes to the Board's findings and conditions that were taken from material submitted to the clerk by the attorney for September Ranch after the Board had adjourned.

#### *The Mandate Proceeding*

Two petitions for administrative [\*\*\*23] mandate were filed in superior court, by the Save Our Peninsula Committee, [3] et al., and by Sierra Club et al., challenging the certification of the EIR and the findings of the Board. The court consolidated the cases for a court trial, which was held on July 1 and July 6, 1999. The court issued a lengthy "Intended Decision" on September 1, 1999, which it adopted as its statement of decision. The court concluded that the Board's findings as to baseline water conditions were not supported [\*116] by substantial evidence; that the Board's findings that there was a long-term water supply in the form of riparian rights were legally inadequate and not supported by the evidence; that the EIR contained no environmental analysis of the use of an off-site water source to offset water usage over baseline; and that the EIR failed to adequately consider mitigation of the traffic impacts of the project at the intersection of Highway 1 and on two other segments of Carmel Valley Road.

[\*\*\*24] The court entered judgment in favor of petitioners in both actions and issued a writ of mandate remanding the matter back to the Board and ordering the Board to vacate resolution No. 98-500 and to vacate the certification of the EIR. The Board was ordered to take no further action to approve the project without first preparing, circulating, and considering an EIR that was legally adequate with regard to its analysis of the water and traffic issues delineated in the statement of decision. In light of its ruling on water and [\*\*\*25] traffic issues, the court found the petitioners' other objections to the project approval and to the EIR were moot, but could be revived depending on the Board's actions on remand. [4] Attorney fees were awarded to petitioners.

[\*\*\*26] Real parties in interest September Ranch Partners and James Morgens appeal. [5] They argue that the EIR was legally sufficient and that the Board's determinations regarding water supply impacts and mitigation and traffic mitigation were supported by substantial evidence.

Real parties also appeal the orders awarding attorney fees. They argue that if the judgment is reversed, the orders awarding attorney fees must also be reversed. The County did not appeal and no cross-appeals were filed by petitioners.

## ISSUES

### Standard of Review

**CA(1a) (1a) HNI** In a mandate proceeding to review an agency's decision for compliance with CEQA, the scope and standard of our review are the [\*\*\*25], same as the trial court's, and the lower court's findings are not binding on us. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 722 [32 Cal. Rptr. 2d 704].) **HNI** We review the administrative record to determine whether the agency prejudicially abused its discretion. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal. 4th 1112, 1132-1133 [26 Cal. Rptr. 2d 231, 864 P.2d 502].) "Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." (*Pub. Resources Code, § 21168.5; Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 392, fn 5 [253 Cal. Rptr. 426, 764 P.2d 278]; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 944 [91 Cal. Rptr. 2d 66].) "Substantial evidence" is defined in the CEQA Guidelines [6.2] as "enough relevant [\*\*\*26] information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made . . . is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative [or] evidence which is clearly erroneous or inaccurate . . . does not constitute substantial evidence." (Guidelines, § 15384, subd. (a).) **HNI** The agency is the finder of fact and we must indulge all reasonable inferences from the evidence that would support the agency's determinations and resolve all conflicts in the evidence in favor of the agency's decision. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal. 4th 559, 571 [38 Cal. Rptr. 2d 139, 888 P.2d 1268].) In reviewing an agency's decision to certify an EIR, we presume the correctness of the decision. The project opponents thus bear the burden of proving that the EIR is legally inadequate. (*Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal. App. 4th 729, 740 [22 Cal. Rptr. 2d 618]; [\*\*\*27] *Barthelemy v. Chino Basin Mun. Water Dist.* (1995) 38 Cal. App. 4th 1609, 1617 [45 Cal. Rptr. 2d 688].)

**CA(2) (2)** While we are guided by these deferential rules of review, we must also bear in mind that the overriding purpose of CEQA is to ensure that agencies regulating [\*\*\*340] activities that may affect the quality of the environment give primary consideration to preventing environmental damage. (*Laurel Heights Improvement Assn. v. Regents of University of California, supra*, 47 Cal. 3d at p. 390.) CEQA is the Legislature's declaration of policy that all necessary action be taken "to protect, rehabilitate, and enhance the environmental quality of the state." (*Id.* at p. 392; *Pub. Resources Code, § 21000*.) **HNI** [\*\*\*28] "The EIR is the heart of CEQA" and the integrity of the process is dependent on the adequacy of the EIR. (*County of Inyo v. Yorty* (1973) 32 [\*\*\*118] Cal. App. 3d 795 [108 Cal. Rptr. 377]; *Sutter Sensible Planning, Inc. v. Board of Supervisors* (1981) 122 Cal. App. 3d 813 [176 Cal. Rptr. 342].) **HNI** "The ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decisionmakers, and the public, with the information about the project that is required by CEQA." [Citation.] The error is prejudicial "if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process." (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus, supra*, 27 Cal. App. 4th at pp. 721-722; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal. App. 4th 1109, 1117 [71 Cal. Rptr. 2d 1]; *County of Amador v. El Dorado County Water Agency, supra*, 76 Cal. App. 4th at p. 946.) [\*\*\*29] **HNI** When the informational requirements of CEQA are not complied with, an agency has failed to proceed in "a manner required by law" and has therefore abused its discretion. (*Pub. Resources Code, §§ 21168.5, 21005, subd. (a); County of Amador v. El Dorado County Water Agency, supra*, 76 Cal. App. 4th at p. 946; *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal. App. 3d 350, 355 [182 Cal. Rptr. 317].)

**CA(1b) (1b)** In sum, **HNI** although the agency's factual determinations are subject to deferential review, questions of interpretation or application of the requirements of CEQA are matters of law. (*Galante Vineyards v. Monterey Peninsula Water Management Dist., supra*, 60 Cal. App. 4th 1109, 1117; *County of Amador v. El Dorado County Water Agency, supra*, 76 Cal. App. 4th at pp. 952-956; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus, supra*, 27 Cal. App. 4th at pp. 728-729.) [\*\*\*30] While we may not substitute our judgment for that of the decision makers, we must ensure strict compliance with the procedures and mandates of the statute. (*Citizens of Galeta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564 [276 Cal. Rptr. 410, 801 P.2d 1161].)

### WATER ISSUES

**CA(2a) (3a)** The EIR in this case recognized the serious water concerns in the Carmel Valley and acknowledged the state and local policies seeking to limit any new development that would result in increased water pumping affecting the Carmel Valley alluvial aquifer. In consideration of these concerns, the analysis of water issues in the EIR rested on the premise that any increase in water pumping above preproject levels would constitute an adverse and significant environmental impact, mandating mitigation. No one disputes this general premise. Rather, it is the determination of the preproject or [\*\*\*119] baseline water use, against which the water demands of the project are to be measured, that is at the center of the controversy here. We turn to this issue first and to several questions which must necessarily be resolved along with it. Is the determination of baseline water use a policy [\*\*\*31] decision, properly addressed to the discretion of the decisionmaking agency, or does CEQA require that baseline use be established in the EIR? Was the EIR's estimate of baseline water use for irrigated pastureland supported [\*\*\*341] by the evidence? Was the Board's determination that baseline water use in this case was 51 acre-feet per year supported by evidence in the record? And what is the time at which a baseline for water use is properly determined? Is it at the beginning of the environmental review process or at the end when the project is approved?

We next address two additional and related water issues: whether the EIR adequately analyzed off-site pumping reduction on the Berube property as mitigation of any increased water usage over baseline, and whether the EIR adequately discussed the applicants' asserted riparian rights as a long-term water source.

#### Baseline

Appellants argue that the determination of a baseline condition is a matter of policy to be resolved by the agency, based on the information and analysis provided in the EIR. Appellants remind us that the EIR is only an informational document and that the agency is the decision maker. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3d 185, 189 [139 Cal. Rptr. 396].) [\*\*\*32] Here the preparers of the EIR ultimately found that the question of "the establishment of a baseline use and mitigations based upon this baseline" raised policy implications best addressed to the Board's discretion. Appellants argue that this was proper because the EIR contained an array of evidence regarding baseline and a variety of suggested formulas for determining baseline. The Board's choice of a particular formula was therefore within its discretion and was supported by the evidence.

Respondents argue that the baseline environmental conditions must be established in the EIR itself. **HNS** Without a determination and description of the existing physical conditions on the property at the start of the environmental review process, the EIR cannot provide a meaningful assessment of the environmental impacts of the proposed project. (Pub. Resources Code, § 21100, subd. (a), 21060.5; *Environmental Planning & Information Council v. County of El Dorado*, supra, 131 Cal. App. 3d at p. 354.) **HNS** [\*\*\*33]. "Before the impacts of a project can be assessed and mitigation measures considered, an EIR must describe the existing environment. It is only against this baseline [\*120] that any significant environmental effects can be determined." (*County of Amador v. El Dorado County Water Agency*, supra, 76 Cal. App. 4th at p. 952; Guidelines, §§ 15125, subd. (a), 15126.2, subd. (a).)

There is some merit in both of these positions. **CA(4a)** (4a) **HN10** Because the chief purpose of the EIR is to provide detailed information regarding the significant environmental effects of the proposed project on the "physical conditions which exist within the area," it follows that the existing conditions must be determined, to the extent possible, in the EIR itself. (Pub. Resources Code, § 21060.5; *Environmental Planning & Information Council v. County of El Dorado*, supra, 131 Cal. App. 3d at p. 354; *Galante Vineyards v. Monterey Peninsula Water Management Dist.*, supra, 60 Cal. App. 4th at p. 1122.) On the other hand, **HN11** [\*\*\*34], the agency has the discretion to resolve factual issues and to make policy decisions. If the determination of a baseline condition requires choosing between conflicting expert opinions or differing methodologies, it is the function of the agency to make those choices based on all of the evidence. (*Barthelemy v. Chino Basin Mun. Water Dist.*, supra, 38 Cal. App. 4th 1609, 1617.)

**HN12** If an EIR presents alternative methodologies for determining a baseline condition, however, we believe CEQA requires that each alternative be supported by reasoned analysis and evidence in the record so that the decision of the agency is an informed one. We further find that the EIR must set forth any analysis of alternative [\*\*\*342] methodologies early enough in the environmental review process to allow for public comment and response. This is particularly important in a case such as this, where water issues were a matter of widespread public concern, and where the determination of the figure for baseline water usage dictated the density of the [\*\*\*35] project.

**CA(3b)** (3b) Here the draft EIR initially established a baseline of 45 acre-feet per year, based on the representation by the owners that 21 acres were irrigated, although the EIR acknowledged that the record contained "no documentation" showing any substantial irrigation prior to 1997. Furthermore, having estimated a baseline figure and having used that figure throughout the EIR to assess the project's impacts, the EIR consultants ultimately referred the baseline determination to the Board, to be decided as a matter of "policy." At the very end of the environmental review process, the Board was invited to choose among various calculations compiled from updated water meter readings on the property. But some of these figures, although generated from recent pumping on the property, did not reflect water actually used for irrigating the property. We conclude, as explained more fully below, that this treatment of baseline water use violated the basic [\*121] principles of CEQA, which require that an EIR start with a description of "the existing environment." (*County of Amador v. El Dorado County Water Agency*, supra, 76 Cal. App. 4th at p. 952.)

Respondents argue that [\*\*\*36] since there was no documentation to support the EIR's threshold determination that the September Ranch property was irrigated pastureland, baseline water use should properly have been set at a figure that more closely represented water actually used historically on the property. The evidence was indeed sparse on this subject. There was some evidence that the property had been farmed prior to 1950. After that time, the equestrian uses began. However, accounts from neighbors in the area indicated that the pasturelands were not regularly irrigated during this time. Although the MPWMD has required well reports since 1980, there were no reports on this property. The applicants indicated at trial that the old well had not been used for at least 10 years before 1990, when a new well was installed. Records starting in 1991 show a temporary aquifer test was conducted in 1991 and produced 1.20 acre-feet. In the following year 40.68 acre-feet were pumped. However this too was all for aquifer testing. Over the next three years prior to the submission of the development application in this case, water production totals were 11.58 acre-feet, 0.40 acre-feet, and 1.08 acre-feet.

We have no objection [\*\*\*37] to the EIR's methodology of estimating historical water use on property where no documentation is available to verify actual use. But estimating water used for irrigation where there was no substantial evidence to show that the property was in fact irrigated does not accurately reflect existing conditions. Appellants's argument that it was entitled to use this amount of water for irrigation is not the same as actual use. As various courts, including this one, have held, **HN13** the impacts of the project must be measured against the "real conditions on the ground." (*City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal. App. 3d 229, 246 (227 Cal. Rptr. 999); *Environmental Planning & Information Council v. County of El Dorado*, supra, 131 Cal. App. 3d at p. 354; *County of Amador v. El Dorado County Water Agency*, supra, 76 Cal. App. 4th at p. 952; *Galante Vineyards v. Monterey Peninsula Water Management Dist.*, supra, 60 Cal. App. 4th at p. 1122.)

We are mindful that **HN14** [\*\*\*38] judicial review does not allow for a reweighing of the evidence and that "determinations in an EIR must be upheld if they are supported [\*\*\*343] by substantial evidence." (*Barthelemy v. Chino Basin Mun. Water Dist.*, supra, 38 Cal. App. 4th 1609, 1620.) However, "[a]n EIR must focus on impacts to the existing environment, not hypothetical situations." (*County of [\*\*\*122] Amador v. El Dorado County Water Agency*, supra, 76 Cal. App. 4th at p. 955.) And "unsubstantiated opinion or narrative . . . does not constitute substantial evidence." (Guidelines, § 15384, subd. (a).) Here it would appear that the only evidence that the terrace on the September Ranch property was irrigated pasture was the representation of the applicants themselves, who clearly had a vested interest in establishing a water use baseline high enough to allow the project to go forward.

On this record, we must question the premise accepted in the EIR, that pre-project water usage on the September Ranch property was for irrigating the pastureland. Furthermore, in response to public comments that the draft EIR's estimated water use did not reflect the actual use, the EIR [\*\*\*39] stated that "the request for documentation for historic use is referred to decision makers." We are concerned by this apparent delegation of duty to the decision makers to gather the necessary information to support a determination of baseline water use. **CA(4b)** (4b) **HN15** We believe CEQA requires that the preparers of the EIR conduct the investigation and obtain documentation to support a determination of preexisting conditions. (See, e.g., *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus*, supra, 27 Cal. App. 4th 713, 727-729.) This is a crucial function of the EIR. **CA(3c)** (3c) If further investigation would have uncovered documentary evidence regarding the historical use of water on the property, that was the province of the EIR and not the Board. And while the Board is entitled to accept or reject evidence or to adopt one methodology over another, the EIR's estimate of baseline by using a standard formula for irrigated pastureland must be based on substantial evidence that this property could be characterized as irrigated pastureland.

Even if we were to accept the EIR's initial [\*\*\*40] premise that an estimate of water used for irrigable lands was appropriate in this case, in the absence of documentary evidence to establish actual use, the EIR's baseline analysis reveals further, and in our view more critical, inadequacies. After determining a "reasonable baseline" of 45 acre-feet per year, and after using this figure throughout the draft and final EIR "for the purposes of assessing impacts," the EIR ultimately retreated from this estimate and deferred to the Board to determine baseline usage based on an entirely different methodology. In the Supplemental Information and Errata, which was submitted to the County just prior to the

No objection to est. of historical use of water

X  
Key

Board meeting, the EIR consultants suggested for the first time that a baseline determination of water use could be established either by using a "standard water demand factor for irrigated pastureland," as the EIR had done, or by using documented water meter records showing water production in recent years.

**[\*123]** The water production chart for the property showed that after the development application was submitted in this case in the summer of 1995, water production on the property increased substantially. In 1996 and 1997, extensive **[\*\*\*41]** aquifer testing was done. For 1997, water production was measured at 78.34 acre-feet. In 1998, water production was 34.04 acre-feet and for the partial reporting year of 1999, just before the Board hearing, it was up to 41.14 acre-feet. The Supplemental Information and Errata then suggested several possible combinations and averages of these production numbers, one of which, 51 acre-feet per year, was the figure eventually selected by the Board.

This figure was a departure, both numerically and methodologically, from the 45 acre-feet per year that had been developed as the baseline figure by the consultants and had been used throughout the **[\*\*344]** EIR process. And since it first appeared in supplemental information supplied to the County shortly before the Board convened, there was little opportunity for public comment and meaningful response as to either the methodology or the evidence to support the figures used. Furthermore, the supplemental information contained little meaningful analysis as to why any of the suggested calculations might represent a reasonable determination of baseline water usage for irrigating this property. Indeed it appears that several of the figures **[\*\*\*42]**, on the water production chart do *not* represent water actually used for irrigating the property.

For example, the 51 acre-feet per year figure selected by the Board was an average of water meter readings in the past three years, including 1997. The figure for 1997 is 78.34 acre-feet. However, the chart clarifies that "[o]f this total, about 52 acre-feet were produced during a 47 day period of aquifer testing . . . The remainder, 26.34 acre-feet is the amount accepted by the MPWMD as the water production for irrigation in RY [reporting year] 1997." (Italics added) Even though only 26.34 acre-feet was actually used for irrigation, the EIR advised that the Board "could accept the actual water production amount, the full 78.34 AF/yr, or deduct the amount of water used for aquifer testing (52 AF), as requested by the MPWMD to account for the anomaly of the aquifer testing." This reasoning is clearly faulty. A baseline figure must represent an environmental condition existing on the property prior to the project. There is simply no justification for using a total of 78.34 acre-feet of water as part of a baseline calculation for this property, when the evidence was that **[\*\*\*43]** 52 acre-feet of this amount was pumped for the purpose of aquifer testing and was discharged into the Carmel River.

By inviting the Board to pick from an array of numbers to determine an important aspect of the baseline environmental setting, the EIR failed to

**[\*124]** fulfill its function of providing information and analysis of environmental impacts. In a recent case involving a massive water project that proposed to divert 17,000 acre-feet of water from three high Sierra lakes, the court found the EIR's baseline analysis to be inadequate, on similar facts. (*County of Amador v. El Dorado County Water Agency*, *supra*, 76 Cal. App. 4th at 953.) In *County of Amador*, the EIR's discussion of baseline conditions consisted of a recitation of month-end lake levels for the three lakes. It failed to explain how those lake levels were maintained, the historical duration and timing of the water releases, and the impacts on fishery resources and recreational uses. The court found that the lake level figures alone were insufficient to describe the existing water release program. The court noted that "this is not a case involving conflicting expert opinions about historical **[\*\*\*44]** operation." (*Id.* at p. 954.) Rather the EIR simply presented data without meaningful analysis. The court in *County of Amador* underscored the "importance of an adequate baseline description, for without such a description, analysis of impacts, mitigation measures and project alternatives becomes impossible." (*Id.* at p. 953.) The court concluded that **HN16** "[a]n adequate EIR requires more than raw data; it requires also an analysis that will provide decision makers with sufficient information to make intelligent decisions." (*Id.* at p. 955; see also Guidelines, § 15151.)

The EIR in this case similarly provided raw data, in the form of recent water meter figures for the September Ranch property, and then invited the Board to select a baseline from among several suggested combinations of these figures. As in *County of Amador*, this was not a case where the Board was called upon to perform its discretionary function of resolving a factual dispute or choosing from conflicting expert opinions or methodologies regarding water usage. Instead **[\*\*\*45]** this was an **[\*\*345]** arbitrary process, involving arithmetic rather than analysis. The Board was permitted to make the crucial determination of baseline water use by choosing from a selection of numbers, some of which did not represent water actually used to irrigate the property. And this occurred at the very end of the environmental review process, thus avoiding public scrutiny and precluding the meaningful comparison of preproject and postproject conditions required by CEQA.

**CA(5)** **(5)** This brings us to the question whether it was proper in any event to rely on water production figures generated at the end of the environmental review process, rather than at the beginning, to determine a baseline figure. The relevant Guideline at the time of the environmental review for the September Ranch project was section 15125, which provided: "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 **[\*125]** perspective." (Guidelines, former § 15125, *subd.* (a), italics added.) Appellants take the italicized words to mean immediately before the project is approved and permits are **[\*\*\*46]** issued. Respondents contend that existing conditions must be evaluated as closely as possible to the date the notice of preparation of the EIR is filed, as that is the date the project is officially commenced within the meaning of CEQA. They maintain that an EIR cannot adequately analyze the impacts on the environment if it does not start with a description of the physical conditions existing on the property at the beginning of the environmental review.

A subsequent amendment to section 15125 of the Guidelines supports respondents' interpretation. Section 15125, subdivision (a), now provides: **HN17** "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced . . . This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (Italics added.) Furthermore, section 15126.2 now provides as follows: **HN18** **[\*\*\*47]**. "In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced." These amendments reflect and clarify a central concept of CEQA, widely accepted by the courts, that **HN19** the significance of a project's impacts cannot be measured unless the EIR first establishes the actual physical conditions on the property. (*County of Amador v. El Dorado County Water Agency*, *supra*, 76 Cal. App. 4th at p. 953; *Environmental Planning & Information Council v. County of El Dorado*, *supra*, 131 Cal. App. 3d at p. 354; *City of Carmel-by-the-Sea v. Board of Supervisors*, *supra*, 183 Cal. App. 3d 229.) In other words, baseline determination is the first rather than the last step in the environmental **[\*\*\*48]** review process.

We adopt this general rule. **HN20** We also agree with appellants, however, that the date for establishing baseline cannot be a rigid one. Environmental conditions may vary from year to year and in some cases it is necessary to consider conditions over a range of time periods. In some cases, conditions closer to the date the project is approved are more relevant to a determination whether the project's impacts will be significant. (See *Mira Monte Homeowners Assn. v. County of Ventura* (1985), 165 Cal. App. 3d 357 [212 Cal. Rptr. 127].) For instance, where the issue involves an impact on traffic levels, the EIR might necessarily take into account the normal increase in **[\*126]** traffic over **[\*\*346]**.

1990  
language  
of 15125  
"Baseline"  
/ Defendant  
Amendment  
of  
15125  
language

time. Since the environmental review process can take a number of years, traffic levels as of the time the project is approved may be a more accurate representation of the existing baseline against which to measure the impact of the project. (See, e.g. *Fairview Neighbors v. County of Ventura* (1999) 70 Cal. App. 4th 238 [82 Cal. Rptr. 2d 436] [maximum [\*\*\*49] estimated traffic was appropriate baseline].) Even in the case before us, if the more recent water production figures could be shown to represent a continuation of preproject water usage, such figures might be relevant to a determination of baseline water conditions. However, here the more recent figures consisted primarily of aquifer testing where water was pumped and released into the river. Water which was pumped for irrigation in 1997, 1998, and 1999 was a significantly higher amount than in the previous six recorded years. Thus these recent figures do not appear to represent a normal fluctuation in usage over time, as appellants suggest.

Furthermore, there are sound reasons for determining baseline water use in this particular case as of the time of the commencement of the environmental review. Here the environmental review process spanned three and a half years. During that time it became apparent that the water supply for this project was a critical issue. A state water board decision precluded a hookup with the local water company. State and local policy restricted development that would increase pumping in the Carmel Valley basin. And pumping tests established that the [\*\*\*50] sub-basin underlying the property was not separate from the Carmel Valley aquifer. Because any water used by the project in excess of baseline would constitute a significant adverse impact, it was clear that the baseline figure would dictate the amount of allowable density for the project.

Production of water on the property during the lengthy environmental review process was controlled by the applicants. It was in their interests to elevate water production figures in order to establish as high a baseline as possible. While we do not speculate as to whether this occurred, we believe water production figures generated towards the end of the environmental review process must be regarded with some caution in these circumstances. Their relevance to baseline conditions would depend on whether they are representative of the amount of water historically produced for use on the property. The better approach, however, would be to follow the general rule expressed in the Guidelines and cases that baseline conditions are normally to be determined as of the time environmental review is begun. This most closely describes the environment "as it exists before the commencement of the project." [\*\*\*51] (Guidelines, former § 15125, subd. (a).)

Cases cited by appellants do not support the proposition that baseline is determined at the end rather than at the beginning of the environmental [\*\*\*127] review. In *Riverwatch v. County of San Diego* (1999) 76 Cal. App. 4th 1428 [91 Cal. Rptr. 2d 322], the court found that the EIR did not need to consider a baseline date some 12 years prior to the commencement of the project, in order to account for previous unlawful activity by the owners that had degraded the property. *Riverwatch* does not address the question raised here, whether the baseline conditions should be established as of the beginning or the end of the environmental review process.

The court in *Riverwatch* did state as a general principle that environmental impacts should be examined "in light of the environment as it exists when a project is approved." (*Riverwatch v. County of San Diego*, *supra*, 76 Cal. App. 4th at p. 1453.) However, in context it appears the court was simply rejecting the notion that the baseline should be set a number of years earlier than the commencement of the current project. Moreover, the authorities relied [\*\*\*52] on in *Riverwatch* do not support the view [\*\*\*347] that baseline should be determined as of the date of project approval. *Bloom v. McGurk* (1994) 26 Cal. App. 4th 1307 [31 Cal. Rptr. 2d 914] did not involve preparation of an EIR but rather addressed the question of baseline for purposes of determining a categorical exemption from CEQA. That case in turn relied on *City of Carmel-by-the-Sea v. Board of Supervisors*, *supra*, 183 Cal. App. 3d 229. In *City of Carmel* we stated that "[i]n assessing the impact of [a] rezoning, it is only logical that the local agency examine the potential impact on the existing physical environment." (*Id.* at p. 246.) In the context of that case our meaning was that the agency must examine the impact of the project as against the physical conditions on the subject property, as opposed to measuring the potential impact against a draft general plan. We said nothing expressly about whether the existing conditions are to be determined at the beginning or at the end of the environmental review process. However our statement in *City of Carmel* clearly implies that meaningful environmental review must [\*\*\*53] proceed at the outset from a determination of the property's existing physical conditions.

We believe that this is the correct interpretation of CEQA as applied to this case. This view is supported by the courts and by the Guidelines, and is consistent with the central function of the EIR, to inform decision makers about the impacts of the proposed project on the existing environment. (*County of Amador v. El Dorado County Water Agency*, *supra*, 76 Cal. App. 4th at pp. 952-956; *County of Inyo v. City of Los Angeles* (1981) 124 Cal. App. 3d 1, 9 [177 Cal. Rptr. 479]; *Environmental Planning & Information Council v. County of El Dorado*, *supra*, 131 Cal. App. 3d at p. 354; *City of Carmel-by-the-Sea v. Board of Supervisors*, *supra*, 183 Cal. App. 3d at p. 246.) An EIR in which a baseline water use determination is elastic and can be [\*\*\*128] modified by the Board at the end of the environmental review process without benefit of analysis or public participation does not fulfill this function.

**CA(6) ¶ (6) HN21 ¶** If an EIR fails to include relevant [\*\*\*54] information and precludes informed decisionmaking and public participation, the goals of CEQA are thwarted and a prejudicial abuse of discretion has occurred. (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal. 4th 1215, 1236 [52 Cal. Rptr. 2d 19, 876 P.2d 505]; *Fall River Wild Trout Foundation v. County of Shasta* (1999) 70 Cal. App. 4th 482, 492 [82 Cal. Rptr. 2d 205]; *County of Amador v. El Dorado County Water Agency*, *supra*, 76 Cal. App. 4th at p. 954; Pub. Resources Code, § 21005, subd. (a).) "Our role here, as a reviewing court, is not to decide whether the board acted wisely or unwisely, but simply to determine whether the EIR contained sufficient information about a proposed project, the site and surrounding area and the projected environmental impacts arising as a result of the proposed project or activity to allow for an informed decision . . ." (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus*, *supra*, 27 Cal. App. 4th at p. 718.) **CA(3d) ¶ (3d)** Based on these guiding principles, we conclude here that the EIR was inadequate in its baseline discussion in several respects: [\*\*\*55] by failing to investigate and present evidence to support the assumption that the preproject use of water on the property was for irrigation; by introducing a new methodology for baseline determination at the end of the environmental review process without any informational discussion or opportunity for public review; and by inviting the Board to select a baseline among water production figures with no meaningful analysis and no showing that the figures represented water actually used on the property consistent with historical use. Because of these inadequacies, the Board's decision setting baseline water use at 51 acre-feet per year was not [\*\*\*348] supported by the evidence and was an abuse of discretion.

#### *Off-site Pumping Reduction on the Berube Property*

Although the EIR had indicated that any increased water pumping over baseline would have to be mitigated either by reducing the project density or by reducing pumping elsewhere within the Carmel Valley basin, the applicants did not identify an offsetting pumping location until well after the comment periods had closed. In June of 1998, the attorney for the applicants informed the County that the applicants had recently [\*\*\*56] acquired pumping rights to approximately 32 acre-feet of water per year on the 10-acre Berube parcel. The Berube property was located further up Carmel Valley Road approximately two miles away from the September Ranch property. The information about the Berube parcel was contained in the Supplemental [\*\*\*129] Information and Errata, which was submitted to the Board just prior to the hearing along with staff recommendations. It was on the basis of the identification of the Berube parcel that staff recommended that the Board modify the failing score given to the project by the subdivision evaluation committee in the category of water/hydrology.

Errors  
1

As a condition of approval of the project, the Board required that the applicants reduce pumping on the Berube property in order to offset project water demand over baseline. All that was required of the applicants was to show proof of control of the water rights on the offset parcel, and evidence of a deed restriction mandating reduction, subject to approval by the MPWMD and the director of environmental health. No permit would be necessary to secure this offset mitigation.

Comments received during the circulation of the draft EIR expressed [\*\*\*57] concerns about the precedent-setting impacts of using offset water credits at another location in the Carmel Valley to mitigate increased pumping at the site of the project. Among other things, such a policy would take water from property capable of being irrigated for agricultural purposes. The Monterey County Environmental Health Department commented that "if [water credit transfers] will be used in the final EIR, then the EIR should also analyze the precedent setting impacts throughout the valley for all properties that are capable of being irrigated for pasture, grapes, crops etc." The health department noted that it would be "crucial" to analyze the specifics and enforcement mechanisms of any off-site pumping offset to make sure the reduction property was situated so that there was a nexus between the offset and the increased pumping for the project. The health department urged that the site be identified as soon as possible so that it could be analyzed for feasibility and the necessary findings could be made. In response to these comments, the EIR agreed that there must be a "nexus" between the impact and the mitigation. If off-site pumping were to be used as mitigation, the [\*\*\*58] reduction must be "an actual reduction in documented current water use, not simply a reduction on potential future pumping."

After the applicants had identified the Berube property as an offset pumping reduction site, the County's chief environmental health officer wrote to the planning director. He pointed out that there had been no discussion of this property in the EIR. He also noted that "offsets do not necessarily provide water 'savings' " and may not be sufficient to provide proof of a long-term water supply. The supplemental material for the EIR provided no response and contained no further discussion of the effects of this offsetting pumping reduction on the Berube property. Other concerns [\*130] were expressed as to the validity of the water rights on the Berube property, and the question whether the impacts of overpumping at one site are in fact balanced out by refraining from pumping at a different site miles away. There was no analysis of the historic usage at the [\*\*349] Berube property or whether the offset would result in an actual reduction of pumping or would simply be a "paper credit."

The trial court found that the Board's approval of this mitigation [\*\*\*59] measure was not supported by the evidence because there was no environmental analysis in the EIR of the impacts of the pumping reduction on the Berube parcel and no analysis of the broader issues that were raised in numerous comments as to whether this offsetting mitigation resulted in potential cumulative growth-inducing impacts.

CA(7) (7) Appellants argue that the EIR is not required to discuss the environmental effects of mitigation measures. They contend that substantial evidence supports the Board's determination that the pumping offset would mitigate the impacts of any increased pumping without causing any new significant impacts. We disagree with these contentions. HN22 An EIR is required to discuss the impacts of mitigation measures. At the time of the environmental review in this case, former section 15126 of the Guidelines provided that HN23 "if a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation [\*\*\*60] measure shall be discussed[,] but in less detail than the significant effects of the project as proposed." (Guidelines, § 15126, former subd. (c).) [7] HN24 Furthermore, section 15126, former subdivision (g), provided that the growth-inducing impact of the proposed action must be discussed in the EIR, including "the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment." [8] (See also *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus*, supra, 27 Cal. App. 4th at p. 734 [EIR inadequate for failing to address off-site impacts of a project].)

Appellants argue that sufficient information [\*\*\*61] about the Berube property was provided with the errata, shortly before the Board meeting. This documentation, however, does not make up for the lack of analysis in the EIR. (See *Environmental Defense Fund, Inc. v. Coastside County Water Dist.* (1972) 27 Cal. App. 3d 695, 706 [104 Cal. Rptr. 197].) As county counsel conceded at trial, there was no discussion in the EIR of the impacts of [\*131] transferring water credits "because the issue of the water transfer came towards the end of the process." HN25 If, subsequent to the period of public and interagency review, the lead agency adds "significant new information" to an EIR, the agency must issue new notice and must "recirculate" the revised EIR, or portions thereof, for additional commentary and consultation. (Pub. Resources Code, § 21092.1; Guidelines, § 15088.5, subd. (a); *Laurel Heights Improvement Assn. v. Regents of University of California*, supra, 6 Cal. 4th 1112.) The revised environmental document must be subjected to the same "critical evaluation that occurs in the [\*\*\*62] draft stage," "so that the public is not denied an " "opportunity to test, assess, and evaluate the data and make an informed judgment as to the validity of the conclusions to be drawn therefrom." " (*Sutter Sensible Planning, Inc. v. Board of Supervisors*, supra, 122 Cal. App. 3d 813, 822.)

In light of the atmosphere of public concern about the water shortage in the Carmel Valley, and the focused concerns expressed in the comments calling for an analysis of the feasibility of any specific offset pumping site to provide actual mitigation, we believe the identification of the Berube parcel late in the environmental review process warranted further discussion and analysis and an opportunity for public response. Although the Board [\*\*350] may exercise its discretion as to the viability of a policy allowing for off-site water credits as mitigation for increased pumping in the valley, and as to the feasibility of the Berube property in particular for this purpose, it must do so on the basis of information collected and presented in the EIR and subjected to the test of public scrutiny. A revised EIR must include a discussion of the Berube parcel, the history of [\*\*\*63] water pumping on this property and its feasibility for providing an actual offset for increased pumping on the September Ranch property, as well as the growth-inducing effect of a policy of offset pumping reduction in the Carmel Valley.

#### Riparian Rights

CA(8a) (8a) The issue whether the September Ranch property had valid riparian rights and could utilize them to support a private water system for the subdivision also arose late in the environmental review process and suffers from a similar lack of analysis. During the second period for circulation and comment the SWRCB wrote that the applicants would need an appropriative rights permit to pump water because "the alluvium underlying the September Ranch is part of the Carmel River subterranean stream." The applicants then asserted for the first time in a letter dated May 2, 1998, that the property had a riparian right, which ran with the land and entitled them to use water from the subterranean stream without an appropriative permit. Neither the draft [\*132] EIR nor the revised EIR had mentioned such a right. The SWRCB responded that a valid riparian right could be utilized for project purposes, if such a right existed, but that no [\*\*\*64] determination had yet been made as to such a right.

The supplemental EIR (vol. 2) added a discussion of riparian rights. HN26 A valid riparian right can be established if: 1) the property is contiguous to the water course; 2) the property is within the watershed of the water course; and 3) the riparian right has not been severed through subdivision or separate conveyance. The supplemental EIR concluded that the September Ranch was "at least partially contiguous to the water course," namely the Carmel River subterranean stream flow, and that the property was located within the Carmel River watershed. A

Riparian Rights  
can be used  
for Development

title search indicated, and county counsel later confirmed, that the 891-acre September Ranch was a single lot of record. Thus there had been no severing of riparian rights. An early deed showed, however, that September Ranch's riparian rights may have been subordinated to a predecessor utility of Cal-Am. The supplemental EIR reported that riparian rights entitle the owner to use "the amount of water that can be reasonably and beneficially used on the riparian parcel" without applying for a permit. **HN22** [\*\*\*65]. In times of shortage a riparian owner must share water with other riparian users, but its rights are superior to the rights of appropriators.

The supplemental EIR clarified that whether the water right was riparian or appropriative, any increase of water use over preproject use would be a significant environmental impact requiring mitigation. In the final changes and corrections to the EIR, mitigation measure 7b was added, which required "either the assurance of a valid riparian claim or the requirement that the applicants secure a permit for an appropriative water right from the State Water Resources Control Board." But this mitigation measure was not included in the conditions of approval in the Board's resolution certifying the EIR.

The trial court pointed out numerous factual and legal issues, as well as policy concerns, that the court believed remained to be resolved before any determination could be made that the property owners have riparian rights sufficient to guarantee a long-term water supply for this project. Even if a riparian right were established, the court found that [\*\*\*66] the approval of a private water system for a large subdivision, based on a subterranean riparian right under only one portion of the property, [\*\*\*67]. could set an undesirable precedent and have a growth-inducing effect. This, the court found, was a potential cumulative impact which should have been considered and discussed in the EIR. The court concluded that "the failure of the EIR to consider potential growth inducing and/or other cumulative impacts of the use of alleged **[\*133]** subterranean riparian rights" was error. Consequently, the Board's findings approving a long-term water supply for the project, to the extent those findings were based on the existence of valid subterranean riparian rights, were not supported by substantial evidence. The judgment granting the writ of mandate directed the preparation of an EIR that properly analyzed whether water rights existed for the project.

Appellants argue that the court erred in ordering that the EIR analyze the legalities of their riparian water rights, contending that CEQA does not require any such analysis. Appellants maintain that as a matter of water law, their land has riparian rights to the subterranean streamflow without [\*\*\*67] having to obtain a permit. Furthermore, they argue, the EIR explained that whether the water use is based on an appropriative right or a riparian right, the physical impact is still the same. In either case if the project's water use exceeds the preproject use, mitigation is required. Finally, they claim that the petitioners in this case waived any water rights claims by failing to brief them before the trial court.

First, there is no basis for finding that petitioners in this case waived claims regarding water rights issues. These issues were adequately raised in briefing and argument before the trial court. Any failure to fully develop arguments can be attributed in part to the fact that the applicants asserted their intent to utilize their riparian rights very late in the environmental review process. As in the previous section, the late introduction of this theory and new information resulted in an incomplete analysis in the EIR. Furthermore, there was no opportunity for meaningful public comment and response.

**CA(9)** **(9)** "The purpose of requiring public review is '...to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications [\*\*\*68] of its action.' . . . Public review permits accountability and 'informed self-government.' . . . 'Public review and comment . . . ensures that appropriate alternatives and mitigation measures are considered, and permits input from agencies with expertise' . . . Thus[,] public review provides the dual purpose of bolstering the public's confidence in the agency's decision and providing the agency with information from a variety of experts and sources." (*Schoen v. Department of Forestry & Fire Protection* (1997) 58 Cal. App. 4th 556, 573-574 [68 Cal. Rptr. 2d 343], citations omitted.) The primary reason that public comment is solicited is so that potential significant adverse effects of the project can be identified "at the earliest possible time." (*Laurel Heights Improvement Assn. v. Regents of University of California*, supra, 6 Cal. 4th at p. 1129.) **HN28** The requirement in **[\*134]** Public Resources Code section 21092.1 that an EIR be recirculated when "significant new information" is added is not intended "to [\*\*\*69] promote endless rounds of revision and recirculation of EIR's. Recirculation is intended to be [the] exception, rather than the general rule." (*Laurel Heights Improvement Assn. v. Regents of University of California*, supra, 6 Cal. 4th at p. 1132.) We believe the exception applies in all of the circumstances of this case.

