



Monterey County

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

Board Report

Legistar File Number: RES 19-148

November 05, 2019

Introduced: 10/24/2019

Current Status: RMA Land Use - Consent

Version: 1

Matter Type: BoS Resolution

Adopt a resolution:

- a. Finding that the action involves an administrative activity that will not result in direct or indirect changes in the environment and is not a project pursuant to Sections 15060(c)(3) and 15378(b)(5) of the State CEQA Guidelines; and
- b. Granting a stay of the expiration of the tentative map for the Rancho Los Robles Subdivision, as modified by the Coastal Development Permit issued by the California Coastal Commission, for the time period in which *Friends, Artists, and Neighbors of Elkhorn Slough et al. v. California Coastal Commission et al.* (Monterey County Superior Court Case No. 18CV001000) has been pending until final disposition of the litigation, not to exceed a period of five years (November 8, 2026), pursuant to Government Code Section 66452.6(c) and Monterey County Code Section 19.04.030.

Project Location: 100 Sill Road, Royal Oaks, North County Coastal Land Use Plan

RECOMMENDATION:

It is recommended that the Monterey County Board of Supervisors adopt a resolution to:

- a. Find that the action involves an administrative activity that will not result in direct or indirect changes in the environment and is not a project pursuant to Sections 15060(c)(3) and 15378(b)(5) of the State CEQA Guidelines; and
- b. Grant a stay of the expiration of the tentative map for the Rancho Los Robles Subdivision, as modified by the Coastal Development Permit issued by the California Coastal Commission, for the time period in which *Friends, Artists, and Neighbors of Elkhorn Slough et al. v. California Coastal Commission et al.* (Monterey County Superior Court Case No. 18CV001000) has been pending until final disposition of the litigation, not to exceed a period of five years (November 8, 2026), pursuant to Government Code Section 66452.6(c) and Monterey County Code Section 19.04.030.

The attached draft resolution includes findings and evidence for consideration (Attachment A). Staff recommends approval of the action.

PROJECT INFORMATION:

Agent: Mark Blum, Attorney at Law

Owner: Heritage/Western Communities LTD

Project Location: 100 Sill Road, Royal Oaks

APNs: 412-073-002-000, 412-073-015-000

Zoning: Medium Density Residential, Coastal Zone *Special Treatment Area-commercial

Plan Area: North County Coastal Land Use Plan

Flagged and Staked: N/A

SUMMARY:

On December 9, 2008, the Board of Supervisors approved a tentative map as part of a Combined Development Permit for the Rancho Los Robles Subdivision Project (Monterey County Resolution No. 08-374). The Board certified the Rancho Los Robles Subdivision EIR No. 02-03, adopted a statement of overriding consideration, and approved a reduced single family development alternative, including a standard subdivision. Friends, Artists, and Neighbors of Elkhorn Slough (FANS) and Coastal Commissioners Blank and Wan appealed the decision to the California Coastal Commission. The Coastal Commission approved a revised and decidedly more ecologically conscious development proposal at its November 8, 2017 hearing. On December 7, 2019, FANS and Landwatch filed a lawsuit challenging the Coastal Commission's approval of the project. That litigation is still pending in Monterey County Superior Court. The applicant, Heritage/Western Communities, Ltd., has requested a litigation stay of the expiration of the tentative map under the Subdivision Map Act. Approval of the applicant's request will stay the life of the Tentative Map during the time of litigation for up to five years, thereby extending the current expiration date of November 8, 2021 by the duration of the litigation for a period not to exceed five years. The extension would result in a new expiration date of November 8, 2026 if litigation is ongoing for the full five years, or an earlier date if the litigation concludes in less than five years.

DISCUSSION:

On December 9, 2008, the Board approved the Combined Development Permit for the Rancho Los Robles Subdivision Project (Reduced Density Alternative). The project included a standard subdivision (tentative map) for 76 total lots including 68 single family lots, 4 duplex lots, a 1.76-acre lot with a General Development Plan allowing mixed use of 17,000 square feet commercial, public/quasi-public space with 4 apartment units above, a 9.7-acre open space parcel including a 2.5-acre community recreation area. The project is located within the Coastal Zone. On February 10, 2009, Friends, Artists, and Neighbors of Elkhorn Slough appealed the Board's decision to the Commission. Coastal Commissioners Blank and Wan filed an appeal on February 17, 2009. On November 8, 2017, after a *de novo* review, the Coastal Commission approved with conditions a Coastal Development Permit including a subdivision for 53 total lots. The single family residential lots were reduced to 50, duplex lots to 2, other project components include a community facilities parcel of 0.6 acre, three small parks totaling 0.98 acres, a 2.5-acre community recreation parcel, 11.1 acres of open space, 3.6-acres of Coastal General Commercial designation, 0.2 acres of Willow Riparian Habitat and 2.7 acres of Wetland Preserve area (0.6 acres of which overlaps a portion of the Coastal General Commercial). On December 7, 2017, Friends, Artists, and Neighbors of Elkhorn Slough and Landwatch Monterey County filed a Petition for Writ of Mandate against the Coastal Commission, County of Monterey and Board of Supervisors of the County of Monterey. The Superior Court has dismissed the case as to the County respondents, but the case is still pending against the Coastal Commission in Monterey County Superior Court.

