



County of Monterey

Item No.19

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: RES 25-079

May 20, 2025

Introduced: 5/14/2025

Current Status: Agenda Ready

Version: 1

Matter Type: BoS Resolution

Continued from February 25, 2025 - Public hearing to consider:

- a. Certifying the Final Supplemental Environmental Impact Report for the Harper Canyon/Encina Hills project (State Clearinghouse Number: 2003071157), which supplements the Final Environmental Impact Report for the same project with information pertaining to wildlife corridors;
- b. Reinstating Board of Supervisors Resolution No. 15-084 for the Harper Canyon/Encina Hills project, except as amended with respect to the issue of wildlife corridors, which:
 - i. Certified the Final Environmental Impact Report for the project;
 - ii. Adopted a Statement of Overriding Considerations;
 - iii. Upheld an appeal by Harper Canyon Realty LLC of the Planning Commissions denial of the project;
 - iv. Approved a Combined Development Permit consisting of a:
 - 1) A Vesting Tentative Map for the subdivision of 344 acres into 17 residential lots ranging in size from 5.13 acres to 23.42 acres on 164 acres with one 180-acre remainder parcel;
 - 2) Use Permit for the removal of approximately 79 Coast live oak trees over six inches in diameter for road and driveway construction;
 - 3) Use Permit for development on slopes in excess of 30 percent;
 - 4) Use Permit for the creation of a public water system with a standalone treatment facility; and
 - 5) Grading for net cut and fill of approximately 2,000 cubic yards; and
 - v. Adopted a Mitigation Monitoring and Reporting Plan.
- c. Adopting a resolution modifying reinstated Resolution No. 15-084 relating to wildlife corridors and updating the record in conformance with the Monterey County Superior Court's Second Amended Peremptory Writ of Mandate issued on July 1, 2021 (Case Number M131193).
- d. Adopting a revised Mitigation Monitoring and Reporting Plan ("MMRP") reflecting modifications to the reinstated permit and replacing the previously adopted MMRP; and
- e. Directing the Office of County Counsel to file a further return to the Writ of Mandate with the Court on this action.

PROJECT INFORMATION:

Planning File Number: PLN000696

Owner: Harper Canyon Realty LLC (Encina Hills)

Project Location: South of Highway 68, East of San Benancio Road and west of Toro Park

APN: 416-611-001-000; 416-611-002-000; and 416-621-001-000

Agent: Matthew Francois and Michael Cling

Plan Area: Toro Area Plan

Flagged and Staked: No

CEQA Action: Reinstate certification of the Final EIR dated December 2013 and certify a

Subsequent Final EIR dated December 2024 modifying the December 2013 EIR with respect to wildlife corridors.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Certify the Final Supplemental Environmental Impact Report for the Harper Canyon/Encina Hills project (State Clearinghouse Number: 2003071157), which supplements the Final Environmental Impact Report for the same project with information pertaining to wildlife corridors;
- b. Reinstate Resolution No. 15-084, except as amended with respect to the issue of wildlife corridors;
- c. Adopt a Resolution modifying reinstated Resolution No. 15-084 relating to wildlife corridors and updating the record in conformance with the Monterey County Superior Court's Second Amended Peremptory Writ of Mandate issued on July 1, 2021 (Case Number M131193);
- d. Adopt a revised Mitigation Monitoring and Reporting Plan ("MMRP") reflecting modifications to the reinstated permit and replacing the previously adopted MMRP; and
- e. Direct the Office of County Counsel to file a further return to the Writ of Mandate with the Court on this action

SUMMARY:

On April 7, 2015, the Board of Supervisors approved a 17-lot subdivision (the "Project") proposed by Harper Canyon Realty, LLC ("Harper") on approximately 344 acres of land located south of State Route 68 and east of San Benancio Road in the Toro Area. To do so, the Board adopted Resolution No. 15-084 (Attachment E) which did the following: (1) certified the Final Environmental Impact Report ("FEIR") for the Project; (2) adopted California Environmental Quality Act ("CEQA") findings and a Statement of Overriding Considerations; (3) upheld the appeal by Harper from the Planning Commission's denial of their application; (4) approved a Combined Development Permit consisting of a Vesting Tentative Map for the subdivision and associated Use Permits; and (5) adopted a Mitigation Monitoring and Reporting Plan. Harper filed the subdivision application in August 2001 and the County deemed it complete on November 22, 2002, which was prior to the adoption of the 2010 General Plan and was therefore subject to review for consistency with the 1982 General Plan that was in effect at the time the subdivision application was deemed complete.

On May 4 and 6, 2015, LandWatch Monterey County and Meyer Community Group (collectively, "Petitioners") filed separate but related challenges to the County's approval of the Project in Monterey County Superior Court (Case Nos. M131893 and M131913). Petitioners claimed that County failed to comply with the CEQA and that its approval of the Project was inconsistent with the County's 1982 General Plan. The trial court upheld the Board's action except with respect to the need to recirculate the FEIR's groundwater resources analysis and the FEIR's analysis of project-level impacts on wildlife corridors.

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

of the Project's setting and its cumulative effect on groundwater resources.

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

On July 1, 2021, the Superior Court issued its Second Amended Peremptory Writ of Mandate ("Writ"). The Writ required the Board do the following:

1. Rescind portions of Resolution No. 15-084 certifying the FEIR, adopting the findings, approving the Combined Development Permit, and adopting the Mitigation Monitoring and Reporting Plan for the Project only to the extent they are dependent on wildlife corridor issues.
2. Suspend any and all activities related to the Project except the preparation, circulation, and consideration under CEQA of a legally adequate EIR with regard to the wildlife corridor issues discussed in the Opinion.
3. Before taking any further action on the Project, comply with CEQA by the preparation, circulation and consideration of a legally adequate EIR with regard to the wildlife corridor issues discussed in the Opinion.
4. Make and file a return to this writ within 60 days of taking such action, setting forth what it has done to comply.

