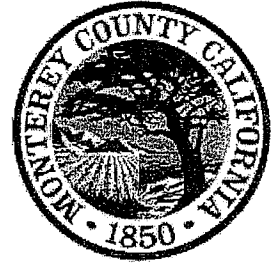



MONTEREY COUNTY
RESOURCE MANAGEMENT AGENCY



MEMORANDUM

Date: October 3, 2012

To: Board of Supervisors

From: Carl Holm, AICP, Deputy Director
Monterey County Resource Management Agency 

Subject: Consideration of alternatives for the provision of safe potable water to the approved nine-lot Oaks subdivision Oaks Subdivision – Continue to December 4, 2012

cc: County Counsel; Benny Young, Mike Novo

Staff recommends that the Board continue the hearing on this matter to December 4, 2012. Mr. Richard Rosenthal, representing Save our Peninsula Committee (SOPC), an interested party, has requested that the County continue this matter to allow time to review and respond to the staff report. County staff supports the continuance request. Mr. Rosenthal is not available October 16 or 23. Key County staff is not available October 20 through November 12. SOPC has agreed to continue this matter to the Board meeting of December 4, 2012. Therefore, we recommend continuance of the hearing to December 4, 2012.

The Board report that was prepared for the October 9, 2012 hearing is attached.



Monterey County

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Report

Legistar File Number: 12-941

10/9/12 - Scheduled

Introduced: 10/2/2012

Current Status: ATS Review

Version: 1

Matter Type: General Agenda Item

Public hearing to:

- a. consider alternatives for the provision of safe potable water to the approved nine-lot Oaks subdivision due to the high arsenic level in the subdivision well water;
 - b. provide direction to staff as to the preferred alternative to enable staff to conduct appropriate environmental review; and
 - c. direct staff to return to the Board for further action following environmental review.
- (PC947170 & PLN030107 (Ferrini Oaks): fronting on east side of San Benancio Road adjacent to San Benancio school, Toro Area Plan)

RECOMMENDATION:

It is recommended that the Board of Supervisors direct staff to:

- a. develop a Memorandum of Understanding (MOU) between California American Water Company and the County for the provision of safe potable water to the approved nine-lot Oaks subdivision due to the high arsenic level in the subdivision well water; and
- b. conduct appropriate environmental review and return to the Board for further action.

DISCUSSION:

The Oaks subdivision divided 325.7 acres into nine residential lots ranging in size from 1.7 to 13.6 acres and a remainder parcel of 285.7 acres. On May 8, 2001, the Board of Supervisors approved the vesting tentative map, with water to be supplied to the nine lots by a well on the Oaks' property (the "Oaks well"). Conditions of approval required the subdivider to convey the well and water infrastructure to Cal Am's Ambler Park system to own and operate and required the subdivider to design the water system improvements to meet state standards. Staff determined that the conditions of approval were met, and the Board of Supervisors accepted the final map on June 20, 2006. Since final map acceptance, the subdivision has new ownership, and some of the lots have been sold to individual owners.

The Oaks' well tested at 35 parts per billion (ppb) when the tentative map was approved. Between the tentative and final map approvals, the federal drinking water standard for arsenic was reduced from 50 ppb to 10 ppb, and the state was required to adopt a revised standard no less stringent than the federal standard. The Oaks' well was compliant with the earlier standard when the tentative map was approved but exceeds the new federal standard of 10 ppb. Consequently, to comply with the law and to protect the public health, staff arranged with California American Water Company (Cal Am) through its Monterey District Ambler Park water system to serve the nine lots on the basis that Cal Am would draw water from the Oaks well, treat the water at the Ambler treatment plant, and return it to the Oaks' lots. In 2006, Cal Am committed to monitoring production from the Oaks' well and water consumption of the Oaks' lots for this purpose. Cal Am is serving the three homes that have been built on the

Oaks' lots but has not yet received a permit from the state to bring the Oaks well into its system.

