

# Attachment C

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**Before the Planning Commission  
in and for the County of Monterey, State of California**

**RESOLUTION NO. 20-031**

Resolution by the Monterey County Planning Commission in the matter of the appeal by Vista Nadura LLC of the incompleteness determination that an application (Agha/PLN990274) for a Standard Subdivision of a 50 acre parcel 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).

(Agha/PLN 990274) 8767 Carmel Valley Road, Carmel, Carmel Valley Area Plan (APN 169-011-009-000)

**The Vista Nadura LLC appeal of the Resource Management Agency’s incompleteness determination for a standard subdivision application (Agha/PLN990274) came on for public hearing before the Monterey County Planning Commission on September 30, 2020. 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**

**FINDING:**            **APPLICATION INCOMPLETE:** The subdivision application (Agha/PLN170296) for a Standard Subdivision of a 50 acre parcel into 20 lots ranging in size from 1.1 acres to 8.5 acres (PLN990274) 8767 Carmel Valley Road, Carmel, was not deemed complete prior to October 16, 2007 and continues to be incomplete pursuant to Government Code Section 65943 (the Permit Streamlining Act).

**EVIDENCE:**    a) Durrel and Nader Agha (applicant) submitted an application to the County Planning Department for a proposed subdivision to subdivide 50 acres into 20 lots (PLN170296) on August 26, 2002. (Attachment 1.) (Citations to attachments are to the attachments to Exhibit A of the September 30, 2020 staff report to the Planning

Commission.) The subdivision is known as the Vista Nadura subdivision.

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. (Attachments 1b)

- b) The county subdivision regulations (Section 19.03.015.L.3.A of the Monterey County Code (Title 19, Subdivisions, non-coastal) states 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.”*
- c) The county Environmental Health Bureau has consistently determined that unless this information is submitted it cannot agree the application is complete to determine if an adequate public water supply is available for the subdivision. The record shows a consistent series of “incomplete application” communications from the Environmental Health Bureau beginning in September 26, 2002 through November 4, 2019. specifying required information for application completeness and clarifying and reiterating the requirement for a project-specific hydrogeological report to demonstrate the existence of a long-term water supply for the subdivision. The report is to be prepared by a hydrogeologist under contract with the County. (**Exhibit A of the September 30, 2020 staff report.**)
- d) In response to a request from Mr. Paul Hart, attorney for the applicant, Mr. John Dugan, Deputy RMA Director, sent a letter dated 1/24/2018 to Mr. Hart 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. Attachment 19
- e) Mr. Paul Hart responded on 3/19/2019 requesting a Director's Interpretation which would find the application complete prior to October 16, 2007. Documentation was provided which applicant contends supports their contention that the application should have been deemed complete sometime in 2002 or 2003. (Attachment 20).
- f) Mr. Paul Hart's information was evaluated by the Environmental Health Bureau and found to be lacking the essential application

submittal requirements. (Attachment 21, letter dated November 4, 2019.

- g) By letter dated April 1, 2020 to Mr. Hart (**Attachment 22**), Mr. John Dugan, RMA Deputy Director, provided the facts and evidence for staff determination that the application remains incomplete. The letter advised the applicant that applicant could either provide the missing hydrogeological information, or appeal the incompleteness determination pursuant to Government Code Section 65943, which provides for an appeal of a determination that an application is incomplete.
- h) By letter dated July 31, 2020, on behalf of Vista Nadura LLC (“appellant”), Mr. Paul Hart filed an appeal of the incompleteness determination to the Planning Commission. (Exhibit C to the September 30, 2020 staff report.) Although the original application was made in the name of Durell and Nader Agha, the appeal was filed by Vista Nadura LLC. 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 the Vista Nadura LLC is the current owner of the property and that Mr. Agha is an authorized representative of Vista Nadura LLC.
- i) The Monterey County Planning Commission conducted a duly noticed public hearing on the appeal on September 30, 2020, at which appellant and all members of the public had the opportunity to appear and provide testimony.
- j) The issue in this appeal is whether the application for the Vista Nadura subdivision was deemed complete prior to October 16, 2007. Monterey County General Plan Policy LU-9.3 provides that subdivision applications deemed complete on or before that date are subject to the County plans and regulations in effect when the applications were deemed complete. Accordingly, the application completeness determination at issue in this appeal will determine whether the 1982 General Plan and earlier Carmel Valley Master Plan or 2010 General Plan and updated Carmel Valley Master Plan apply to the project application. In either event, the application completeness determination is not a decision on the project. if and when the application is determined complete, if applicant desires to continue pursuing the application,

the County will process the application, which would include environmental review and bringing the application to public hearing before the appropriate County decision makers.

- k) The appeal contends that the determination of application incompleteness is incorrect and not supported by facts and evidence. The appeal requests the Planning Commission to reverse this determination and find the Vista Nadura Subdivision application was complete prior to October 16, 2007. The appeal raises 17 contentions listed and addressed as follows:

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

Response: **Exhibit A** provides a chronology of events and documents (numbered attachments to Exhibit A) which show that the application was incomplete prior to October 17, 2007 and remains incomplete. See also the following responses.

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

Response: See **Exhibit A**. The key ordinance supporting the finding that the application is incomplete is 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 an 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 (Subdivisions, non-coastal) of the Monterey County Code 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" (emphasis added). This requirement has been in place

since before the Vista Nadura application was filed on 8/26/2002. 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 A, Attachment 1a.**) After the applicant submitted his application, the County has consistently advised the applicant, beginning on 9/26/2002, within the 30 day timeframe for application completeness review, that this key requirement of a subdivision application had not been submitted. (See **Exhibit A, Attachments 1b and 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 these Subdivision Regulations. **Exhibit A, Attachment 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 **Exhibit A** and attached to Exhibit A.