**CA(8b)** **(8b)** The supplemental EIR presented new and significant information regarding the applicants' asserted riparian right, which raised important water issue questions. If the validity of such a right were determined, would this entitle the applicants to rights superior to those of appropriative water users? How would these rights be superior? How would this affect other [\*\*\*70] riparian water users in the area during times of drought? If the exercise of a riparian right would not require a permit, but would be subject only to a rule of "reasonable use," how is water use regulated and controlled? Can a riparian right underlying one portion of the property be the basis for a private mutual water company providing water to the entire subdivision? Does the exercise of such a right create a precedent for other subdivisions and thus result in a growth-inducing [\*\*\*70] impact? Is the exercise of a riparian right, which may justify an expanded use of water, consistent with local policies limiting water for new development? Were further mitigation measures warranted? For example, the supplemental EIR added a mitigation measure requiring that the applicants either provide assurance of a valid riparian claim or secure an appropriative permit from the SWRCB. The fact that this mitigation measure was not carried over into the Board's final resolution only illustrates the difficulties presented by adding significant changes late in the EIR process.

In sum, we believe the addition of this new information regarding the asserted riparian right as a basis for long-term water supply for this project changed the EIR "in a way that deprive[d] the public of a meaningful opportunity to comment upon a *substantial* adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect." (*Laurel Heights Improvement Assn. Inc. v. Regents of University of California*, supra, 6 Cal. 4th at pp. 1129-1130; *Sierra Club v. Gilroy City Council* (1990) 222 Cal. App. 3d 30 [271 Cal. Rptr. 393].) We agree with [\*\*\*71] appellants that the final decision determining county policy on this issue is a matter of the Board's discretion. However, the EIR must provide sufficient information to make the exercise of this discretion an informed one. **[\*135]**

#### TRAFFIC ISSUES

Traffic issues center around the EIR recommending, and the Board adopting, the payment by the applicants of in-lieu fees into county traffic impact fee programs as mitigation for traffic increases attributed to the project.

The Carmel Valley Road traffic impact fee program is designed to respond to cumulative growth in traffic by generating the funds needed for construction of improvements along Carmel Valley Road. The road is divided into segments with assigned traffic thresholds. Projected traffic increases that will cause a threshold to be crossed trigger the need for improvements designed to return the segment to an acceptable level of service. The fee impact program thus enables the County to collect fees and add roadway improvements as new development increases traffic to unacceptable levels.

CV  
Rd  
Traffic  
Rules



The traffic analysis in the draft EIR indicated that on two segments of Carmel Valley Road, segments 6 and 7, the projected traffic [\*\*\*72] increase from the September Ranch project, plus traffic from already approved projects, would exceed the threshold, thus triggering the need for improvements. As to segment 7, which included the frontage along the September Ranch property, the threshold would be exceeded with existing traffic and projected traffic from projects already approved but not yet built out. The draft found that the traffic increase over the threshold was a significant impact, which could be reduced through the implementation of Carmel Valley Road improvements. As mitigation, the project applicants would be required to pay fees to the County, as established in the traffic impact fee program for Carmel Valley Road.

The Carmel Valley Road traffic impact fees imposed on the project were based on a traffic impact fee ordinance adopted by the Board in 1992. The fee program was enacted to enable the County to fund improvements to Carmel Valley Road on a "pay-as-you-go basis" and to avoid a moratorium [\*\*\*353] affecting development within the Carmel Valley area. Prior to the issuance of any building permit, a traffic mitigation fee was to be paid into a separate interest-bearing account, to be used "for road [\*\*\*73] and street improvements to Carmel Valley Road generally consistent with the Carmel Valley Master Plan . . . ." In a 1995 resolution the County adopted a traffic mitigation fee schedule for all new development along Carmel Valley Road. New development was to be assessed \$ 16,000 per unit, plus annual increases tied to the construction cost index. The traffic mitigation program calls for regular monitoring of Carmel Valley Road traffic conditions to determine when [\*136] traffic thresholds along the various segments are reached. The draft EIR found that it was up to the County "to determine the nature and timing of the required improvements to Carmel Valley Road."

A second problem area for traffic involved the intersections along Highway 1 in the vicinity of Carmel Valley Road. The draft EIR found that the level of service at several of these intersections was currently substandard during peak hours. The County, in conjunction with the California Department of Transportation (CalTrans), had prepared a program of interim improvements to address these deficiencies. According to one study, these operational improvements were designed to maintain an acceptable level of service or [\*\*\*74] better at four intersections along Highway 1 and to support a 27 percent growth in peak hour traffic. The EIR found that unless these proposed interim improvements to Highway 1 were implemented, the traffic increase from this project and other approved projects in the area would "exacerbate unacceptable levels of service of roadways and intersections in the vicinity of Carmel Valley Road and Highway 1 . . . ." As mitigation, the project applicants were to pay to the County, prior to the issuance of building permits, a pro rata share toward the cost of 12 interim Highway 1 improvements. The draft further found, however, that cumulative impacts would eventually require long-range solutions, such as the proposed Hatton Canyon Freeway or the widening of Highway 1.

The final EIR included updated traffic counts, which did not change the statistics significantly. The previous conclusions regarding the two segments of Carmel Valley Road were still valid. Recommended mitigation, as before, involved the payment of fees to the County pursuant to its traffic impact fee program.

The intersections along Highway 1 continued to operate at unacceptable levels. Comments from CalTrans expressed "great [\*\*\*75] concerns" over the project generating additional traffic along Highway 1, a corridor that already operated at an unacceptable level of service. According to CalTrans, the level of service in that area was not likely to improve significantly until the Hatton Canyon Freeway was built. CalTrans urged that the September Ranch project not be approved until this freeway was completed. [§ 8]. The EIR's response to these comments indicated that interim improvements would provide short-term congestion relief pending the construction of the Hatton Canyon Freeway. The EIR provided further that as the decisionmaking body [\*137] "it is up to the Board of Supervisors to decide when the improvements are scheduled to be completed."

The final EIR noted that the Board and the Transportation Agency for Monterey County had developed a "Deficiency [\*\*\*76] Plan" calling for 12 operational improvements along Highway 1. The EIR acknowledged that the additional traffic generated by the September Ranch project would cause a significant impact on traffic volumes at these intersections unless the proposed interim improvements to Highway 1 were in [\*\*\*354] place. State funding for these improvements was to be supplemented with county funds pursuant to the traffic impact fee program. The final EIR recommended that traffic impacts be mitigated by payment by the developer of a pro rata share of the 12 interim improvements to Highway 1 prior to the issuance of building permits.

The Board adopted these fee payment mitigation measures as conditions of approval and also required that the applicants install various circulation improvements on Carmel Valley Road at the entrance to the project, provide a safe transit stop convenient to the entrance, dedicate a right-of-way for future widening of the road, and implement a trip-reduction program. The Board determined that because of the delay in the construction of the Hatton Canyon Freeway, the 12 interim improvements in the vicinity of Carmel Valley Road and Highway 1 would be implemented and would [\*\*\*77] be funded through collection of Carmel Valley Road traffic impact fees to supplement CalTrans funds. In addition, the Board determined that the project would be phased so that no more than 50 lots could be developed prior to the completion of Highway 1 interim road improvement No. 5, "or another traffic solution for Highway 1 is approved." Improvement No. 5 was the planned construction of dual right-turn lanes onto Highway 1.

**CA(10a) (10a)** Petitioners argued that the mitigation proposed by the EIR and adopted by the Board was inadequate in that the in-lieu fees did not readily translate into actual improvements. They contended that the fees were not likely to result in improvements, considering that the traffic problems were long standing and that the County had failed to act to implement improvements in the past, despite assurances that new projects would not be approved unless the infrastructure was in place to support such projects. Furthermore, allowing the County to determine "the nature and timing" of the improvements was no guarantee that the fees would go to the improvements needed in the areas where the project caused significant impacts. Petitioners argued that the EIR failed as an [\*\*\*78] informational document because it failed to tie the fee mitigation plan to the actual physical impacts of the [\*138] project on the environment. They claimed the EIR mitigation plan must identify the nature of specific improvements and their timing and how the improvements would mitigate the impact of the increased traffic. And finally they claimed that the Board's approval of the project with the adoption of these mitigation measures created an inconsistency with the traffic policy in the Master Plan.

The trial court agreed with these arguments. The court acknowledged that in-lieu fees are appropriate in some cases, but reasoned that after the critical threshold is reached or surpassed and the improvements have still not been implemented such fees are no longer adequate mitigation. The court focused on the County's previous interpretation of policy No. 39.1.6 of the Master Plan, as represented by county counsel in prior litigation involving the Master Plan. Policy No. 39.1.6 of the Master Plan, adopted in 1986, provides that "[e]very effort should be made to obtain funding and proceed with construction of the Hatton Canyon Freeway at the earliest possible date." However, [\*\*\*79] if after five years of allocation the freeway has not been built, "the Board shall limit further development until the freeway is under construction." In litigation challenging the approval of the Master Plan, county counsel represented that this policy meant that "if . . . the infrastructure is not available to support growth, growth will not be permitted." Specifically, if the Hatton Canyon Freeway were not funded and other mitigation measures were not implemented the County's alternative would be "not to approve development unless there is infrastructure to support it."



[\*\*355] The trial court noted that 12 years had passed since the approval of the Master Plan and that the time for "action, not words" HAD COME. THE COURT CONCLUDED: "With respect to the intersection of Highway One and the other two segments of Carmel Valley Road which have reached the 'threshold' trigger, the EIR should have specifically considered when in fact the improvements are to be done and whether that time period is feasible. The County should have made specific findings as to whether they are going to be done and when. If the improvements are not to be done in the immediate future, then, in [\*\*80], accordance with the [Master Plan], development must be limited or action taken to amend the plan."

Appellants argue that the EIR's traffic analysis and mitigation measures complied with CEQA, that substantial evidence supported the Board's conclusion that traffic impacts would be mitigated, and that the Board's interpretation of Master Plan policy No. 39.1.6 was within its discretion and was reasonable. We agree with appellants.

**[\*139]** First, we restate our standard of review here. Our task is to determine whether the agency prejudicially abused its discretion either by not proceeding in the manner required by law or by making a decision not supported by substantial evidence. (*Pub. Resources Code, § 21168.5; Laurel Heights Improvement Assn. v. Regents of University of California, supra, 47 Cal. 3d at p. 392.*) **HN29** We presume the correctness of the agency's decision and the petitioners thus bear the burden of proving that the EIR is legally inadequate or that the record does not contain substantial evidence to support the agency's decision. [\*\*81] (*Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners, supra, 18 Cal. App. 4th at p. 740; Barthelmy v. Chino Basin Mun. Water Dist., supra, 38 Cal. App. 4th at p. 1617.*) **CA(11)** **(11)** The substantial evidence rule does not require certainty; substantial evidence is "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Guidelines, § 15384, subd. (a).) Where the dispute is whether adverse effects could be better mitigated, we do not weigh the evidence and determine who has the better argument. (*Laurel Heights Improvement Assn. v. Regents of University of California, supra, 47 Cal. 3d at p. 392-393.*) "We have neither the resources nor scientific expertise to engage in such analysis, even if the statutorily prescribed standard of review permitted us to do so." (*Id.* at p. 393.)

**CA(10b)** **(10b)** **HN30** CEQA requires that an EIR indicate the ways in which a project's significant effects can be mitigated, by setting forth [\*\*82] "mitigation measures proposed to minimize significant effects on the environment." (*Pub. Resources Code, §§ 21100, subd. (b) (3), 21002.1, subd. (a), 21061.*) The discussion should identify mitigation measures which "could reasonably be expected to reduce adverse impacts if required as conditions of approving the project." (Guidelines, former § 15126, subd. (c), now § 15126.4, subd. (a)(1)(A).) We believe the EIR adequately fulfilled these requirements. It contained a comprehensive traffic analysis that compared the total projected traffic from this project, and from other projects in the area that were approved but not built, against an established capacity threshold for each road segment along Carmel Valley Road and the intersections with Highway 1. It identified problem areas and described the programs designed to address these areas of concern. And it recommended mitigation in the form of pro rata fees paid to a traffic impact fee program established by county ordinance and designed to implement road improvements as needed. Further recommended mitigation was construction of safe transit stops, implementation of a trip reduction program, installation [\*\*83] of circulation improvements [\*\*356] at the entrances to the project site, and dedication of a right-of-way for the widening of Carmel Valley Road. **HN31**

**[\*140]** Fee-based infrastructure mitigation programs have been found to be adequate mitigation measures under CEQA. (See, e.g., *Russ Bldg. Partnership v. City and County of San Francisco* (1988) 44 Cal. 3d 839, 845 [244 Cal. Rptr. 682, 750 P.2d 324] [upholding transit impact development fee]; *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1989) 209 Cal. App. 3d 1502 [258 Cal. Rptr. 267].) The CEQA Guidelines also recognize that when an impact is not unique to a single project, but is instead the result of cumulative conditions, the only feasible mitigation may involve adoption of ordinances or other regulations designed to address the cumulative impact. (Guidelines, § 15130, subd. (c).) Section 15130 of the Guidelines now specifically provides that an EIR may determine that a project's contribution to a cumulative impact may be mitigated by requiring the project "to [\*\*84] implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact." (Guidelines, § 15130, subd. (a)(3).) The trial court recognized that the payment of fees and phased improvements was appropriate, at least with respect to traffic impacts which have not yet reached the threshold trigger.

Of course a commitment to pay fees without any evidence that mitigation will actually occur is inadequate. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692 [270 Cal. Rptr. 650].) In the *City of Hanford* case, the city had found that certain impacts on groundwater were insignificant, in reliance on a "mitigation agreement" with the water district by which the project applicant agreed to pay the district to purchase water supplies to make up for amounts used by the project. However, the record contained no evidence indicating that any such water supplies were or would be available. Consequently, the developer's promise to pay the fees bore no connection to actual mitigation of impacts. The court found that the EIR was inadequate in this respect

Here, however, the collection of fees was not an idle act. The [\*\*85] EIR reported that the County had adopted the traffic impact fee program in order to fund improvements to Carmel Valley Road. A citizens advisory committee, the Carmel Valley Road Improvement Committee, had studied potential road improvements and had reported to the Board. Studies in the EIR indicated that existing traffic levels at all segments along Carmel Valley Road were below the threshold at the time the EIR was completed. Therefore, the requirement for improvements to bring the service back to an acceptable level had not yet been triggered. However, traffic projected from projects already approved but not yet built would exceed the threshold on segment 7. And both segments 6 and 7 would be exceeded when all approved projects plus the September Ranch project were built out. Planned **[\*141]** improvements included intersection channelization and passing lanes on segments 6 and 7, the two segments most affected by the project in this case.

As to the intersections along Highway 1, where the level of service was unacceptable at peak hours, the EIR reported that the County had adopted, and the Monterey County Transportation Agency had endorsed, a deficiency plan to resolve congestion [\*\*86] problems. Twelve interim improvements were proposed. At the time of the final EIR one of the scheduled improvements had been completed and another, improvement No. 5, which was specifically identified in the Board's resolution, was funded and scheduled for construction.

Thus with respect to the problem areas for traffic identified in the EIR, the evidence indicated that road improvement plans were in place and in some cases construction was proceeding. A time schedule for improvement was inherent in the County's traffic impact program, in [\*\*357] that it provided for improvements to be constructed as the traffic triggering the need for the improvements exceeded a projected threshold and the funds to pay for the improvements were generated by the new development.

We are not unsympathetic to concerns, voiced by the trial court, about the County's failure to act in the past to implement road improvements. We do not believe, however, that CEQA requires that the EIR set forth a time-specific schedule for the County to complete specified road improvements. All that is required by CEQA is that there be a reasonable plan for mitigation. (*Sacramento Old City Assn. v. City Council* (1991) 229 Cal. App. 3d 1011 [280 Cal. Rptr. 476]; [\*\*87] see also *Laurel Heights Improvement Assn. v. Regents of the University of California,*

*supra*, 47 Cal. 3d 376, 418.) Furthermore, we must presume and expect that the County will comply with its own ordinances, and spend the fees it collects on the appropriate improvements to the affected road segments. (See, e.g., *Ervon v. Board of Supervisors* (1975) 53 Cal. App. 3d 1004, 1012 [126 Cal. Rptr. 285].) On this record we find that the traffic impact mitigation fees were sufficiently tied to the actual mitigation of the impacts of increased traffic. We therefore conclude that the EIR's discussion of traffic mitigation measures was adequate and the Board's adoption of the conditions of approval was supported by the evidence.

**CA(12a)** **(12a)** Furthermore, we find that the Board's determination that the project was consistent with policy No. 39.1.6 of the Master Plan was not an abuse of discretion. The relevant portion of the policy stated that the Board "shall limit further development" until the Hatton Canyon Freeway was under construction. The EIR did not find an inconsistency with this policy **[\*142]** because interim improvements were planned to maintain an acceptable **[\*\*\*68]** level of service pending the construction of the Hatton Canyon Freeway, or another long-term plan, and because the policy required only that further development be *limited*, not that it was prohibited. The Board's resolution did in fact provide limitations, requiring that development of the project be phased to coincide with completion of identified interim improvements.

**CA(13)** **(13)** **HN32** When we review an agency's decision for consistency with its own general plan, we accord great deference to the agency's determination. This is because the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity. (*City of Walnut Creek v. County of Contra Costa* (1980) 101 Cal. App. 3d 1012, 1021 [162 Cal. Rptr. 224].) Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan's policies when applying them, and it has broad discretion to construe its policies in light of the plan's purposes. (*Sequoiah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal. App. 4th 704 [29 Cal. Rptr. 2d 182]; **[\*\*\*89]** *Greenebaum v. City of Los Angeles* (1984) 153 Cal. App. 3d 391, 407 [200 Cal. Rptr. 237].) A reviewing court's role "is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies." (*Sequoiah Hills Homeowners Assn. v. City of Oakland, supra*, 23 Cal. App. 4th at pp. 719-720.)

**CA(12b)** **(12b)** Here, the EIR discussed the Master Plan, including policy No. 39.1.6, and the Board expressly found that the project was consistent with that policy. We find no abuse of discretion. The purpose of policy No. 39.1.6. was to prevent unacceptable increases in congestion at the intersection of Highway 1 and Carmel Valley Road due to new development until a long-term plan such as the Hatton Canyon Freeway could be implemented. Notwithstanding the representations of counsel during litigation in 1987, the policy did not prohibit all further development until the **[\*\*358]** freeway was built. We believe the Board was entitled to exercise its discretion to determine what limitations were appropriate in light of its review of current levels of service, approved development and planned interim **[\*\*\*90]** improvements. **103**

#### **[\*143]** DISPOSITION

The judgment granting a peremptory writ of mandate is reversed in part and affirmed in part. The matter is remanded to the superior court with directions that the court issue a new writ of mandate ordering the Board to vacate resolution No. 98-500, including the approval of any permits or entitlements for the project described in that resolution, and to vacate the certification of the EIR prepared in regard to the project. The Board shall be ordered not to take any further action to approve the project without the preparation, circulation and consideration under CEQA of a **[\*\*\*91]** legally adequate EIR with regard to the water issues discussed in this opinion.

The revised EIR is to investigate and analyze the baseline water conditions on the property at or around the time of the commencement of the environmental review process for this project. Baseline water figures shall reflect actual water use on the property, where possible, and methodologies for determining baseline shall be supported by evidence of actual water use on the property or, where no documentation is available, by good faith estimates of actual historical use.

The revised EIR is to discuss and analyze the growth-inducing impact of mitigating increased pumping over baseline with off-site pumping reduction, including the loss of agricultural lands, and specifically the feasibility of a pumping offset on the Berube parcel, including water availability and pumping history on the Berube parcel and whether there is an actual nexus between reduced pumping on that property and increased pumping on the September Ranch property.

The revised EIR is to discuss and analyze the asserted riparian right of the applicants, including whether such a right has been established, whether it entitles the applicants **[\*\*\*92]** to an expanded use of water in derogation of the rights of other water users in the area, whether such a right may support a mutual water system serving the entire subdivision, and whether the utilization of riparian rights may result in a growth-inducing impact.

The portion of the superior court's judgment granting a writ of mandate and directing that the Board prepare a revised EIR to include further discussion regarding mitigation of traffic impacts is reversed.

The superior court's order awarding attorney fees is hereby vacated. Upon remand, the court may issue a new order, in light of our disposition herein, or may reinstate the same order.

**[\*144]** The parties are to bear their own costs on appeal.

Premo  $\nabla$ , Acting P. J., and Wunderlich, J., concurred.

#### Footnotes

**17** California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq.

**27** This discussion is confined to water issues. We will include the background of the traffic issues in that section.

**37** Two parties in this action, Ed Leeper and Save Our Peninsula Committee, were dismissed following a demurrer sustained without leave to amend. The remaining petitioner, Responsible Consumers of the Monterey Peninsula, is still a party and is the respondent in appeal No. HO20900.

47

As to the asserted changes made to the Board's findings after the Board had adjourned, the trial court noted that the record revealed "numerous instances" where the applicants' attorney had prepared critical documents for county planners. The court disapproved such a practice and pointed out that the County had indicated it had "recognized the problem and taken appropriate action."

57

The two petitions were consolidated only for administrative purposes at trial. Therefore, two separate appeals were filed. The two appeals have been consolidated here for the limited purposes of filing the administrative record, oral argument and decision.

67

The CEQA Guidelines are found at [California Code of Regulations, title 14, section 15000 et seq.](#) (hereafter Guidelines).

77

This same language now appears in Guidelines section 15126.4, subdivision (a)(1)(D).

87

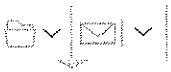
This language now appears in Guidelines section 15126.2, subdivision (d).

97

The Halton Canyon Freeway has not gone forward due to local opposition. At oral argument, respondents represented that state funding for this project has been diverted to other uses.

107

Respondents have raised several further arguments challenging other aspects of the EIR and the Board's action. The trial court determined that its judgment granting a peremptory writ of mandate mooted any additional challenges, which could be raised again depending on the Board's action on remand. Respondents have not cross-appealed and these further issues are not before us at this time.





# **Exhibit A**

MONTEREY COUNTY  
RESOURCE MANAGEMENT AGENCY



PLANNING & BUILDING INSPECTION DEPARTMENT, Scott Hennessy, Director

168 W. Alisal St., 2<sup>nd</sup> Floor  
Salinas, CA 93901

(831) 755-5025

FAX (831) 757-9516

RECEIVED

AUG - 7 2006

Bestor Engineers

August 3, 2006

Mr. Nader Agha  
542 Lighthouse Avenue  
Pacific Grove, CA 93950

Subject: Vista Nadura Subdivision (PLN990274)

Dear Mr. Agha:

The County has reviewed the additional information and revised plan for the subject project that was submitted on July 10, 2006. All of the County Department have now deemed the application complete with the exception of Environmental Health (see the attached memorandum dated July 31, 2006). The information requested from Environmental Health must be submitted before the subject application (PLN990274) can be deemed complete.

If you have any questions regarding the requested information that has been requested by Environmental Health, please contact Roger Van Horn at (831) 755-4763.

Sincerely,

Bob Schubert, AICP  
Senior Planner

Cc: Carl Hooper, Bestor Engineers  
Mike Novo  
Burke Peas

## Project Referral Sheet

Planning & Building Inspection Department  
168 W Alisal St 2nd Floor  
Saratoga, CA 95001  
(831) 755-5025

TO: FIRE DEPARTMENT  
PUBLIC WORKS  
PARKS DEPARTMENT

~~HEALTH DEPARTMENT~~  
WATER RESOURCES AGENCY  
OTHER: \_\_\_\_\_

PLEASE SUBMIT YOUR COMMENTS FOR THIS APPLICATION BY: Monday, July 31, 2006

Project Title: AGHA DURELL D TR  
File Number: PLN990274  
File Type: SUB  
Planner: SCHUBERT  
Location: N OF LOS ARBOLES RD CARMEL VALLEY  
Assessor's No: 169-011-009-000-M

**Project Description:**  
STANDARD SUBDIVISION TENTATIVE MAP FOR THE SUBDIVISION OF AN EXISTING LOT OF RECORD OF 50 ACRES INTO 20 LOTS RANGING IN SIZE FROM 1.1 ACRES TO 5.2 ACRES, INCLUDING GRADING FOR THE CONSTRUCTION OF 20-FOOT WIDE ACCESS ROAD; AND A USE PERMIT FOR DEVELOPMENT ON SLOPES GREATER THAN 30 PERCENT (ACCESS ROAD). THE PROPERTY IS LOCATED NORTH OF LOS ARBOLES ROAD, CARMEL (ASSESSOR'S PARCEL NUMBERS 169-011-009-000, 169-011-014-000 AND 169-011-015-000), MID CARMEL VALLEY AREA.

Status: ~~COMPLETE~~ INCOMPLETE (circle one)

Recommended Conditions:

The Health Department has reviewed the above referenced application and has considered the application incomplete. The following reports and/or information are needed prior to considering the application complete.

### PROJECT DESCRIPTION

1. A full and complete description of the project needs to be submitted for approval. Upon receipt of project description, the specific location of the project in the Carmel valley Wastewater Study (Montgomery Study) will be determined and if additional information is required the applicant will be notified.

### SEPTIC SYSTEM ISSUES

2. Please contact Mr. Roger Van Horn at 831-755-4763 to arrange an on-site visit to determine septic system feasibility of the proposed project as per Chapter 15.20 MCC (Septic Ordinance) and "Prohibitions", Central Coast Basin Plan, RWQCB.
3. Additional soils and percolation testing are required on the proposed lots for review and approval by the Division of Environmental Health to prove that the site is suitable for the use and that it meets the standards found in Chapter 15.20 MCC (Septic Ordinance), and "Prohibitions", Central Coast Basin Plan, RWQCB. Contact the Division prior to proceeding to determine the scope of work and to oversee soil testing. The testing and report format

Signature: Roger Van Horn

Date: July 31, 2006

Please return a copy to Planning & Building Inspection Department  
IDR Comments Due Date: 07/31/2006  
Date IDR Referral Sheet Printed: 07/14/2006

**Project Referral Sheet**  
Planning & Building Inspection Department  
168 W Alisal St 2nd Floor  
Salinas, CA 93901  
(831) 755-5025

TO: FIRE DEPARTMENT                      ~~HEALTH DEPARTMENT~~  
PUBLIC WORKS                              WATER RESOURCES AGENCY  
PARKS DEPARTMENT                      OTHER: \_\_\_\_\_

PLEASE SUBMIT YOUR COMMENTS FOR THIS APPLICATION BY: Monday, July 31, 2006

shall be completed as per the adopted soil report policies of the Department.

4. Information to determine conformance with the Carmel Valley Wastewater Study, Montgomery Study, is necessary for determination of the feasibility of the wastewater disposal.

**WATER ISSUES**

5. In the event that the development meets the definition of a water system and will require the establishment of a permitted water system and if a individual well or wells are to be used, water quality and quantity information meeting all applicable State and County requirements shall be submitted to the Director of Environmental Health for review and approval as evidence that an adequate water supply exists for the project. The well or wells shall first undergo a minimum of a 72-hour continuous pump test to determine the yield of the well to meet the required quantity. The pump tests shall be made no earlier than June 1 of each year and no later than the first significant rainfall event of the wet season. A representative of the Division of Environmental Health shall witness the pump tests.
6. Please refer to the attached "Water System Completeness Requirements" check sheet. This is provided to further detail the requirements of MMC Title 19, Subdivision Ordinance. The items listed may or may not be necessary depending on your final project description.
7. Since Initial Water Use Questionnaire submitted indicates an intensification of water use, a determination shall be made by a hydrogeologist under contract to the County as to the requirement for any additional water resources information. If any hydrologic or hydrogeologic reports are deemed necessary, the County will contract directly with a qualified consultant, at the applicant's expense, upon request of the applicant. A written request to the Division of Environmental Health is necessary to commence with the preparation of a scope of work.
8. The Monterey Peninsula Water Management District (MPWMD) needs to be advised of this project so they may make comments regarding any specific concerns they might have as to water intensification usage. Please contact Henrietta Stern at the MPWMD for information regarding requirements. MPWMD has requested MCDDEH to advise applicants to enter the MPWMD "Preapplication Conference".

Signature: Roger Van Horn

Date: July 31, 2006

2



# **Exhibit B**



# MONTEREY COUNTY



## PLANNING AND BUILDING INSPECTION DEPARTMENT

- 240 CHURCH STREET, SALINAS, CA 93901 PLANNING: (831) 755-5025 BUILDING: (831) 755-5027 FAX: (831) 755-5487  
MAILING ADDRESS: P. O. BOX 1208, SALINAS, CA 93902
- COASTAL OFFICE, 2620 1<sup>st</sup> Avenue, MARINA, CALIFORNIA 93933 PLANNING: (831) 883-7500 BUILDING: (831) 883-7501 FAX: (831) 384-3261

SCOTT HENNESSY, DIRECTOR

September 26, 2002

Nader Agha  
542 Lighthouse Ave.  
Pacific Grove, CA. 93950

**Subject: Vista Nadura Subdivision (PLN990274)**

Dear Mr. Agha:

This is to notify you that a staff review of your application finds it to be incomplete, and more information is necessary. A list of the additional information required is attached and must be received in this office and found adequate by the Planning and Building Inspection Department before processing can begin.

Copies of all interdepartmental review comments and requirements are attached for your information. Some of these sheets indicate additional materials are necessary before the project can be deemed complete.

Should you have any questions, please call me at (831) 883-7560.

Sincerely,

Patrick Kelly, AICP  
Associate Planner

## Project Referral Sheet

Planning & Building Inspection Department  
Coastal Office  
2620 First Ave  
Marina, California  
(831) 883-7500

**TO:** FIRE DEPARTMENT      ~~HEALTH DEPARTMENT~~  
PUBLIC WORKS              WATER RESOURCES AGENCY  
PARKS DEPARTMENT      OTHER: \_\_\_\_\_

Please Submit your recommendations for this application by: Monday, September 23, 2002

Project Title: AGHA DURELL D TR

File Number: PLN990274

File Type: SUB

Planner: KELLY

Location: Carmel Valley Road

Assessor's No: 169-011-009-000-M

**Project Description:**

Standard Subdivision Tentative Map for the subdivision of an existing lot of record of 50 acres into 20 lots ranging in size from 1.1 acres to 5.2 acres, including grading for the construction of 20-foot wide access road; and a Use Permit for development on slopes greater than 30 percent (access road). The property is located north of Los Arboles Road (Assessor's Parcel Number 169-011-015), Mid Carmel Valley area, Carmel Valley Master Plan area.

Status: ~~COMPLETE~~/INCOMPLETE (highlight one)

**Recommended Conditions:**

The Health Department has reviewed the above referenced application and has considered the application incomplete. The following reports and/or information are needed prior to considering the application complete.

- 1) Provide a map of the proposed subdivision. Upon receipt of the map, the project's location in the Carmel Valley Wastewater Study(Montgomery Study) will be determined and additional information or requirements may apply.
- 2) Provide to the Director of Environmental Health certification and any necessary documentation that California American Water Company can and will supply sufficient water flow and pressure to comply with both Health and fire flow standards.
- 3) Provide evidence to the satisfaction of the Director of Environmental Health that the water source for the mutual system meets applicable State and County standards for water quantity and quantity.
- 4) Since the Initial Water Use Questionnaire submitted indicates an intensification of water use, a determination shall be made by a hydrogeologist under contract to the County as to the requirement for any additional water resources information. If any hydrologic or hydrogeologic reports are deemed necessary, the County will contract directly with qualified consultants, at the applicant's expense, upon request of the applicant. A written request to the Division of Environmental Health is necessary to commence with the preparation of a scope of work.
- 5) Please contact Roger Beretti at 755-4570 to arrange an on-site visit to determine septic system feasibility of the proposed project as per Chapter 15.20 MCC (Septic Ordinance) and "Prohibitions", Central Coast Basin Plan, RWQCB.
- 6) Soil excavations must be performed on each lot and witnessed by a representative of the Division of Environmental Health. Contact Roger Beretti at 744-4570 to schedule and determine the scope of work.
- 7) Submit two copies of a soils and percolation testing report for review and approval by the Division of Environmental Health to prove that the site is suitable for the use and that it meets the standards found in Chapter 15.20 MCC (Septic Ordinance), and "Prohibitions", Central Coast Basin Plan, RWQCB. Contact the Division prior to proceeding to determine the scope of work and to oversee soil testing. The testing and report format shall be completed as per the adopted soil report policies of the Department.

Signature: Roger Beretti via email

Date: September 23, 2002

Please return original to Planning & Building Inspection and make a copy for your records.

IDR Mtg. Date: 09/23/2002

C

# Exhibit C

CARLL HOOPER R.C.E  
JOHN M. VAN ZANDER, R.C.E., L.S.  
H. PATRICK WARD, R.C.E. L.S.  
JAMES A. WURZ, R.C.E.



**BESTOR ENGINEERS, INC.**  
CIVIL ENGINEERING • SURVEYING • LAND PLANNING  
9701 BLUE LARKSPUR LANE, MONTEREY, CA 93940  
(831) 373-2941 • SALINAS (831) 424-7681 • FAX (831) 649-4118

### Transmittal Sheet

**TO:** MONTEREY COUNTY  
HEALTH DEPARTMENT  
1270 Natividad Road  
Salinas, CA 93906

**DATE:** 10/1/02  
**W.O.#** 3782.01  
**RE:** Vista Nadura (PLN 99 0274)

**ATTN:** Roger Beretti

**WE ARE FORWARDING VIA:** First Class Mail

**THE FOLLOWING:**

Enclosed:  
Print of Tentative Map.

For your information:

For your approval:

As requested by:

**REMARKS:**

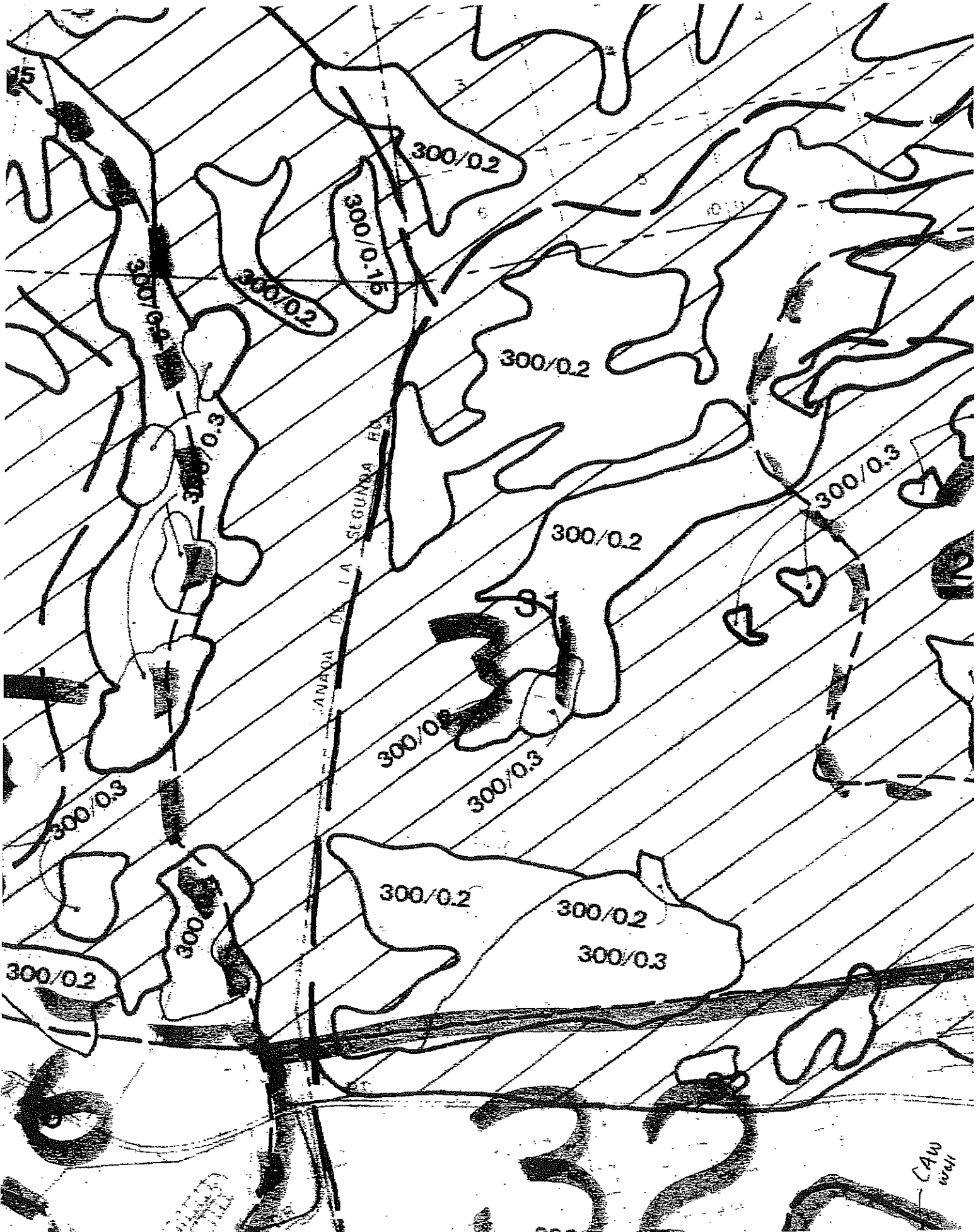
Please note the intended water system (Note 3). Also, marked print of Montgomery study map showing project outlined in green. Please note that the entire area of small lots and Carmel Valley Manor are all shown in Sub Area 32, and in Drainfield restricted area. My review of Table 3-8 (Page 3-34) shows 31 suitable for 478dv increase, 32 suitable for 30dv increase.

Please call to arrange a site tour.