The Subdivision Map Act (Section 66452.6(c)) provides that the life of a tentative subdivision map shall not include any period of time during which a lawsuit involving the approval of the tentative map is or was pending in a court of competent jurisdiction if the subdivider requests a stay and the local agency grants the stay for the time during which litigation over the tentative map approval is pending. The local agency may grant the so-called "litigation stay" for a period of up to five years. Monterey County Subdivision Ordinance (Title 19 - Coastal, Section 19.03.030 similarly provides that the

approved tentative map may be extended if litigation involving the approval of the tentative map has been filed and if a stay of such time period is approved by the Board of Supervisors following a written request of the subdivider. County received a written request from Mark Blum, attorney for Heritage/Western Communities LTD, the subdivider, on July 25, 2019 for the litigation stay.

(Attachment B).

Staff assessed the timeline of events pertaining to the tentative map, considered the subdivider's written request, and considered the Subdivision Map Act, Title 19 (County's subdivision ordinance), and the Coastal Act.

Tentative Map Timeline:

- The tentative map in question was approved by the Coastal Commission on November 8, 2017, the effective date of the map as per Monterey County Zoning Code §20.82.090.
- Friends, Artists, and Neighbors of Elkhorn Slough and Landwatch Monterey County filed a Petition for Writ of Mandate challenging the tentative map approval on December 7, 2017, and the litigation is ongoing.
- Initial expiration date of tentative map on November 8, 2019, as per Subdivision Map Act §66452.6(a); Title 19 §19.03.030.A and the permit issued by the Coastal Commission.
- Automatic extension of twenty-four months applied to the tentative map, advancing the expiration date to November 8, 2021, as per Government Code §66452.24(a).
- If granted, 5-year extension of tentative map would be November 8, 2026 or, if litigation is resolved prior to December 7, 2022, extension is granted by the number of months during which the litigation was pending added to November 8, 2021.

In addition to the timeline detailed above, there are other potential scenarios by which the tentative map could be extended outside of the litigation stay. On various occasions throughout the years, the State has granted extensions for specific periods of time (e.g.: 24 months). A recent example was a set of extensions that were granted during the economic downturn. These extensions were automatic, and would not require any action by the County. Additionally, the Subdivision Map Act (Section 66463.5.c) and Monterey County Title 19 have provisions for developers to request extensions to their maps. These extension requests are discretionary and would require action by Monterey County. This discretionary extension could be granted for a period up to 6 years. Extensions requested by a developer are wholly separate from any automatic extensions that could be granted by the State, and also separate from any extensions granted under a litigation stay. Neither of these potential extension scenarios are currently in progress, this is simply additional information for the Board to be aware of.

Staff recommends that the Board approve the stay of the expiration of the map for the period during which the litigation is pending, not to exceed five years.

CEQA:

This action is not a project under CEQA because it is an administrative activity that will not result in direct or indirect changes in the environment pursuant to §§15060(c)(3) and 15378(b)(5) of the CEQA Guidelines. This exemption applies to activities not defined as projects because they are organizational or administrative activities of government that will not result in direct or indirect physical

changes in the environment. The whole of this action is changing the expiration date of a Tentative Map, an action which pertains to time and not to the physical environment.

OTHER AGENCY INVOLVEMENT:

County Counsel has reviewed the report as to form.

FINANCING:

Funding for staff time associated with this project is included in the FY19-20 Adopted Budget for RMA-Planning.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

This action represents effective and timely response to our RMA customers. Processing this application in accordance with all applicable policies and regulations also provides the County accountability for proper management of our land resources, as well as consideration for public health.

Check the related Board of Supervisors Strategic Initiatives:

Economic Development

Administration

Health & Human Services

Infrastructure

Public Safety

Prepared by: Richard C. Smith, ext. 6408 and Mary C. Israel, ext. 5183, Associate Planners *RCS*

Reviewed by: Brandon Swanson, Interim Chief of Planning *BS*

Approved by: Carl Holm, AICP, Director of Resource Management Agency *CH*

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

Attachment A - Draft Resolution

Attachment B - Letter from Applicant dated July 25, 2019

cc: Front Counter Copy; California Coastal Commission; Wendy Strimling, County Counsel; Brandon Swanson, RMA Interim Chief of Planning; Mark Blum, Applicant, Heritage/Western Communities LTD, Owner; The Open Monterey Project (Molly Erickson); LandWatch (Amy White); Friends, Artist and Neighbors of the Elkhorn Slough (FANS); RMA-Public Works; RMA-Environmental Services; Project File PLN970159