The purpose of today's hearing at the Board is twofold. First, staff is recommending that the Board provide direction to staff to proceed to develop a Memorandum of Understanding (MOU) between Cal Am and County to memorialize Cal Am's prior commitment to pump an amount of water from the Oaks' well into the Ambler system equal to the amount Ambler provides to the Oaks' lots, so as to result in no net transfer of water. The MOU would create a binding contractual obligation on the part of Cal Am and flesh out the details of implementation and monitoring. Cal Am has expressed a willingness to enter into such an MOU. A preliminary draft of the MOU is attached to the staff report as **Exhibit A**. Bringing the draft MOU to the Board allows for an open and transparent process and allows for public input.

The second reason for today's noticed public hearing is that it provides an opportunity for the Board to take input from the public, deliberate, and provide direction as to whether the proposed MOU or another alternative is the best means to ensure a safe potable drinking water for the Oaks' lots. Save Our Peninsula Committee (SOPC) and members of the public have objected to Ambler serving the Oaks' subdivision. They contend that Ambler's service violates the conditions of approval of the Oaks subdivision and violates County's B-8 zoning because the Ambler water system is in the B-8 zone while the Oaks lots are not. SOPC contends that the County is in violation of a settlement agreement in the lawsuit *Save Our Peninsula Committee v. County of Monterey*. The settlement agreement requires the County to analyze the Oaks subdivision and certain other approved projects to determine whether they are in compliance with mitigation measures imposed on the project and, if determined to be non-compliant, to remedy the non-compliance after conducting a noticed public hearing before the Board of Supervisors.

Staff's analysis is that the no net transfer requirement, whereby Cal Am serves the Oaks and offsets that service by pumping an equal amount of water from the Oaks' well into the Ambler system, constitutes substantial compliance with all applicable regulations and conditions. The net result is provision of potable water to the Oaks, in reliance on the Oaks well, with no net export out of County's B-8 zone or Zone 2c. Although County is not compelled to hold this noticed public hearing if the settlement agreement does not apply, in light of the dispute between the County and SOPC, this noticed public hearing will fulfill the requirement under the settlement agreement.

Staff requests direction from the Board as to which option to pursue to ensure a potable water supply to the Oaks subdivision. Following receipt of Board direction, staff will conduct environmental review of the preferred alternative and return to the Board to consider approval of the chosen solution. SOPC has proposed a number of alternatives that it would like the Board to consider other than the proposed MOU. Options include the following:

1. Pursue a MOU between the County and Cal Am to implement Cal Am's agreement to offset Cal Am Monterey District Ambler Park's water service to the Oaks subdivision with an equal amount of water to be pumped from the Oaks well into the Ambler Park water system, so as to result in no net transfer of water.
2. Require Cal Am to build a new treatment plant that is not in County's B-8 zone to treat

- the water from the Oaks' well.
3. Require a new well be drilled on the Oaks' site.
 4. Provide water from Zone 2c from a different water utility.
 5. Require water to be trucked into the Oaks lots.

An analysis of these options and further background are presented in **Exhibit B**. Staff recommends option 1, the MOU, for the reasons discussed in **Exhibit B**.

FINANCING:

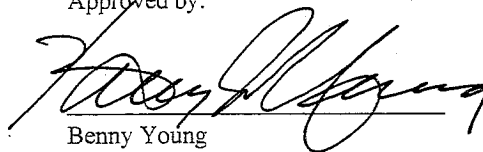
The recommended action has no direct financial impact to the General Fund. Staff time would be required to conduct environmental review and process the Board's preferred option. Required staff efforts would become part of the existing work program for Resource Management Agency (RMA), RMA-Planning Services, Environmental Health Bureau, and County Counsel. Associated staff time would be included in the approved FY 2012/13 budget for these respective departments. Due to the late submission of this Board Report, the CAO-Budget and Analysis Division was not provided adequate time to fully review for potential fiscal, organizational, policy, or other implications to the County of Monterey.