Sincerely,  
**BESTOR ENGINEERS, INC.**

**CC:** Nader Agha

**BY:**   
CARL L. HOOPER



15

CALLE DE LA SEGUNDA ESQ

300/0.2

300/0.15

300/0.2

300/0.2

300/0.3

300/0.3

300/0.2

300/0.8

300/0.3

300/0.8

300/0.2

300/0.2

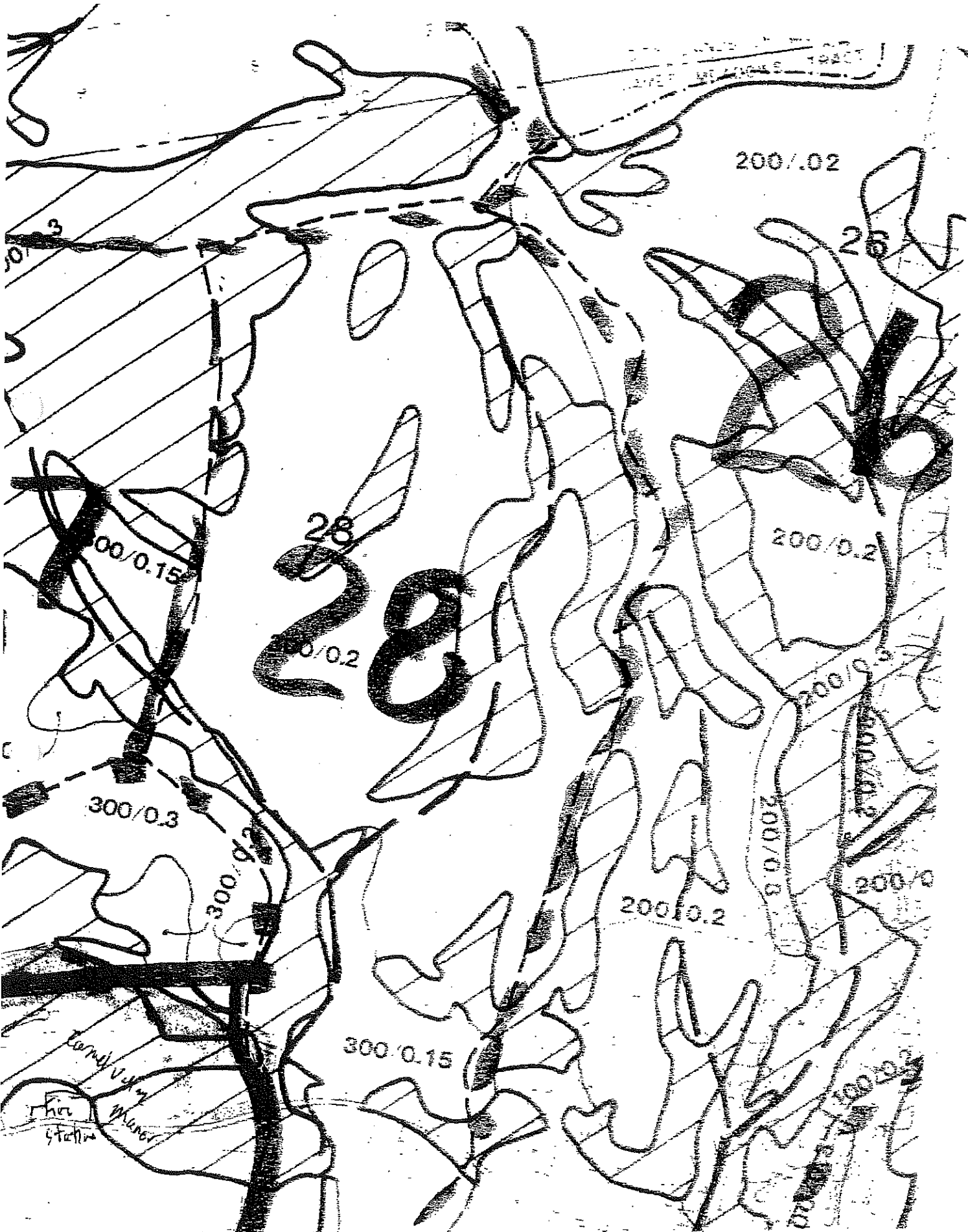
300/0.3

300/0.2

300/0.2

CAW well

32



200/0.02

28

28

200/0.2

200/0.15

200/0.2

300/0.3

300/0.3

200/0.3

200/0.2

200/0.3

200/0

200/0.2

300/0.15

200/0.2

The station

# Exhibit D

**WATER CREDIT APPLICATION PROPOSAL**

August 15, 1998

Darby Furest, General Manager  
Monterey Peninsula Water Management District  
187 El Dorado Street  
Monterey, CA 93940

Dear Darby:

This application request is made pursuant to our discussion regarding the water credit for Vista Nadura Equestrian Center at 8767 Carmel Valley Road, Carmel, California 93923. This facility had the use of Cal-Am Water gratis for many decades in exchange for easements for main water pipe lines. Nine years ago, Cal-Am decided to commence charging for that water supply. These charges escalated yearly to a point of unreasonable excess.

It is primarily this situation which has lead to our decision to terminate permanently the operation of a horse facility and to obtain water credit for home construction. This would bring about a permanent reduction in water usage which at this time is an average of 2.5 acre feet and as high as 5 acre feet. This permanent reduction in Cal-Am water use would be accomplished by:

1. The permanent removal of the horse operation;
2. Removal of all of the horse drinking fixtures;
3. Removal of all of the paddocks;
4. The use of the District's rules for new construction to reduce and minimize water usage by applying the District's fixture unit methodology;
5. Utilizing the on-site well for landscaping;
6. Agreeing to a deed restriction that the property would not be used for an equestrian center unless and until Cal-Am has secured a reliable and legal supply of water consistent with all state laws and requirements.

I trust this will meet with your approval.

Respectfully yours,



Nader Agha



# Monterey Peninsula Water Management District

## Water Use Credit Application

**IMPORTANT:** Applicant must provide sufficient information for District staff to quantify the water credit. Evidence of permanent removal of the previous use will be required. Evidence may include a Water Management District inspection report identifying the fixtures/use, building permits or demolition permits from the jurisdiction, and in some cases, video tapes or photographs of the abandoned use. District staff may request additional information as needed.

TYPE OF CREDIT REQUESTED (Please check one):  Advance  Abandonment within last 18 months

Advance notification of a water use to be abandoned allows reuse of the water credit for five years, with a possible extension for five years. Notification to the District following abandonment allows the credit to be used for 2 ½ years, with a possible 2 ½ year extension.

### Applicant Information

Name: NADER AGHA Telephone No. (831) 646-1677

Mailing Address: P.O. Box 3016 City: MONTEREY State: CA Zip: 93942-30

### Property Information

Address: 8767 CARMEL VALLEY ROAD City: CARMEL, CA 93923

Property Owner's Name (if different from applicant): MASULA II LIVING TRUST, DORELL D. AGHA

Assessor's Parcel Number (APN) 1169-011-014 Cal-Am Account Number: 020-782-5850-03-6

Previous Use: EQUESTRIAN CENTER

Date previous water use will be (was) abandoned: UPON RECORDATION of tentative map for residential use or sooner.

Explain how water use capacity is being permanently abandoned on the site. Attach additional information as

needed: SEE LETTER TO DARRY FUERST, GENERAL MANAGER OF MONTEREY PENINSULA WATER MANAGEMENT DISTRICT, DATED AUGUST 15, 1998 FROM NADER AGHA, attached.

If other source of water supply (i.e. well), please list the supply and identify the property where the supply is located: well, 1169-011-015

PLEASE RETURN COMPLETED APPLICATION TO:

Monterey Peninsula Water Management District  
PERMIT OFFICE  
Post Office Box 85  
Monterey, California 93942-0085

MPWMD  
AUG 19 1998

For more information, please call (408)649-2500



MONTEREY PENINSULA  
WATER MANAGEMENT DISTRICT

187 ELDORADO STREET • POST OFFICE BOX 85  
MONTEREY, CA 93942-0085 • (831) 649-4866  
FAX (831) 649-3678 • <http://www.mpwmd.dst.ca.us>

March 1, 1999

Mr. Nader T. Agha  
Post Office Box 3016  
Monterey, California 93942-3016

**Subject: Water Credits for Vista Nadura Horse Stables and Training Facility.**

Dear Mr. Agha:

This letter is in response to your August 15, 1998 request for documentation of water credits for the Vista Nadura horse stables and training facility at 8767 Carmel Valley Road, Carmel Valley. On December 17, 1998, following a request by District staff for further information about the commercial use of the property, you provided various documents to the District to prove that the stable and training facility has been operated as a commercial use. District staff has reviewed the information that you submitted and concurs that the facility is an active commercial use and, therefore, is eligible for a commercial water use credit upon abandonment of the use.

Based on an eight-year record of water provided by the California-American Water Company (Cal-Am) to the site, average annual use is estimated to be 2.43 acre-feet (Enclosure 1). Please note that, under normal circumstances, commercial water credits are calculated using the District's *Commercial Water Use Factors*. These factors, which are listed in Table 2 of District Rule 24, are used to estimate projected water use and compute associated connection charges. Historical Cal-Am water use was used to estimate the commercial water credit for the Vista Nadura horse stables and training facility because the District does not have a specific use factor for this type of commercial activity.

The final water credit would be reduced to provide water for the existing residence, and any other water fixtures supplied by Cal-Am, and by 15 percent as required by District Rule 25.5 as a contribution to the District's long-term water conservation goal. It is also noted in your application that you may use water from an existing onsite well for outdoor water uses. The replumbing of all outdoor water uses to the onsite well will reduce the amount of Cal-Am water needed to supply the existing residence. The final water use credit would be determined and made available when the existing commercial water use is permanently abandoned.

District Rule 25.5 outlines the process for receiving credit when water use capacity is abandoned on a site. A copy of this Rule 25.5 is enclosed for your review and records (Enclosure 2). The rule provides that staff "shall verify that the reduction is one which is permanent." Due to the unusual use of the property for horse boarding and training, a deed restriction will be necessary



Mr. Nadar T. Agha  
March 1, 1999  
Page 2

to limit the future use of the property to a residential single-family dwelling with no livestock facilities. The deed restriction will be required before a water use credit is issued and following abandonment of the commercial use. The credit will be valid for sixty months, and can be extended for an additional sixty months if water savings on the site remain unused.

In the event that intensified water use is proposed on the site, the water use credit can be used to offset the water demand of the new use. Use of the credit on parcels other than the parcels listed above is restricted to property that is contiguous and under the same ownership and use. Commercial water use credits may also be transferred to other expanding commercial uses within the jurisdiction and may be transferred directly to Monterey County's public water account. Information about the transfer process is available at the District.

Documentation of water use credits does not constitute approval of any proposed future use of water on the site, nor does it approve the transfer of water credits to another site or to the jurisdiction. Determinations regarding development of the property for uses other than the existing uses will be made by Monterey County. The District's water credit process documents permanent abandonment of a water use on a site, but does not guarantee the ability to reuse the saved water. It should also be noted that future action of the District's Board of Directors following a noticed public hearing could modify the ability to obtain or use water use credits.

At your convenience, please call Gabriella Ayala to schedule an inspection of the property to document the residential water uses. She can be reached at 649-2500. Thank you for your patience and cooperation in this matter.

Sincerely,



Stephanie Locke  
Water Demand Manager

enclosures



Monterey Peninsula Water Management District

Cal-Am Water Consumption for Vista Nadura Horse Stables and Training Facility  
(All values are in hundred cubic feet, unless noted otherwise)

Month	Calendar Year												Mean
	1990	1991	1992	1993	1994	1995	1996	1997	1998				
January		0	0	0	0	41	148	74	54	40			
February		76	53	72	66	0	0	0	55	40			
March		0	0	0	0	92	755	120	94	133			
April		36	80	62	100	0	0	0	111	49			
May		0	0	0	0	85	250	248	0	73			
June		95	291	175	170	0	0	0	58	99			
July		0	0	0	0	185	265	532	102	136			
August	196	197	142	232	240	0	0	270	129	151			
September	0	0	0	0	0	229	299	223	0	94			
October	79	0	212	177	200	0	0	120	132	105			
November	0	146	0	0	0	161	193	107	165	89			
December	70	0	130	84	107	0	0	40	43	51			
Total	345	550	908	802	883	793	1,910	1,734	883	1,058			
Acre-foot	0.79	1.26	2.08	1.84	2.03	1.82	4.38	3.98	2.03	2.43			

Source: California-American Water Company

Notes: Mean values are based on Cal-Am records for the period January 1991 through December 1998. One hundred cubic feet (Ccf) equals 748 gallons. One acre-foot equals 325,851 gallons.

Enclosure 1



**RULE 25.5 WATER USE CREDITS**

- A. Except where a permit has been cancelled, returned or revoked under these Rules, a Person may receive a Water Use Credit for the permanent abandonment of some or all of the prior water use on that Site by one of the methods set forth in this Rule. A Water Use Credit shall enable the later use of that water on that same Site.
1. A Person may apply to the District for a Water Use Credit in advance of the abandonment of capacity for water use which that Person may cause on that Site. In such a circumstance, District staff (1) shall verify that the Reduction is one which is permanent, (2) shall quantify the capacity for water use which remains, (3) shall quantify the reduced water use (the abandoned capacity), (4) shall quantify the increment of reduction which exceeds the District's target of 15% conservation based upon the criteria used for the Water Allocation EIR, and (5) shall provide written confirmation of the Water Use Credit based upon the quantity set forth in element (4) above. Credit shall not be given for any reduction which occurs by reason of a District mandated or sponsored program (e.g. retrofit-on-resale). A Water Use Credit obtained pursuant to this method may be applied to, and shall allow future water use on that Site at any time within a period of 60 months. After the 60th month, renewal of this Water Use Credit shall be allowed only upon proof by the applicant that some or all water savings represented by that Credit are current. If all savings are not current, a pro-rata reduction shall occur. A single renewal period of 60 months shall be allowed; thereafter any remaining unused Water Use Credit shall expire. Water Use Credits shall not be transferrable to any other Site.
  2. A Person who has not applied in advance to the District for a Water Use Credit (in advance of the abandonment of the capacity for water use) may still request that a Credit be given based on prior reductions in water use capacity which occurred on that Site within the preceding eighteen (18) months. In such a circumstance the applicant shall have the burden to quantify and verify both the reduction of water use capacity, and the date such reduction occurred. District staff shall determine the increment of reduction which exceeds the District's target of 15% conservation as set forth in the Allocation EIR and shall determine the effective date for that reduction in capacity for water use. Credit shall not be given for any reduction which occurs by reason of a District mandated or sponsored program (e.g. retrofit-on-resale); credit shall not be given for any reduction which was completed more than eighteen (18) months prior to the date of the application for the Water Use Credit. The quantity of water determined by staff to be available for a Water Use Credit under this method, once the Water Use Credit has been granted, may be applied to, and shall allow future water use on that Site within thirty (30) months from the date the reduction first occurred, and upon proof by the applicant that those water savings are still current. After the 30th month, renewal of this Water Use Credit shall be allowed only upon proof by the applicant that some or all water savings represented by that Credit are current. If all savings are not current, a pro-rata reduction shall occur. A single renewal period of thirty (30) months shall be allowed; thereafter any remaining Water Use Credit shall expire. Water Use Credits shall not be transferrable to any other Site. Residential Water Use Credits shall not be transferrable to any other Site.
  3. A Water Use Credit shall provide the basis for issuance of a permit for an Intensified Water Use on that Site provided (1) the credit is current (has not expired), and (2) provided the abandoned capacity (saved water) forming the basis for the Water Use Credit is determined not yet to have been used on that Site. There shall be no connection charge assessed for the capacity for water used pursuant to any Water Use Credit. Connection charges, however, shall apply to the capacity for water use which exceeds the Water Use Credit, or for any expansion of use following the expiration of the Water Use Credit. No refund shall accrue by reason of water use reduction, or abandonment of capacity, whether or not reflected by a Water Use Credit. Issuance of a Water Use Credit shall not result in any change to a Jurisdiction's Allocation. Use of any Water Use Credit shall similarly not cause a change to a Jurisdiction's Allocation.

1234 HIGHWAY  
 WATSONVILLE  
 CALIFORNIA

W1141636

9

1979

2 APR 1979

# CERTIFIED ANALYTICAL REPORT

MATERIAL:  
 IDENTIFICATION:  
 REPORT:

collected 20 March 1979

**PUBLIC  
 HEALTH  
 DRINKING  
 WATER  
 LIMITS\***

Quantitative chemical analysis is as follows expressed as milligrams per liter where not otherwise stated:

pH value (units):	7.95	10.6
Conductivity(micromhos/cm) :	1220	900
Carbonate Alk. (as CaCO <sub>3</sub> ) :	0	120
Bicarbonate Alk.(as CaCO <sub>3</sub> ) :	117	-
Total Alkalinity(as CaCO <sub>3</sub> ) :	117	-
Total Hardness (as CaCO <sub>3</sub> ) :	44.2	-
Total Dissolved Solids	866	500
Nitrate (as NO <sub>3</sub> ) :	0.1**	45
Chloride (Cl ):	224	250
Sulfate (SO <sub>4</sub> ):	320	250
Fluoride (F ):	3.8	1.0
Calcium (Ca ):	4.46	-
Magnesium (Mg ):	8.03	-
Potassium (K ):	3.8	-
Sodium (Na ):	204	-
Iron total(Fe ):	0.94	0.3
Manganese (Mn ):	0.08	0.05

\*\* less than figure stated  
 \* California Administrative Code,  
 Title 22

The undersigned certifies that the above is a true and accurate report of the findings of this Laboratory.

*Frank Smith*

Analyst

STATE OF CALIFORNIA  
 THE RESOURCES AGENCY  
 DEPARTMENT OF WATER RESOURCES  
 WATER WELL DRILLERS REPORT

No. 003905

Permit No. or Date **1378**

WB 3811

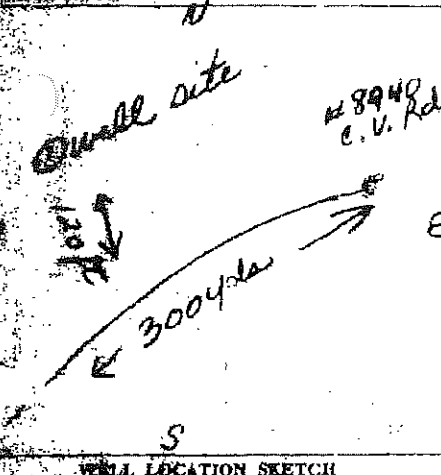
State Well No. \_\_\_\_\_  
 Other Well No. \_\_\_\_\_

OWNER: Name **Kader Agba**  
**P.O. Box 643**  
**Mobile Beach, Ca.** Zip **93953**

LOCATION OF WELL (See instructions).  
 Owner's Well Number **AP169-011-10**  
 (If different from above, specify)  
 Range \_\_\_\_\_ Section \_\_\_\_\_  
 from cities, roads, railroads, fences, **300 yds west of 8940**  
**Valley Rd & 170 ft North**

(12) WELL LOG: Total depth **974** ft. Depth of completed well **750** ft.

from ft.	to ft.	Formation (Describe by color, character, lith or material)
0	1	Top soil
1	18	Chalk rock brown
28	42	Chalk rock & some sand
42	44	Chalk rock
44	68	Sand
68	88	Sand - hard
88	108	"
108	138	"
138	170	Hard blue shale/some clay
170	188	Hard sand/granite
188	208	Clay & shale & hard sand
208	228	Brown shale, hard sand
228	248	Blue clay & sand streaks
248	268	Sand/streaks blue clay, shale
268	275	Blue clay, streaks sand & shale
275	288	Brown clay
288	294	Fine sand
294	310	"
310	315	Coarse sand/streaks clay
315	368	Coarse sand
368	388	Hard sand
388	408	"
408	428	Sand & boulders
428	448	Sand, boulder, shale
448	508	"
508	528	White fine sand
528	548	"
548	551	Clay gray & fine sand
551	558	White fine sand, some clay
558	628	Fine white sand
628	658	"
658	673	"
673	688	Fine sand & clay
688	708	Fine sand hard
708	728	"
728	750	Fine sand



- (3) TYPE OF WORK:  
 New Well  Deepening   
 Retraction   
 Reconditioning   
 Horizontal Well   
 Destruction  (Describe destruction materials and procedures in Item 12)
- (4) PROPOSED USE:  
 Domestic   
 Irrigation   
 Industrial   
 Test Well   
 Stock   
 Municipal   
 Other

WELL LOCATION SKETCH

INSTALLMENT:  
 Reverse   
 Air   
 Bucket

(6) GRAVEL PACK:  
 Yes  No  Size \_\_\_\_\_  
 Diameter of bore \_\_\_\_\_  
 Packed from **0** to **750** ft.

(8) PERFORATIONS:  
 Type of perforation or size of screen

Start ft.	To ft.	Dia. in.	Cage or Wall	From ft.	To ft.	Slot size
18	310	3/16	3/16	310	750	3/32
18	310	3/16	3/16	310	750	Full Flow

WELL SEAL:  
 surface sanitary seal provided? Yes  No  If yes, to depth, **50** ft.  
 joints sealed against pollution? Yes  No  Interval \_\_\_\_\_ ft.  
 casing **Smexco w/60 ft 3" gravel shut**

WATER LEVELS:  
 of first water, if known \_\_\_\_\_ ft.  
 after well completion \_\_\_\_\_ ft.

WELL TESTS:  
 test made? Yes  No  If yes, by whom? \_\_\_\_\_  
 Pump  Baller  Air lift   
 water at start of test \_\_\_\_\_ ft. At end of test \_\_\_\_\_ ft.  
 gal/min after \_\_\_\_\_ hours. Water temperature \_\_\_\_\_

analysis made? Yes  No  If yes, by whom? \_\_\_\_\_  
 log made? Yes  No  If yes, attach copy to this report

CONTINUED ON FORM 0063905

Work started **4/19** 19 **78** Completed **5/27** 19 **78**

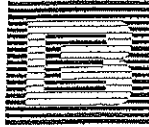
WELL DRILLER'S STATEMENT:  
 This well was drilled under my jurisdiction and this report is true to the best of my knowledge and belief.  
 SIGNED: *Arnon Shortan*  
 (Well Driller)  
 NAME: **SALINAS PUMP CO.**  
 (Person, firm, or corporation) (Typed or printed)  
 Address: **1128 Madison Lane**  
 City: **Salinas, Ca.** Zip **93907**  
 License No. **273053** Date of this report **5/31/78**

CARL L. HOOPER, R.C.E.

JOHN M. VAN ZANDER, R.C.E., L.S.

H. PATRICK WARD, R.C.E., L.S.

JAMES A. WURZ, R.C.E.



**BESTOR ENGINEERS, INC.**

CIVIL ENGINEERING - SURVEYING - LAND PLANNING

9701 BLUE LARKSPUR LANE, MONTEREY, CALIFORNIA 93940

(831) 373-2941 • SALINAS 424-7681 • FAX 649-4118

25 April 2000

MONTEREY COUNTY PLANNING DEPARTMENT

P.O. Box 1208

Salinas, CA 93903

Attn: Mimi Whitney

Re: Vista Nadura, Carmel Valley

Dear Mimi:

Enclosed is the revised 20 Lot Tentative Map for subject project, a follow-up on our August 1999 discussion and site tour. I recognize that you have been shifted to General Plan portion of staff and this letter will be passed on to a newly assigned planner. Please have that planner call me. The following changes have been made:

1. Project is separated into two phases to limit traffic to match current daily trips generated by the existing equestrian operation -- 60 trips per day. Six lots of Phase 1 will generate that, at 10 trips per day per home. These are Lots 1-4 and 18-19.
2. Water usage by Phase 1, six single-family lots, will be approximately  $6 \times 0.32 \text{AFY} = 1.92 \text{AFY}$ . Historic use, by equestrian operation, as shown by MPWMD (Letter from Stephanie Locke, 1 Mar 99) is 4.23AFY. Dedication of 15% for conversion leaves 3.60AFY, leaving 1.6AFY for future use when traffic limitation is lifted. This would allow five additional homes or alternately, 0.114AF of quality critical water for each of the 14 homes of Phase 2. This would be piped to kitchens, laundry, showers and wash basins in each of these 14 homes.
3. Outdoor water and water for toilet flushing for Phase 2 can be supplied by a new mutual water company to serve Lots 5-17 and 20. This would be a 14 member mutual, served by the existing 1978 well, a new tank on upper slope, and separate main from Cal Am service. This mutual will provide the probable 0.21AF per home for these non-quality critical uses, since this 1978 well has had a history of high iron and manganese, and occasional tests of high nitrates. Note that this system will not be placed into operation with Phase 1.
4. Lot lines in Lot 15-19 area are tweaked to place fences more nearly normal to contours.
5. West end (Lots 1 to 4) are served directly from Carmel Valley Road via existing easement on Lutheran Church property. Connecting road between this group and the cul-de-sac from the east end is deleted, eliminating one creek crossing. Only driveway to mutual water tank will extend west from cul-de-sac.
6. The Qoa (alluvium) area of lots 5-12 and of Lots 16-20 was tested for percolation in 1980 Tentative Map and was proven adequate for community septic tanks and disposal fields to serve several dozen homes in the 1980 Tentative Map (shale) areas to the north. The area of Lots 1-4 is also alluvium, but has not been perc tested.

COUNTY 000116



7. The only questionable geology item is possible Quaternary landslides (Q's) on the upper portion of Lots 9-13. This was shown on Geoconsultants 1978 report, but does not appear on Rosenberg et al 1997 mapping. It will be fully examined prior to development of Phase 2. If a problem is proven to exist, those several lots will be relocated into the flat Lot 20 area. This does not in any way affect Phase 1, which is the only portion that we anticipate to be approved for recordation in the year 2000.
8. Drainage mitigations for total 20 lots will consist of the three detention basins shown:

Location	Nat'l Area	Road Area x 1000 sf	Lot Imperv. x 1000 sf	Increased cfs	Pond Vol, AF
Lot 1	12 ac	1	4 @ 7	0.8	0.1
Lot 5	27 ac	61	10 @ 7	5	0.4
Lot 19	11 ac	26	5 @ 7	1.7	0.2

(Subject to final drainage report based on final design)

Detained discharge from each will be:

Lot 1 – To Church parking lot pavement.

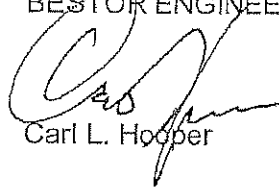
Lot 5 – Sheet flows on to existing lots to south.

Lot 19 – To County culvert under Carmel Valley Road.

Lot 20 – To westbound Carmel Valley ditch.

9. I assume that application fee will be re calculated based only on 6 lots that can be approved this year.

Sincerely,  
BESTOR ENGINEERS, INC.



Carl L. Hooper

Cc: Nader Agha

CARL L. HOOPER, R.C.E.

JOHN M. VAN ZANDER, R.C.E., L.S.

H. PATRICK WARD, R.C.E., L.S.

JAMES A. WURZ, R.C.E.



## BESTOR ENGINEERS, INC.

CIVIL ENGINEERING - SURVEYING - LAND PLANNING  
9701 BLUE LARKSPUR LANE, MONTEREY, CALIFORNIA 93940  
(831) 373-2941 • SALINAS 424-7681 • FAX 649-4118

6 March 2001

MONTEREY COUNTY PLANNING & BUILDING  
P.O. Box 1208  
Salinas, CA 93903

Attn: Mimi Whitney

**RE: Vista Nadura,  
Carmel Valley (Agha)**

Dear Mimi:

In response to your letter dated 21 December 2000, Mr. Agha has requested that we proceed with a formal application for consideration on its merits.

As discussed in my 25 April 2000 letter, we are of the opinion that only six lots can be approved without causing an increase in traffic, so we suggest that the Tentative Map still address a six lot subdivision. We do feel, however, that the total 20 homes should be addressed in any environmental documents, anticipating a probable limitation to six until improvements to Highway 1 and Carmel Valley Road can adequately mitigate the ultimate 14 additional homes.

Enclosed are the applicable documents to proceed with a formal application:

1. Prints of the Tentative Map
2. Copy of Water Management District letter, (Stephanie Locke) 1 March 1999 acknowledging 2.43 AF existing commercial use water credits of which 85% or 2.065 AF can be released for subdivision use upon cessation at commercial horse operation.
3. Water Well data - Drillers log (Aaron Thornton, 31 May 1978) E-log dated May 4 and 15, 1978, annotated to show TDS at various depths. Total depth was 978' (965 by logger). TDS varied from 570 at 140' - 190', 700-750 TDS at 210' to 650', and increased to 1,000 TDS at 950'. Perforations were at 310 to 750. I can't find official pump test report, but my personal notes dated 16 November 1978 show "pumped 3 days, now at 30 gpm, tastes good, clear. Sent to Watsonville" (Soil Contract Lab) SCL report dated 2 April 1979 (Ken Galloway) showed TDS at 866, hardness at 44.2, very low nitrates (0.1), and only Fe (0.94) and Mn (0.08) exceeding allowable limits. We also have a 12 page report from Bob Barminski dated 7 April 1997 showing TDS at 870, nitrates inexplicably at 54 (was previously 0.1?) Fe at 0.83, and slightly high SO<sub>4</sub>. These are the reasons we have suggested dual systems, with well water irrigation and flushing toilets, but Cal-Am for other uses.

4. Copy of percolation test reports dated 1980 showing following results:

Lot 6 (of current plan) - Boring #27, showing no ground water at 25' depth, and 3.7 iph percolation rate

Lot 17/18 (of current plan) – Boring #16 showing no ground water at 25 feet depth, and 3.76 iph percolation rate

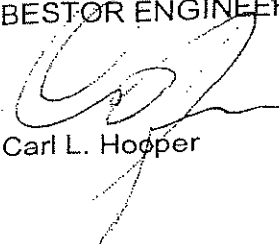
Above church (Lots 1 through 4 of current plan) – Boring #29, showing no ground water at 25 feet depth, and 7.8 iph percolation rate

Since these cover the full width of property, all with better than adequate results, we suggest that they provide ample evidence to preclude the need for any further testing.

5. Copy of GeoConsultants 14 April 1978 Preliminary Geological Investigation, which covered the whole 1,350 acres. The only truly germane issue is the QIs (landslide) area, which partially encroaches into lots 8 – 13 in Phase 2 of this subdivision. This is shown on GeoConsultants Figure 2, Geologic Map, and in Figure 4, Geologic cross section A-A, and is discussed on page 8. This was also discussed in my letter to you dated 25 April 2000, at paragraph 7, where I commented that it does not appear on Rosenberg, et al, 1997 map 97-30. (marked copy enclosed)
6. Preliminary Drainage Analysis is enclosed, showing adequacy of the detention basins shown on Tentative map, and commenting on inadequate effect to warrant offsite storm drain to the Carmel River.
7. As you are aware, we had an EIR in 1980, which covered botanical and biological matters. Nothing is changed regarding those.

Please inform me of the required filing fees, and Mr. Agha will promptly provide those so that the process can proceed.

Sincerely,  
BESTOR ENGINEERS, INC.

  
Carl L. Hooper

cc Nader Agha

# **Exhibit E**

Kelly  
PLN 990274



California-American Water Company

Monterey Division  
50 Ragsdale Dr., Suite 100, P.O. Box 951 • Monterey, CA 93942-0951

October 23, 2002

Nader Agha  
P.O. Box 321337  
Carmel, Ca. 93922

RE: APN 169-011-009-000

Dear Mr. Agha:

This letter is to advise that the referenced property is located within the California-American Water Company (Cal-Am) service area. Cal-Am will serve water to this lot under the provision of the rules, regulations and tariffs of the California Public Utilities Commission (CPUC) and in accordance with all applicable rules, regulations and ordinances and restrictions of the Monterey Peninsula Water Management District (MPWMD) and/or any other regulatory agency with jurisdiction. The applicant for water service must comply with all Cal-Am rules and regulations as are on file with the CPUC and must obtain all required permits and pay all required fees as a condition of service.

This proposal to serve water is valid for an indefinite period of time, is subject to water availability to Cal-Am and to changes or modifications as approved, adopted or directed by the CPUC and/or the MPWMD.

Sincerely,

Kathi Maschio  
Water Conservation Specialist

COUNTY 000242

# **Exhibit F**


**BESTOR ENGINEERS, INC.**

 CIVIL ENGINEERING - SURVEYING - LAND PLANNING  
 9701 BLUE LARKSPUR LANE, MONTEREY, CALIFORNIA 93940  
 (831) 373-2941 • SALINAS 424-7681 • FAX 649-4118

15 April 2003

**MONTEREY COUNTY HEALTH DEPARTMENT**

 1270 Natividad Road  
 Salinas, CA 93906  
**Via Fax: 755-4880**

Attn: Roger Beretti

**Re: Vista Nadura, PLN 990274  
 Carmel Valley (Agha)**

Dear Mr. Beretti:

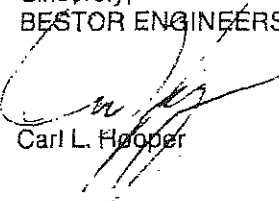
In your letter to Nader Agha dated 11/4/02, you stated in paragraph two that a hydrogeologic report would be required to demonstrate the existence of a long term water supply. Mr. Agha urges you to reconsider that requirement, on the basis of the historic land uses on the site, and their related water consumption:

- a. Domestic water has been supplied to the property by Cal-Am for many decades. A letter from Stephanie Locke at the Water Management District dated 3/1/99 (copy attached) stated that the District was satisfied that historic Cal-Am use over an eight-year period established an average annual use of 2.43AF/yr.
- b. The existing well was drilled by Salinas Pump Company in 1978 (750 feet plus deep, ceased to 750, perforated 310 to 750, and equipped with a 40gpm pump). It has been used for most of the intervening 25 years for irrigation and for dust suppression in the riding rings and paddocks. Most probable usage has been five to seven acre feet per year. This well produces water at 870 ppm TDS, slightly high in sulfate (280) and iron (0.83). It is intended to be used for irrigation and sub-potable interior uses (primarily for toilets) at an average of 0.217AF/yr., whereas the Cal-Am water supply can be used at an annual average of 93gpd per residence for drinking, cooking, showering, and laundry purposes (0.103AF/yr per residence).

Gross use will thus remain within the current and historic total use of about 0.32AF/yr. per dwelling, or a total of 6.4AF/yr. for the 20-lot project. There is a potential net reduction of 1 to 3AF/yr.

Note that the well perforations start at 310, below the shales and clays that occur from 158 to 288, a potentially effective aquaclude that could prevent annual variations in shallower aquifers from having any effect. The sands that provide water to this well then extend for more than 440 feet of thickness. This also affects the total absence of nitrates as exhibited in the 1979 report.

 Sincerely,  
 BESTOR ENGINEERS, INC.

  
 Carl L. Hooper

cc: Nader Agha



**MONTEREY PENINSULA  
WATER MANAGEMENT DISTRICT**

187 ELDORADO STREET • POST OFFICE BOX 85  
MONTEREY, CA 93942-0085 • (831) 649-4866  
FAX (831) 649-3678 • <http://www.mpwmd.dat.ca.us>

658-5630  
0595-859  
R. Agha

March 1, 1999

Mr. Nader T. Agha  
Post Office Box 3016  
Monterey, California 93942-3016

**Subject: Water Credits for Vista Nadura Horse Stables and Training Facility.**

Dear Mr. Agha:

This letter is in response to your August 15, 1998 request for documentation of water credits for the Vista Nadura horse stables and training facility at 8767 Carmel Valley Road, Carmel Valley. On December 17, 1998, following a request by District staff for further information about the commercial use of the property, you provided various documents to the District to prove that the stable and training facility has been operated as a commercial use. District staff has reviewed the information that you submitted and concurs that the facility is an active commercial use and, therefore, is eligible for a commercial water use credit upon abandonment of the use.

Based on an eight year record of water provided by the California-American Water Company (Cal-Am) to the site, average annual use is estimated to be 2.43 acre-feet (Enclosure 1). Please note that, under normal circumstances, commercial water credits are calculated using the District's *Commercial Water Use Factors*. These factors, which are listed in Table 2 of District Rule 24, are used to estimate projected water use and compute associated connection charges. Historical Cal-Am water use was used to estimate the commercial water credit for the Vista Nadura horse stables and training facility because the District does not have a specific use factor for this type of commercial activity.

The final water credit would be reduced to provide water for the existing residence, and any other water fixtures supplied by Cal-Am, and by 15 percent as required by District Rule 25.5 as a contribution to the District's long-term water conservation goal. It is also noted in your application that you may use water from an existing onsite well for outdoor water uses. The replumbing of all outdoor water uses to the onsite well will reduce the amount of Cal-Am water needed to supply the existing residence. The final water use credit would be determined and made available when the existing commercial water use is permanently abandoned.

District Rule 25.5 outlines the process for receiving credit when water use capacity is abandoned on a site. A copy of this Rule 25.5 is enclosed for your review and records (Enclosure 2). The rule provides that staff "shall verify that the reduction is one which is permanent." Due to the unusual use of the property for horse boarding and training, a deed restriction will be necessary



Mr. Nadar T. Agha

March 1, 1999

Page 2

to limit the future use of the property to a residential single-family dwelling with no livestock facilities. The deed restriction will be required before a water use credit is issued and following abandonment of the commercial use. The credit will be valid for sixty months, and can be extended for an additional sixty months if water savings on the site remain unused.

In the event that intensified water use is proposed on the site, the water use credit can be used to offset the water demand of the new use. Use of the credit on parcels other than the parcels listed above is restricted to property that is contiguous and under the same ownership and use. Commercial water use credits may also be transferred to other expanding commercial uses within the jurisdiction and may be transferred directly to Monterey County's public water account. Information about the transfer process is available at the District.

Documentation of water use credits does not constitute approval of any proposed future use of water on the site, nor does it approve the transfer of water credits to another site or to the jurisdiction. Determinations regarding development of the property for uses other than the existing uses will be made by Monterey County. The District's water credit process documents permanent abandonment of a water use on a site, but does not guarantee the ability to reuse the saved water. It should also be noted that future action of the District's Board of Directors following a noticed public hearing could modify the ability to obtain or use water use credits.

At your convenience, please call Gabriella Ayala to schedule an inspection of the property to document the residential water uses. She can be reached at 649-2500. Thank you for your patience and cooperation in this matter.

Sincerely,



Stephanie Locke  
Water Demand Manager

enclosures

234 HIGHWAY  
WATSONVILLE  
CALIFORNIA

WAT 41836

9

## CERTIFIED ANALYTICAL REPORT

MATERIAL:  
IDENTIFICATION:  
REPORT:

collected on March 1979  
Quantitative chemical analysis is as follows expressed as milligrams per liter where not otherwise stated:

**PUBLIC  
HEALTH  
DRINKING  
WATER  
LIMITS\***

pH value (units):	7.95	10.6
Conductivity(micromhos/cm):	1220	900
Carbonate Alk. (as CaCO <sub>3</sub> ):	0	120
Bicarbonate Alk.(as CaCO <sub>3</sub> ):	117	-
Total Alkalinity(as CaCO <sub>3</sub> ):	117	-
Total Hardness (as CaCO <sub>3</sub> ):	44.2	-
Total Dissolved Solids	866	500
Nitrate (as NO <sub>3</sub> ):	0.1**	45
Chloride (Cl):	224	250
Sulfate (SO <sub>4</sub> ):	320	250
Fluoride (F):	3.8	1.0
Calcium (Ca):	4.46	-
Magnesium (Mg):	8.03	-
Potassium (K):	3.8	-
Sodium (Na):	204	-
Iron total(Fe):	0.94	0.3
Manganese (Mn):	0.08	0.05

\*\* less than figure stated  
\* California Administrative Code;  
Title 22

The undersigned certifies that the above is a true and accurate report of the findings of this Laboratory.

*Frank Shultz*

Analyst

STATE OF CALIFORNIA  
THE RESOURCES AGENCY  
DEPARTMENT OF WATER RESOURCES  
WATER WELL DRILLERS REPORT

No. **063904**

of Hole No. \_\_\_\_\_  
Project No. or Date **1378**  
WO **3811**

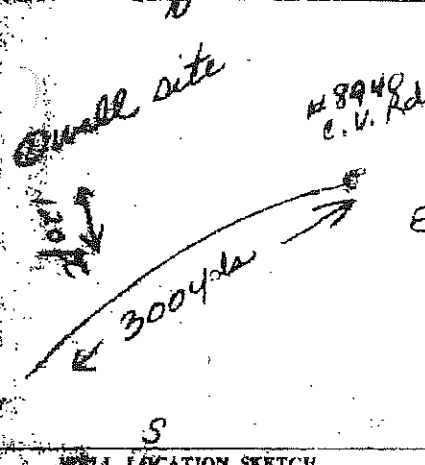
State Well No. \_\_\_\_\_  
Other Well No. \_\_\_\_\_

OWNER: Name **Madon Alpha**  
**P.O. Box 643**  
**Hobbs Ranch, Ca.** Zip **93933**

(12) WELL LOG: Total depth **974** ft. Depth of completed well **750**  
from ft. to ft. Formation (Describe by color, character, etc. or material)

LOCATION OF WELL (See instructions).  
Owner's Well Number **AP169-011-10**  
Range \_\_\_\_\_ Section \_\_\_\_\_  
**300 yds west of 8940**  
**Valley Rd & 120 ft North**

0' - 3' Top soil  
3' - 11' Chalk rock brown  
11' - 28' Chalk rock & some sand  
28' - 42' Chalk rock  
42' - 44' Sand  
44' - 68' Sand - hard  
68' - 108' Sand - hard  
108' - 130' Sand - hard  
130' - 170' Sand/blue shale/some clay



(3) TYPE OF WORK:  
New Well  Deepening   
Ret. structure   
Reconditioning   
Horizontal Well   
Destruction  (Describe destruction materials and procedures in Item 12)  
(4) PROPOSED USE:  
Domestic   
Irrigation   
Industrial   
Test Well   
Stock   
Municipal   
Other

170' - 188' Hard sand/granite  
188' - 200' Clay & shale & hard sand  
200' - 228' Brown shale, hard sand  
228' - 248' Blue clay & sand streaks  
248' - 268' Sand/streaks blue clay, shale  
268' - 275' Blue clay, streaks sand & shale  
275' - 288' Brown clay  
288' - 294' Fine sand  
294' - 310' " " "  
310' - 315' Coarse sand/streaks clay  
315' - 368' Coarse sand  
368' - 388' Hard sand  
388' - 408' " " "  
408' - 428' Sand & boulders  
428' - 448' Sand, boulder, shale  
448' - 508' " " "

WELL LOCATION SKETCH  
ELEVATION:  
Reverse   
Air   
Bucket

(6) GRAVEL PACK:  
Yes  No  Size \_\_\_\_\_  
Diameter of bore \_\_\_\_\_  
Racked from **0** to **750** ft.

