

0602.350; 0125.000

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

Agreement No.: A-11022

- a. Approve pregrading to allow removal of 154 trees and grading for Cathrein Estates Subdivision (PLN990330), subject to Monterey County Requirements (Attachment A) and Pre-Grading Agreement (Attachment B), North County area;
- b. Authorize the Chair to sign the Pre-Grading Agreement;
- c. Approve Subdivision Improvement Plans; and
- d. Authorize the Public Works Director to sign the Subdivision Improvement Plans.....

Upon motion of Supervisor Salinas, seconded by Supervisor Armenta, and carried by those members present, the Board hereby:

- a. Approves pre-grading to allow the removal of 154 trees and grading for the Cathrein Estates Subdivision (PLN990330), subject to Monterey County requirements (Attachment A) and Pre-Grading Agreement (Attachment B), North County area;
- b. Authorizes the Chair to sign the Pre-Grading Agreement;
- c. Approves Subdivision Improvement Plans; and
- d. Authorizes the Public Works Director to sign the Improvement Plans

SED AND ADOPTED this 1st day of May 2007, by the following votes, to wit:

AYES: Supervisors Armenta, Calcagno, Salinas, and Potter

NOES: None

ABSENT: Supervisor Smith

I, Lew C. Bauman, 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 73 for the meeting on May 1, 2007

Dated: 9/20/2007

Lew C. Bauman, Clerk of the Board of Supervisors, County of Monterey, State of California

By [Signature] Darlene Drain, Deputy

**AGREEMENT PURSUANT TO ISSUANCE OF
GRADING PERMIT FOR PRE-GRADING**

[File No. PLN990330]

This Agreement ("Agreement") is made and entered as of March 19, 2007 by and between the COUNTY OF MONTEREY (the "County") and DONALD D. CHAPIN, JR. and BARBARA A. CHAPIN (the "Applicant"), each a "Party" and collectively the "Parties".

RECITALS

A. On May 4, 2004, the Monterey County Board of Supervisors adopted a mitigated negative declaration and approved a Combined Development Permit, including Conditions of Approval for the Cathrein Estates Subdivision (PLN990330, "the Project") for the development of approximately 143 acres in the unincorporated area of the County as a subdivision of 28 residential units for the Cathrein Estates Subdivision.

B. Pursuant to the provisions of the Monterey County Code and Requirement No. 5 of the Monterey County Requirements for Issuance of the Grading Permit for Pre-Grading ("Requirement No. 5"), Applicant has applied to the County to cut down 154 (2) trees and to be allowed to perform pre-grading on the site prior to recordation of the subdivision final map.

C. Requirement No. 5 requires an applicant to:

"Enter into an agreement with the County subject to the approval of the Directors of Public Works, Planning and Building Inspection, and Water Resources Agency, and County Counsel for the prevention of sediment from entering downstream facilities; for the maintenance of the pre-graded area to include the maintenance of plantings, maintenance and restoration of slopes, maintenance of retention/detention/sedimentation ponds, maintenance of drainage system improvements installed as part of the Pre-grading Permit; and provide for the restoration of on and off-site damages caused by storm activities. The agreement shall also include an appropriate hold harmless clause for the County. Security shall be provided in the form of a performance bond for 100 per cent of the grading and erosion control cost, a labor and materials bond for 50 per cent of the labor and material costs and a maintenance bond for 100 percent of the estimated cost of annual maintenance of the graded area. Additional security shall be provided subject to the approval of County Counsel to cover any potential liability that may be filed against the County due to the pre-grading activities"

D. The Parties desire to enter into this Agreement to fulfill the above provision of Requirement No. 5 relating to the maintenance of erosion control facilities and the performance of other obligations by Applicant as further set forth herein.

AGREEMENT

I. DEFINITIONS

- A. "Erosion Control Plan" means the plan required under Requirement No. 5, and Monterey County Code Section 16.12.060 that sets forth the methods for the control of runoff, erosion, and sediment movement during grading and building activities.
- B. "Project" means the Cathrein Estates project, approved by the Monterey County Board of Supervisors pursuant to Board of Supervisors Resolution No. 04-151 approved on May 4, 2004.
- C. "Grading Permit" means permit as required by Chapter 16.08, Monterey County Code.

II. EROSION CONTROL PROCEDURES

- A. Applicant shall prepare an Erosion Control Plan in accordance with Requirement No. 5 and the provisions of the Monterey County Code, and submit the Plan for approval by the Public Works Director prior to the commencement of pre-grading allowed under the grading permit.
- B. In order to satisfy the requirements of Requirement No. 5, in addition to the requirements set forth in the Monterey County Code, the Erosion Control Plan shall also provide for the protection of down stream facilities from sediment; the maintenance of plantings; the maintenance and restoration of slopes; the maintenance of retention/detention/sedimentation ponds; the maintenance of drainage system improvements installed as part of grading activities; the restoration of on and off site damages that may be caused by the grading activities; and the restoration of the site to its natural state in the event of an adverse court decision in the present litigation challenging the decision of the Sixth District Court of Appeal which upheld the County's approval of the Project and denied the Appeal of LandWatch.
- C. All erosion control procedures shall be installed in a timely manner in accordance with the Erosion Control Plan
- D. Applicant agrees to provide security in accordance with Requirement No. 5 and in compliance with Monterey County Code section 16.12.140. Applicant hereby agrees that if maintenance of the erosion control facilities is not performed in accordance with the Erosion Control Plan, after receipt of reasonable notice in writing from the County to do so, that the failure to provide such maintenance will be a default under this agreement of the kind secured by the deposit referenced above.