On July 27, 2021, the Board adopted Resolution No. 21-281 to set aside portions of Resolution 15-084 for the Project only as it related to wildlife corridor issues, and filed a return with the court, in compliance with the Writ. At the same time, Harper requested the County prepare a revised EIR addressing the projects impacts on wildlife corridors.

The County contracted with Denise Duffy & Associates to prepare a Draft Supplemental EIR ("SDEIR") for the Project focusing on impacts of the Project on wildlife corridors consistent with the direction of the Writ and with the requirements of CEQA. The SDEIR found that the Project, as conditioned and mitigated, will have a less-than-significant impact on wildlife corridors. The SDEIR was released for public review and comment from March 12, 2024 through April 25, 2024. Public comments received during the public comment period, including comments received after the close of the public comment period from the California Department of Fish and Wildlife, have been reviewed. Responses to comments and revisions to the SDEIR are included in the Final Supplemental EIR ("SFEIR"), which was published on January 10, 2025.

The project, inclusive of the wildlife corridor analysis, was scheduled for consideration by the Board of Supervisors on February 25, 2025. Prior to the hearing several comment letters were received regarding the significance of the wildlife corridor and the potential impacts of the project on that corridor. The Board continued the hearing on February 25, 2025 to May 20, 2025 in order to

provide time to review and address comments. Since February 25, 2025, staff has met with representatives from the California Department of Fish and Wildlife (CDFW). The meeting included review of a conceptual wildlife corridor map with the lot boundaries, potential building sites, camera trap study results, topography, vegetation, and drainage areas all incorporated in the conceptual map. Potential revisions to wildlife corridor mitigation measures to reduce human/wildlife corridor conflicts and make the mitigation more effective in protecting wildlife corridors was also discussed and revisions to the mitigation measures in Exhibit 1, Attachment B have been incorporated. The camera trap survey results demonstrate that wildlife movement through the remainder lot and drainage area near Lot 16 of the tentative map was the most frequent area used by wildlife. This corresponds with the alignment of the Highway 68 under crossing to the north of the site. The map (**Attachment K**), shows the ability to protect large swaths of land, particularly in valleys and with vegetation cover, through the site. The Conceptual corridor map also extends beyond the project boundaries to ensure that the connection is made between open space areas of Fort Ord and Toro Park.

With the preparation, circulation, and consideration of the SFEIR addressing wildlife corridors, and when combined with the previously certified FEIR for all resource topics, the project is now ready to return to the Board for consideration.

The recommended action would reinstate approval of the Project while simultaneously modifying the previous approval to address the issue of wildlife corridors and reflect the SFEIR prepared for that purpose. Consistent with the Writ and the proposed action, the Board is only required to reconsider the approval in light of the new analysis pertaining to wildlife corridors.

CEQA:

The Board certifies that it has been presented with the SFEIR for the Project (State Clearinghouse Number: 2003071157), which supplements the FEIR for the same Project with information pertaining to wildlife corridors, and that it has reviewed and considered the information prior to approving the Project and prior to making the findings and approvals contained herein. The Board certifies that the SFEIR has been completed in accordance with CEQA, and the SFEIR reflects its independent judgment and analysis.

DISCUSSION:

Detailed discussion is provided in **Attachment A**.

OTHER AGENCY INVOLVEMENT:

The following agencies have previously reviewed the Project, had comments, and/or recommended conditions:

- Environmental Health Bureau
- Public Works, Parks & Facilities
- Economic Development
- Monterey County Water Resources Agency
- Monterey Regional Fire Protection District

The revisions pertaining to wildlife corridor impacts has been reviewed by Housing & Community Development with input from the Office of County Counsel.

The proposed project was reviewed by the Toro Land Use Advisory Committee as part of the original process.

FINANCING:

Funding for staff time associated with this project is included in the FY24/25 Adopted Budget for HCD. Funding for the wildlife corridor study and the preparation was provide by HCD with reimbursement for costs recovered under the terms of a funding agreement between Harper Canyon Realty LLC and the County.

Prepared and Approved by: Craig Spencer, Director of HCD, x5233

The following attachments are on file with the Clerk of the Board:

Attachment A - Detailed Discussion

Attachment B - Draft Resolution (wildlife corridors)

Exhibit 1 - Revised MMRP

Attachment C - Supplemental Draft EIR

Attachment D - Supplemental Final EIR

Attachment E - Board Resolution No. 15-084 (original approval)

Attachment F - Link to prior EIR (original approval)

<https://www.countyofmonterey.gov/government/departments-a-h/housing-community-development/planning-services/library-current-major-projects/harper-canyon-encina-hills-subdivision-eir>

Attachment G - Court of Appeal Opinion

Attachment H - Second Amended Writ of Mandate

Attachment I - Board Resolution No 21-628 (setting aside original approval)

Attachment J - Wildlife Corridor Study

Attachment K - Conceptual Wildlife Corridor Map

cc: Front Counter Copy, Matthew Francois (applicant), Michael Cling (applicant), Craig Spencer (Director of HCD); The Open Monterey Project (Molly Erickson); LandWatch (Executive Director); John H. Farrow; Richard Rosenthal, Meyer Community Group, Tanya Diamond, Pathways for Life; Michael Weaver; Rachel Saunders, Big Sur Land Trust; Julie Vance, California Department of Fish & Wildlife; Project File PLN000696