Prepared by:



Carl P. Holm, AICP
Deputy Director
Resource Management Agency
755-5103; holmcp@co.monterey.ca.us

Approved by:



Benny Young
Director
Resource Management Agency

This report was prepared with assistance by Richard LeWarne, Assistant Director, Environmental Health Bureau

cc: Front Counter Copy; Board of Supervisor's (16); County Counsel; Environmental Health Bureau; RMA-Planning; Monterey County Water Resources Agency

Attachments:

- Exhibit A - Draft MOU
- Exhibit B - Summary of Options

EXHIBIT A

DRAFT
9/28/12

This Memorandum of Understanding (MOU) is entered into this ____ day of _____, 20__, by and between California-American Water Company ("Cal Am") and the County of Monterey ("County"), with reference to the following facts:

RECITALS

- A. The parties desire to enter into this MOU to memorialize the parties' agreement to certain terms and conditions governing Cal Am's provision of water to the Oaks subdivision for the purpose of ensuring that Cal Am's water service to the Oaks subdivision will be offset by an equal amount of water drawn from the Oaks well.
- B. On May 8, 2001, the County of Monterey approved a tentative map to subdivide a 325.7-acre parcel into 9 residential lots ranging in size from 1.7 to 13.6 acres and a remainder parcel of 285.7 acres (hereafter the "Oaks Subdivision"). On June 20, 2006, the County accepted the final map for the Oaks Subdivision, which map was recorded on June 30, 2006, at Volume 23, Cities and Towns, page 32, in the Office of the Recorder of the County of Monterey. A copy of the final recorded map is attached hereto as Attachment 1 and incorporated herein by reference.
- C. Pursuant to conditions of approval of the tentative map, the subdivider entered into an agreement with Cal-Am in 2004 whereby the subdivider agreed to construct a well and water distribution system for domestic and fire flow water supply ("water system") for the Oaks subdivision and to transfer the water system to Cal Am in exchange for Cal Am's agreement to operate and maintain the water system either as a stand alone or satellite system providing domestic and fire flow water supply to the Oaks Subdivision. The agreement by its terms was to take effect upon the recordation of the final map for the Oaks subdivision. The Oaks' well and water infrastructure has since been conveyed to Cal Am.
- D. The water from the Oaks' well does not meet federal and water quality standards, specifically the Maximum Contaminant Level (MCL) for arsenic. A sample taken in August 2000 from the Oaks' well indicated the presence of arsenic at 35 parts per billion (ppb). At the time of the sample, the federal arsenic standard was 50 ppb, so the Oaks' well complied with drinking water standards at that time. A new federal standard for arsenic, reducing the MCL for arsenic to 10 ppb, was adopted on February 22, 2002 and became enforceable on January 23, 2006. Therefore, the Oaks well no longer meets drinking water standards, and it is necessary to treat the water or find an alternate water supply for the Oaks' subdivision in order for the nine approved lots to have a potable water supply that meets drinking water standards.
- E. The County has determined that the solution to providing potable water to the Oaks subdivision that is the most feasible, most capable of success, and therefore most protective of public health while not intensifying water use in Cal Am's Monterey

District Ambler Park service area is for Cal Am to serve the Oaks subdivision with water that has been treated by Cal Am to meet drinking water standards, provided that Cal Am augment the Ambler water supply by transferring water from the Oaks' well to the Ambler Park water system in an amount equal to the amount Cal Am is supplying to the Oaks' subdivision. This solution is the most feasible because Cal Am through its Ambler Park water treatment plant has the technical, managerial and financial capability to treat water. Cal Am also has the ability to serve the Oaks subdivision because Cal Am already owns the Oaks' well and its infrastructure, and via Advice Letter 617 filed with the California Public Utilities Commission(PUC), has extended its Monterey District Ambler Park service area to include the Oaks subdivision.