508' - 528' White fine sand  
528' - 548' " " "  
548' - 551' Clay gray & fine sand  
551' - 558' White fine sand, some clay  
558' - 628' Fine white sand  
628' - 658' " " "  
658' - 673' " " "  
673' - 688' Fine sand & clay  
688' - 708' Fine sand hard  
708' - 728' " " "  
728' - 750' Fine sand

(8) PERFORATIONS:  
Type of perforation of size of screen

From ft.	To ft.	Slot size
13	310	3/32
18	750	Full Flo

WELL SEAL:  
Surface sanitary seal provided? Yes  No  If yes, to depth **50** ft.  
Gravel sealed against pollution? Yes  No  Interval \_\_\_\_\_ ft.  
**Concrete w/60 lb 3" gravel shut**

Work started **4/19** 19 **78** Completed **5/27** 19 **78**  
CONTINUED ON FORM **063903**

WATER LEVELS:  
First water, if known \_\_\_\_\_ ft.  
Level after well completion \_\_\_\_\_ ft.  
WELL TESTS:  
Test made? Yes  No  If yes, by whom? \_\_\_\_\_  
Pump  Buller  Air lift   
Water at start of test \_\_\_\_\_ ft. At end of test \_\_\_\_\_ ft.  
\_\_\_\_\_ gal/min after \_\_\_\_\_ hours. Water temperature \_\_\_\_\_  
Test made? Yes  No  If yes, by whom? \_\_\_\_\_  
Test made? Yes  No  If yes, attach copy to this report

WELL DRILLER'S STATEMENT:  
This well was drilled under my jurisdiction and this report is true to the best of my knowledge and belief.  
SIGNED: *Caron Thornton*  
(Well Driller)  
NAME **SALINAS PUMP CO.**  
(Person, firm, or corporation) (Typed or printed)  
Address **1128 Madison Lane**  
City **Salinas, Ca.** Zip **93901**  
License No. **273053** Date of this report **5/31/78**

# MONTEREY COUNTY



## PLANNING AND BUILDING INSPECTION DEPARTMENT

- 240 CHURCH ST. RM 116, SALINAS, CA 93901 PLANNING: (831) 755-5025 BUILDING: (831) 755-5027 FAX: (831) 755-5487  
MAILING ADDRESS: P.O. BOX 1208, SALINAS, CA 93902
- MONTEREY COURTHOUSE, 1200 AGUAJITO ROAD, RM 003, MONTEREY, CA 93940 (831) 647-7620 FAX: (831) 647-7877

December 21, 2000

Mr. Nader Agha  
542 Lighthouse Ave.  
Pacific Grove, CA 93950

Subject: Update of proposed Tentative Map – Vista Nadura

Dear Mr. Agha:

As you know, the Board of Supervisors adopted a Resolution on October 19, 1999 that precludes the Planning and Building Inspection Department from recommending approval of residential subdivisions in Carmel Valley. The Board extended this policy to March 28, 2001 and may extend it again if Caltrans has not developed an alternative plan to increase capacity on State Highway 1 and/or alternative plans have not been prepared to address deficient segments of Carmel Valley Road.

A determination was made by the Board that subdivision applications received prior to October 19, 1999 could proceed, based on their individual merits. Your Request for Application was submitted on June 10, 1999.

At this time, I would recommend that you consider filing your application with the knowledge that an Environmental Impact Report will be required. Planning staff would oversee the Scope of Work and a Request for Proposal would be prepared to send out to qualified EIR preparers. The primary issues to be addressed would include traffic and circulation, water availability, biology, visual impacts, grading, drainage, erosion control, geology and soil stability, archaeology, tree removal, public facility impacts and general plan policies related to Carmel Valley.

Should you have any questions regarding this process, please contact me.

Regards,

Mimi Whitney, AICP  
Sr. Planner

(831) 755-5866

whitneyin@co.monterey.ca.us

C/Carl Hooper

# Exhibit G



**BESTOR ENGINEERS, INC.**  
CIVIL ENGINEERING - SURVEYING - LAND PLANNING  
9701 BLUE LARKSPUR LANE, MONTEREY, CALIFORNIA 93940  
(831) 373-2941 • SALINAS 424-7681 • FAX 649-4118

28 October 2002

MONTEREY COUNTY HEALTH DEPARTMENT  
1270 Natividad Road  
Salinas, CA 93906

Attn: Roger Beretti

Re: Vista Nadura

Dear Roger:

We have scheduled Central Coast Drilling (Craig Lambert 469-7524) to drill perc test holes for the Subject 20 Lot Subdivision on November 5<sup>th</sup> and 6<sup>th</sup>. We need your direction on depth of holes. Sites will be staked on or about Friday, November 1<sup>st</sup>. The enclosed mark-up of the Tentative Map shows the proposed holes.

Note that we show one test on each of Lots 1 through 19, and three tests on Lot 20, for evaluation of potential treatment plant effluent, in the event individual lot drain fields are found to be inadequate.

Note that none of the building sites should require drainfields on slopes exceeding 30%, revealing that Montgomery's evaluation was not correct. The perc rates will speak for themselves.

Please call.

Sincerely,  
BESTOR ENGINEERS, INC.

Carl L. Hooper

Cc: Nader Agha



**BESTOR ENGINEERS, INC.**  
 CIVIL ENGINEERING SURVEYING LAND PLANNING  
 9701 BLUE LARKSPUR LANE MONTEREY CALIFORNIA 93940

3782.01

SHEET NO.

OF

DRAWN BY

DATE Nov 02

CHECKED BY CLH

DATE

SCALE

VISTA NADURA PERC Rates

LOT	Flow, iph		
1	2.52	(30')	1972 test 7.2 iph
2	1.6		
3	1.8		
4	3.2		
5	1.8	(Flow Determined on Lot)	(30')
6	6.48		1972 test 3.8 iph
7	3.24		
8	4.32		
9	4.82		
10	5.4		
11	3.72		
12	4.64		
13	5.4		
14	1.8	(30')	
15 X	0.94	- Test Hole was 2.04"/hr	
16	4.32		
17	9.6		
18	4.08		1972 test 3.7 iph
19	2.64	(30')	
20 C	2.6	(100' N + 20' S of 100' W of Dood Road)	(30' deep) - (No Water)
20 B	2.4	(100' N + 20' S of 500' W of Dood)	
20 A	2.4	(100' N + 20' S of 650' W of Dood)	

All holes were drilled on Nov 5 and 6, 2002 by  
 Craig Lambert & Central Coast Drilling  
 They were pre-saturated and perc tested on Nov 12, 13  
 and 14, 2002 by John Huiripany, under supervision of Carl Hays  
 of Bestor Engineering

\* Note: Min reading, 0.94 iph, indicates less than the minimum allowable  
 rate for Lot 15. Test hole was on 2% slope. Probable house  
 site is at elevation 265, 50' above test hole, and on flatter area.



**BESTOR ENGINEERS, INC.**  
CIVIL ENGINEERING - SURVEYING - LAND PLANNING  
9701 BLUE LARKSPUR LANE, MONTEREY, CALIFORNIA 93940  
(831) 373-2941 • SALINAS 424-7581 • FAX 649-4118

6 November 2002

MONTEREY COUNTY HEALTH DEPARTMENT  
1270 Natividad Road  
Salinas, CA 93906  
Via Fax: (831) 755-8929

Attn: Roger Berretti

**Re: Vista Nadera, Carmel Valley**

Dear Roger,

As stated in my letter to you last week, we have proceeded with drilling for the percolation tests and are starting to pre soak this afternoon, for perc tests to begin tomorrow, 7 November 2002. I will meet you onsite at your convenience. In the absence of comments about depth, we placed 10 foot holes on all lots, with 3 on Lot 20. We've put 6 at 20' depth for ground water observation in to upper 19 lots, and will have two at 30' in Lot 20.

Craig Lambert states that most have some clays, some gravels, and are basically colluvium. His logs will be available at the end of this week. We feel quite confident that the percolation test will prove successful.

Sincerely,  
BESTOR ENGINEERS, INC.

CARL L. HOOPER

cc: Nader Agha



10



**BESTOR ENGINEERS, INC.**  
CIVIL ENGINEERING - SURVEYING - LAND PLANNING  
9701 BLUE LARKSPUR LANE, MONTEREY, CALIFORNIA 93940  
(831) 373-2941 • SALINAS 424-7681 • FAX 649-4118

1 October 2003

MONTEREY COUNTY HEALTH DEPARTMENT  
1270 Natividad Road  
Salinas, CA 93906

Attn: Roger Beretti

**Re: Vista Nadura (Agha) Tentative Map**  
**APN 169-011-009, 014, & 015**  
**PLN 990274**

Dear Roger:

Enclosed are copies of the November 2002 boring logs, Percolation Test data sheets, and key map showing the results of the 22 percolation tests. There are minor corrections from our 4/14/02 letter where exact times were incorrectly applied to the final percolation rate. All 22 holes exceed one-inch per hour (minimum was 1.08 on Lot 15).

Holes were drilled by Central Coast Drilling and logged by Craig Lambert on 11/5/02 and 11/6/02. 22 logs are also enclosed. Ten-foot holes were placed on each lot (three on Lot 20) for percolation. Additional 20-foot holes were placed on Lots 1, 5, 14, and 19. 30-foot holes were drilled at Lots 20A and 20C. No ground water was encountered (nor was any found later). No bedrock or shale were encountered.

All holes were pre-soaked on 11/13/02 or 11/14/02, then tested on 11/14/02 or 11/15/02. At your request, the holes that remained open (6, 2 and 3) were again pre-soaked on 6/9/03 and re-tested on 6/10/03. The enclosed tabulation shows the final percolation rates after four hours (third hour on one hole, which was re-filled and gave erroneous result in the fourth hour). The lowest rate was 1.08 inches per hour (Lot 15), 1.8 (Lot 3) and 1.92 (Lot 2). Six holes were between two and three inches per hour, and the remaining 13 varied from 3.7 to 8.3 inches per hour. All tests indicate acceptable percolation rates for normal disposal trenches.

The three tests on Lot 20 (2.52, 2.76 and 2.08 inches per hour) would appear to make the flat area adjacent to Carmel Valley Road an ideal location for a master septic tank area, in the event that multi-family low income housing should be developed in lieu of the proposed 20-lot acre-minimum single family lots.

In view of the obviously acceptable drainfield tests, and considering the proven lack of nitrate problem (see our 6/5/03 letter to Mary Ann Dennis, copy attached), we ask that you notify Planning that the proposed 20-lot Tentative Map is acceptable as complete and ready for processing.

Sincerely,  
BESTOR ENGINEERS, INC.

Carl L. Hooper

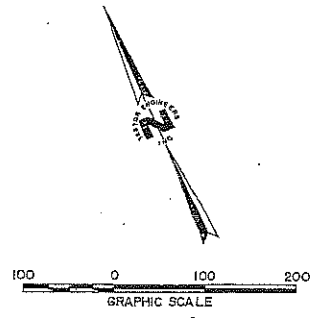
cc: Nader Agha  
Robert Rosenthal

**VISTA NADURA  
PERCOLATION TEST RESULTS  
W.O. 3782.01  
10/1/03**

<u>Lot</u>	<u>Perc Rate (inches per hour)</u>	<u>6/9/03 Re-test</u>
1	2.28	
2	1.92	3.9
3	1.8	2.4
4	4.2	
5	2.64 (Future Det. Pond on Lot)	
6	8.28	8.8
7	3.72	
8	7.8	
9	5.16	
10	5.64	
11	3.72	
12	4.2	
13	5.64	
14	4.08 (30')	
15	1.08	
16	6.04	
17	8.13	
18	4.37	
19	2.76 (30')	
20C	2.52 (30' deep) (No water)	
20B	2.76	
20A	2.08	

All holes were drilled on 11/5/02 and 11/6/02 by Craig Lambert of Central Coast Drilling. They were pre-soaked and percolation tested on 11/12/02, 11/13/02 and 11/14/02 by John Halfpenny, under supervision of Carl Hooper of Bestor Engineers, Inc.

PHASE 1 - LOTS 1-4 AND 18 & 19 (SIX)  
 PHASE 2 - LOTS 5-17 & 20 (FOURTEEN)  
 (DEFERRED UNTIL TRAFFIC MORATORIUM ENDS)

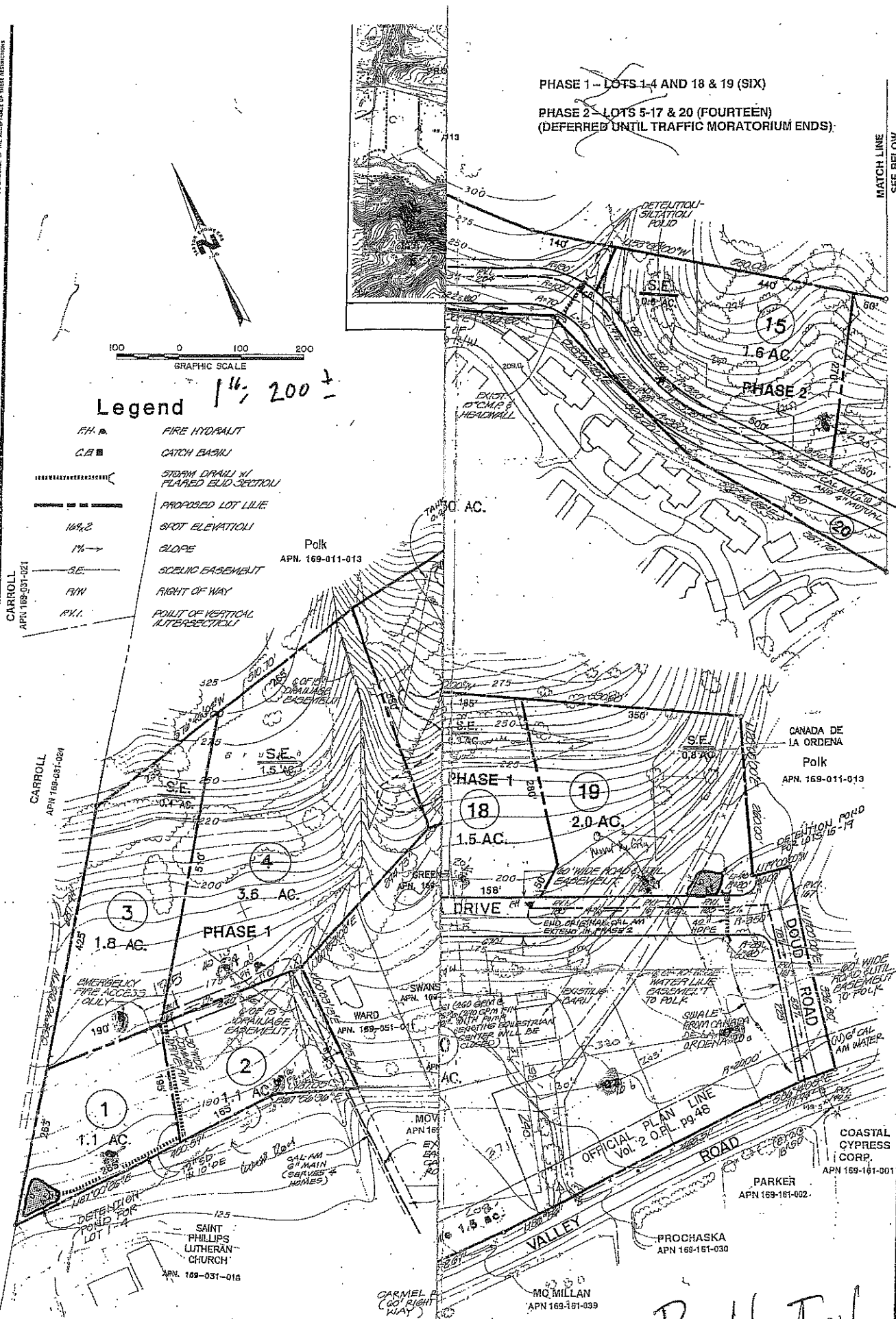


**Legend**

- F.H. ■ FIRE HYDRANT
- C.B. ■ CATCH BASIN
- STORM DRAIN W/ FLARED END SECTION
- PROPOSED LOT LINE
- 169.2 SPOT ELEVATION
- 1% → SLOPE
- SE. SCENC EASEMENT
- R/W. RIGHT OF WAY
- P.V.L. POINT OF VERTICAL INTERSECTION

CARROLL  
 APRN 189-031-021

CARROLL  
 APRN 189-031-021



**Owner**  
 DURELL AGHA

**Subdivider:**  
 NADER AGHA  
 c/o Holman Building  
 542 Lighthouse Avenue  
 Pacific Grove CA 93950

**E. HOLMAN**  
 APRN 169-151-038

**B. ...**  
 APRN ...

**M. ...**  
 APRN ...

*Percolation Test Locations*

MATCH LINE  
 SEE BELOW

DESIGNED BY	6/99	REVISED LOT LAYOUT
DRAWN BY	1/88	CONVERTED TO TAP PHASES
CHECKED BY	6/97	
ENGINEER	CARL ...	

**BESTOR ENGINEERS, INC.**  
 CIVIL ENGINEERING — SURVEYING — LAND PLANNING  
 9701 BLUE LARKSPUR LANE, MONTEREY, CALIFORNIA 93940



**TENTATIVE MAP**  
 OF VISTA NADURA  
 CARMEL VALLEY  
 CALIFORNIA

PREPARED FOR: AGHA

SCALE: 1" = 100'  
 DATE: JAN. 85  
 SHEET  
 1 OF 1



**BESTOR ENGINEERS, INC.**

CIVIL ENGINEERING - SURVEYING - LAND PLANNING  
9701 BLUE LARKSPUR LANE, MONTEREY, CALIFORNIA 93940  
(831) 373-2941 • SALINAS 424-7681 • FAX 649-4118

5 June 2003.

MONTEREY COUNTY HEALTH DEPARTMENT  
1270 Natividad Road  
Salinas CA 93906

Attn: Mary Ann Dennis

**Re: Carmel Valley Area 32  
Moratorium - Nitrate**

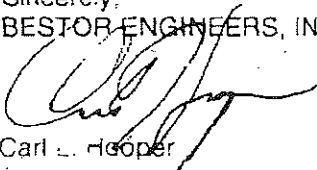
Dear Mary Ann:

We just received the enclosed report from Tom Lindberg at MPWMD for Schulte Road Observation Well.

Please note that Nitrates are shown to be less than 1.0 mg/l, versus allowable of 10 as NO3.

We believe that this is adequate proof that Montgomery fears in 1982 were overly cautious. We believe it is now time to reconsider the Sub-Area 32 prohibition against subdivision and ask that the Vista Nadura Vesting Tentative Map be deemed acceptable.

Sincerely,  
BESTOR ENGINEERS, INC



Carl L. Hooper

cc: Nader Agha  
Robert Rosenthal  
Roger Berretti (Health Dept.)



**MONTEREY PENINSULA  
WATER MANAGEMENT DISTRICT**

5 HARRIS COURT BLDG. G • P.O. BOX 85  
MONTEREY, CA 93942-0085 • (831) 658-5600  
FAX (831) 644-9560 • <http://www.mpwmd.dst.ca.us>

**RECEIVED**

**JUN - 4 2003**

DESTIP ENGINEERS, INC.  
3701 BLUE LARKSPUR MONTEREY CA

**T R A N S M I T T A L**

TO: Carl Hooper  
901 Blue Larkspur Lane  
Monterey, CA 939-0

DATE: 5/28/2003

RE: Water Quality Record for Well on Schulte Road

**WE ARE SENDING YOU:**

- |   |  |
|---|--|
| <input type="checkbox"/> DOCUMENTS                          | <input type="checkbox"/> AGREEMENT OR CONTRACT |
| <input checked="" type="checkbox"/> DOCUMENTS YOU REQUESTED | <input type="checkbox"/> OTHER                 |
| <input type="checkbox"/> COPY OF LETTER                     |  |

**THE ABOVE ITEMS ARE SUBMITTED:**

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> At your request     | <input type="checkbox"/> Please review and comment |
| <input type="checkbox"/> For your information and files | <input type="checkbox"/> For your action           |
| <input type="checkbox"/> For your approval              | <input type="checkbox"/> Please sign and return    |
|   | <input type="checkbox"/> Please telephone me       |

REMARKS: The attached page includes water quality results for the well near the corner of Arma Valley Road and Schulte Road for the period from October 10, 1991 through November 17, 2002. We're working out a couple of glitches in our Report

COPIES TO: file level of 0.03 mg/l were displayed as -0.03, and the dates for 2001 and 2002 were displayed as 1901 and 1902. In order to expeditiously process your request, I have taken the liberty of correcting these items by hand on your copy.

BY: Thomas Lindberg  
Thomas Lindberg

Please feel free to contact us if you have questions regarding these data.

CHEMICAL ANALYSIS OF GROUND WATER

(Values in milligrams per liter, except where noted)

Well Name	Assessor's Parcel Number	Reference Elevation (feet AMSL)	109 66														
DATE	SPECIFIC CONDUCTANCE (micro-mhos/cm)	PH (Units)	CHLORIDE (mg/L)	NITROGEN as NH <sub>3</sub>	AMMONIA as NH <sub>3</sub>	NITRATE as NO <sub>3</sub>	SULFATE as SO <sub>4</sub>	TOTAL ALKALINITY as CaCO <sub>3</sub>	IRON	MANGANESE	DEPTH TO WATER (feet)	CALCIUM	MAGNESIUM	SODIUM	POTASSIUM	ORGANIC CARBON	ORGANIC PHOSPHORUS
10/10/1995	154	7.1	111	< 0.10	< 0.5	3.0	218	218	1.30	0.72	35.9	4.19	1.56	1.71	0.7	2.09	
01/06/1997	909	7.1	75	3.75	3.8	3.0	313	242	1.30	0.72	35.1	4.19	1.56	1.71	0.7	2.09	
04/08/1997	1050	6.9	96	< 0.10	2.0	2.0	159	262	4.40	0.71	28.5	4.94	1.81	4.13	.05	2.00	
10/14/1997	1057	6.9	180	< 0.10	2.2	2.0	201	266	6.90	0.80	26.5	4.34	2.05	4.00	0.7	2.00	
04/07/1998	1091	7.3	102	< 0.10	1.9	1.9	211	268	5.50	0.86	31.7	5.38	2.05	3.95	.06	1.80	
10/06/1998	112	7.9	90	< 0.05	1.0	1.0	152	278	1.60	0.83	28.2	4.64	1.89	4.13	0.5	2.00	
04/19/1998	1060	7.0	92	< 0.05	8.0	8.0	221	280	3.00	0.80	34.0	4.89	2.05	4.04	0.6	2.20	
10/12/1998	1100	7.3	92	< 0.05	2.0	2.0	178	270	3.30	0.82	--	4.99	1.97	3.82	.05	2.00	
04/19/1999	1114	8.0	98	< 0.05	< 0.1	< 0.1	185	239	0.10	0.63	--	5.08	2.13	4.00	.05	2.40	0.5
11/03/1999	1135	8.0	90	< 0.05	2.0	2.0	168	263	1.80	0.76	--	4.79	2.13	3.74	.06	5.14	< .03
04/24/1999	1097	7.9	103	0.05	< 1.0	< 1.0	186	273	0.51	0.83	--	5.43	2.22	4.35	.06	5.40	0.4
11/07/1999	1123	6.6	103	0.05	< 1.0	< 1.0	187	266	1.22	0.77	--	4.99	2.46	4.00	.05	1.84	.09
11/19/1999	1114	7.6	93	0.13	< 1.0	< 1.0	186	272	1.37	0.71	--	5.53	2.22	4.08	.06	2.10	2.0
10/26/1998	1141	7.3	94	0.09	< 1.0	< 1.0	178	254	2.34	0.77	--	5.23	2.13	3.95	.06	2.20	< .03
10/28/1995	1108	7.2	88	0.08	< 1.0	< 1.0	159	233	8.32	0.08	--	4.89	1.97	3.65	.09	2.70	.15
10/24/2000	1015	7.2	94	0.10	< 1.0	< 1.0	174	240	2.89	0.62	--	5.28	1.81	3.82	.04	2.10	--
10/24/2001	1060	7.1	76	0.20	< 1.0	< 1.0	133	258	3.40	0.73	--	4.64	1.81	3.69	.06	2.80	.69
11/17/2002	1071	7.1	76	0.20	< 1.0	< 1.0	133	258	3.40	0.73	--	4.64	1.81	3.69	.06	2.80	.69

W.O. # 3782.01

Percolation Test Data - Bestor Engineers, Inc.

Project VISTA NADIRA Lot # 1 Map Date \_\_\_\_\_

Test Hole # 1 Date 11/15/02 Driller \_\_\_\_\_

Pre Soak Date 11/14/02 Perc Date \_\_\_\_\_ Duration \_\_\_\_\_

Health Department Witness \_\_\_\_\_ Measured by JLH

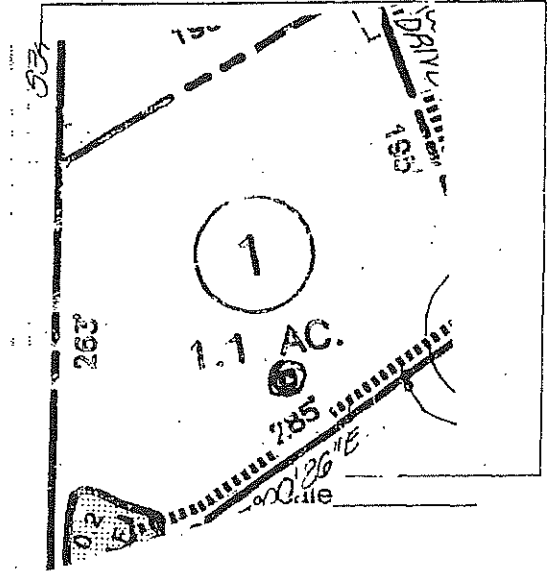
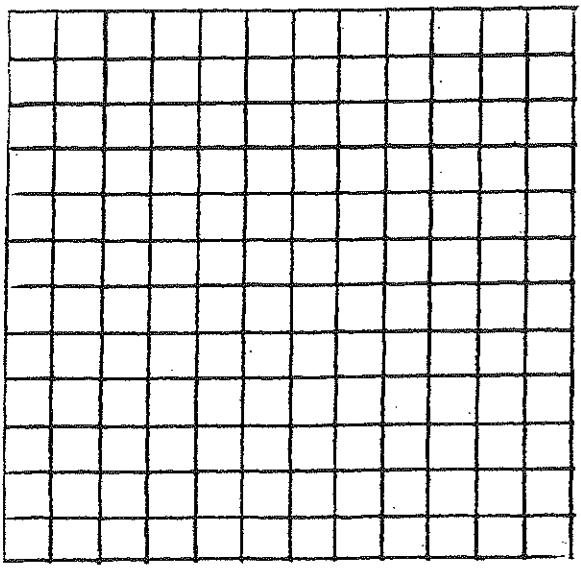
Depth \_\_\_\_\_ Depth to Ground Water \_\_\_\_\_ Final Rule 2.28" / hr

Project Engineer [Signature]

20' DAY @ 9:19 A @ 1:19 P

	Time	Depth to Water	TIME	DEPTH
1	9:19 A	-1 34	12:39 P	-3 47
2	9:37 A	-1 57	12:59 P	-3 52
3	9:59 A	-2 39	1:19 P	-3 59
4	10:19 A	-2 45		
5	10:39 A	-2 34		
6	10:59 A	-3 00		
7	11:19 A	-3 13		
8	11:39 A	-3 23		
9	11:59 A	-3 31		
10	12:19 P	-3 40		

0.19' = 2.28" / hr



W.O. # 3782.01

Percolation Test Data - Bestor Engineers, Inc.

Project VISTA NADURA Lot # 2 Map Date \_\_\_\_\_

Test Hole # 2 Date 11/15/02 Driller \_\_\_\_\_

Pre Soak Date 11/14/02 Perc Date \_\_\_\_\_ Duration \_\_\_\_\_

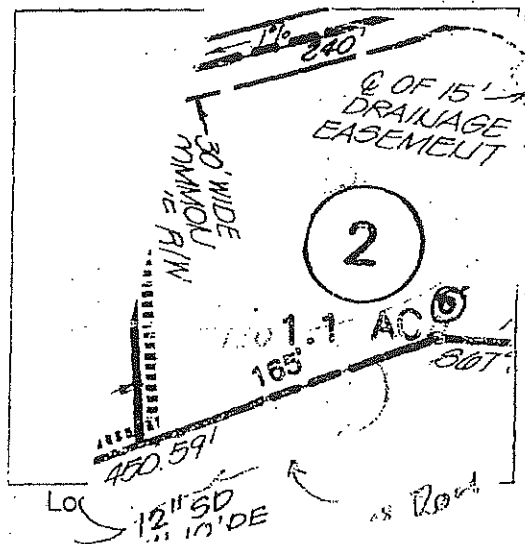
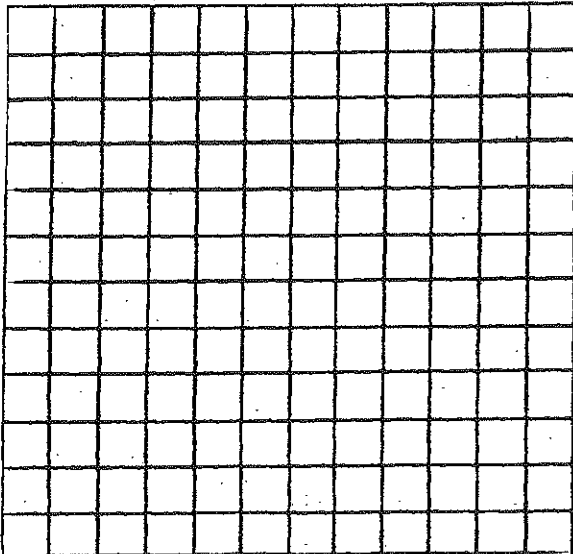
Health Department Witness \_\_\_\_\_ Measured by JWH

Depth \_\_\_\_\_ Depth to Ground Water \_\_\_\_\_ Final Rate 1.92"/hr

Project Engineer [Signature]

	Time	Depth to Water	Time Minutes	DEPTH Rate Min/in
1	9:17A	-0.75	12:37P	-1.85
2	9:37A	-1.02	12:57P	-1.91
3	9:57A	-1.20	1:17P	-1.96
4	10:17A	-1.33		
5	10:37A	-1.45		
6	10:57A	-1.52		
7	11:17A	-1.61		
8	11:37A	-1.69		
9	11:57A	-1.73		
10	12:17P	-1.80		

$0.16' = 1.92"/hr$





W.O. # 3782.01

Percolation Test Data - Bestor Engineers, Inc.

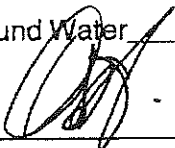
Project VISTA NADURA Lot # 3 Map Date \_\_\_\_\_

Test Hole # 3 Date 11/15/02 Driller \_\_\_\_\_

Pre Soak Date 11/14/02 Perc Date \_\_\_\_\_ Duration \_\_\_\_\_

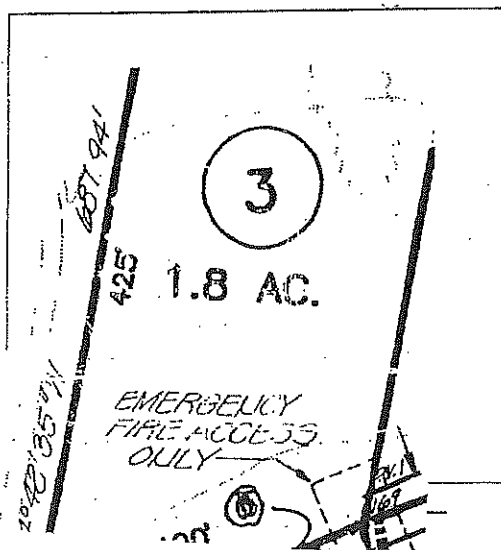
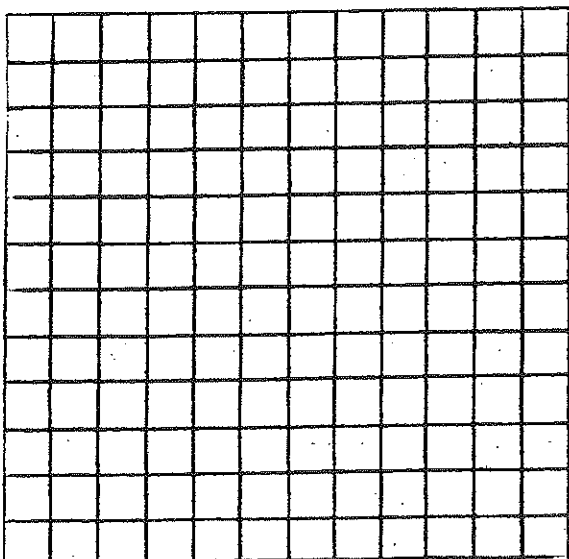
Health Department Witness \_\_\_\_\_ Measured by JLH

Depth \_\_\_\_\_ Depth to Ground Water \_\_\_\_\_ Final Rule lic

Project Engineer 

	Time	Depth to Water	Time Minutes	DEPTH Rate/Minute
1	9:21 A	-4 13	12:41 P	-4 83
2	9:41 A	-4 24	1:01 P	-4 88
3	10:01 A	-4 32	1:21 P	-4 93
4	10:21 A	-4 42		
5	10:41 A	-4 50		
6	11:01 A	-4 50		
7	11:21 A	-4 63		
8	11:41 A	-4 68		
9	12:01 P	-4 73		
10	2:21 P	-4 78		

$0.15' = 1.8" / hr$



W.O. # 3782.01

Percolation Test Data - Bestor Engineers, Inc.

Project VISTA NADURA Lot # 4 Map Date \_\_\_\_\_

Test Hole # 4 Date 11/15/02 Driller \_\_\_\_\_

Pre Soak Date 11/14/02 Perc Date \_\_\_\_\_ Duration \_\_\_\_\_

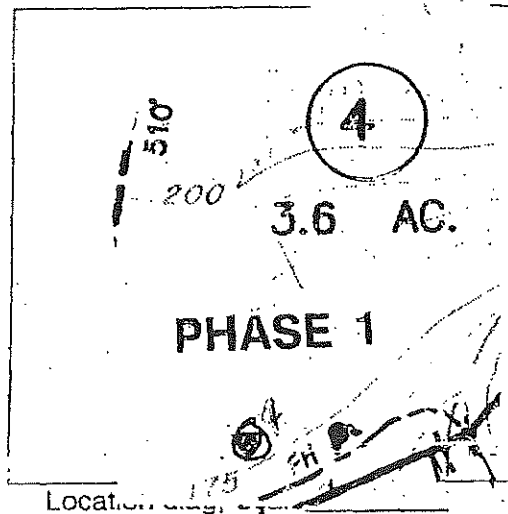
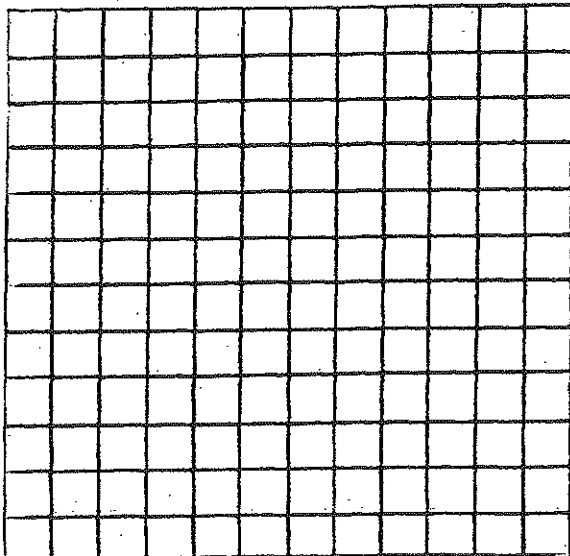
Health Department Witness \_\_\_\_\_ Measured by JLH  
Depth \_\_\_\_\_ Depth to Ground Water \_\_\_\_\_ Final Rate 4.2" / hr

Project Engineer [Signature]

20' HOLDING WATER @ 9:15A

	Time	Depth to Water	TIME	DEPTH
1	9:15 A	- 2 <sup>72</sup>	12:35 P	- 5 <sup>12</sup>
2	9:35 A	- 3 <sup>20</sup>	12:55 P	- 5 <sup>31</sup>
3	9:55 A	- 3 <sup>40</sup>	1:15 P	- 5 <sup>41</sup>
4	10:15 A	- 3 <sup>45</sup>		
5	10:35 A	- 4 <sup>20</sup>		
6	10:55 A	- 4 <sup>41</sup>		
7	11:15 A	- 4 <sup>42</sup>		
8	11:35 A	- 4 <sup>51</sup>		
9	11:55 A	- 4 <sup>52</sup>		
10	12:15 P	- 5 <sup>00</sup>		

0.35' = 4.2"



PERL TEST

W.O. # 3782.01

Percolation Test Data - Bestor Engineers, Inc.

Project VISTA NAJUPA Lot # 5 Map Date \_\_\_\_\_

Test Hole # 5 Date 11/14/02 Driller \_\_\_\_\_

Pre Soak Date 11/13/02 Perc Date \_\_\_\_\_ Duration \_\_\_\_\_

Health Department Witness \_\_\_\_\_ Measured by JLH 2.64" / hr

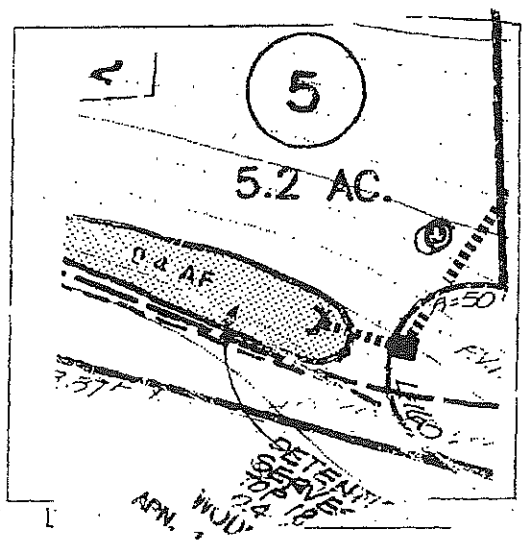
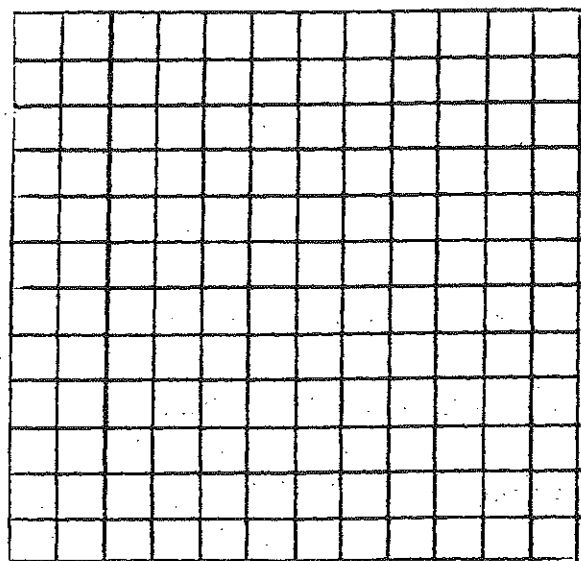
Depth \_\_\_\_\_ Depth to Ground Water \_\_\_\_\_ Final Rule 1.8" / hr

Project Engineer [Signature]

20 HOLDING WATER @ 9:08A

	Time	Depth to Water	TIME <del>Minutes</del>	DEPTH <del>Feet</del>
1	9:08A	- 3'9"	12:28P	- 6'3"
2	9:28A	- 4'0"	12:48P	- 6'7"
3	9:48A	- 5'35"	1:08P	- 6'85"
4	10:08A	- 5'6"		
5	10:28A	- 5'2"		
6	10:48A	- 6'5"		
7	11:08A	- 6'8"		
8	11:28A	- 6'9"		
9	11:48A	- 6'35"		
10	12:08P	- 6'43"		

0.22' = 2.64" / hr



W.O. # 3782.01

Percolation Test Data - Bestor Engineers, Inc.