III. WAIVER OF VESTED RIGHTS CLAIMS

In accepting the County's grant of the grading permit herein, Applicant hereby waives any and all vested rights claim that Applicant may have or acquire under any theory of law in connection with the County's approval and issuance of the grading permit for pre-grading. By entering into this Agreement, Applicant hereby warrants and represents that Applicant will not make any vested rights claim in connection with the County's approval and issuance of the grading permit and that Applicant waives any such claim by accepting the County's grant of the grading permit.

IV. INDEMNIFICATION

- A. Applicant agrees that it will defend, indemnify and hold harmless the County or its agents, officers and employees from and against any and all claims, liabilities, losses whatsoever (including damages to property and injuries to or death of persons, court costs and reasonable attorneys fees), actions or proceedings against the County or its agents, officers or employees occurring or resulting in connection with any erosion, flooding, stormwater runoff, grading or discharge as a result of the Project, issuance of the Grading Permit for Pre-Grading and, any claim brought against the County which challenges the County for approving the grading permit, entering into this Agreement, or any similar or related claim. This indemnification and hold harmless agreement includes the cost of independent outside counsel if engaged by the County to defend any such action. Applicant will reimburse the County for any and all court costs, fines, penalties, liabilities, damages and/or attorney's fees, to the extent allowed by law, which the County may be required to pay by a court as a result of such action. The County, may, at its sole discretion, participate in the defense of such action, but such participation shall not relieve Applicant of its obligations under this section.
- B. The County shall promptly notify Applicant of any claim, action or proceeding covered by this indemnification provision, and the County shall cooperate fully in the defense thereof.

V. TERM OF AGREEMENT

The term of this Agreement shall commence upon issuance of the grading permit and shall remain in effect for the life of the grading permit and any applicable statute of limitations in connection with the approval of the Project and/or with the approval of said grading permit whichever date occurs later.

VI. EFFECT OF HEADINGS

The headings or titles of the sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, or effect hereof.

VII. SUCCESSORS AND ASSIGNS

Whenever either Applicant or the County is named or referred to herein, such reference shall be deemed to include the successor to the powers, duties, and functions that are presently vested in Applicant, or the County, and all agreements and covenants required hereby to be performed by or on behalf of Applicant or the County shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.

VIII. BENEFITS OF AGREEMENT

Nothing contained herein, expressed, or implied, is intended to give to any person other than Applicant, or the County any right, remedy or claim under or pursuant hereto, and any agreement or covenant required herein to be performed by or on behalf of Applicant, or the County shall be for the sole and exclusive benefit of the Parties.

IX. SEVERABILITY CLAUSE

If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of Applicant or the County shall be contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed severable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof. Applicant and the County hereby declare that they would have executed this Agreement, and each and every other article, section, paragraph, subdivision, sentence, clause, and phrase hereof irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses, or phrases, hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable, or invalid.

X. AMENDMENT IN WRITING

This Agreement may only be modified, amended or changed by written agreement of the Parties.

XI. FAILURE TO ENFORCE NOT A WAIVER

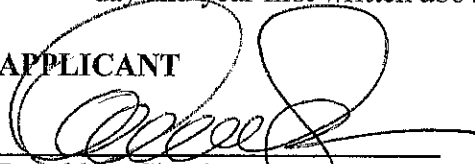
The failure by either Party to enforce any term or provision of this Agreement will not constitute a waiver of that term or provision, or any other term or provision. No waiver of any term or provision of this Agreement, by either Party, will be deemed or will constitute a waiver of any other provision of this Agreement, and no waiver will constitute a continuing waiver unless otherwise expressly provided in writing.

XII. EXECUTION IN COUNTERPARTS

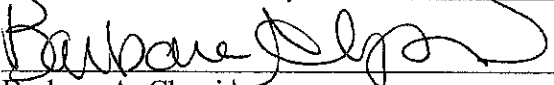
This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

APPLICANT

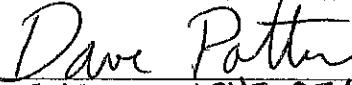

Donald D. Chapin, Jr.

Dated: 3/19/07


Barbara A. Chapin

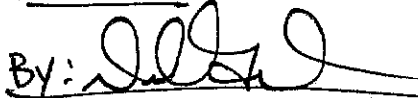
Dated: 3/19/07

COUNTY OF MONTEREY


By: CHAIR, MONTEREY COUNTY BOARD OF SUPERVISORS

Dated: 5/1/07

ATTEST:

By: 
CLERK TO THE BOARD

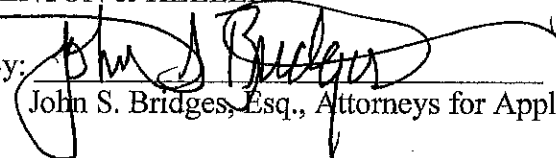
Dated: 5/1/07

APPROVED AS TO FORM:

Charles McKee, County Counsel 3/20/07

By: 
Efren N. Iglesia, Senior Deputy County Counsel

FENTON & KELLER

By: 
John S. Bridges, Esq., Attorneys for Applicant

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

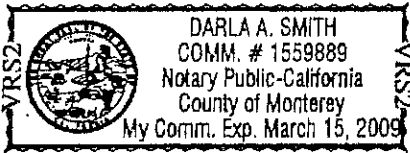
County of Monterey } ss.

On 3/19/07, before me, Darla A. Smith

personally appeared Donald and Barbara Chapin

personally known to me

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

Darla A. Smith
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____