- F. The Ambler water treatment plant is within the County's B-8 zoning district. The purpose of the B-8 zoning district is to "restrict development and/or intensification of land use in areas where, due to water supply ... or similar measurable public-facility type constraints, additional development and/or intensification of land use if [sic] found to be detrimental to the health, safety, and welfare of the residents of the area, or the County as a whole." When the Oaks' tentative map was approved, water was to be supplied directly by the Oaks' well which is not within the County's B-8 zone. Ambler's water supply is located in the County's B-8 zone. The well water did not exceed the federal drinking water standards in effect at the time of the tentative map approval, and therefore, treatment of the water was not an issue at that time. To enable treatment of the water while ensuring that water treatment and service by Ambler to the Oaks does not result in intensification of water use in the B-8 zone, it is necessary for Cal Am to offset the water it supplies to the Oaks subdivision by an equal transfer of water from the Oaks' well into the Ambler system. Conversely, the Oaks' well lies within Monterey County Water Resources Agency's benefit assessment "Zone 2C," which does not allow the export of water out of Zone 2C. The Ambler treatment plant lies outside Zone 2C. Therefore, it is necessary for Cal Am to ensure that the volume of water it pumps from the Oaks' well into the Ambler Park water system does not exceed the amount of water supplied from Ambler to the Oaks.
- G. In 2006, Cal Am committed to quarterly monitoring of both the production records from the Oaks' well and the water consumption of the nine lots in the Oaks' subdivision. The understanding by staff was that water from the Oaks' well would be piped to the Ambler Water treatment plant to be treated and returned to the Oaks subdivision, with no net transfer of water. More recent discussions have clarified that it is not physically feasible to ensure that the exact same molecules of water sent for treatment are the same as those returned to the Oaks, but it is feasible to ensure that the exact same volume of water be sent for treatment as is returned to the Oaks' subdivision.
- H. Homes have been built on three lots in the Oaks subdivision, which received a building final on April 1, 2009. The County has not issued building permits on any of the remaining lots, pending Board of Supervisors' approval of a mechanism ensuring service of water to the Oaks subdivision that meets drinking water standards while not intensifying water use in the B-8 zone.

- I. The parties now desire to enter into this MOU to memorialize Cal Am's prior commitment and to prescribe the terms and conditions under which Cal Am will balance the volume of treated waters provided to the Oaks subdivision with the volume of water pumped from the Oaks well into the Ambler Park water system, so as to result in no net transfer of water.
- J. The County finds that this MOU is consistent with County's B-8 zoning because Ambler's service to the Oaks subdivision under the terms set forth in this MOU will not result in an intensification of water use in the B-8 zone and is not detrimental to the public health, safety, and welfare.
- K. [CEQA findings – be added following environmental review]
- L. This MOU serves to protect the public health, safety and welfare by ensuring a water supply to the Oaks' subdivision that meets federal and state drinking water standards without intensifying water use in the County's B-8 zone or exporting water out of benefit assessment Zone 2C.
- M. This MOU is intended to be binding on Cal Am, its agents, successors and assigns.

NOW, THEREFORE, in view of the foregoing recitals, the parties agree as follows:

1. Cal Am will diligently pursue any permits and permit amendments necessary to incorporate the Oaks' well into its water system and, upon obtaining such permits, will incorporate the Oaks' well into the Cal Am Monterey District Ambler Park system ("Ambler Park Water System").
2. Cal Am shall on a quarterly basis balance the volume of treated water sent from the Ambler Park Water System to the Oaks subdivision and the water sent from the Oaks well to the Ambler Park Water System so as to result in no net transfer of water. Cal Am shall accomplish said balance by transferring a volume of raw water from the Oaks well to the Ambler Park Water System equal to the volume of water served by Ambler to the Oaks' lots. Equal volume shall include the calculated transportation water loss incurred in connection with Ambler's supply to the Oaks subdivision. The quantity of water pumped from the Oaks subdivision well to the Ambler Park Water System shall match the quarterly total plus the calculated transportation water loss.
3. Cal Am shall maintain water meters in good working order for its service to the Oaks lots, including residences and irrigation, so as to determine the amount of water served to the Oaks lots by the Ambler Park Water System. Cal Am shall also maintain a water meter(s) in good working order at the Oaks well, which shall be used to determine the volume of water pumped from the well.
4. Cal Am shall on a quarterly basis total the monthly meter readings of the nine lots in the Oaks subdivision and the irrigation system on land held in common. The water system's calculated transportation water loss for the quarter shall be added to the quarterly total meter readings. The quantity of water resulting from the addition of the quarterly total of the monthly meter readings and the calculated transportation water loss shall be pumped from the Oaks subdivision well into the Ambler Park Water System on a quarterly basis during the calendar year (the four quarters

being January through March, April through June, July through September, and October through December). Quarterly pumping of the Oaks' well based on the quarterly calculation within the month following the end of the quarter shall be considered to satisfy the no net transfer requirement.