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, 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:** See application checklist requiring hydrological information and proof of water supply and letters dated 9/26/2002 and 11/4/2002, stating the hydrogeological report was required and not submitted. **Exhibit A, Attachments 1, 1a, 1b, 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.

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:** The County consistently informed the applicant that the project application was not complete.

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. County will 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: Mr. Hart is referring to the September Ranch subdivision (PC95062), which he contends 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 subsequently (PLN050001), 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 prior to the Board's approval of the September Ranch subdivision application in 2010 (Resolution No. 10-312).

Appellant attaches a copy of *Save Our Peninsula Committee v. Monterey County Board of Supervisors*, 87 Cal. App. 4<sup>th</sup> 99 (2001) but draws the wrong lesson from that case. Appellant cites the case 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 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 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 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 provide by appellant in conjunction with its application.*

Response: In December 2007, EHB acknowledged in a letter 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.

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.

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: See **Exhibit A**. The application checklist required submission of hydrological evidence of water quality and quantity and proof of an assured, long term water supply. **(Exhibit A, Attachment 1a)** The County has consistently advised the applicant, beginning on 9/26/2002, within the 30 day timeframe for application completeness review, that this key requirement of a subdivision application had not been submitted. **(See Exhibit A, Attachment 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 A, Attachment 2.)** See also, **Attachment 8** (8/3/2006 letter to applicant from RMA listing missing information required by Environmental Health Bureau to deem application complete.)

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, **Attachments 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. Applicant has failed to provide the information which County regulations require of subdivision applications to deem the application complete. The County has required the hydrogeologic report in accordance with County's regulations (Title 19, as cited above) for this applicant equally with other subdivision applicants. For example, other subdivision applications during the relevant time frame which included this required 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 Exhibit A and its attachments and responses above.

2. **FINDING:** **CEQA (Exempt):** This determination that the Vista Nadura application is incomplete is not a project under CEQA.

**EVIDENCE:** a) Application status determination is not a project under CEQA Guidelines section 15378(b) (5) because it does not constitute approval of the subdivision application or commit the County to approval of the subdivision. This determination is an administrative activity that will not result in direct or indirect physical changes in the environment. The standard subdivision application itself is a project that would be subject to environmental review under CEQA prior to a decision on the proposed project.

3. **FINDING:** **APPEALABILITY** - The decision on this application incompleteness determination is final.

**EVIDENCE:** a) This appeal is taken pursuant to Government Code section 65943 which requires a final determination on an appeal of an incompleteness determination within 60 days of the filing of the appeal unless applicant and the County mutually agree to an extension. At the hearing at the Planning Commission, County Counsel inquired whether appellant would grant an extension of time in order for appellant to pursue an appeal to the Board of Supervisors which would have been available pursuant to section 19.17.050.D of the Monterey County Code, and appellant's attorney stated that appellant would not grant an extension of time.

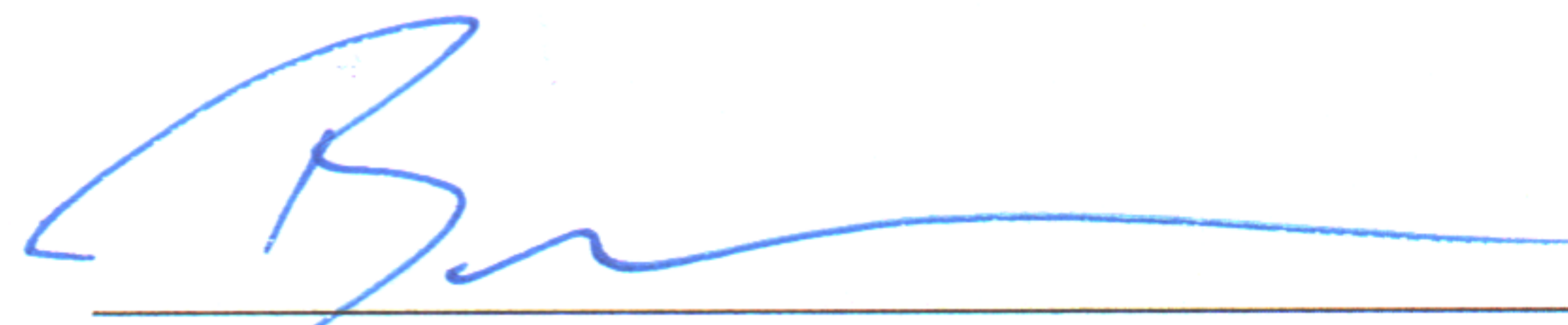
### DECISION

**NOW, THEREFORE**, based on all of the above findings and evidence, the Monterey County Planning Commission does hereby:

1. Deny the appeal by Vista Nadura LLC of the Resource Management Agency's determination that the Vista Nadura Subdivision application (Agha/ PLN990274) is incomplete; and
2. Affirm the determination that the Vista Nadura subdivision application (Agha/ PLN990274) was incomplete prior to October 16, 2007 and remains incomplete.

**PASSED AND ADOPTED** this 30<sup>th</sup> day of September 2020 upon motion of Commissioner Diehl, seconded by Commissioner Monsalve, by the following vote:

AYES: Ambriz, Diehl, Monsalve, Mendoza, Getzelman, Daniels, Coffelt, Gonzales  
NOES: None  
ABSENT: Duflock  
ABSTAIN: Roberts



Brandon Swanson, Planning Commission Secretary

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