Project VISTA NADEGA Lot # 6 Map Date \_\_\_\_\_

Test Hole # 6 Date 11/14/02 Driller \_\_\_\_\_

Pre Soak Date 11/13/02 Perc Date \_\_\_\_\_ Duration \_\_\_\_\_

Health Department Witness \_\_\_\_\_ Measured by JLH

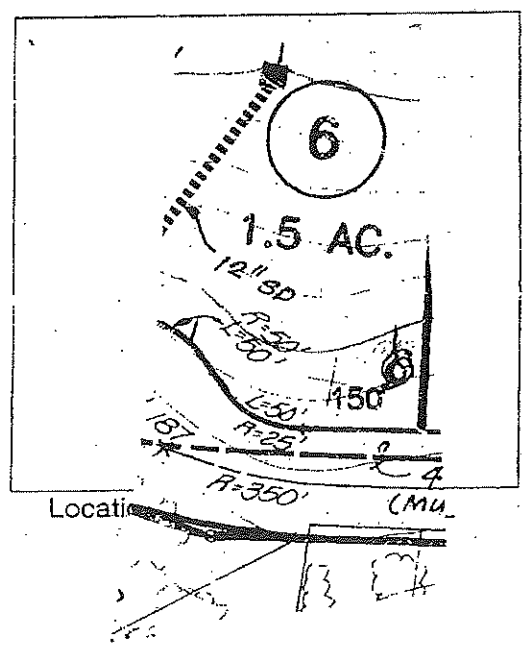
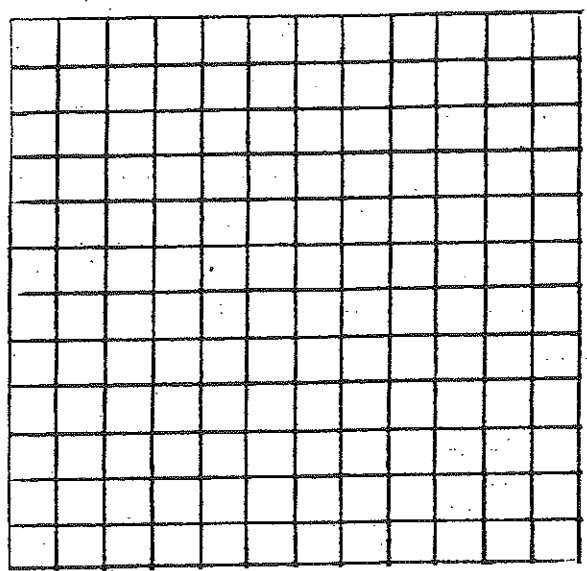
Depth \_\_\_\_\_ Depth to Ground Water \_\_\_\_\_ Final Rule 8.28

Project Engineer [Signature]

REFILLED AFTER  
READING

	Time	Depth to Water	Minutes	Rate Min/in
1	9:06A	-6 59	12:26P	-7 30
2	9:26A	-7 00	12:46P	-7 55
3	9:46A	-7 24	1:06P	-7 72
4	10:06A	-7 40		
5	10:26A	-7 52		
6	10:46A	-7 57		
7	11:06A	-7 77		
8	11:26A	-7 90		
9	11:46A	-6 49		
10	12:00P	-7 03		

$0.69 = 8.28 \text{ "/in}$



W.O. # 3732.01

Percolation Test Data - Bestor Engineers, Inc.

Project VISTA NADURA Lot # 7 Map Date \_\_\_\_\_

Test Hole # 7 Date 11/14/02 Driller \_\_\_\_\_

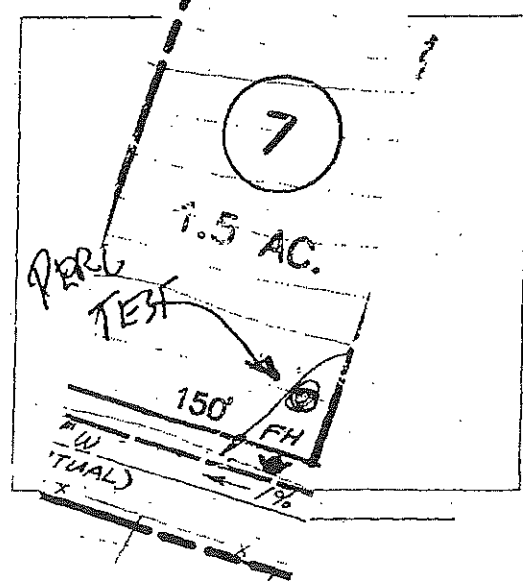
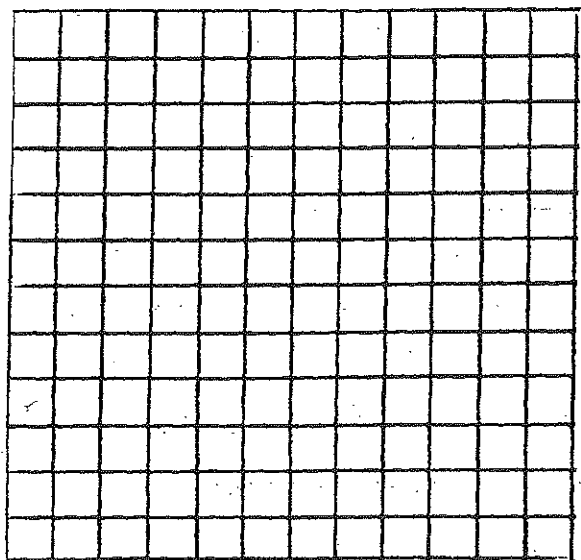
Pre Soak Date 11/3/02 Perc Date \_\_\_\_\_ Duration \_\_\_\_\_

Health Department Witness \_\_\_\_\_ Measured by JLH

Depth \_\_\_\_\_ Depth to Ground Water \_\_\_\_\_ Final Rule 3.72" / hr

Project Engineer [Signature]

	Time	Depth to Water	TIME <del>Minutes</del>	DEPTH <del>Rate</del> <u>Min/in</u>
1	9:04A	-4 <sup>05</sup>	12:24P	-7 <sup>72</sup>
2	9:24A	-5 <sup>43</sup>	12:44P	-7 <sup>86</sup>
3	9:44A	-6 <sup>13</sup>	1:04P	-7 <sup>95</sup>
4	10:04A	-6 <sup>51</sup>		
5	10:24A	-6 <sup>15</sup>		
6	10:44A	-7 <sup>01</sup>	0.31' =	3.72" / hr
7	11:04A	-7 <sup>19</sup>		
8	11:24A	-7 <sup>40</sup>		
9	11:44A	-7 <sup>53</sup>		
10	12:04P	-7 <sup>43</sup>		



W.O. # 3782.01

Percolation Test Data - Bestor Engineers, Inc.

Project VISTA NADURA Lot # 8 Map Date \_\_\_\_\_

Test Hole # 5 Date 11/14/02 Driller \_\_\_\_\_

Pre Soak Date 11/13/02 Perc Date \_\_\_\_\_ Duration \_\_\_\_\_

Health Department Witness \_\_\_\_\_ Measured by JLH

Depth \_\_\_\_\_ Depth to Ground Water \_\_\_\_\_ Final Rule 2.8" / hr

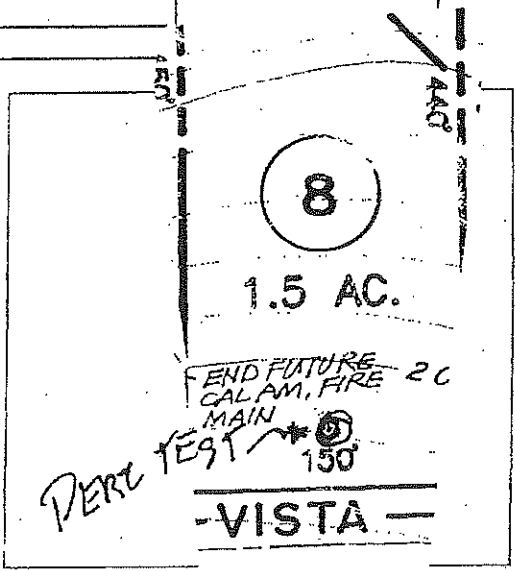
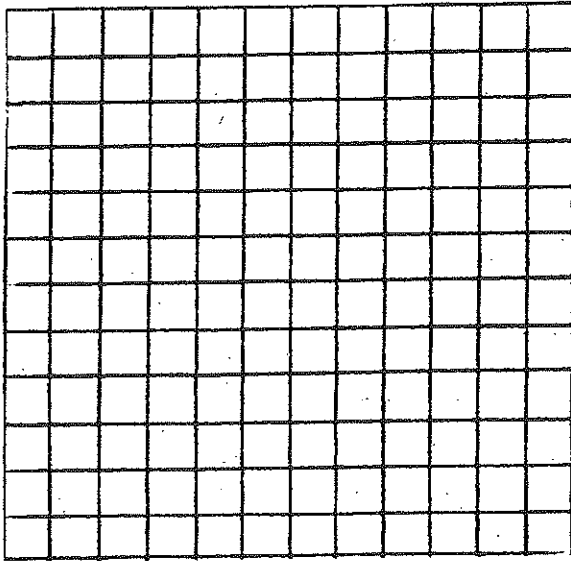
Project Engineer [Signature]

2.8" / hr  
7.0" / hr  
6.0" / hr  
1.0" / hr

20' HOLDING WATER AT 9:02A

	Time	Depth to Water	TIME Minutes	DEPTH Rate/Min
1	9:02A	-6 <sup>20</sup>	12:22P	-7 <sup>25</sup>
2	9:22A	-7 <sup>03</sup>	12:42P	-7 <sup>48</sup>
3	9:42A	-7 <sup>40</sup>	1:02P	-7 <sup>49</sup>
4	10:02A	-7 <sup>57</sup>		
5	10:22A	-7 <sup>53</sup>		
6	10:42A	-7 <sup>36</sup>		0.65 = <u>6.5" / hr</u>
7	11:02A	-7 <sup>95</sup>		
8	11:22A	-8 <sup>07</sup>		
9	11:42A	-6 <sup>21</sup>		
10	12:02P	-6 <sup>99</sup>		

FILLED AFTER\*  
READING



Location dia

W.O. # 3782.01

Percolation Test Data - Bestor Engineers, Inc.

Project VISTA NADUEA Lot # 9 Map Date \_\_\_\_\_

Test Hole # 9 Date 11/14/02 Driller \_\_\_\_\_

Pre Soak Date 11/13/02 Perc Date \_\_\_\_\_ Duration \_\_\_\_\_

Health Department Witness \_\_\_\_\_ Measured by JLH

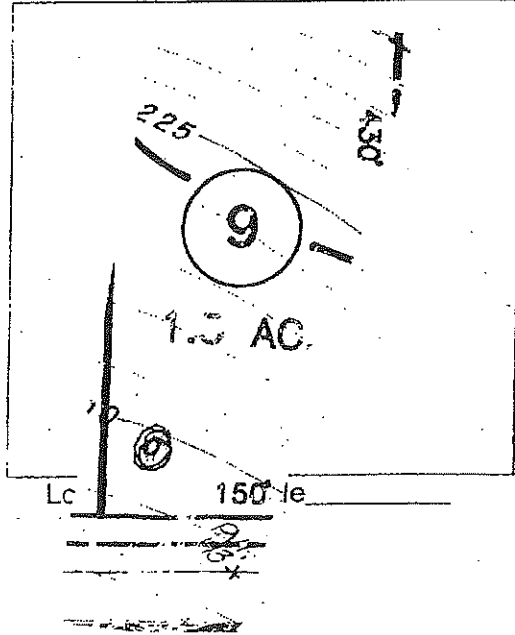
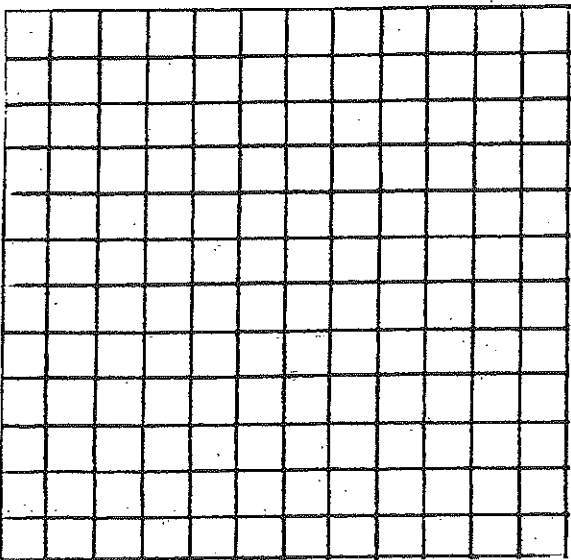
Depth \_\_\_\_\_ Depth to Ground Water \_\_\_\_\_ Final Rate 5.16"  
~~4.21"~~

Project Engineer [Signature]

	Time	Depth to Water	TIME <del>Minutes</del>	DEPTH <del>Rate-Min/In</del>
1	9:00 A	- 2 45	12:20 P	- 3 05
2	9:20 A	- 4 14	12:40 P	- 4 53
3	9:40 A	- 5 27	1:00 P	- 5 37
4	10:00 A	- 5 92		
5	10:20 A	- 6 38		
6	10:40 A	- 6 70		
7	1:00 P	- 6 92		
8	1:20 P	- 7 18		
9	1:40 P	- 7 23		
*10	2:00 P	- 7 35		

Handwritten notes on table:  
- Between rows 5-7: } 4.00' = 12" / hr  
- Between rows 8-10: } 0.43' = 5.16" / hr (circled)  
- Next to row 2: 2.31' = 27.22" / 40 min = 4.15" / hr  
- Next to row 8: Do Not Use - too shallow  
- Next to row 9: USE THIS

\*10 RECORDED WITH MEASUREMENT



W.O. # 3782.01

Percolation Test Data - Bestor Engineers, Inc.

Project VISTA NAJURA Lot # 10 Map Date \_\_\_\_\_

Test Hole # 10 Date 11/13/02 Driller \_\_\_\_\_

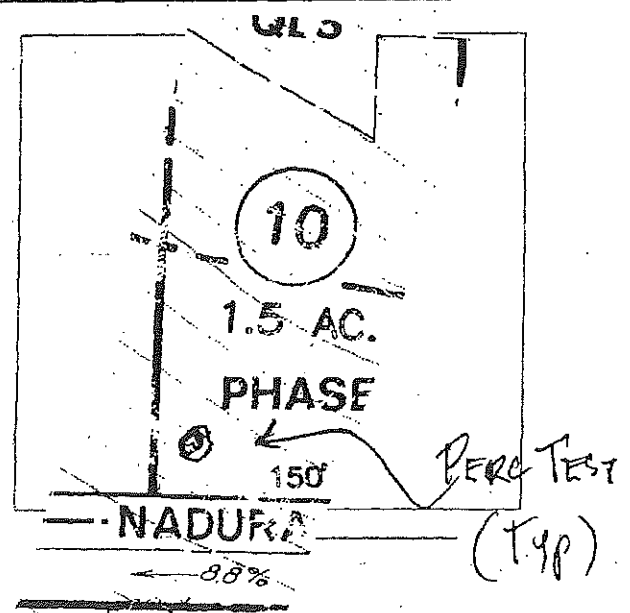
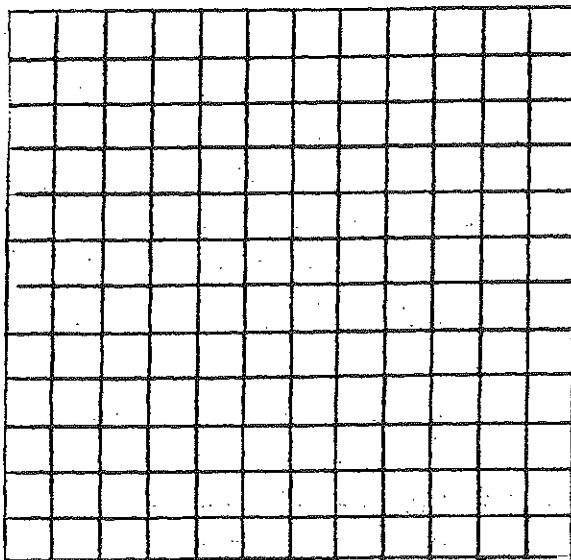
Pre Soak Date 11/12/02 Perc Date \_\_\_\_\_ Duration \_\_\_\_\_

Health Department Witness \_\_\_\_\_ Measured by JLH

Depth \_\_\_\_\_ Depth to Ground Water \_\_\_\_\_ Final Rate 5.64  
5.4" / hr

Project Engineer [Signature]

	Time	Depth to Water	TIME Minutes	DEPTH Rate Min/in.
1	9:06 A	-0 83	12:26 P	-4 86
2	9:26 A	-1 07	12:46 P	-5 03
3	9:46 A	-2 39	1:06 P	-5 17
4	10:06 A	-2 78		
5	10:26 A	-3 28		
6	10:46 A	-3 68		
7	11:06 A	-3 97		
8	11:26 A	-4 26	0.47' = 5.64" / hr	
9	11:46 A	-4 49		
10	12:06 P	-4 70		





W.O. # 3782.01

Percolation Test Data - Bestor Engineers, Inc.

Project VISTA NADURA Lot # 11 Map Date \_\_\_\_\_

Test Hole # 11 Date 11/13/02 Driller \_\_\_\_\_

Pre Soak Date 11/12/02 Perc Date \_\_\_\_\_ Duration \_\_\_\_\_

Health Department Witness \_\_\_\_\_ Measured by JLH

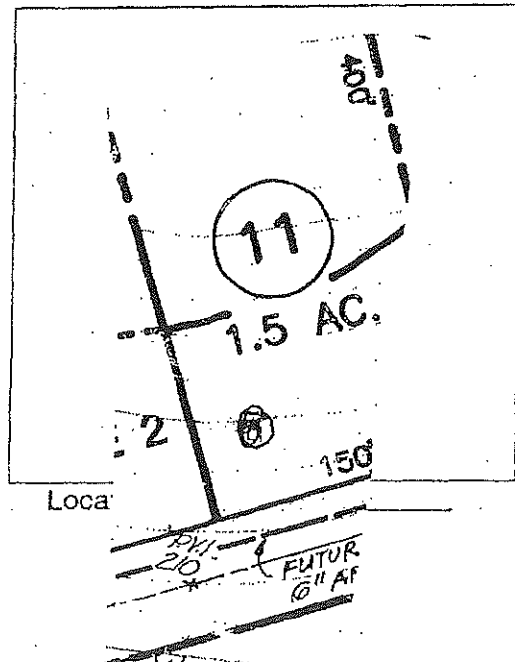
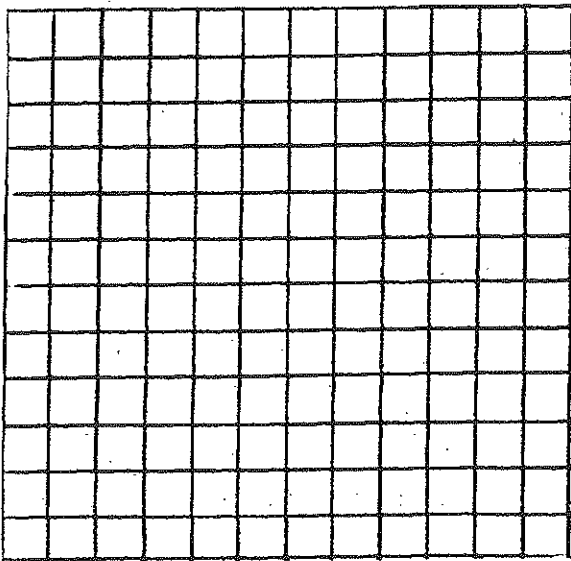
Depth 18 Depth to Ground Water 20' Final Rate 3.72"/hr

Project Engineer [Signature]

20' DRY @ 9:05A

	Time	Depth to Water	Time Minutes	DEPTH Rate Min/in
1	9:05A	-3 18	12:25P	-6 45
2	9:25A	-3 37	12:45P	-6 55
3	9:45A	-4 50	1:05P	-6 45
4	10:05A	-4 30		
5	10:25A	-5 23		
6	10:45A	-5 54		
7	11:05A	-5 78		
8	11:25A	-6 00		
9	11:45A	-6 15		
10	12:05P	-6 35		

1.37 / 0.36 = 3.46"/hr  
Last 10' x 2.0' = 3.72"/hr  
0.31' = 3.72"/hr



W.O. # 3782 01

Percolation Test Data - Bestor Engineers, Inc.

Project VISTA NADURA Lot # 12 Map Date \_\_\_\_\_

Test Hole # 12 Date 11/13/02 Driller \_\_\_\_\_

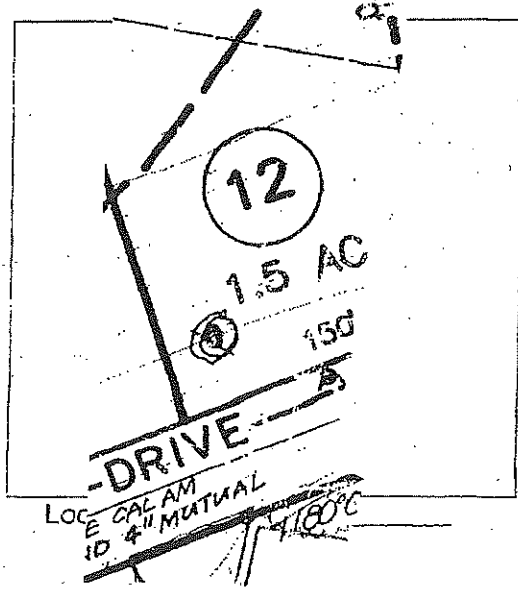
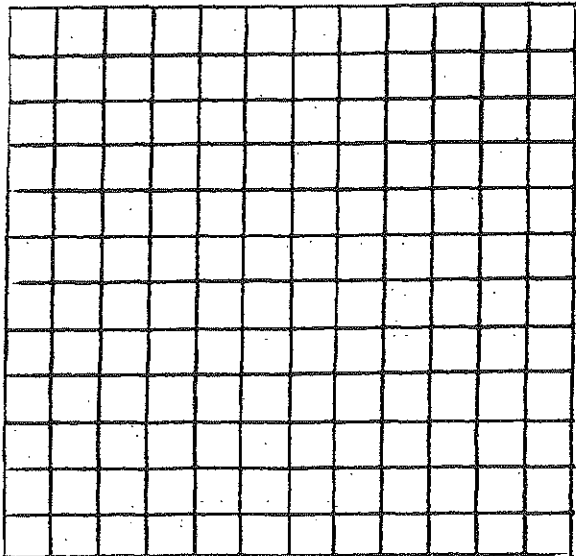
Pre Soak Date 11/12/02 Perc Date \_\_\_\_\_ Duration \_\_\_\_\_

Health Department Witness \_\_\_\_\_ Measured by JLH

Depth \_\_\_\_\_ Depth to Ground Water \_\_\_\_\_ Final Rule 4.2" / 1.1

Project Engineer [Signature]

	Time	Depth to Water	TIME Minutes	DEPTH Rate Min/in
1	9:04	-1 <sup>27</sup>	12:24P	-4 <sup>76</sup>
2	9:24	-2 <sup>27</sup>	12:44P	-4 <sup>87</sup>
3	9:44 A	-2 <sup>33</sup>	1:04 P	-5 <sup>03</sup>
4	10:04 A	-3 <sup>17</sup>		
5	10:24 A	-3 <sup>59</sup>		
6	10:44 A	-3 <sup>88</sup>		
7	11:04 A	-4 <sup>12</sup>		
8	11:24 A	-4 <sup>34</sup>	0.35'	4.2" / hr
9	11:44 A	-4 <sup>47</sup>		
10	12:04 P	-4 <sup>67</sup>		



W.O. # 3782.01

Percolation Test Data - Bestor Engineers, Inc.

Project VISTA NAJURA Lot # 13 Map Date \_\_\_\_\_

Test Hole # 13 Date 11/13/02 Driller \_\_\_\_\_

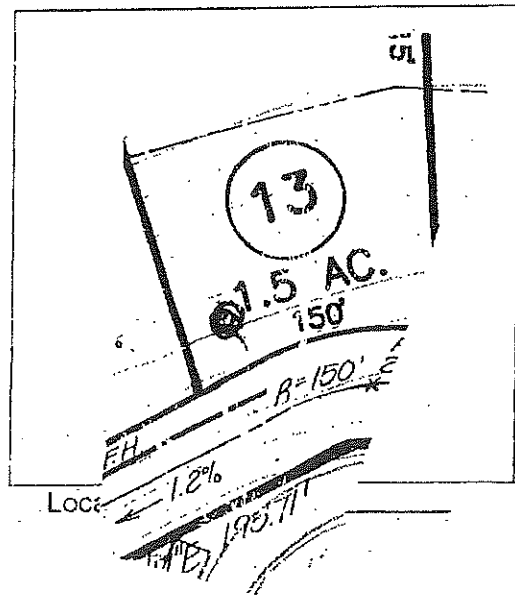
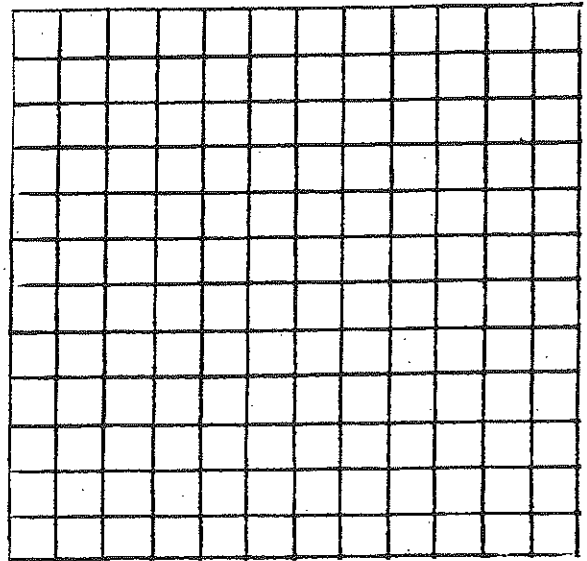
Pre Soak Date 11/12/02 Perc Date \_\_\_\_\_ Duration \_\_\_\_\_

Health Department Witness \_\_\_\_\_ Measured by JLH

Depth 10 Depth to Ground Water \_\_\_\_\_ Final Rate 5.64" / hr

Project Engineer CL

	Time	Depth to Water	TIME Minutes	DEPTH Rate Min/in
1	9:03 A	-0 <sup>59</sup>	12:23 P	-2 <sup>77</sup>
2	9:23 A	-0 <sup>89</sup>	12:43 P	-2 <sup>92</sup>
3	9:43 A	-1 <sup>18</sup>	1:03 P	-3 <sup>09</sup>
4	10:03 A	-1 <sup>35</sup>		
5	10:23 A	-1 <sup>61</sup>		
6	10:43 A	-1 <sup>84</sup>	0.47' =	5.64" / hr
7	11:03 A	-2 <sup>04</sup>		
8	11:23 A	-2 <sup>25</sup>		
9	11:43 A	-2 <sup>45</sup>		
10	12:03 P	-2 <sup>52</sup>		



W.O. # 3782.01

Percolation Test Data - Bestor Engineers, Inc.

Project VISTA MADURA Lot # 14 Map Date \_\_\_\_\_

Test Hole # 11 Date 11/13/02 Driller \_\_\_\_\_

Pre Soak Date 11/12/02 Perc Date \_\_\_\_\_ Duration \_\_\_\_\_

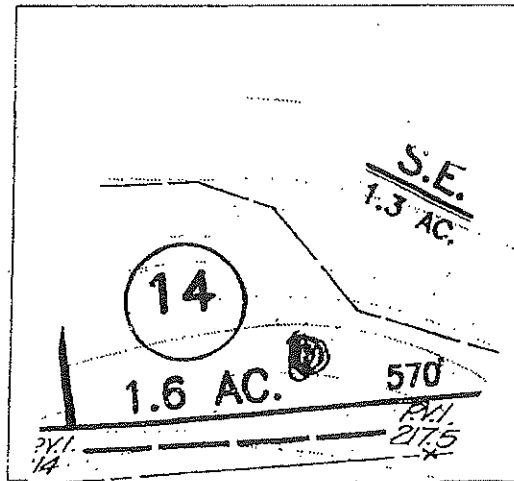
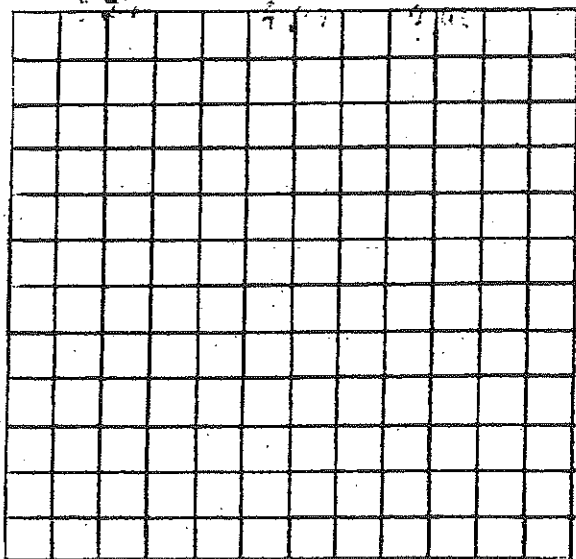
Health Department Witness \_\_\_\_\_ Measured by JLH

Depth 10 Depth to Ground Water \_\_\_\_\_ Final Rate 4.08" / hr

Project Engineer [Signature]

	Time	Depth to Water	Minutes	Rate Min/in
1	9:02 A	-0 32	12:22 P	-2 05
2	9:22 A	-0 76	12:42 P	-2 15
3	9:42 A	-0 97	1:02 P	-2 30
4	10:02 A	-1 11		
5	10:22 A	-1 30		
6	10:42 A	-1 46		
7	11:02 A	-1 58		
8	11:22 A	-1 70		
9	11:42 A	-1 85		
10	12:02 P	-1 96		

0.3 ft = 4.08" / hr



20061

W.O.# 3782.01

Percolation Test Data - Bestor Engineers, Inc.

Project VISTA NADURA Lot # 15 Map Date 1

Test Hole # 15 Date 11/13/02 Driller \_\_\_\_\_

Pre Soak Date 11/12/02 Perc Date \_\_\_\_\_ Duration \_\_\_\_\_

Health Department Witness \_\_\_\_\_ Measured by JLH

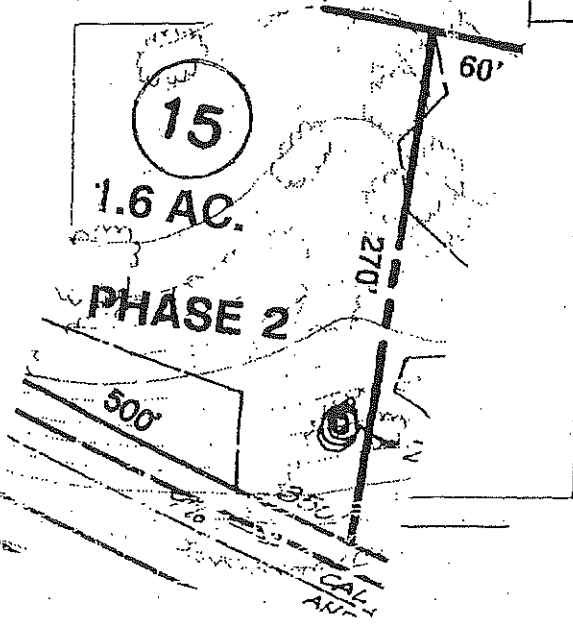
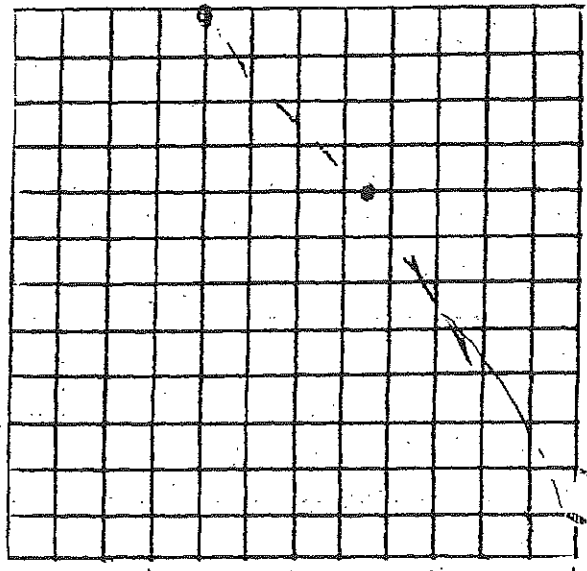
Depth \_\_\_\_\_ Depth to Ground Water \_\_\_\_\_ Final Rate ~~0.94" / hr~~ 1.08" / hr  
Project Engineer JLH

20' HOLDING WATER @ 9:00A

	Time	Depth to Water (ft)	Time <del>Minutes</del>	Rate <del>minutes</del>
1	9:00A	-1.78	12:20P	-2.81
2	9:20A	-2.15	12:40P	-2.95
3	9:40A	-2.26	1 P	-2.86
4	10 A	-2.35		
5	10:20 A	-2.45		
6	10:40A	-2.53		
7	11 A	-2.60		
8	11:20 A	-2.66		
9	11:40A	-2.71		
10	12 P	-2.77		

$2.77 / 40 = 0.94$

0.09 = 1.08 m/hr



W.O. # 3782.01

Percolation Test Data – Bestor Engineers, Inc.

Project VISTA NADORA Lot # 16 Map Date \_\_\_\_\_

Test Hole # 1V Date 11/12/02 Driller \_\_\_\_\_

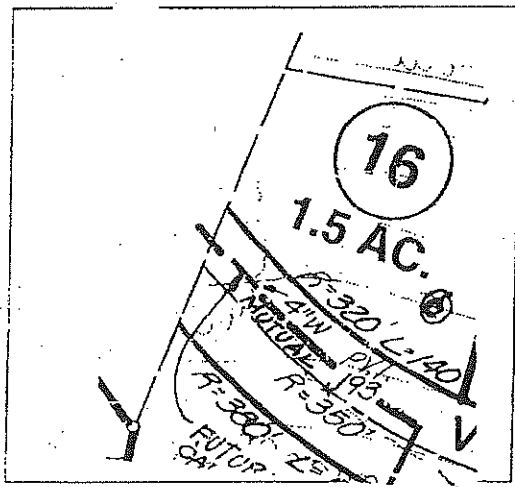
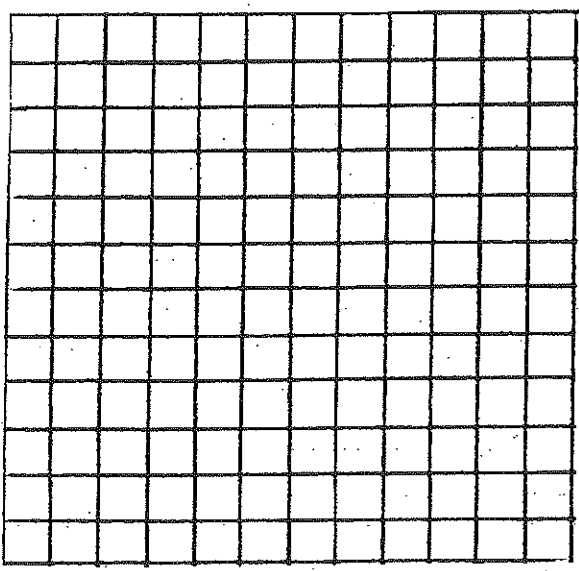
Pre Soak Date \_\_\_\_\_ Perc Date \_\_\_\_\_ Duration \_\_\_\_\_

Health Department Witness \_\_\_\_\_ Measured by JLH 6.04" / hr

Depth \_\_\_\_\_ Depth to Ground Water \_\_\_\_\_ Final Rule 1.72" / hr

Project Engineer \_\_\_\_\_

	Time	Depth to Water	Minutes	Rate Min/in
1	9:57A	-0 38		
2	10:18A	-0 86		
3	10:47A	-1 45		
4	11:17A	-1 98		
5	11:46A	-2 25		
6	12:15P	-2 63		
7	12:43P	-2 93		
8	1:15P	-3 27	0.57	6.24" / 62 min = 6.04" / hr
9	1:45P	-3 45		
10				



Location diag, Scale

W.O. # 3782.01

Percolation Test Data - Bestor Engineers, Inc.

Project VISTA NADURA Lot # 17 Map Date \_\_\_\_\_

Test Hole # 17 Date 11/12/02 Driller \_\_\_\_\_

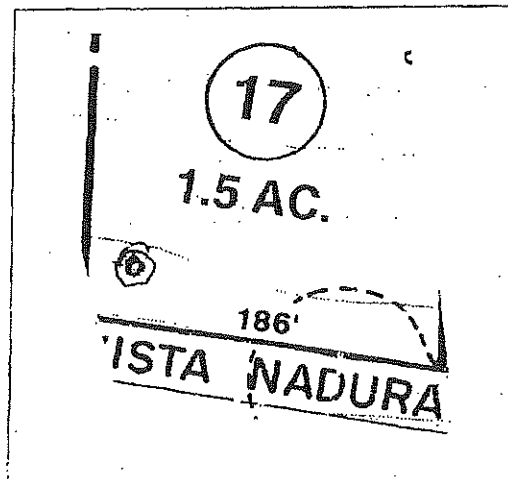
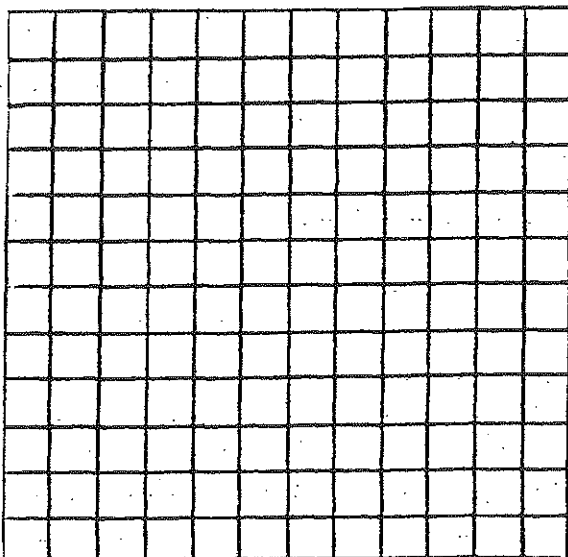
Pre Soak Date \_\_\_\_\_ Perc Date \_\_\_\_\_ Duration \_\_\_\_\_

Health Department Witness \_\_\_\_\_ Measured by JLH 8.13"/hr

Depth \_\_\_\_\_ Depth to Ground Water \_\_\_\_\_ Final Rule 2.5"/hr

Project Engineer [Signature]

	Time	Depth to Water	Minutes	Rate Min/in
1	9:55A	-2 <sup>04</sup>		
2	10:17A	-2 <sup>97</sup>		
3	10:46A	-3 <sup>78</sup>		
4	11:16A	-4 <sup>56</sup>		
5	11:45A	-5 <sup>00</sup>		
6	12:13P	-5 <sup>48</sup>		
7	12:42P	-5 <sup>73</sup>		
8	1:14P	-6 <sup>02</sup>	0.70	8.13"/hr
9	1:44P	-6 <sup>42</sup>		
10				



Location diag, Scale \_\_\_\_\_

W.O. # 3782.01

Percolation Test Data - Bestor Engineers, Inc.

Project VISTA NADIRA Lot # 18 Map Date \_\_\_\_\_

Test Hole # 18 Date 11/12/02 Driller \_\_\_\_\_

Pre Soak Date \_\_\_\_\_ Perc Date \_\_\_\_\_ Duration \_\_\_\_\_

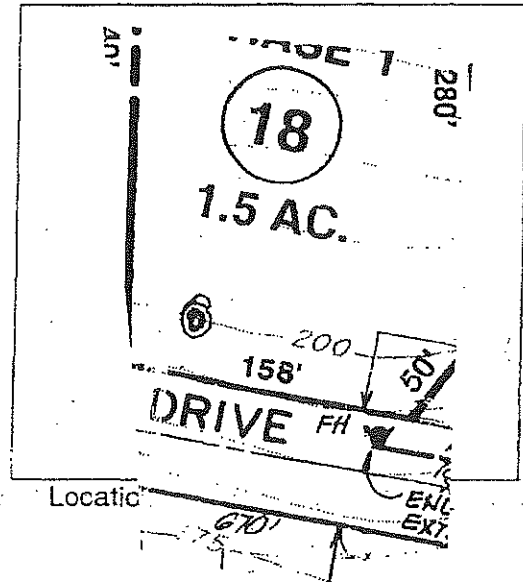
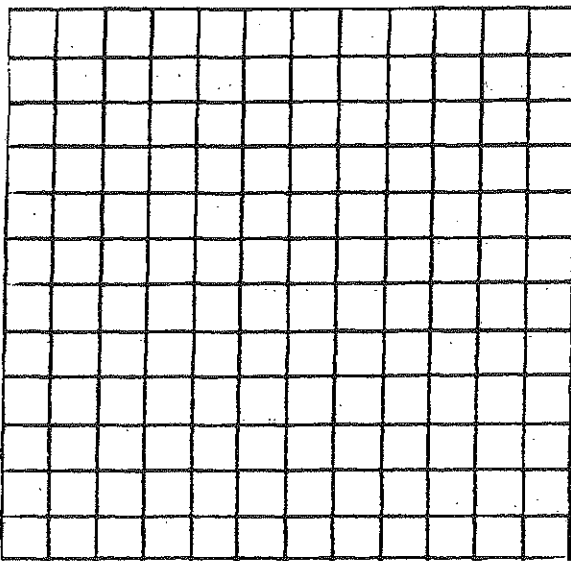
Health Department Witness \_\_\_\_\_ Measured by JLH 4.37" / hr

Depth \_\_\_\_\_ Depth to Ground Water \_\_\_\_\_ Final Rule 4.37" / hr

Project Engineer [Signature]

20' HOLDING H<sub>2</sub>O @ 9:53a

	Time	Depth to Water	Minutes	Rate Min/in
1	9:53a	- 0 87		
10, 15a 2	<del>9:53a</del>	<del>0 87</del> - 1 35		
3	10:44a	- 1 82		
4	11:17a	- 2 14		
5	11:44a	- 2 38		
6	12:12p	- 2 60		
7	12:41p	- 2 75		
8	1:13p	- 2 95	0.37	4.44" / 61 min = 4.37" / hr
9	1:42p	- 3 13		
10				





W.O. # 3782.01

Percolation Test Data - Bestor Engineers, Inc.

Project VISTA NADURA Lot # 19 Map Date \_\_\_\_\_

Test Hole # 19 Date 11/12/02 Driller \_\_\_\_\_

Pre Soak Date \_\_\_\_\_ Perc Date \_\_\_\_\_ Duration \_\_\_\_\_

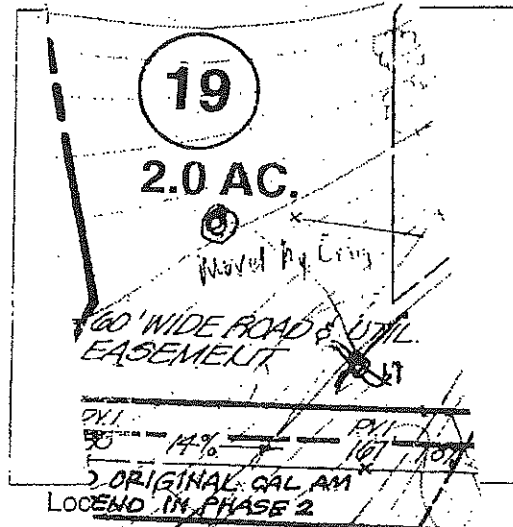
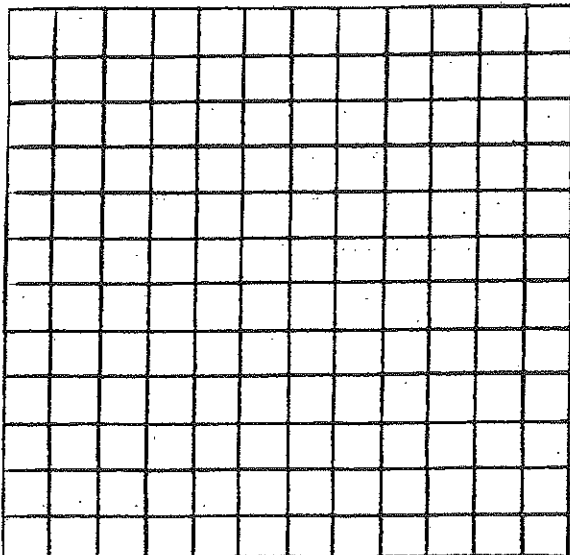
Health Department Witness \_\_\_\_\_ Measured by JLH

Depth \_\_\_\_\_ Depth to Ground Water [Signature] Final Rule 2.76"/hr

Project Engineer [Signature]

	Time	Depth to Water	Minutes	Rate Min/in
1	9:48 A	-2.17		
2	10:13	-3.79		
3	10:42	-4.93		
4	11:12 A	-5.42		
5	11:42 A	-6.08		
6	12:10 P	-6.55		
7	12:40 P	-6.44		
8	1:10 P	-6.55		
9	1:40 P	-6.57		
10				

} 2.76"



W.O. # 3782.01

Percolation Test Data - Bestor Engineers, Inc.

Project VISTA NAPUNA Lot # 20 Map Date \_\_\_\_\_

Test Hole # 20A Date 11/12/02 Driller \_\_\_\_\_

Pre Soak Date \_\_\_\_\_ Perc Date \_\_\_\_\_ Duration \_\_\_\_\_

Health Department Witness \_\_\_\_\_ Measured by JLH

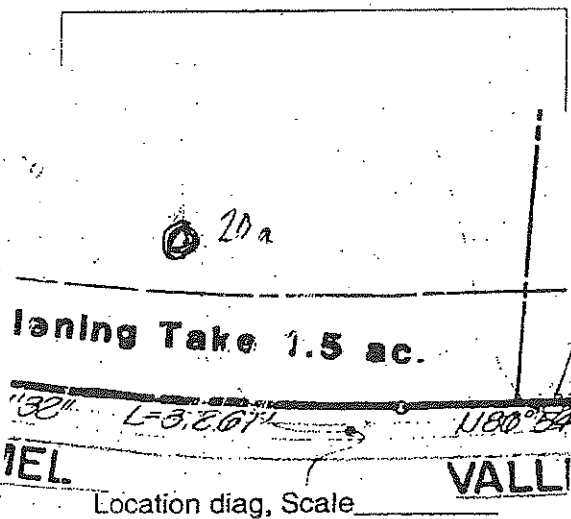
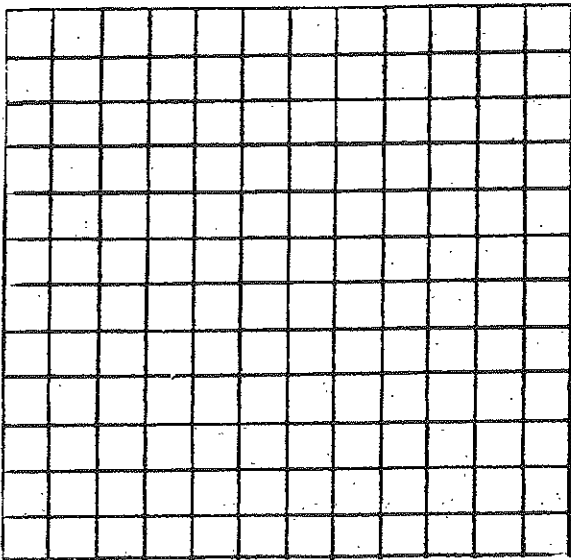
Depth \_\_\_\_\_ Depth to Ground Water \_\_\_\_\_ Final Rule 2.52" / hr

Project Engineer [Signature]

20' DLY @ 9:30A - 1:30P

	Time	Depth to Water	Minutes	Rate <del>Min</del> / hr
1	9:30A	-3 00		
2	10:00A	-4 15	21.06	7.12
3	10:30A	-5 30	1.00	7.50
4	11 A	-6 45	6.00	7.50
5	11:30A	-6 75	2.00	7.50
6	12:00P	-7 05	1.00	7.50
7	12:30P	-7 25	2.00	7.50
8	1 P	-7 35	1.00	7.50
9	1:30P	-7 45	1.00	7.50
10				

} 2.52"



TEL Location diag, Scale VALLI

W.O. # 3782.01

Percolation Test Data - Bestor Engineers, Inc.

Project VISTA NADURA Lot # 20 Map Date \_\_\_\_\_

Test Hole # 20B Date 11/12/02 Driller \_\_\_\_\_

Pre Soak Date \_\_\_\_\_ Perc Date \_\_\_\_\_ Duration \_\_\_\_\_

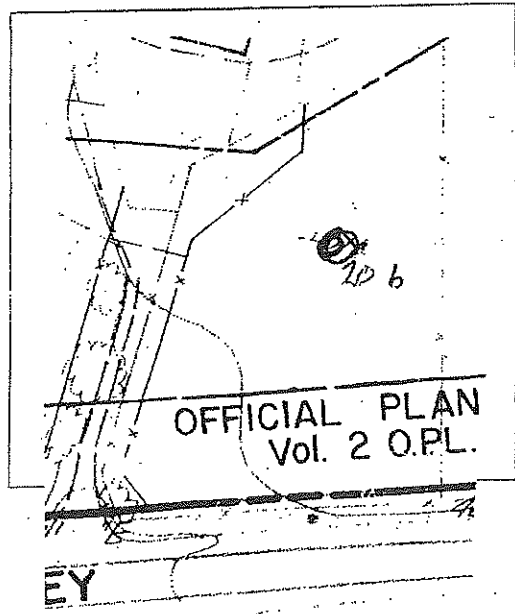
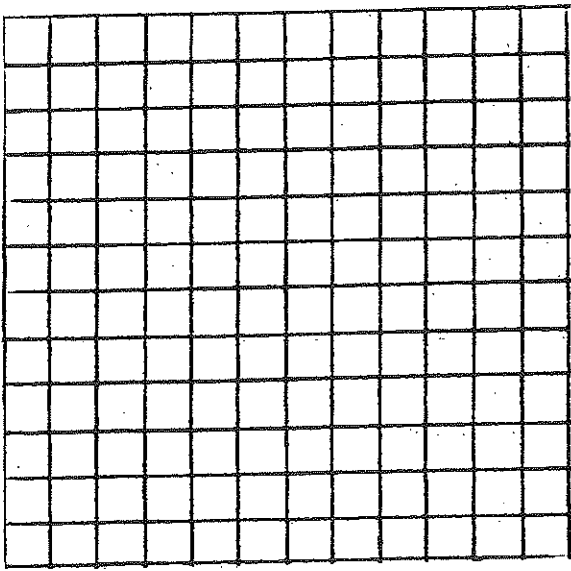
Health Department Witness \_\_\_\_\_ Measured by JLH  
2.76" / hr

Depth \_\_\_\_\_ Depth to Ground Water \_\_\_\_\_ Final Rule 2.76" / hr

Project Engineer [Signature]

	Time	Depth to Water	Minutes	Rate Min/in
1	9:36A	-4 07		
2	10:06A	-5 30		
3	10:35A	-5 92		
4	11:05A	-6 35		
5	11:35A	-6 43		
6	12:05P	-6 39		
7	12:35P	-7 07		
8	1:05P	-7 20		
9	1:35P	-7 30		
10				

} 2.76



W.O. # 3782.01

Percolation Test Data - Bestor Engineers, Inc.

Project VISTA NADURA Lot # 20 Map Date \_\_\_\_\_

Test Hole # 20C Date 11/12/02 Driller \_\_\_\_\_

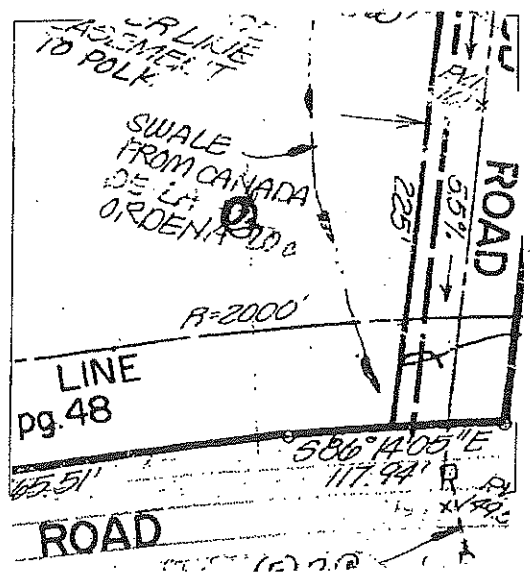
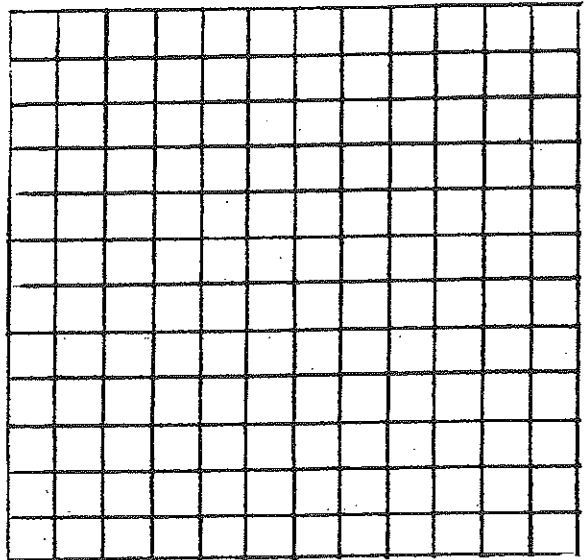
Pre Soak Date \_\_\_\_\_ Perc Date \_\_\_\_\_ Duration \_\_\_\_\_

Health Department Witness \_\_\_\_\_ Measured by JLH  
Depth \_\_\_\_\_ Depth to Ground Water \_\_\_\_\_ Final Rule 2.08 <sup>11</sup>/<sub>hr</sub>  
2.16 <sup>11</sup>/<sub>hr</sub>

Project Engineer [Signature]

20' DAY @ 9.40A

	Time	Depth to Water	Minutes	Rate Min/in
1	9:40A	- 5 05		
2	10:08A	- 6 33		
3	10:38A	- 6 57		
4	11:08A	- 7 20		
5	11:38A	- 7 43		
6	12:08P	- 7 54		
7	12:38P	- 7 57		
8	1:07P	- 7 56	58	2.08 <sup>11</sup> / <sub>hr</sub> I
9	1:37P	- 7 55		
10				



APR-10-02 MON 14:38

P. 01/01

LOT # 1 VISTA NAS.

LOGGED BY CL DATE DRILLED 11/05/02 BORING DIAMETER 6" BORING NO. 182

Depth, ft.	Sample No. and type	Symbol	SOIL DESCRIPTION	Unified Soil Classification	Blows/foot 350 g. lbs.	Qu. t. s. f. Penetrometer	Dry Density p.c.f.	Moisture % dry wt.	MISC. LAB RESULTS
1			DARK BROWN SILTY SAND w/ CLASTS OF SILTSTONE, dry.						
2			Loose						
3			- Med. dense						
4									
5									
6									
7			grades to coarse sand w/ rounded gravels, damp.						
8									
9									
10			- increase in silt. silty sand, w/ some clay.						
11			- increase in moisture. moist.						
12									
13									
14									
15									
16			MOIST SILTY SAND.						
17			Med. dense.						
18									
19									
20									
21			B.T. @ 20'						
22									
23									

FIGURE NO.

Lot #2

VISTA NAD

LOGGED BY CL DATE DRILLED 11-05-02 BORING DIAMETER 6" BORING NO. 4

Depth, ft.	Sample No. and type	Symbol	SOIL DESCRIPTION	Unit of Soil Classification	Blows/foot 30 N-lbs.	Qu - 1.5 ft. Penetrometer	Dry Density p.c.f.	Moisture % dry wt.	MISC. LAB RESULTS
1			DARK BROWN SILTY SAND. w/ rounded shale, s. tan. gravel's LOOSE dry.						
2									
3			- grade to Brown sandy silt.						
4			coarser grain. damp. med. dense						
5									
6									
7									
8			- slightly clayey. Brown silty sand w/ clay. MOST med.						
9			med.						
10			- grades loss clay						
11			B.T. @ 10'						
12									
13									
14									
15									
16									
17									
18									
19									
20									
21									
22									
23									

FIGURE NO.

Lot # 3 VISTA NAD

LOGGED BY SA DATE DRILLED 11-05-03 BORING DIAMETER 6" BORING NO. 3

Depth, ft.	Sample No. and type	Symbol	SOIL DESCRIPTION	Unified Soil Classification	Blows/foot 150 g. lbs.	Qu - s. f.	Penetrometer	Dry Density p.c.f.	Moisture % dry wt.	MISC. LAB RESULTS
1			DARK BRN. SILTY SAND w/ Angular shale clasts, loose dry.							
2										
3										
4			turns brown less silt increase in sand. some small rounded gravels.							
5										
6										
7			grades less sand. FINE silty sand. Damp. Med. brown.							
8										
9										
10										
11			B.T. @ 10.							
12										
13										
14										
15										
16										
17										
18										
19										
20										
21										
22										
23										

FIGURE NO.

LOT # 4

VISTA NAD.

LOGGED BY CL DATE DRILLED 11/05/02 BORING DIAMETER 6" BORING NO. B-5 #6

Depth, ft.	Sample No. and type	Symbol	SOIL DESCRIPTION	Unit of Soil Class. (calcs)	Blows/foot 150 lb. lbs.	Qu. & s. c.	Permeability	Dry Density p.s.f.	Moisture % dry wt.	MISC. LAB RESULTS
1			dark brown sandy silt w/ clay. clasts of siltstone. some s.s. loose. dry.							
2			grades to brown silty sand.							
3			w/ sub. rounded siltstone & s.s. dump loose							
4										
5										
6										
7										
8										
9			some clay. silty sand w/ clay							
10			mod. to med dense							
11										
12										
13										
14										
15										
16			increase in density denser.							
17										
18										
19										
20			refusal on cobbles?							
20			B.T. @ 20'							
21										
22										
23										

FIGURE NO.



LOT # 5; VISTA NAO

LOGGED BY CL DATE DRILLED 11/05/02 BORING DIAMETER 6" BORING NO. B-7, B-8

Depth, ft.	Sample No. and type	Symbol	SOIL DESCRIPTION	Soil Classification	Moisture %	Penetration	Dry Density	Misc. Lab Results
1			DARK BROWN SILTY SAND w/ clay clasts of shale. Dry loose.					
2								
3								
4								
5			grades to Brown silty sand w/ clay. generally DAMP					
6			Med. dense.					
7								
8								
9			-TRANS HORST.					
10								
11								
12								
13								
14			-TRANS Med. dense to dense.					
15								
16								
17								
18								
19								
20								
21			B.T. @ 20."					
22								
23								

FIGURE NO.

Lot # 6 Visto Nord

LOGGED BY CL DATE DRILLED 11.05.02 BORING DIAMETER 6" BORING NO. 8-7

Depth, ft.	Sample No. and type	Symbol	SOIL DESCRIPTION	Unified Soil Classification	Blows/ft. 350 W. lbs.	Qu. U.S.C. Penetration	Dry Density P.C.F.	Moisture % dry wt.	MISC. LAB RESULTS
1			Drk. Brown silty sand w/ clasts of ang. shell. Loose dry						
2									
3									
4									
5			- turns med dense comp.						
6									
7									
8			- grades to Brown silty sand, coarse-med. grained w/ sub-angular gravels med dense damp-moist						
9									
10									
11			B.T. @ 10'						
12									
13									
14									
15									
16									
17									
18									
19									
20									
21									
22									
23									

FIGURE NO.

Lot # 7

VISTA NAD.

LOGGED BY C DATE DRILLED 11-05-02 BORING DIAMETER 6" BORING NO. B-10

Depth, ft.	Sample No. and type	Symbol	SOIL DESCRIPTION	Unconfined Soil Compression	Blows/foot 350 g. lbs.	Qu - C. S. S. Penetrometer	Dry Density g.c.c.	Moisture % dry wt.	MISC. LAB RESULTS
1			Dark Brown silty sand w/ angular gravels (5%); Loose Dry						
2									
3									
4									
5			- Turns damp. Light Brown silty sand. less gravels. Med. dense.						
6									
7									
8			- grades less gravel.						
9									
10									
11			B.T. @ 10'						
12									
13									
14									
15									
16									
17									
18									
19									
20									
21									
22									
23									

FIGURE NO.

Lot # 8

VISTA - NAD.

LOGGED BY CL DATE DRILLED 11-05-02 BORING DIAMETER 6" BORING NO. B-11, B-12

Depth, ft.	Sample No. and type	Symbol	SOIL DESCRIPTION	Unified Soil Classification	Blows/foot 350 lb. hammer	Penetration g.c.f.	Dry Density p.c.f.	Moisture % dry wt.	MISC. LAB RESULTS
1			DARK BROWN SILTY SAND w/ ang. gravels. (ch.) loose. dry.						
2									
3									
4			- grades less gravels. increase in sand. Turn comp.						
5									
6									
7									
8									
9			- slight clay binder increase in gravels. moist.						
10									
11									
12									
13									
14									
15			DARK BROWN clayey sand w/ silt. some gravels. sub. angular. V. MOIST med. dense.						
16									
17									
18									
19									
20									
21			B.T. @ 20'						
22									
23									

FIGURE NO.

Lot # 9 VISTA NAD.

LOGGED BY CL DATE DRILLED 11-05-02 BORING DIAMETER 6" BORING NO. B-13

Depth, ft.	Sample No. and type	Symbol	SOIL DESCRIPTION	Unified Soil Classification	Blow/100ft 150 lb. lbs.	Qu - U.S.C. Penetrometer	Dry Density p.c.f.	Moisture % dry wt.	MISC. LAB RESULTS
1			DARK Brown SILTY SAND w/ Angular gravels (sh) LOOSE. DRY.						
2									
3			- Less gravels turns light Brown.						
4									
5			grades clayey. turns moist.						
6									
7									
8									
9									
10			DARK Brown clayey sand w/ SILT & angular gravels. Moist. Med dense						
11									
12			B.T. @ 10.'						
13									
14									
15									
16									
17									
18									
19									
20									
21									
22									
23									

FIGURE NO.

LOT # 10. USTA MAD.

LOGGED BY CL DATE DRILLED 11.05.02 BORING DIAMETER 6" BORING NO. B-14

Depth, ft.	Sample No. and type	Symbol	SOIL DESCRIPTION	Unified Soil Classification	Blows/foot 150 g. lbs.	Qu - A. S. C. Penetrometer	Dry Density p.c.f.	Moisture % dry wt.	MISC. LAB RESULTS
1			light grey Brown sandy silt w/ ons gravels (s&l) loose dry.						
2									
3									
4									
5			- EXPOS MOIST. DUCKER brown						
6									
7									
8									
9			slightly clayey silty sand w/ gravels (s&l). Moist. Med. DUKER.						
10									
11			B.T @ 10'						
12									
13									
14									
15									
16									
17									
18									
19									
20									
21									
22									
23									

FIGURE NO.

Lot # 11 Vista NAD

LOGGED BY CL DATE DRILLED 11-05-02 BORING DIAMETER 6" BORING NO. B-15 #16

Depth, ft.	Sample No. and type	Symbol	SOIL DESCRIPTION	Unified Soil Classification	Blows/foot 150 ft. lbs.	Q <sub>u</sub> - 1.5, l. Penetrometer	Dry Density p.c.t.	Moisture % dry wt.	MISC. LAB RESULTS
1			Light gray Brown sandy silt w/ angular gravels. LOOSE. DRY.						
2									
3									
4									
5			FINES CONTERS. silty sand w/ gravels. MOIST.						
6									
7									
8			slightly clayey.						
9									
10			increase in clay. silty sand w/ clay - sub. angular gravels. MOIST. Med. dense.						
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									
21			B.T. @ 20'						
22									
23									

FIGURE NO.

Lot# 12 VISTA NAD.

LOGGED BY CL DATE DRILLED 11-05-02 BORING DIAMETER 6" BORING NO. B-17

Depth, ft.	Sample No. and type	Symbol	SOIL DESCRIPTION	Unified Soil Classification	Blows/foot 150 W-lbs.	Co - 1.5, 1. Penetrometer	Dry Density p.c.f.	Moisture % dry wt.	MISC. LAB RESULTS
1			Light grey brown sandy silt w/ avg. gravels. (SHL). Loose. Dry.						
2									
3									
4			- grades Brown silty sand.						
5			w/ gravels Dens. Med. Dense.						
6									
7			- Turns moist.						
8									
9									
10			B.T. @ 10'						
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									
21									
22									
23									

FIGURE NO.



Lot # 13 VISTA NAD.

LOGGED BY CL DATE DRILLED 11-05-02 BORING DIAMETER 6" BORING NO. B-1B

Depth, ft.	Sample No. and type	Symbol	SOIL DESCRIPTION	Unified Soil Classification	Blows/foot 350 lb. lbs.	Qu - t. s. f. Penetrometer	Dry Density p.c.f.	Moisture % dry wt.	MISC. LAB RESULTS
1			DRK BROWN Black - sandy silt w/ sand clay. med. sbl gravels. Damp. LOOSE.						
2									
3									
4			grades to Brown silty sand						
5			w/ gravels. Moist. Med. Dense.						
6									
7									
8			- increase in clay.						
9			clayey sand w/ silt. med. sbl gravels MOIST. Med. Dense.						
10									
11			B.T. @ 10.0'						
12									
13									
14									
15									
16									
17									
18									
19									
20									
21									
22									
23									

FIGURE NO.

Lot # 14 VISTA N.A.S.

LOGGED BY CC DATE DRILLED 11.05.02 BORING DIAMETER 6" BORING NO. B-19

Depth, ft.	Sample No. and type	Symbol	SOIL DESCRIPTION	Unified Soil Classification	Blows/foot 350 lb. S.F.	Q <sub>u</sub> - U.S.C. Penetrometer	Dry Density p.c.f.	Moisture % dry wt.	MISC. LAB RESULTS
1			DRK Brn-Black sandy silt w/ gravels (shl.). Loose. DRY.						
2									
3			grades to dk brown						
4			clayey sand w/ silt. Damp.						
5			med. dense - loose. w/ gravels.						
6									
7									
8			- Turns moist						
9									
10									
11			B.T.C.M.						
12									
13									
14									
15									
16									
17									
18									
19									
20									
21									
22									
23									

FIGURE NO.

Lot # 15

Vista NAD.

LOGGED BY CL DATE DRILLED 11-06-02 BORING DIAMETER 6" BORING NO. 20431

Depth, ft.	Sample No. and type	Symbol	SOIL DESCRIPTION	Unified Soil Classification	Blow Count (60 lb. hammer)	Qu - 1.5 ft. Penetration	Dry Density	P.C.F.	Moisture % Dry wt.	MISC. LAB RESULTS
1			grey brown silty sand w/ silt & ss. gravels. dry loose.							
2										
3										
4			grades to brown coarse silty sand, w/ gravels.							
5			dump to dry med. coarse.							
6										
7										
8										
9										
10			- increase in clay.							
11										
12										
13			- turns to brown clayey sand w/ silt & sub. med - fine gravels (silt, s.s.) moist. med. dense.							
14										
15										
16										
17										
18										
19										
20			B.T. @ 20.00							
21										
22										
23										

FIGURE NO.

Lot # 16

VISTA NAD.

LOGGED BY CL DATE DRILLED 11.06.02 BORING DIAMETER 6" BORING NO. B-22

Depth, ft.	Sample No. and type	Symbol	SOIL DESCRIPTION	Unit of Soil Class	Blow Count 350 lb. hammer	Qu. - U. S. C. Penetration	Dry Density P.C.T.	Moisture % dry wt.	MISC. LAB RESULTS
1			Light Brown SILTY sand w/ med. gravels - (silt s.s). LOOSE Dry.						
2									
3			- increase in gravels.						
4									
5			- coarser sand less gravels.						
6									
7			- Med. Dense. Damp.						
8			trans to clayey sand w/ silt & gravel. Moist. Med. Dense.						
9									
10									
11			B.T. @ 10'						
12									
13									
14									
15									
16									
17									
18									
19									
20									
21									
22									
23									

FIGURE NO.

Lot # 17 Vista NAD.

LOGGED BY CL DATE DRILLED 11.06.02 BORING DIAMETER 6" BORING NO. B-23

Depth, ft.	Sample No. and type	Symbol	SOIL DESCRIPTION	Unified Soil Class. Location	Blows/foot 150 lb. S.I.	Penetrometer	Dry Density p.c.f.	Moisture % dry wt.	MISC. LAB RESULTS
1			Light Brown-grey silty sand, w/ sub-ang. gravels LOOSE org.						
2									
3			grains finer graind - Brown						
4			silty sand. w/ gravels. comp.						
5			Med. dense.						
6									
7									
8									
9									
10									
11			B.T. @ 10.0'						
12									
13									
14									
15									
16									
17									
18									
19									
20									
21									
22									
23									

FIGURE NO.

LOT # 18 VISTA NAD.

LOGGED BY CL DATE DRILLED 11/06/02 BORING DIAMETER 6" BORING NO. B-24 25

Depth, ft.	Sample No. and type	Symbol	SOIL DESCRIPTION	Unified Soil Classification	Blg. $\gamma$ /ft <sup>3</sup> 150 g./lb.	Qu - 1 s.g. Penetrometer	Dry Density p.c.f.	Moisture % dry wt.	MISC. LAB RESULTS
			B-24.						
1			Light brown silty sand w/ sub-ang - ang gravels (shl) Loose, dry.						
2									
3									
4									
5			Turns brown, increase in gravels. damp.						
6									
7									
8									
9									
10			increase in moisture. turns moist.						
11									
12									
13									
14									
15									
16			increase in gravels Brown gravelly sand w/ clay & silt. (shale, quartzite) rounded. moist. dense - Med. dense.						
17									
18									
19									
20									
21			B.F. @ 20'						
22									
23									

FIGURE NO.

IPR-10-00 MON 14:38

LOT # 19 VISTA NAD.

LOGGED BY CL DATE DRILLED 11-06-02 BORING DIAMETER 6" BORING NO. B-26

Depth, ft.	Sample No. and type	Symbol	SOIL DESCRIPTION	Dist. to Soil Class. (feet)	Moist. 250 W-lbs.	Q <sub>u</sub> - t.s. f. Penetration	Dry Density p.c.t.	Moisture % dry wt.	MISC. LAB RESULTS
1			grey brown silty sand w/ ang. shl gravels. Loose. Dry.						
2									
3									
4			- grades dark brown-silty sand w/ clay. increase in gravels						
5			Moist-Damp. med. dense.						
6									
7									
8			- minor increase in clay						
9									
10									
11			B.T. @ 10.0'						
12									
13									
14									
15									
16									
17									
18									
19									
20									
21									
22									
23									

FIGURE NO.

San Diego COUNTY - CALIFORNIA

Lot # 20 A

VISTA NAD

LOGGED BY CC DATE DRILLED 11-06-03 BORING DIAMETER 6" BORING NO. B22-B-25

Depth, ft.	Sample No. and type	Symbol	SOIL DESCRIPTION	Un. of Soil Class. IUCAR	Bl. w/foot 150 w. lbs.	Qu. T. S. L. Penetrometer	Dry Density p.s.f.	Moisture % dry wt.	MISC. LAB RESULTS
			B-27						
1			BLACK BROWN silty sand. fine grained. w/ sub-angular gravels loose. damp (silt. art.)						
2									
3									
4									
5									
6			- turns to gold brown silty med. grained sand. w/ gravels damp. med. dense.						
7									
8									
9									
10									
11									
12									
13									
14									
15			- grades to clayey sand w/ gravels some silt. Hoist, med. dense.						
16									
17									
18									
19									
20									
21									
22									
23									
24									

FIGURE NO.

25  
26  
27  
28  
29  
30



Lot # 20 B

VISTA NAD.

LOGGED BY CC DATE DRILLED 11.06.02 BORING DIAMETER 6" BORING NO. B-29

Depth, ft.	Sample No. and type	Symbol	SOIL DESCRIPTION	Unit of Soil Classification	Blows/foot	350 lb. S.F.	Penetration	Dry Density g.c.c.	Moisture % dry wt.	MISC. LAB RESULTS
1			Black Brown - silty sand w/ sub. ang gravels (shl) damp. loose.							
2										
3			- turns lighter color brown.							
4										
5										
6			- grades to gravelly sand w/ silt and clay. sub. ang. gravels (shl, artzite) med. dense. damp. - moist.							
7										
8										
9										
10			B.T. @ 10'							
11										
12										
13										
14										
15										
16										
17										
18										
19										
20										
21										
22										
23										

FIGURE NO.

LOT # 20 C

VISTA - NAD.

LOGGED BY CS DATE DRILLED 11.06.02 BORING DIAMETER 6" BORING NO. B-30, B-31.

Depth, ft.	Sample No. and type	Symbol	SOIL DESCRIPTION	Unified Soil Class. Notation	Blows/100 350 g. lbs.	QU - 1.5. L.	Penetrometer	Dry Density p.c.f.	Moisture % dry wt.	MISC. LAB RESULTS
1			grey-brown silty sand w/ ang. gravels (shl.). Dry. Loose.							
2										
3										
4										
5			- grades to brown silty sand w/ ang. sub-ang gravels.							
6			(shl, Qtz) damp. Med. dense.							
8										
9										
10										
11										
12										
13										
14			Less gravels.							
15										
16										
17										
18										
19										
20			- increase in gravels. turns slightly clayey. turns moist.							
21										
22										
23										

FIGURE NO.

turns dark color.  
 black brown clay sand w/ sub-rounded gravels (shl, Qtz etc). Med. dense. Damp. Moist.



**BESTOR ENGINEERS, INC.**

CIVIL ENGINEERING - SURVEYING - LAND PLANNING  
9701 BLUE LARKSPUR LANE, MONTEREY, CALIFORNIA 93940  
(831) 373-2941 • SALINAS 424-7681 • FAX 649-4118

5 June 2003

MONTEREY COUNTY HEALTH DEPARTMENT  
1270 Natividad Road  
Salinas, CA 93906

Attn: Mary Ann Dennis

**Re: Carmel Valley Area 32  
Moratorium - Nitrate**

Dear Mary Ann:

We just received the enclosed report from Tom Lindberg at MPWMD for Schulte Road Observation Well.

Please note that Nitrates are shown to be less than 1.0 mg/l, versus allowable of 10 as NO<sub>3</sub>.

We believe that this is adequate proof that Montgomery fears in 1982 were overly cautious. We believe it is now time to reconsider the Sub-Area 32 prohibition against subdivision and ask that the Vista Nadura Vesting Tentative Map be deemed acceptable.

Sincerely,  
BESTOR ENGINEERS, INC.

Carl L. Hooper

cc: Nader Agha  
Robert Rosenthal  
Roger Berretti (Health Dept.)



MONTEREY PENINSULA  
WATER MANAGEMENT DISTRICT

5 HARRIS COURT BLDG. G • P.O. BOX 85  
MONTEREY, CA 93942-0085 • (831) 658-5600  
FAX (831) 644-9560 • <http://www.mpwmd.dst.ca.us>

RECEIVED

JUN - 4 2003

BESTAR ENGINEERS, INC.  
9701 BLUE LARKSPUR MONTEREY CA

TRANSMITTAL

TO: Carl Hooper  
9701 Blue Larkspur Lane  
Monterey, CA 93940

DATE: 5/28/2003

RE: Water Quality Record for Well on Schulte Road

WE ARE SENDING YOU:

- |   |  |
|---|--|
| <input type="checkbox"/> DOCUMENTS                          | <input type="checkbox"/> AGREEMENT OR CONTRACT |
| <input checked="" type="checkbox"/> DOCUMENTS YOU REQUESTED | <input type="checkbox"/> OTHER                 |
| <input type="checkbox"/> COPY OF LETTER                     |  |

THE ABOVE ITEMS ARE SUBMITTED:

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> At your request     | <input type="checkbox"/> Please review and comment |
| <input type="checkbox"/> For your information and files | <input type="checkbox"/> For your action           |
| <input type="checkbox"/> For your approval              | <input type="checkbox"/> Please sign and return    |
|   | <input type="checkbox"/> Please telephone me       |

REMARKS: The attached page includes water quality results for the well near the corner of Carmel Valley Road and Schulte Road for the period from October 10, 1991 through November 17, 2002. We're working out a couple of glitches in our Report program; specifically, results for orthophosphate that were below the detectable

COPIES TO: file level of 0.03 mg/l were displayed as -0.03, and the dates for 2001 and 2002 were displayed as 1901 and 1902. In order to expeditiously process your request, I have taken the liberty of correcting these items by hand on your copy.

BY: Thomas Lindberg  
Thomas Lindberg

Please feel free to contact us if you have questions regarding these data.

CHEMICAL ANALYSIS OF GROUND WATER  
(Values in milligrams per liter except where noted)

Well Name: SCHULTE

Assessor's Parcel Number:

Well Number: T16S/R1E-23E4      Reference Elevation (feet AMSL): 109.66

DATE	SPECIFIC CONDUCTANCE (µmhos/cm)	PH (Units)	AMMONIA		NITRATE as NO3	SULFATE	TOTAL ALKALINITY as CaCO3	IRON MANGANESE	DEPTH TO WATER (feet)	CALCIUM	MAGNESIUM	SODIUM	POTASSIUM	ORGANIC CARBON	ORTHO PHOSPHATE
			CHLORIDE	NITROGEN as NH3											
10/10/1991	1154	7.1	113	<0.10	< 0.5				33.9						
01/08/1992	900	7.1	75	--	3.0		218		35.1	4.19	1.56	3.21	.07	2.09	
04/08/1992	1030	6.9	78	3.75	3.8	313	242	1.30	28.5						
10/14/1992	1050	6.9	96	<0.10	2.0	159	262	4.40	33.8	4.94	1.61	4.13	.05	2.00	
04/07/1993	1091	6.9	180	<0.10	1.2	201	266	6.90	26.5	4.34	2.05	4.00	.07	2.00	
10/06/1993	1127	7.3	102	<0.10	1.9	211	268	5.50	31.7	5.38	2.05	3.95	.06	1.80	
04/19/1994	1060	7.9	90	<0.05	< 1.0	152	278	1.60	28.2	4.64	1.89	4.13	.05	2.00	
10/12/1994	1100	7.0	92	<0.05	8.0	221	280	3.00	34.0	4.89	2.05	4.04	.06	2.20	
04/19/1995	1114	7.3	92	<0.05	2.0	178	270	3.30	--	4.99	1.97	3.82	.05	2.00	
11/03/1995	1135	8.0	98	0.05	< 0.1	185	239	0.10	--	5.08	2.13	4.00	.05	2.40	.05
04/24/1996	1097	8.0	90	<0.05	2.0	168	263	1.80	--	4.79	2.13	3.74	.06	5.14	<.03
11/07/1996	1123	7.9	103	0.05	< 1.0	186	273	0.51	--	5.43	2.22	4.35	.06	5.40	.04
11/19/1997	1114	6.6	103	0.05	< 1.0	187	266	1.22	--	4.99	2.46	4.00	.05	1.84	.09
10/26/1998	1141	7.6	93	0.13	< 1.0	186	272	1.37	--	5.53	2.22	4.08	.06	2.10	.20
10/28/1999	1108	7.3	94	0.09	< 1.0	178	254	2.34	--	5.23	2.13	3.95	.06	2.20	<.03
10/24/2000	1015	7.2	88	0.08	< 1.0	159	233	8.32	--	4.89	1.97	3.65	.09	2.70	.15
10/24/2001	1060	7.2	94	0.10	< 1.0	174	248	2.89	--	5.28	1.81	3.82	.04	2.10	--
11/17/2002	1071	7.1	76	0.20	< 1.0	133	258	3.40	--	4.64	1.81	3.69	.06	2.80	.69

# Exhibit H



3782.01

COUNTY OF MONTEREY  
HEALTH DEPARTMENT

ENVIRONMENTAL HEALTH DIVISION

MEMORANDUM

Rec'd 18 Mar 04 FEBRUARY 4, 2004

To: Mary Anne Dennis, Program Manager  
Resource Protection Branch

From: John Hodges, R.E.H.S.,  
Land Use Section

Subject: PLN990274 Vista Nadura (Agha) Project

The DEH issues are Wastewater & Water

Wastewater

1. Proposed subdivision of existing 50 acre parcel into 20 lots
2. Carmel Valley Wastewater Study (Montgomery Study) restrictions:
  - Project cuts through multiple sub-basins 28, 31, and 32.
  - No more subdivision in Sb 32 per BOS resolution of 2-15-83
3. Carmel Valley Master Plan 21.3.6 adopts the CVWS
4. Bestor Engineers has proposed that this project be exempt from the sub-basin 32 constraints since nearby monitoring wells have not shown an increase in NO3.

Water

1. Propose existing Cal-Am usage of 2.43 AF/Y be divided among SFDs for potable use.
2. MPWMD would deduct 15% for conservation
3. Proposes existing Ag well (~40gpm) with higher secondary Fe, SO4 be used for irrigation and sub-potable domestic uses. (Our view is that dual piping is not acceptable)

Current Cal-Am would be suitable for about 10 condominiums @ 0.23 AF/Y

If well water can be treated and water rights established, then 5.44 AF/Y available

(6.4 AF/Y total water usage for the 20 parcels, all sources combined)

Currently, BOS resolution 02-024 limits new development due to traffic issues.

Carmel Valley Land Use Advisory Committee minutes of 9-23-2002:

In answer to a question as to why a subdivision request is even accepted for consideration given the current moratorium, Hertlein reports that a BOS policy does not disallow people from submitting such requests, but may, of course, impact the final decision by the County on such requests.

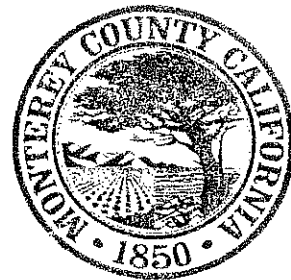
Best scenario: Hi density low income housing that is connected to sanitary sewer

David Kelly 259 6706

# Exhibit I



# MONTEREY COUNTY



## PLANNING AND BUILDING INSPECTION DEPARTMENT

240 CHURCH STREET, SALINAS, CA 93901 PLANNING: (831) 755-5025 BUILDING: (831) 755-5027 FAX: (831) 755-5487

MAILING ADDRESS: P. O. BOX 1208, SALINAS, CA 93902

COASTAL OFFICE, 2620 1<sup>st</sup> Avenue, MARINA, CALIFORNIA 93933 PLANNING: (831) 883-7500 BUILDING: (831) 883-7501 FAX: (831) 384-3261

SCOTT HENNESSY, DIRECTOR

August 21, 2002

Robert E. Rosenthal  
Bohnen, Rosenthal and Dusenbury  
P.O. Box 1111  
Monterey, CA 93942-1111

RE: Nader Agha; PLN990274

Dear Mr. Rosenthal:

This will confirm that the Agha project has been reassigned to Patrick Kelley. Mr. Kelley is reviewing the existing file materials and is preparing an updated application package so that Mr. Agha will have a full and accurate list of application requirements. As has been pointed out in Ms. Whitney's previous correspondence to Mr. Agha, there is currently a Board of Supervisors policy that precludes subdivisions in Carmel Valley. The effect of that policy, the practical issues of any subdivision (water, traffic, design, sewage disposal, environmental resources, etc.) and the potential impact of the general plan update will be significant in the evaluation of Mr. Agha's proposal.

Should you have any questions please feel free to contact me at 883-7515 or by email at [ellisd@co.monterey.ca.us](mailto:ellisd@co.monterey.ca.us). Mr. Kelly can be reached at 883-7560.

Sincerely,

Dale Ellis, AICP

Assistant Director

Planning and Building Inspection

CC: Mike Novo  
Patrick Kelley  
File PLN 990274

BOHNEN, ROSENTHAL & DUSENBURY  
AN ASSOCIATION OF LAW PARTNERSHIPS

THOMAS P. BOHNEN  
ROBERT E. ROSENTHAL  
DOUGLAS K. DUSENBURY  
ROGER D. BOLGARD  
JANE E. BEDNAR

555 ABREGO STREET  
SECOND FLOOR  
POST OFFICE BOX 1111  
MONTEREY, CALIFORNIA 93942  
TELEPHONE (831) 649-5551  
FACSIMILE (831) 649-0272  
BAYLAW@REDSHIFT.COM

Via facsimile (831) 755-5487 and by mail

August 23, 2002

Dale Ellis  
Monterey County Planning Commission  
P.O. Box 1208  
Salinas, CA 93902

Re: 8767 Carmel Valley Road, CA

Dear Dale:

My client, Nader Agha and his engineer, Carl Hooper, earlier today sought to have the formal application for the Vista Nadura subdivision accepted for processing and evaluation. They were informed by the Planner, "Patrick", that he could not accept their application as there were additional requirements that must first be met before the application could be accepted. You will recall that in Ms. Whitney's letter of July 3, 2001 (enclosed), my clients were given specific instructions as to what was required by the County as a condition precedent to the application being processed. All of those conditions have been met and now, additional conditions are apparently being imposed. While my client will proceed with meeting these new conditions as soon as possible, it was our understanding based on the correspondence of Ms. Whitney, that the application would be accepted upon meeting those conditions set forth in that letter.

My fear is that this will further prejudice my client's ability to have the application timely processed and thus he will be unable to vest his rights under the present zoning. I would ask that the County Planning Department reconsider and accept the application and fees as tendered earlier today.

Please call me at your earliest convenience so that we might discuss this further.

Very Truly Yours,

BOHNEN, ROSENTHAL & DUSENBURY

  
ROBERT E. ROSENTHAL

RER;jk

cc: Nader Agah

Mahir Agha  
P.O. Box 413  
Pebble Beach, CA 93953

August 25, 2002

Monterey County Board of Supervisors  
P.O. Box 1208  
Salinas, CA 93902

**RE: General Plan Update / 8949 Carmel Valley Road, Carmel, CA 93923**

Dear Monterey County Board of Supervisors:

We read with regret the Staff report recommending denial of our request to produce 100% affordable housing (inclusionary housing) on 40% of our property that is already zoned 1 dwelling per 2.5 acres. In addition, the Staff is recommending rezoning our property to allow only 1 dwelling per 40 acres (effectively only 1 dwelling on our 50 acres). We did not expect this and we find it highly inappropriate. This recommendation is tainted with disregard for years of our hard work and the satisfactory completion of many requirements requested by the Monterey County Planning Department. In addition, the process and methodology applied by the Staff in this recommendation is significantly flawed.

We have been in the process of developing this property for many years and have diligently and with much effort completed the many requests made by the County. Having done so, we were very near the beginning stages of development when this recommendation was presented. The thought of changing our zoning to the Staff's recommendation at this time because of newly conceived standards is simply unethical and unreasonable.

It is unclear (Staff's descriptions and on-line maps are not clear enough to interpret), but it appears that one of the "reasons" that Staff recommended to change our zoning was because our developed area (including our property) is not included in the newly formed Mid-Carmel Valley Rural Center (I believe created by an inappropriate textbook-like 1 mile radius). There is no apparent reason to change our current zoning. The staff of 1982 spent hundreds of hours and 3 years drafting (relying upon consultant, specialists and EIR) the 2.5 acres per lot line designation, contained with boundaries paralleling Carmel Valley Road/Highway G16 600 yards to the north and a short distance away from the highway to the south. Much effort and tax dollars were spent to conceive and implement the 1982 2.5 acres designation, (which we objected to at that time). This approach to density is an effective, well thought out planning mechanism and should be maintained. This density boundary method is much more appropriate for a narrow valley such as ours with density paralleling the road (a radius zoning designation does not work for this area, but possibly appropriate for an area such as California's Central Valley which is flat). If the current common sense approach is not to be continued, it is abundantly clear that our property and the developed area around our property either should have been included in the Mid-Carmel Valley Rural Center or established as its own Rural Center. Staff was either not aware or forgot that our property was already reduced in 1982 from 1 acre per dwelling unit (50 units on our property) to 2.5 acres per dwelling unit for a new total of only 20 units on our property which was a 60% reduction.

I reviewed the information on your website regarding the zoning changes, as well as the rationale provided by the Staff for their recommendations. In doing so, I noted several significant errors and oversights; if these had not been committed, our zoning would have been preserved. The following issues are among those noted in my review:

- In regard to the establishment of Tier I, Tier II, and Tier III, the following phrase is used in regard to defining Tier III: "...and where there is no local interest in further subdivisions or intensification of use." This phrase is highly subjective and debatable as it applies to our Community Area.

- Please find my comments regarding your "detailed...criteria" of a Rural Center as follows:

- Please note that the immediate area proximate to our property includes a fire station (Mid-Valley); two houses of worship (one of which accommodates a sizable youth center); four schools; a very large winery with a retail-commercial-like parking lot, a visitor center, a building used for entertaining large numbers of clients with multi-course dinners, and which has big-rigs making deliveries and shipments; a roadside fruit and vegetable stand; a nursery; an upholstery business; a very large, high-density senior housing community; and our currently operating equestrian center. In between this functional Rural Center and the Mid-Carmel Valley Rural Center are located another nursery (Griggs) and a bed and breakfast/wedding site (The Holly Farm). These services fulfill criteria A and B. On the other hand, I know of no public or quasi-public services or uses to be found in the Mid-Carmel Valley Rural Center as it is currently defined.

- Criteria C1 is satisfied in that there are many properties in our immediate developed area zoned as 1 unit per acre; there are with absolute certainty complete and separate parcels in the immediately area as small as 6,000 square feet.

- Criteria C2 is met in one of two ways. This criterion is somewhat nebulous in that, as stated above, our developed area either should have been included in the Mid-Carmel Valley Rural Center, or it should have been established as its own Rural Center. This criterion is addressed either way.

- Criteria C3 does not apply.

- Criteria D does not apply.

- Criteria E does not apply.

- The portion of Criteria F that is suggested as applicable to our property is F4. This is an incorrect categorization. Fortunately, a majority of our land is flat or at a gradual slope and on stable land. To label our property Rural Land and only eligible for 1 dwelling due to a very small portion of the parcel being at +30% slope is ridiculous. Have any members of your staff inspected this property? To classify this entire property as +30% slope is incorrect. To

describe more than a very small portion of our property as having "High soil erosion" and "high landslide susceptibility" is incorrect.

- Criteria G does not apply.
- It is unclear, but it appears that Criteria H has been developed in a disingenuous manner. It is indicated that the area north of Carmel Valley Road is excluded, because the majority of the land north of Carmel Valley Road is at a 30% slope. If the majority of the land north of Carmel Valley Road is at a slope, it is acceptable that this portion at this slope be designated for 1 dwelling per 40 acres, but not simply all of the land north of Carmel Valley Road. Just because some land is at a significant slope in a quasi-geographical area, all of the land should not be disqualified for development. This appears arbitrary and just does not make sense. In addition, flat land north of Carmel Valley Road in the Mid-Carmel Valley Rural Center (or in the effective Rural Center surrounding the Mid-Carmel Valley Fire Station) should be desired for development as it is away from flood hazards.
- Criteria I does not apply as we addressed criteria A through H.
- Criteria J, K, L do not apply for obvious reasons.

Justification by the Staff to recommend the changing of our zoning was also based on "Objective 3". I consider myself a staunch environmentalist and very supportive of environmental protective measures. But our land has no value to farming, mining or eco-tourism. We have not used it for grazing in the two plus decades that we have owned it and we probably will not use it for such, as it is relatively small. It is not desirable as parkland. It is adjacent to and partially circumventing the Carmel Valley Manor, one of the highest density, largest properties in Carmel Valley. In addition, because our property is behind Carmel Valley Manor and is mostly flat, the subdivision will not be visible from Carmel Valley Road or from most other properties, except those few properties at high elevation and of otherwise high visibility. Traffic flow issues have been addressed with the recent improvements to Carmel Valley Road, and, with the development of our property, our Equestrian property will be significantly downsized, which will reduce traffic in the area. The hillside on the north side of our property and the adjacent property to the north will function as a "distinction between urban and rural areas". "Objective 3" simply just does not apply.

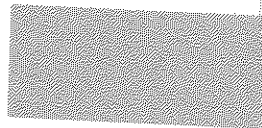
Overall, we are very disappointed in the approach that the Staff has taken in regard to our property, as well as with the general zoning methodology applied to Carmel Valley. We are determined to resolve these issues so that our current zoning is preserved, allowing us to continue our decades-long effort to positively contribute to the community. We sincerely hope that the Monterey County Board of Supervisors will appropriately consider our concerns.

Sincerely,



Mahir Agha

# Exhibit J



## MONTEREY COUNTY PLANNING COMMISSION

<b>Meeting:</b> September 8, 2010		<b>Time:</b> 9:00 a.m.		<b>Agenda Item No.:</b> 1	
<p><b>Project Description:</b> Combined Development Permit consisting of: 1) Preliminary Project Review Map and a Vesting Tentative Map for the subdivision of 891 acres into 73 market-rate residential lots and 22 affordable housing lots (15 inclusionary and 7 deed-restricted workforce housing lots) for a total of 95 residential lots; a 20.2 acre existing equestrian facility and accessory structures related to that use (Parcel E); 300.5 acres of common open space (Parcels A &amp; C); 242.9 acres of public open space for donation/dedication (Parcel D); 250.7 acres of private open space (conservation and scenic easement) on each lot outside of the building envelope; 6.9 acres of open space reserved for future public facilities (Parcel B); annexation to the Carmel Area Wastewater District for sewage disposal; 2) a Use Permit for the public/commercial use of the equestrian center &amp; stables for a maximum of 50 horses and a maximum water use of 3.0 acre-feet per year; 3) a Use Permit for an on-site water system including new wells, backup well(s), booster pumps, water tanks and piping for fire suppression and residents of the subdivision; 4) a Use Permit for removal of a maximum of 819 protected Coast live oaks; 5) an Administrative Permit for up to 100,000 cubic yards of grading in an "S" (Site Plan Review) Overlay Zoning District for subdivision infrastructure and improvements including, but not limited to, development of roads, water tanks, water system, and drainage detention areas; 6) a Use Permit to allow development on slopes greater than 30 percent for affordable housing on Lots 5 through 11, subdivision infrastructure and subdivision improvements; and 7) an Administrative Permit for affordable housing, equestrian center caretaker unit/public office, a tract sales office and a security gatehouse.</p>					
<b>Project Location:</b> Carmel Valley Road between Canada Way and Valley Greens Drive, Carmel Valley			<b>APNs:</b> 015-171-010-000, 015-171-012-000, 015-361-013-000, and 015-361-014-000		
<b>Planning File Number:</b> PC95062 / PLN050001			<b>Owner:</b> September Ranch Partners <b>Agent:</b> Lombardo & Gilles		
<b>Planning Area:</b> Carmel Valley Master Plan			<b>Flagged and staked:</b> Yes		
<b>Zoning Designation:</b> : RDR/10-D-S-RAZ [Rural Density Residential, 10 acres per unit with Design Control, Site Plan Review, and Residential Allocation Zoning District Overlays] and LDR/2.5-D-S-RAZ [Low Density Residential, 2.5 acres per unit with Design Control, Site Plan Review, and Residential Allocation Zoning District Overlays]					
<b>CEQA Action:</b> Environmental Impact Report					
<b>Department:</b> RMA - Planning Department					

### RECOMMENDATION:

Staff recommends that the Planning Commission adopt a resolution (**Exhibit C**) to:

- 1) Recommend that the Board of Supervisors certify the Final Revised Environmental Impact Report including the Final Revised Water Demand Analysis;
- 2) Recommend that the Board of Supervisors approve the Project subject to recommended conditions of approval (**Exhibit C-1**); and
- 3) Recommend that the Board of Supervisors adopt the Mitigation Monitoring and Reporting Program for the Project (**Exhibit C-1**).

### PROJECT OVERVIEW:

The first Environmental Impact Report (EIR) for the September Ranch Subdivision was certified by the County in 1998. In 2001, the Sixth District Court of Appeal affirmed a Superior Court determination that additional analysis was needed with respect to water supply baseline, water rights, water-related mitigation, and growth-inducing impacts. In 2006, the County took a fresh look at the Project and all potential impacts. On December 12, 2006 the County certified the

Revised EIR for the September Ranch Subdivision ("Revised EIR") and approved the combined development permit for the September Ranch Subdivision Project consisting of 73 market rate homes, 15 inclusionary units and 7 workforce units (Resolution No. 06-363).

The Revised EIR was again challenged pursuant to the California Environmental Quality Act (CEQA), and in September 2008 the Superior Court found the Revised EIR legally sufficient with the exception of the issue of water demand, water cap, and cumulative impacts as to water demand. The Court directed the County to vacate the certification of the EIR, void the approvals of the Project, and take no further action on the Project "without the preparation, circulation, and consideration under CEQA of a legally adequate document adopted in compliance with CEQA which properly analyzes water demand, water cap, and cumulative impacts as to water demand." (Judgments Granting Peremptory Writ of Mandate, issued September 16, 2008 and September 30, 2008 (Monterey County Superior Court Case Nos. M82632 and M82643).) In compliance with the writ, on July 21, 2009, the Board of Supervisors adopted Resolution No. 09-356, which rescinded Resolution No. 06-363 and, thereby, vacated the certification of the Final Revised EIR and voided the approval of permits and entitlements for the September Ranch Project.

The County prepared a Revised Water Demand Analysis (**Exhibit F**) to comprehensively reanalyze water demand for the Project pursuant to direction of the Monterey County Superior Court and the requirements of CEQA, Public Resources Code § 21000 et seq., and implementing regulations, Title 14, California Code of Regulations § 15000 et seq. The Revised Water Demand Analysis is a recirculated portion of the September Ranch Revised Environmental Impact Report (EIR) and was circulated for review through the State Clearinghouse with comments accepted from August 11, 2009 to September 28, 2009. The Revised Water Demand Analysis fulfills the Court's direction for analysis of water demand, water cap, and cumulative impacts as to water demand.

**OTHER AGENCY INVOLVEMENT:** The following agencies have reviewed the project and those that are checked (✓) have recommended conditions:

✓ Water Resources Agency	✓ Carmel Valley Fire Protection District
✓ Environmental Health Division	✓ Sheriff's Office
✓ Public Works Department	✓ Housing & Redevelopment
✓ Parks Department	

Conditions recommended by each of the agencies noted above have been incorporated into the Condition Compliance/Mitigation Monitoring and Reporting Plan attached as **Exhibit 1** to the draft resolution (**Exhibit C**).

**LUAC RECOMMENDATION:**

The Carmel Valley Land Use Advisory Committee (LUAC) unanimously recommended denial of the project at their meeting on March 21, 2005.



Laura M. Lawrence, R.E.H.S., Planning Services Manager  
(831) 755-5148, lawrencel@co.monterey.ca.us  
August 31, 2010



cc: Front Counter Copy; Planning Commission; Carmel Valley Fire Protection District; Public Works Department; Parks Department; Environmental Health Bureau; Water Resources Agency; Laura Lawrence, Planning Services Manager; Carol Allen, Senior Secretary; September Ranch Partners, Owner; Lombardo & Gilles, Agent; Law Offices of Michael Stamp; Planning File PLN050001.

Attachments: Exhibit A Project Data Sheet  
Exhibit B Project Discussion  
Exhibit C Draft Resolution, including:  
1. Conditions of Approval and Mitigation Monitoring and Reporting Program  
2. Vesting Tentative Map  
3. Board of Supervisors Resolution 06-363  
4. Peremptory Writ of Mandate Superior Court of Monterey County (Nos. M82632 and M82643)  
Exhibit D Vicinity Map  
Exhibit E Final Revised Water Demand Analysis (distributed to the Planning Commission, Property Owner, Property Owner's Agent, and the Law Offices of Michael Stamp)\*  
Exhibit F March 21, 2005 LUAC Minutes (excerpted)

\*available for public review upon request

  
This report was reviewed by Mike Novo, Director of Planning

## EXHIBIT A

### Project Data Sheet for PLN050001

Project Title: <b>SEPTEMBER RANCH PARTNERS</b>	Primary APN: 015-171-010-000
Location: <b>CARMEL VALLEY RD CARMEL</b>	Coastal Zone: No
Applicable Plan: <b>Carmel Valley Master Plan</b>	Zoning: <b>LDR/2.5-D-S-RAZ &amp; RDR/10-D-S-RAZ</b>
Permit Type: <b>Combined Development Permit,</b>	Plan Designation: <b>RDR-5+ acres/unit &amp; LDR-5 to 1 ac</b>
Environmental Status: <b>Environmental Impact Report Prepared</b>	Final Action Deadline (884): <b>7/11/1996</b>
Advisory Committee: <b>Carmel Valley</b>	

#### Project Site Data:

Lot Size: <b>Varies</b>	Coverage Allowed: <b>25%</b>
Existing Structures (sf): <b>Yes</b>	Coverage Proposed: <b>N/A</b>
Proposed Structures (sf): <b>N/A</b>	Height Allowed: <b>30'</b>
Total Sq. Ft.: <b>N/A</b>	Height Proposed: <b>N/A</b>
	FAR Allowed: <b>N/A</b>
	FAR Proposed: <b>N/A</b>

#### Resource Zones and Reports:

Environmentally Sensitive Habitat: <b>Yes</b>	Erosion Hazard Zone: <b>HIGH/MOD.</b>
Biological Report #: <b>PC95062</b>	Soils Report #: <b>PC95062</b>
Forest Management Rpt. #: <b>PC95062</b>	
Archaeological Sensitivity Zone: <b>HIGH/MOD.</b>	Geologic Hazard Zone: <b>IV</b>
Archaeological Report #: <b>PC95062</b>	Geologic Report #: <b>PC95062</b>
Fire Hazard Zone: <b>HIGH</b>	Traffic Report #: <b>PC95062</b>

#### Other Information:

Water Source: <b>NEW WATER SYSTEM</b>	Sewage Disposal (method): <b>SEWER</b>
Water Dist/Co: <b>N/A</b>	Sewer District Name: <b>CAWD</b>
Fire District: <b>CARMEL VALLEY FPD</b>	Grading (cubic yds.): <b>100,000</b>
Tree Removal: <b>3,582</b>	

## **EXHIBIT B DISCUSSION**

### **Project History**

The first Environmental Impact Report (EIR) for the September Ranch Subdivision was certified by the County in 1998. In 2001, the Sixth District Court of Appeal affirmed a Superior Court determination that additional analysis was needed with respect to water supply baseline, water rights, water-related mitigation, and growth-inducing impacts. In 2006, the County took a fresh look at the Project and all potential impacts. On December 12, 2006 the County certified a Revised EIR for the September Ranch Subdivision ("Revised EIR") and approved the combined development permit for the September Ranch Subdivision Project consisting of 73 market rate homes, 15 inclusionary units and 7 workforce units (Resolution No. 06-363).

The Revised EIR was again challenged pursuant to the California Environmental Quality Act (CEQA), and in September 2008 the Superior Court found the Revised EIR legally sufficient with the exception of the issue of water demand, water cap, and cumulative impacts as to water demand. The Court directed the County to vacate the certification of the Revised EIR, void the approvals of the Project, and take no further action on the Project "without the preparation, circulation, and consideration under CEQA of a legally adequate document adopted in compliance with CEQA which properly analyzes water demand, water cap, and cumulative impacts as to water demand." (Judgments Granting Peremptory Writ of Mandate, issued September 16, 2008 and September 30, 2008 (Monterey County Superior Court Case Nos. M82632 and M82643; Peremptory Writ of Mandate signed by the judge on December 23, 2008 and signed by the Court's Clerk on January 23, 2009, attached as Exhibit C-4 to this staff report).) In compliance with the writ, on July 21, 2009, the Board of Supervisors adopted Resolution No. 09-356, which rescinded Resolution No. 06-363 and, thereby, vacated the certification of the Revised EIR and voided the approval of permits and entitlements for the September Ranch Project.

### **Revised Water Demand Analysis**

The County prepared the Revised Water Demand Analysis to comprehensively reanalyze water demand for the Project pursuant to direction of the Monterey County Superior Court and the requirements of CEQA, Public Resources Code § 21000 et seq., and implementing regulations, Title-14, California Code of Regulations § 15000 et seq. The Revised Water Demand Analysis is a recirculated portion of the Revised EIR.

Specifically, the Revised Water Demand Analysis replaces and updates the following:

- Replaces the Revised EIR's water demand analysis, which consists of the two full paragraphs and table (Table 4.3-5) immediately following the heading "Less than Significant Impact -- Substantially Degrade Groundwater or Interfere with Groundwater Recharge" within the Water Supply and Availability Chapter on pages 4.3-41 to 4.3-42 of the Recirculated Portion of the Draft Revised EIR;
- Replaces Master Response 17 in the July 2006 Final EIR on pages 3-15 to 3-19.
- Updates Table 5-1 and some accompanying text within the Cumulative Impacts Analysis Section (Section 5.1.1) on pages 5-2 and 5-3 of the Recirculated Portion of the Draft Revised EIR.

The Revised Water Demand Analysis was circulated for review through the State Clearinghouse, with comments accepted from August 11, 2009 to September 28, 2009. The Revised Water Demand Analysis fulfills the Court's direction for analysis of water demand, water cap, and cumulative impacts as to water demand.

### **Planning Commission Hearing**

The Project comes before the Planning Commission for recommendation following the preparation of the Final Revised Water Demand Analysis dated August 2010. The Final Revised Water Demand Analysis, together with the 2006 Final Revised EIR, provides the environmental review of the Project (Final EIR). The Project analyzed in the Final Revised Water Demand Analysis is the 73/22 Alternative as identified in the 2006 EIR and as modified by the Board in 2006 because the applicant is no longer pursuing the larger project that it had originally proposed.

As a result of the Board's adoption of Resolution No. 09-356 which satisfied the Peremptory Writ of Mandate by rescinding the prior certification of the 2006 Final Revised EIR and the prior approval of the project, the Board of Supervisors is the appropriate authority to consider certification of the Final Revised EIR with the Final Revised Water Demand Analysis and to once more consider action on the Project application. The role of the Planning Commission is to make recommendations to the Board on these actions following the Planning Commission's consideration of the Final EIR. It is expected that the Commission's principal focus will be on the Final Revised Water Demand Analysis, which substantively reanalyzed the issues of water demand, water cap, and cumulative effects as to water demand and, thus, replaces and updates the relevant portions of the 2006 Final Revised EIR. The court has already determined that the 2006 Final Revised EIR contained a legally adequate discussion on all other issues.

**EXHIBIT C  
DRAFT RESOLUTION**

**Before the Planning Commission in and for the  
County of Monterey, State of California**

In the matter of the application of:

**SEPTEMBER RANCH PARTNERS (PLN050001)**

**RESOLUTION NO. [REDACTED]**

Resolution by the Monterey County Planning  
Commission:

- 1) Recommending that the Board of Supervisors certify the Final Revised Environmental Impact Report including the Final Revised Water Demand Analysis;
- 2) Recommending that the Board of Supervisors approve the Project subject to recommended conditions of approval (**Exhibit 1**); and
- 3) Recommending that the Board of Supervisors adopt the Mitigation Monitoring and Reporting Program for the Project (**Exhibit 1**).

(PC95062 / PLN050001, September Ranch Partners, Carmel Valley Road, Carmel Valley Master Plan (APNs: 015-171-010-000, 015-171-012-000, 015-361-013-000, AND 015-361-014-000))

**The September Ranch Partners application (PC95062 / PLN050001) came on for public hearing before the Monterey County Planning Commission on September 8, 2010. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Planning Commission finds and decides as follows:**

**FINDINGS**

1. **FINDING:** **PROJECT BACKGROUND.** The September Ranch Partners Combined Development Permit, as described in Condition #1 in Exhibit 1, attached, consists of: 1) a Preliminary Project Review Map and Vesting Tentative Map for the subdivision of 891 acres into 73 market-rate residential lots and 22 affordable housing lots (15 inclusionary and 7 deed-restricted workforce housing lots) for a total of 95 residential lots; a 20.2 acre existing equestrian facility and accessory structures related to that use (Parcel E); 300.5 acres of common open space (Parcels A & C); 242.9 acres of public open space for donation/dedication (Parcel D); 250.7 acres of private open space (conservation and scenic easement) on each lot outside of the building envelope; 6.9 acres of open space reserved for future public facilities (Parcel B); annexation to the Carmel Area Wastewater District for sewage disposal; 2) a Use Permit for the public/commercial

use of the equestrian center & stables for a maximum of 50 horses and a maximum water use of 3.0 acre-feet per year; 3) a Use Permit for an on-site water system including new wells, backup well(s), booster pumps, water tanks and piping for fire suppression and residents of the subdivision; 4) a Use Permit for removal of a maximum of 819 protected Coast live oaks; 5) an Administrative Permit for up to 100,000 cubic yards of grading in an "S" (Site Plan Review) Overlay Zoning District for subdivision infrastructure and improvements including, but not limited to, development of roads, water tanks, water system, and drainage detention areas; 6) a Use Permit to allow development on slopes greater than 30 percent for affordable housing on Lots 5 through 11, subdivision infrastructure and subdivision improvements; and 7) an Administrative Permit for affordable housing, equestrian center caretaker unit/public office, a tract sales office and a security gatehouse (hereafter "the Project"). The Project comes before the Planning Commission for recommendation and for action by the Board of Supervisors following the preparation of the Final Revised Water Demand Analysis, as described below.

- EVIDENCE:**
- a) On June 16, 1995, September Ranch Partners filed an application for a Combined Development Permit (PC95062, September Ranch Partners) consisting of a preliminary Project Review Map, a Vesting Tentative Map to allow the division of 902 acres creating 100 market rate units, 17 inclusionary housing units, a lot for the existing equestrian facility, and open space. The application was deemed completed on July 13, 1995. The application, plans, and support materials submitted by the project applicant to the Monterey County Planning Department for the proposed development are found in Project Files PC95062 and PLN050001.
  - b) On December 1, 1998, the Board of Supervisors approved the Combined Development Permit (PC95062, September Ranch Partners) consisting of a preliminary Project Review Map, a Vesting Tentative Map to allow the division of an 891-acre parcel creating 94 market rate units, 15 inclusionary housing units, a 20.2 acre lot for the existing equestrian facility (with one employee unit), and 791 acres of open space. The application, plans, and support materials submitted by the project applicant to the Monterey County Planning Department for the proposed development are found in Project Files PC95062 and PLN050001.
  - c) The approval was challenged in court by *Save Our Peninsula Committee et al.* and *Sierra Club et al.* The Superior Court of Monterey County (Nos. M42412 and M42485) held that the EIR was legally inadequate under the California Environmental Quality Act (CEQA), Public Resources Code §21000 *et seq.* In Resolution No. 01-374, the Board of Supervisors vacated its December 1998 certification and approval. The application filed in 1995 remains on file; the proposed project is substantially consistent with the application deemed complete in 1995.
  - d) On December 12, 2006, the County Board of Supervisors adopted Resolution No. 06-363 certifying a Revised Environmental Impact Report on the September Ranch Subdivision ("Revised EIR"),

adopting a passing score, approving a Combined Development Permit for the September Ranch subdivision project, and adopting the associated Mitigation Monitoring and Reporting Plan. The project approved under the Combined Development Permit consisted of the 73/22 Alternative as identified in the Revised EIR as modified by the Board following public hearing. The Combined Development Permit included approval of a Vesting Tentative Map for the subdivision of 891 acres into 73 market-rate residential lots, 15 inclusionary housing lots and 7 workforce housing lots. (Board of Supervisors' Resolution No. 06-363). A copy of Board of Supervisors' Resolution No. 06-363 is attached to this resolution as Exhibit 3.

- e) The approval was challenged in court by *Sierra Club et al.* and *Helping Our Peninsula's Environment*. In September 2008, the Superior Court of Monterey County (Nos. M82632 and M82643) entered judgment finding that the EIR was legally sufficient under the California Environmental Quality Act (CEQA), Public Resources Code §21000 *et seq.* except as to issues of water demand, water cap, and cumulative impacts as to water demand. A Peremptory Writ of Mandate, signed by the judge on December 23, 2008 and signed by the Court's Clerk on January 23, 2009, was issued requiring the County to vacate the certification of the Revised EIR, void the approvals of the Project, and take no further action on the Project "without the preparation, circulation, and consideration under CEQA of a legally adequate document adopted in compliance with CEQA which properly analyzes water demand, water cap, and cumulative impacts as to water demand." (Peremptory Writ of Mandate (Nos. M82632 and M82643).) A copy of the Peremptory Writ of Mandate is attached hereto as Exhibit 4 and incorporated herein by reference.
- f) In compliance with the Judgments Granting Peremptory Writs of Mandate, issued by the court on September 16, 2008 and September 30, 2008 (Monterey County Superior Court Case Nos. M82632 and M82643), the Board of Supervisors rescinded Resolution No. 06-363, vacated the certification of the Final Revised EIR, and voided the approval of permits and entitlements for the September Ranch Project (Board of Supervisors' Resolution No. 09-356).
- g) The County has prepared the Revised Water Demand Analysis, fulfilling the Court's direction for analysis of water demand, water cap, and cumulative impacts as to water demand. The Revised Water Demand Analysis replaces and updates the following:
- Replaces the Revised EIR's water demand analysis, which consists of the two full paragraphs and table (Table 4.3-5) immediately following the heading "Less than Significant Impact -- Substantially Degrade Groundwater or Interfere with Groundwater Recharge" within the Water Supply and Availability Chapter on pages 4.3-41 to 4.3-42 of the Recirculated Portion of the Draft Revised EIR;
  - Replaces Master Response 17 in the July 2006 Final EIR on pages 3-15 to 3-19.
  - Updates Table 5-1 and some accompanying text within the Cumulative Impacts Analysis Section (Section 5.1.1) on pages 5-2

and 5-3 of the Recirculated Portion of the Draft Revised EIR. The document entitled "Revised Water Demand Analysis: 2009 Recirculated Portion of the Final Revised Environmental Impact Report" was circulated for public comment from August 12, 2009 through September 28, 2009. The Final Revised Water Demand Analysis, which contains responses to comments Revised Water Demand Analysis on the 2009 Recirculated Portion of the Final Revised Environmental Impact Report, was released to the public on August 27, 2010. The Revised Water Demand Analysis, together with the Final Revised EIR which contains a legally sufficient discussion on all other issues, provides the environmental review of the Project.

- h) The Project analyzed in the Revised Water Demand Analysis and that is the subject of this Planning Commission recommendation is the 73/22 Alternative because the applicant is no longer pursuing the larger project that it had originally proposed.

2. **FINDING:**

**CONSISTENCY.** The Project, as conditioned, is consistent with applicable provisions of the Monterey County General Plan, Carmel Valley Master Plan, Monterey County Zoning Ordinance (Title 21 of the Monterey County Code), Monterey County Subdivision Ordinance (Title 19 of the Monterey County Code), Monterey County Code 18.46.040, Monterey County Inclusionary Housing Ordinance, Air Quality Management Plan and Transportation Plans & Policies.

- a) The project site is located on Carmel Valley Road (Assessor's Parcel Numbers 015-171-010-000, 015-171-012-000, 015-361-013-000, and 015-361-014-000), Carmel Valley in the County of Monterey.
- b) The evidence from Finding 1 (Consistency) in Resolution 06-363 is incorporated herein by reference except as amplified and/or revised herein.
- c) The County of Monterey is in the process of updating its 1982 General Plan. However, pursuant to Government Code Section 66474.2, the County is applying those ordinances, policies, and standards as of the date the application for the vesting tentative map was deemed complete (July 13, 1995). Therefore the 1982 General Plan and the ordinances in effect as of the completeness date apply.
- d) Nothing in the Final Revised Water Demand Analysis changes the consistency analysis and conclusions contained in Finding 1 of Resolution No. 06-363 or the EIR sections referenced above.
- e) Administrative record including material in Planning Department files PC95062 and PLN050001.



3. **FINDING:** **NO VIOLATIONS.** The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision and any other applicable provisions of the County's zoning ordinance. No violations exist on the property. Zoning violation abatement costs, if any, have been paid.

- EVIDENCE:**
- a) Staff reviewed Monterey County Planning Department and Building Services Department records and is not aware of any violations existing on subject property.
  - b) Staff conducted site visits on March 16, 2005 and July 25, 2006 to verify that the project on the subject parcel conforms to the plans submitted under PLN050001.
  - c) The application, plans, and support materials submitted by the project applicant to the Monterey County Planning Department for the proposed development are found in Project Files PC95062 and PLN050001.

4. **FINDING:** **HEALTH AND SAFETY.** The establishment, maintenance or operation of the project applied for will not, under the circumstances of this particular case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use; or be detrimental or injurious to property and improvements in the neighborhood; or to the general welfare of the County.

- EVIDENCE:**
- a) The proposed development has been reviewed by the Monterey County RMA – Planning Department, Water Resources Agency, Public Works Department, Environmental Health Bureau, Parks and Recreation Department, Housing and Redevelopment Agency, Sheriff's Office and the Carmel Valley Fire Protection District as part of the project design and environmental review process. The respective departments have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood; or the County in general.
  - b) The application, plans, and support materials submitted by the project applicant to the Monterey County Planning Department for the proposed development are found in Project Files PC95062 and PLN050001.
  - c) In order to construct internal access roads, the project proposes grading over slopes in excess of 30 percent. Therefore, the project requires the granting of a Use Permit to allow development on slopes of 30 percent or more (Monterey County Code Section 21.64.230). See Finding 6.
  - d) Up to approximately 34.90 acres of Monterey pine/coast live oak forest habitat will be impacted for construction of roads, utilities, and building pads. Therefore, the project requires a Use Permit for tree removal (Monterey County Code Section 21.64.260.D). See Finding 5.
  - e) Draft Revised EIR dated December 2004, Recirculated Draft Revised EIR dated February 2006, and Final Revised EIR dated July 2006, and Final Revised Water Demand Analysis dated August 2010.

f) Preceding and following Findings and supporting evidence.

5. **FINDING:** **TREE REMOVAL.** The tree removal is the minimum required under the circumstances of the case. The removal will not involve a risk of adverse environmental impacts, as fully described in Monterey County Code Section 21.64.260.D.5, such as soil erosion, impacts to water quality, ecological impacts, increases in noise pollution, reduce the ability of vegetation to reduce wind velocities, or significantly reduce available habitat.

**EVIDENCE:** a) The evidence from Finding 3 (Tree Removal) in Resolution 06-363 is incorporated herein by reference except as amplified and/or revised herein.

b) In Resolution 06-363, Finding 3 (Tree Removal), 8<sup>th</sup> Evidence shall be revised to read “~~The tree removal under the Proposed Project involves six percent of the oak trees and four percent of the Monterey pine trees found on the project site.~~ The tree removal under the Proposed Project, the 73/22 Alternative, involves five percent of the oak trees and two percent of the Monterey pine trees found on the project site.”

6. **FINDING:** **30 PERCENT SLOPES.** The proposed development on over 30 percent slopes better achieves the goals, policies, and objectives of the Monterey County General Plan and Carmel Valley Master Plan than other development alternatives consistent with CVMP Policy 26.1.10.1. There is no feasible alternative which would allow development to occur on slopes of less than 30 percent.

**EVIDENCE:** The evidence from Finding 5 (30 Percent Slopes) in Resolution 06-363 is incorporated herein by reference.

7. **FINDING:** **TENTATIVE MAP** – None of the findings found in Section 19.05.055.B of the Monterey County Code Title 19 (Subdivision Ordinance) can be made.

**EVIDENCE:** a) The evidence from Finding 6 (Tentative Map) in Resolution 06-363 is incorporated herein by reference except as amplified by the Final Revised Water Demand Analysis dated August 2010.

8. **FINDING:** a) **INCLUSIONARY HOUSING.** In approving the vesting tentative map, the decision-making body has balanced the housing needs of the County against the public service needs of its residents and available fiscal and environmental resources. The applicant is required to comply with provisions of Monterey County’s Inclusionary Housing Ordinance with provisions of Monterey County’s Inclusionary Housing Ordinance

**EVIDENCE:** The evidence from Finding 8 (Inclusionary Housing) in Resolution 06-363 is incorporated herein by reference.

9. **FINDING:** **RECREATIONAL REQUIREMENTS.** The applicant will be required to comply with the recreational requirements of Title 19, Section 19.12.010.

**EVIDENCE:** The evidence from Finding 9 (Recreational Requirements) in Resolution 06-363 is incorporated herein by reference.

10. **FINDING:** **SITE SUITABILITY.** The site is physically suitable for the proposed development.
- EVIDENCE:** The evidence from Finding 10 (Site Suitability) in Resolution 06-363 is incorporated herein by reference.
11. **FINDING:** **PRELIMINARY PROJECT REVIEW MAP.** The Planning Commission finds, based on substantial evidence, that Project complies with the requirements of Monterey County Code Section 19.07.025.G.
- EVIDENCE:** a) See Finding 7 and associated evidence.  
b) Draft Revised EIR dated December 2004, Recirculated Draft Revised EIR dated February 2006, and Final Revised EIR dated July 2006, and Final Revised Water Demand Analysis dated August 2010.
12. **FINDING:** **DRAFT REVISED WATER DEMAND ANALYSIS CIRCULATED.** A Revised Water Demand Analysis on the 2009 Recirculated Portion of the Final Revised Environmental Impact Report dated August 2009, was distributed to responsible agencies, trustee agencies, other departments and agencies, and interested parties including the State Clearinghouse (SCH#1995083033) in accordance with the California Environmental Quality Act. The public comment period for this document was from August 11, 2009 to September 28, 2009.
- EVIDENCE:** a) A Notice of Completion, dated August 10, 2009, was sent to the State Clearinghouse, along with copies of the Draft Revised Water Demand Analysis, which were circulated to State agencies.  
b) A Notice of Availability was published, mailed to interested parties and property owners within 300 feet of the project boundaries, and was provided to the Carmel Valley Library and the City of Carmel-by-the-Sea Library.  
c) Administrative record including material in Planning Department files PC95062 and PLN050001.  
d) This finding supplements Finding 16 (Draft Revised EIR Circulated) in Board of Supervisors Resolution No. 06-363.
13. **FINDING:** **DRAFT REVISED WATER DEMAND ANALYSIS COMMENTS.** Comments on the Draft Revised Water Demand Analysis were received from agencies and interested parties.
- EVIDENCE:** Administrative record including material in Planning Department files PC95062 and PLN050001.
14. **FINDING:** **FINAL REVISED EIR RELEASED.** On August 27, 2010, the Final Revised EIR including the Final Revised Water Demand Analysis was released to the public, which responded to significant environmental issues raised in the comments.
- EVIDENCE:** Administrative record including material in Planning Department files PC95062 and PLN050001.
15. **FINDING:** **RECIRCULATION NOT REQUIRED** The Planning Commission has assessed all changes and new information identified from public

comments and staff investigation since circulation of the Revised Water Demand Analysis in August-September 2009, and based on the record as a whole finds that recirculation is not required.

- EVIDENCE:**
- a) Recirculation is generally not required when the only additional information clarifies or amplifies or makes insignificant modifications to the EIR, while recirculation would be required if there were significant new information showing a new significant environmental impact, a substantial increase in the severity of a previously identified environmental impact, a mitigation measure considerably different from others previously analyzed that would clearly less the project's environmental impacts, or the draft was so fundamentally inadequate and cursory that it precluded meaningful public comment.
  - b) Minor changes and edits have been made to the text, tables and figures of the Revised Water Demand Analysis, as set forth in the Errata (pages 67-71). Most of the changes involved tightening the conditions of approval to provide further assurance that water use at September Ranch will remain within the forecasted estimates. These changes are principally requiring more details in the required water use reporting, further requirements for irrigation equipment and water-saving interior fixtures, prohibiting subdivision phase approval absent compliance with MPWMD's Pro Rata Expansion Capacity policy, ensuring County and MPWMD entry onto individual lots for monitoring and enforcement, prohibiting changes in installed landscaping or irrigation system absent evidence that the changes will not increase water use, and limiting the total area that may be used on each lot for irrigated landscaping and exterior water features. These changes strengthen the conclusion that water demand at September Ranch will not exceed 57.21 AFY, and thereby clarify or amplify the adequate analysis in the Revised Water Demand Analysis.
  - c) Additional data on water use in neighboring subdivisions has also been added to reflect acquisition of water use reports released since preparation of the Revised Water Demand Analysis, as well as correcting numerical errors and making minor adjustments to the data. The Planning Commission finds that these changes are of a minor, non-substantive nature and do not require recirculation of the Revised EIR.
  - d) Draft Revised EIR dated December 2004, Recirculated Draft Revised EIR dated February 2006, Final Revised EIR dated July 2006, and Final Revised Water Demand Analysis dated August 2010.
  - e) Administrative record including material in Planning Department files PC95062 and PLN050001.

16. **FINDING:** **BOARD OF SUPERVISORS RESOLUTION 06-363.** The Findings and the associated Evidence in Board of Supervisors Resolution No. 06-363 in relation to the environmental review conducted under the California Environmental Quality Act (CEQA) and the findings under CEQA, specifically Findings 12 through 32 and associated evidence of Resolution No. 06-363, are incorporated herein by reference, except as amplified and revised by the findings in this resolution relating to water demand and water cap.

**EVIDENCE:**

The Judgments entered in Case No. M82632 and Case No. M82643 declare that the revised EIR certified by the Board of Supervisors in 2006 contains a legally sufficient discussion on all issues other than water demand, water cap, and cumulative impacts as to water demand. Accordingly, the findings and evidence contained in Resolution No. 06-363 with respect to environmental impacts of the Project are incorporated herein by reference, except for the findings which are set forth below with respect to water demand, water cap, and cumulative impacts as to water demand.

17. **FINDING:**

**ENVIRONMENTAL IMPACTS FOUND TO BE LESS THAN SIGNIFICANT - WATER DEMAND AND WATER CAP.** The County has systematically reanalyzed the water demand for the Project in light of the Superior Court writ issued in *Sierra Club, Save Our Carmel River, Patricia Bernardi v. County of Monterey Board of Supervisors* and *Helping Our Peninsula's Environment v. County of Monterey* (Monterey County Superior Court Case Nos. M82632 and M82643). To conduct the analysis, the County computed the estimated indoor and outdoor water use for three hypothetical homes/lots within September Ranch, taking into account (a) conditions of approval formulated specifically to reduce each lot's water consumption, (b) County and District ordinances concerning water use, and (c) the new Model Water Efficient Landscape Ordinance prepared by the State Department of Water Resources, Cal. Code Regs., tit. 23, § 490 et seq. The County compared the resulting demand figures against consumption within neighboring large-lot subdivisions in the Carmel Valley, and evaluated the County and District enforcement capabilities for ensuring the subdivision will remain within a fixed annual quantity of no more than 57.21 acre-feet per year (AFY). The Revised Water Demand Analysis and other documents in the record demonstrate to the Planning Commission's satisfaction that, subject to the recommended conditions of approval, the September Ranch Project will consume no more than 57.21 AFY. This finding supplements Finding 25b (Water Supply and Availability (REIR Chapter 4.3)), Finding 25b (ii) (Water Demand), and Finding 25b (iii) (Treatment Water) in Board of Supervisors Resolution No. 06-363.

- EVIDENCE:**
- a) In Resolution 06-363, Finding 25b (iv) (c) (Impact Conclusions – The project will not use water in a wasteful manner.) shall be revised to read "...Relevant Conditions of Approval include but are not limited to Conditions 33, 40, 41, 45, 46, 107, 108, 110-112, 120, 122-124, 146, and 148, and 188-190."
  - b) In Resolution 06-363, Finding 25b (v) (Project Elements/Mitigations/ Conditions – Mitigation Measure 4.3-1) shall be revised to add the following text at the end of the paragraph: "In addition to meeting all reporting requirements of MPWMD, the reports will separately detail the number of active connections of employee, inclusionary and market-rate houses, the monthly water use (interior, exterior and combined) for each connection, the permitted water amount for the lot, identification of whether the home at each connection is under construction or has completed construction and is accepting routine

water service. Upon request of RMA – Planning Department or MPWMD, the applicant, per the water system operator, shall make available the name and address information for any connection exceeding its permitted water limit; such disclosures will be made pursuant to a public nondisclosure agreement consistent with State constitutional privacy guarantees.”

- c) In Resolution 06-363, Finding 25b (v) (Project Elements/Mitigations/ Conditions – Mitigation Measure 4.3-2) shall be revised in the second paragraph to read: “Related Conditions of Approval include but are not limited to Conditions 33, 45, 46, 108, 111, 112, 120, 122-124, 146, and 147, and 188-190.”
- d) Draft Revised EIR dated December 2004, Recirculated Draft Revised EIR dated February 2006, Final Revised EIR dated July 2006, and Final Revised Water Demand Analysis dated August 2010.
- e) Administrative record including material in Planning Department files PC95062 and PLN050001.

17a. **FINDING:** **Interior Water Use.** The interior water use estimates were made pursuant to the Monterey Peninsula Water Management District (MPWMD) fixture count, using water-saving fixtures as required by recommended conditions of approval for the Project. The number of fixtures for the market-rate lots was estimated high (5 to 6 bathrooms) even though all homes would be single-family dwellings. To ensure that the homeowner will not cause an exceedance of the subdivision’s water cap, no additional fixtures may be installed unless the property owner first obtains a water permit amendment approved by MPWMD.

17b. **FINDING:** **Exterior Water Use.** Exterior water use was estimated using the Maximum Applied Water Allowance as described in the Model Ordinance, which relies primarily on regional evapotranspiration rates and the square footage of landscaping and water features. This method is reliable for September Ranch lots because the square footage of landscaping and exterior water features for all types of lots is limited by a recommended condition of approval. Further, the estimates are conservative because the Model Ordinance assumes medium water-use plants, while the Project is required to use drought-tolerant / low water-use plants. The exterior water demand will be accurate even taking into account individual watering habits. Under the Model Ordinance, water efficient irrigation systems will be designed for each lot, with certification that they were designed as installed. For market-rate lots, the irrigation system must have controllers equipped with soil moisture sensors to avoid overwatering. In addition, no changes in type or location of landscaping or changes to the irrigation system can be made absent evidence demonstrating that the modifications will not result in either an increase in annual water use or a reduction in water use efficiency, and the landowner first obtains written concurrence from the RMA – Planning Department and MPWMD.

17c. **FINDING:** **Equestrian Center Water Use.** Water use for the equestrian center was based on demonstrated historical usage (3 AFY) and may not be increased pursuant to condition.

17d. **FINDING:** **Water Treatment Loss.** The water treatment loss is estimated at a maximum of 10% of total water deliveries based on a condition

requiring the lowest losses feasible, from 0 to 10%. Applicants submitted Kennedy/Jenks Consultants, Technical Memorandum No. 8, which discusses several treatment options capable of achieving the required loss percentage.

- 17e. **FINDING:** **Water Conveyance Loss.** The estimated conveyance loss percentage (7%) is higher than the standard loss estimated by MPWMD (5%), and is comparable to losses in neighboring subdivisions.
- 17f. **FINDING:** **Computation of Water Treatment and Conveyance Loss.** The treatment and conveyance losses were computed as a function of total subdivision water deliveries according to MPWMD's standard formula.
- 17g. **FINDING:** **MPWMD Rule 11.** Pursuant to MPWMD regulations (Rule 11), if the lots' proportional share of the overall Project water limit is exceeded when more than half of the total allowed connections have been installed, MPWMD will not process new individual water permits until the system is brought back into compliance and credible expert analysis demonstrates that the system can and will remain in compliance into the future. Before the County will approve the final map for each phase, the applicant must demonstrate the subdivision water use is within MPWMD Rule 11. See Condition 45.
- 17h. **FINDING:** **Demand Data by Subdivision.** The market-rate homes in other large-lot subdivisions in the Carmel Valley have used, on average, somewhat more water than the average use estimated for market-rate homes in September Ranch (0.535 AFY)—i.e., Monterra Ranch (0.58 to 0.78 AFY including caretaker units), Tehama (0.48 to 0.76 AFY including caretaker units), Santa Lucia Preserve (0.43 to 0.66 AFY). Unlike September Ranch, however, these subdivisions have no maximum limits on area for irrigated landscaping and exterior water features other than the building envelope, which averages 1.3 acres or more. At September Ranch, the outside area for water use will be limited to less than 1/10 of an acre (4,275 square feet). This difference is substantial given that outside water use is often two to three times as much as interior use. Additional subdivision-specific conditions will further limit September Ranch water use relative to other subdivisions—e.g., Model Ordinance compliance, specific low-water fixture limits, limitations on the landscaped acreage.
- 17i. **FINDING:** **Enforcement.** The County will have sufficient means of enforcement to ensure water use at September Ranch remains at or below 57.21 AFY, including installing flow restrictors at homeowner cost if unauthorized fixture or landscaping changes are made; administrative citations; hearings; fines; and legal actions. These are in addition to the means available to MPWMD, which has committed to collaborating with the County on enforcement at September Ranch.
- 17j. **FINDING:** **Cumulative Impacts.** The court ordered the Board of Supervisors to not take "further action approving the project without the preparation, circulation, and consideration under CEQA of a legally adequate document adopted in compliance with CEQA which properly analyzes . . . cumulative impacts as to water demand." The Revised Water Demand Analysis affirms the cumulative impacts analysis in the Revised EIR based on (1) a determination that water use will be at or

below 57.21 AFY, which was the measure of Project water demand in the Revised EIR, and (2) there is no increase in water consumed by recently built and proposed future projects.

**EVIDENCE:**

The following evidence supports Findings 17a through 17j inclusive:

- Draft Revised EIR dated December 2004, Recirculated Draft Revised EIR dated February 2006, Final Revised EIR dated July 2006, and Final Revised Water Demand Analysis dated August 2010.
- Administrative record including material in Planning Department files PC95062 and PLN050001.

**18. FINDING:**

**CERTIFICATION OF THE REVISED EIR.** The Planning Commission has reviewed and considered the Final EIR including the Final Revised Water Demand Analysis prior to making its

recommendations on the Project and finds that substantial evidence supports certification of the Final EIR by the Board of Supervisors

**EVIDENCE:**

a) The Final Revised Water Demand Analysis dated August 2010 analyzes the issues of water demand, water cap, and cumulative impacts as to water demand. The Final Revised Water Demand Analysis, together with the Final Revised EIR dated July 2006 which has been held by the Monterey County Superior Court to contain a legally adequate discussion on all other issues, comprises the Final EIR for the Project.

b) The Final EIR, including the Final Revised Water Demand Analysis, has been completed in compliance with CEQA.

c) The Final EIR, including the Final Revised Water Demand Analysis, reflects the County's independent judgment and analysis.

d) The Final EIR evaluates the potential environmental impacts of the Project and recommends feasible mitigation measures to reduce impacts to a less than significant level, and these measures are recommended to be adopted as conditions of project approval as described in the record, these findings, and Resolution No. 06-363.

e) In accordance with CEQA and the CEQA Guidelines, a Mitigation Monitoring and Reporting Program (Exhibit 1) has been prepared for the Project and is recommended for approval by the Board of Supervisors.

f) Various documents and other materials constitute the record upon which the Planning Commission bases its findings and its recommendations. The location and custodian of these documents and materials is the Monterey County Resource Management Agency – Planning Department, 168 West Alisal Street, Salinas, California.

**19. FINDING:**

**PLANNING COMMISSION HEARING.** The Planning Commission conducted a duly noticed public hearing on the Project on September 8, 2010.

**EVIDENCE:**

a) A public notice for the Project was published in the *Monterey County Herald* on August 29, 2010.

b) Public notices were mailed to the property owners within 300 feet of the project site and interested parties on August 25, 2010.

c) Public notices were posted in three different public places on and near



the property at 10:30 a.m. on August 27, 2010. The notices were posted:

- On the property entry gate;
- On the address marker for the property on Carmel Valley Road;
- On the fence next to the bus stop near Brookdale Road.

### DECISION

**NOW, THEREFORE**, based on the above findings and evidence, the Planning Commission does hereby:

- Recommend that the Board of Supervisors certify the Final Revised Environmental Impact Report including the Final Revised Water Demand Analysis;
- Recommend that the Board of Supervisors approve the Combined Development Permit subject to recommended conditions of approval (**Exhibit 1**) and in substantial conformance with the attached Vesting Tentative Map (**Exhibit 2**); and
- Recommend that the Board of Supervisors adopt the Mitigation Monitoring and Reporting Program for the Project (**Exhibit 1**).

**PASSED AND ADOPTED** this 8<sup>th</sup> day of September, 2010 upon motion of \_\_\_\_\_, seconded by \_\_\_\_\_, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Mike Novo, Planning Commission

COPY OF THIS DECISION MAILED TO APPLICANT ON \_\_\_\_\_.

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.

### NOTES

1. You will need a building permit and must comply with the Monterey County Building Ordinance in every respect.

Additionally, the Zoning Ordinance provides that no building permit shall be issued, nor any use conducted, otherwise than in accordance with the conditions and terms of the permit granted or until ten days after the mailing of notice of the granting of the permit by the appropriate authority, or after granting of the permit by the Board of Supervisors in the event of appeal.

Do not start any construction or occupy any building until you have obtained the necessary permits and use clearances from the Monterey County Planning Department and Building Services Department office in Salinas.

2. This permit expires 2 years after the above date of granting thereof unless construction or use is started within this period.

This page intentionally left blank

# **Exhibit 21**

This page intentionally left blank.



**COUNTY OF MONTEREY  
HEALTH DEPARTMENT**

**MEMORANDUM**

ENVIRONMENTAL HEALTH BUREAU

NOVEMBER 4, 2019

**To: John Dugan, AICP, Deputy Director  
Monterey County Resource Management Agency**

**From: Bryan Escamilla, REHS  
Environmental Health Review**

**Subject: PLN990274, Agha Durrell D Tr**

As previously requested by Environmental Health Bureau staff, the follow items are required to be addressed prior to the project being deemed complete:

1. Written verification from Carmel Area Wastewater District (CAWD) stating the sewer service can and will be provided for the proposed property/project.

Information and/or agreements as to how the sewer main will be connected to this project (both financially and logistically) and additional review from the Local Agency Formation Commission of Monterey County (LAFCO) for annexation into the CAWD district will be necessary for the wastewater expansion. This review may take place through the EIR process.

2. This project will require proof of a Long Term Sustainable Water Supply and an Adequate Water Supply System pursuant to General Plan policy PS 3.2. This review can be done through a contracted Hydrogeological Study through RMA or through the EIR process.
3. Official documents verifying water rights for the existing well due to location within Carmel River Basin have not been supplied to EHB. The proposed project would also meet the definition of a Public Water System and as a result, a suitable secondary water source shall be identified and tested to determine that it meets quality and quantity requirements. Monterey Peninsula Water Management District (MPWMD) also needs to be advised of this project so they may make comments regarding any specific concerns they might have as to water use intensification.
4. Chemical test results for the existing well, dated Feb 12, 2009, detected Fluoride at 6 mg/L (three times the MCL of 2 mg/L) subsequently, quarterly conformation samples for Fluoride should have been taken to demonstrate Fluoride thresholds. The applicant met with EHB staff in April 2011 and a conformation sample was taken. The result was 3.48 mg/L, which is still over the MCL. Quarterly confirmation samples are required.

This page intentionally left blank

# **Exhibit 22**

This page intentionally left blank.



# MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

Carl P. Holm, AICP, Director



---

LAND USE & COMMUNITY DEVELOPMENT | PUBLIC WORKS & FACILITIES | PARKS  
1441 Schilling Place, South 2<sup>nd</sup> Floor (831)755-4800  
Salinas, California 93901-4527 [www.co.monterey.ca.us/rma](http://www.co.monterey.ca.us/rma)

April 1, 2020

Mr. Paul Hart  
Moncrief and Hart  
16 West Gabilan St.  
Salinas, CA 93901

RE: Vista Nadura Subdivision, Carmel Valley, PLN990274

Dear Mr. Hart:

This letter is in response to your request that the above referenced subdivision application be deemed complete as of 2002-2003. Staff has reviewed the project file and your contentions, and staff has confirmed its prior determinations that the application is incomplete. As further outlined below, you may submit the information required to make this application complete, or you may appeal the incompleteness determination to the Monterey County Planning Commission.

There is no dispute that under the Subdivision Map Act, the subdivision application is subject to the ordinances, policies, and standards in effect when the application is deemed complete, with some exceptions not at issue here. (Government Code section 66474.2(a).) In this case, the application has been incomplete since 2002 and remains incomplete. Therefore, the application will be subject to such County ordinances, policies and standards rules in effect when it is deemed complete, including but not limited to the 2010 General Plan, including the updated Carmel Valley Master Plan. Review of a completeness determination is factually based.

County staff, predominantly RMA and Environmental Health, have conducted an in-depth review of the application materials and project files over the past 20 years, as well as the extensive supplemental information your office provided. Staff's determination is based on project specific facts. **Exhibit A** provides a summary of key dates and actions that support this determination.

County records show that the formal application was filed on August 26, 2002. By letter dated September 26, 2002, staff informed the applicant that the application was incomplete because the applicant had not submitted proof of adequate water supply, and additional information, as required by the County's subdivision ordinance in order to deem the application complete.

You contend the subdivision application should not have been deemed incomplete due to the failure to include in the application material evidence as to the existing availability of full water rights to serve the entirety of the proposed project. You contend this was not the proper procedure or standard in place at that time, rather, the application should have been deemed

complete when the applicant “pointed to a proposed source of water supply. The actual sufficiency and viability of the water supply was not a precondition of deeming the application complete, rather it was an issue to be evaluated and examined during the project review and approval/denial process.” (Email of August 6, 2019 to Craig Spencer, RMA Services Manager).

Research found that on September, 2000, the County Board of Supervisors adopted a “Proof of Water” ordinance requiring that all proposed subdivisions show adequate source of water prior to an application being deemed complete. The ordinance amended portions of Title 19, and stated that these new provisions were not retroactive to projects for which an application had already been deemed complete prior to June 26, 2000. Per the ordinance adopted in September 2000, County regulations require submission of a hydrogeological report for a subdivision application to be complete. Section 19.03.015.L.3.A of the Monterey County Codes (Title 19, Subdivisions, non-coastal) states, in part: “**Prior to an application being deemed complete, a hydrogeologic report based on a comprehensive hydrological investigation shall be prepared by a certified hydrogeologist, selected by the County and under contract with the County, at the applicant's expense, if required by this Section...**” This requirement has been in place since before your client submitted its formal application in 2002.

In contrast, you provided as evidence the application evaluation process for the September Ranch property, located nearby, which you contend was not required to provide proof of water supply before being deemed complete for processing. However, the original September Ranch subdivision (PC95062) application was submitted and deemed complete in 1995. The EIR was revised (PLN050001) subsequently as a result of litigation, but since the revision of the EIR was to satisfy the court directives, the September Ranch project retained its original completion date and was processed under the pre-2000 Subdivision Code. Nonetheless, a very thorough analysis of water supply and water demand was required and done for the September Ranch project.

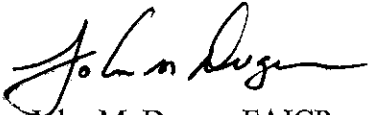
Based on the information I have reviewed, it is staff’s determination that the Vista Nadura Subdivision application is incomplete and, therefore, subject to Monterey County Code Section 19.03.015.L.3.A and the 2010 General Plan, and the Carmel Valley Master Plan, as incorporated into the 2010 General Plan and amended in 2013, as well as any other County plans, rules and regulations applicable to the project that are in effect when the application is deemed complete.

This is an incompleteness determination pursuant to Government Code section 65943. In order to move the application forward, two options are open to you:

- A. Submit the information required to make the Vista Nadura Subdivision application complete: To render the application complete, you must submit the information required by the Monterey County Health Department Environmental Health Bureau (EHB) related to adequate public water supply, as specified in the attached Memorandum (dated 11/4/2019). As delineated in the memo, EHB has modified its requirements in response to your request that some of the information would be addressed in the EIR process; however, EHB requires you to submit certain information prior to application completeness. Additionally, as a prerequisite to a complete application, the subdivision description needs confirmation as to number of lots and subdivision design, given revisions to the application which applicant submitted in 2016.
- B. Appeal the determination: Pursuant to Government Code section 65943(c), you have the right to appeal this incompleteness determination to the Monterey County Planning Commission. If you desire to file an appeal, you must submit an appeal in writing to the Resource Management Agency and pay the applicable appeal fee. The appeal must specify

the grounds for the appeal. Upon receipt of the appeal, Resource Management Agency would set the appeal for hearing before the Planning Commission within 60 days of the hearing, unless the COVID-19 emergency requires additional time. Please note the appeal would be limited to the issue of application completeness and would not be a hearing on the application itself.

Sincerely

A handwritten signature in black ink, appearing to read "John M. Dugan". The signature is fluid and cursive, with a prominent initial "J" and "D".

John M. Dugan, FAICP

RMA Deputy Director of Land Use and Community Development

## EXHIBIT A – KEY DATES/ACTIONS

- 6/10/1999 Application Request submitted, assigned case number PLN990274
- 09/2000 BOS adopts Ordinance 4082 amending MCC Chapters 19.03 and 19.04 setting forth procedures for a tentative map, including a hydrogeological report required prior to an application being deemed complete.
- 8/1/2001 Application Checklist “Given Out”
- 8/26/2002 Application Submitted
- 9/26/2002 Incomplete letter issued noting 1) the subdivision is located in water sub basins 31 and 32. Sub basin 32 is subject to a subdivision prohibition adopted by the County in Feb. 1983., 2) no documentation of source of water supply, 3) Lack of soils study and report for each lot.4) Project description is not complete.
- 11/4/2002 Supplemental letter from Environmental Health Office reiterating that the applicant must provide map overlays showing the proposed subdivision location in the two sub basins, and related soil percolation test results. Also reiterated was the requirement for a project-specific hydrogeological report to demonstrate the existence of a long-term water supply for the subdivision. The report was to be prepared by a hydrogeologist under contract with the County. It was specifically stated the application would be deemed incomplete until such report was completed and accepted by Environmental Health.
- 4/15/2003 Letter from Bestor Engineers (Applicant’s engineer) urging reconsideration of requirement of hydrogeological report to demonstrate long range water supply. based on historic land use of the property and their related water consumption. Health Department notes they have no record of this letter and marked it received on November 9, 2007.
- 4/6/2006 Bestor Engineers submits supplemental data for water system.
- 4/20/2006 Letter from County Planning regarding additional information needed.
- 8/3/2006 Letter from County Planning stating all departments have deemed the application complete except the Health Department. Health Department requires information on 1) Complete project description related to sub basins, 2) Additional soils information, 3) Documentation of water supply, 4) Method of sewage disposal and proposed Community Septic System not acceptable.
- 11/9/2007 Information submitted by applicant to Health Department addressing required data.
- 11/30/2007 Detailed letter from Health Department identifying incomplete information for: wastewater management, water supply, project description, and related tentative map requirements.
- 12/27/2007 Reissued letter from County Health Department reiterating the application is incomplete due to lack of information listed in their referral of 7/31/2006.(Listed in County Planning letter of 8/3/2006.
- 2/21/2008 Bestor Engineers submits response to County Health Department letter of 12/27/2007. Response clarified the project description is to include 7 inclusionary housing units on lot 20; 1982 map showing subdivision location in sub watersheds; soil and percolation testing reports, well pump test, drain-field and septic information; statement that water credits from existing horse operations (2.48 acre feet) can be used for water plus use of sub-potable water from aquifer underlying the Carmel Valley aquifer.
- 3/18/2008 County Health Department stating the project description was now satisfactory, but none of the other required information had been received in the form or detail required: 1. Sub basin and proposed subdivision overlay map, 2.Soils and

- percolation testing reports for proposed lots, 3. Water supply information verifying water rights, report from Monterey Peninsula Water Management District, well pump test data.
- 6/4/2008 County Health Department letter to applicant summarizing required information on the: sub basins overlaid by the subdivision proposed septic fields, wastewater management, water supply verifying water rights for existing well and other data as detailed in March 18,2008 letter.
- 9/4/2008 Letter from Health Department to applicant confirming a phone conversation of 8/28/2008 wherein applicant stated he wished to address sewage issues by deleting drain fields and connecting to Carmel Area Wastewater District (CAWD). Letter stated Can and Will Serve Letter from CAWD required to be documented. Water supply issues still not addressed.
- 12/10/2010 Letter from Environmental Health Department documenting phone conversation regarding letters sent to applicant by the Planning Department. Staff was directed by the Board of Supervisors to recommend denial of all proposed subdivisions in Carmel Valley. On October 26, 2010, the Board of Supervisors adopted the 2010 Monterey County General Plan. Carmel Valley projects that remain incomplete as of Oct.16, 2007 are to comply with the 2010 General Plan policies LU-1.19, CV-1.6,CV-2.18, CV-2.19 and CV-5.5. Previously documented reports and technical information remain outstanding. Regarding wastewater disposal, an Oct 23, 2008 letter from the Carmel Area Wastewater District stated the project will have to apply to amend the CAWD Sphere of Influence in order to be annexed into the district.
- 11/15/2011 Memorandum from Roger Van Horn, Environmental Health Dept. to Robert Schubert, Planning Department stating that Environmental Health considers the project incomplete with recommendation for denial due to lack of proof of a sustainable long-term potable water supply.
- 5/31/2016 Project Referral Sheet from Environmental Health Bureau stating the application is incomplete. Can and Will Serve Certification from CAWD has not been submitted by the applicant to show CAWD will provide sewer service to the project. Proof of Long-Term Sustainable Water Supply and Adequate Water Supply System pursuant to General Plan policy PS 3.2 has not been submitted.
- 1/24/2018 Letter from John M Dugan, RMA Deputy Director summarizing a history of the project and requesting evidence that the Health Bureau information requirements had been met to deem the project application complete.
- 3/19/2019 Letter from Paul Hart of Moncrief and Hart responding to the letter of 1/24/18 and requesting a Director's Interpretation which would find the application Complete prior to October 16, 2007. Documentation provided which applicant contends supports their contention that the application should have been deemed complete sometime in 2002 or 2003.
- 11/4/2019 Memorandum from Bryan Escamilla Environmental Health Bureau restating and partially revising (ie, reducing) items required to be addressed prior to the project being deemed complete.



**COUNTY OF MONTEREY  
HEALTH DEPARTMENT**

**MEMORANDUM**

ENVIRONMENTAL HEALTH BUREAU

NOVEMBER 4, 2019

**To: John Dugan, AICP, Deputy Director  
Monterey County Resource Management Agency**

**From: Bryan Escamilla, REHS  
Environmental Health Review**

**Subject: PLN990274, Agha Durrell D Tr**

As previously requested by Environmental Health Bureau staff, the follow items are required to be addressed prior to the project being deemed complete:

1. Written verification from Carmel Area Wastewater District (CAWD) stating the sewer service can and will be provided for the proposed property/project.

Information and/or agreements as to how the sewer main will be connected to this project (both financially and logistically) and additional review from the Local Agency Formation Commission of Monterey County (LAFCO) for annexation into the CAWD district will be necessary for the wastewater expansion. This review may take place through the EIR process.

2. This project will require proof of a Long Term Sustainable Water Supply and an Adequate Water Supply System pursuant to General Plan policy PS 3.2. This review can be done through a contracted Hydrogeological Study through RMA or through the EIR process.
3. Official documents verifying water rights for the existing well due to location within Carmel River Basin have not been supplied to EHB. The proposed project would also meet the definition of a Public Water System and as a result, a suitable secondary water source shall be identified and tested to determine that it meets quality and quantity requirements. Monterey Peninsula Water Management District (MPWMD) also needs to be advised of this project so they may make comments regarding any specific concerns they might have as to water use intensification.
4. Chemical test results for the existing well, dated Feb 12, 2009, detected Fluoride at 6 mg/L (three times the MCL of 2 mg/L) subsequently, quarterly conformation samples for Fluoride should have been taken to demonstrate Fluoride thresholds. The applicant met with EHB staff in April 2011 and a conformation sample was taken. The result was 3.48 mg/L, which is still over the MCL. Quarterly confirmation samples are required.

# **Exhibit 23**

This page intentionally left blank.



# MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

---



PLANNING & BUILDING INSPECTION DEPARTMENT, Scott Hennessy, Director

168 W. Alisal St., 2<sup>nd</sup> Floor  
Salinas, CA 93901

(831) 755-5025  
FAX (831) 757-9516

December 22, 2006

Mr. Nader Agha  
542 Lighthouse Avenue  
Pacific Grove, CA 93950

Subject: Vista Nadura Subdivision (PLN990274)

Dear Mr. Agha:

On September 28, 2006 I sent you a copy of the proposal from the firm (EMC) that was selected by the County to prepare an EIR for the Vista Nadura Subdivision. Please review the proposal and let me know whether you agree to pay for the EIR. Once the County receives your authorization we will prepare the appropriate contract documents.

Let me know if you need another copy of the proposal. Feel free to call me at (831) 755-5183 if you have any questions.

Sincerely,

Bob Schubert, AICP  
Acting Planning and Building Services Manager

This page intentionally left blank

# **Exhibit 24**

This page intentionally left blank.

# MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY



PLANNING DEPARTMENT, Mike Novo, Director

168 W. Alisal St., 2<sup>nd</sup> Floor  
Salinas, CA 93901

(831) 755-5025  
FAX (831) 757-9516

October 28, 2010

Mr. Nader Agha  
542 Lighthouse Avenue  
Pacific Grove, CA 93950

Subject: Vista Nadura Subdivision (PLN990274)

Dear Mr. Agha:

The purpose of this letter is to outline the options for processing the Vista Nadura Subdivision which is within the Carmel Valley Master Plan Area. Resolution No. 02-024 states that it is the policy of the Board of Supervisors that residential subdivisions in the Carmel Valley Master Plan Area be denied, pending the construction of left turn pockets on Segments 6 and 7 of Carmel Valley Road (from Robinson Canyon Road to Rancho San Carlos Road) and the construction of capacity-increasing improvements to State Highway 1 between its intersections with Carmel Valley Road and Morse Drive. While the policy established in Resolution No. 02-024 remains in effect, staff is directed by the Board of Supervisors to recommend denial of proposed subdivisions in Carmel Valley, including the subject application.

On October 26, 2010, the Board of Supervisors adopted the General Plan Update. Policy LU-9.3 in the General Plan Update states that applications for subdivision maps that were deemed complete after October 16, 2007 shall be governed by the plans, policies ordinances and standards that are enacted as a result of the General Plan Update. All of the County departments have deemed the application complete with the exception of the Environmental Health Bureau (see memorandum from Environmental Health dated July 31, 2006). Since the subject application is incomplete, it is subject to the following requirements of the adopted General Plan Update:

- a. LU-1.19 requires all development outside of designated Community Areas and Rural Centers to be subject to a Development Evaluation System with evaluation criteria that must meet a minimum passing score.
- b. Policy CV-1.6 in the General Plan Update limits new residential subdivisions in Carmel Valley to the creation of 266 new units with preference to projects including at least 50% affordable housing units. As of this time Monterey County has three applications in Carmel Valley with a total of 268 lots that have been deemed complete (i.e., Rancho Canada Village Specific Plan with 247 residential lots, Delfino with 19 residential lots and Miller with 2 residential lots) that could precede this project in the buildout accounting. Again, the maximum unit count that could be approved under the General Plan Update is 266 units. If these projects are approved, there would not be any units remaining for the Vista Nadura Subdivision.



- c. Policy CV-5.4 requires the establishment of regulations for Carmel Valley that limit development to vacant lots of record and already approved projects, unless additional water supplies are identified.
- d. Policies CV-2.18/CV-2.19 include a specified list of road improvements along Carmel Valley Road and Laureles Grade within the Carmel Valley Master Plan Area, proposed amendments to the Carmel Valley Master Plan, consideration of several interim improvement options for one intersection, a change in LOS standard for one segment (Segment 3), and a proposed update of traffic impact fees to pay for the proposed improvements through collection of fees from new development.

Options that are available to you for the Vista Nadura Subdivision are as follows:

1. Withdraw the application.
2. Request that the project be put on hold until such time that Resolution No. 02-024 is rescinded by the Board of Supervisors. The project would still need to comply with the requirements of General Plan Policy LU-1.19 and Carmel Valley Master Plan Policies CV-1.6, CV-5.4 and CV-2.18/CV-2.19.
3. Proceed with the preparation of an EIR. On September 28, 2006, the Planning Department sent you a copy of the proposal from the firm (EMC) that was selected by the County to prepare an EIR for the Vista Nadura Subdivision. On December 22, 2006, the Planning Department sent you a letter asking that you review the proposal and let us know whether you agree to pay for the EIR. Since we never received a response or deposit from you, work on the EIR was never started. For the reasons stated above, staff does not recommend that an EIR be prepared. Staff would recommend denial of the project which would not require an EIR. If you decide to pursue this option, there could be considerable time and expense involved with completion of an EIR regardless of the conclusions.

Please let me know how you wish to proceed within 30 days of the date of this letter. If we do not hear from you, staff will schedule the project for hearing and recommend denial. Feel free to call me at (831) 755-5183 if you have any questions.

Sincerely,

Bob Schubert, AICP  
Senior Planner

Cc: Durell Agha  
Richard LeWarne  
Tom Moss  
Chad Alinio  
Les Girard