5. Cal Am shall on a quarterly basis submit to the Monterey County Health Department Environmental Health Bureau (EHB) and the Monterey County Water Resources Agency (WRA) a quarterly water audit report for review by EHB and WRA. Cal Am shall submit the water audit report no later than thirty days following each quarter. The water audit report shall be prepared by a qualified engineer experienced in water system operations. The water audit report shall indicate the quantity of water that was delivered to the Oaks subdivision (determined by the quarterly total of monthly meter readings of the nine Oaks subdivision lots and irrigation system plus the calculated transportation water loss) from the Ambler Park Water System and the quantity of water that was pumped from the Oaks well to the Ambler Park Water System during the quarter. The report shall confirm that the quantity of water pumped from the Oaks well to the Ambler Park Water System equals the quarterly total plus the calculated transportation water loss. The report shall demonstrate how the calculated transportation water loss was determined. If the report or other information indicates that the volume of water pumped from the Oaks well into the Ambler Park Water System does not equal the volume calculated from the quarterly meter reading and the calculated transportation water system loss of the Oaks Subdivision, then Cal Am shall explain the reasons for the discrepancy and the corrective action Cal Am proposes to take to achieve no net transfer. Cal Am shall take such steps as EHB may require to bring the transfer back into balance.
6. Cal Am shall begin quarterly pumping of the Oaks well into the Ambler system in the first quarter after Cal Am obtains all necessary permits to include the Oaks well within its system. Additionally, to account for the water service provided by Ambler to the Oaks lots predating this quarterly pumping, Cal Am shall as part of its first draw from the Oaks well transfer into the Ambler system an amount of water equivalent to the total amount of water previously served by Ambler to the Oaks lots.
7. This agreement pertains only to the nine lots of the Oaks subdivision due to the unique circumstances and public health considerations requiring treatment of water to an already approved subdivision. This agreement shall not be used to serve any other property.
8. This MOU is binding on the parties and their agents, successors and assigns. Cal Am accepts these obligations for itself, its agents, and its successors and assigns and shall inform its agents, successors and assigns of these obligations. This MOU shall not be terminated unless an alternative mechanism is put in place to provide water that meets drinking water standards to the Oaks subdivision's nine lots and that does not intensify use of water from the County's B-8 zoning district in effect at that time. Any such termination would require approval of Cal Am and the Board of Supervisors of the County of Monterey upon findings that these conditions precedent to termination have been met.
9. This MOU may not be amended except by a written instrument approved by Cal Am and the Board of Supervisors of the County of Monterey.

IN WITNESS WHEREOF, the County of Monterey and California-American Water Company through its duly authorized agents have executed this agreement as of the date and year written below.

Dated: _____

COUNTY OF MONTEREY

Chair, Board of Supervisors

Dated: _____

CALIFORNIA-AMERICAN WATER COMPANY

[Title]

[Title]

ATTACHMENT 1

OWNER'S STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF, OR HAVE SOME RIGHT, TITLE OR INTEREST IN, AND TO THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION SHOWN UPON THIS MAP, AND THAT WE ARE THE ONLY PERSONS OR CORPORATION WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID PROPERTY, AND WE CONSENT TO THE MAKING OF SAID MAP AND SUBDIVISION AS SHOWN WITHIN THE BORDER LINE SHOWN THERE.

WE HEREBY DEDICATE FOR PUBLIC USE IN CASE CERTAIN EASEMENTS FOR PUBLIC UTILITIES (INCLUDING, BUT NOT LIMITED TO, GAS, ELECTRIC, WATER, TELEPHONE, COMMUNICATION, TELEVISION CABLE AND SANITARY SEWERS), AND FOR CLUSTER POSTAL BOXES AND THEIR NECESSARY APPURTENANCES ON, OVER, OR UNDER THOSE CERTAIN STRIPS OF LAND, DESIGNATED AS RUSTIC LANE AND BIG SKY LANE, SHOWN UPON SAID MAP WITHIN SAID SUBDIVISION, SAID STRIPS OF LAND ARE TO BE LEFT OPEN AND FREE FROM BUILDINGS AND STRUCTURES OF ANY KIND EXCEPT ROADWAYS, DRIVEWAYS, UTILITY COMPANY STRUCTURES, IRRIGATION SYSTEMS, LAWN IRRIGATORS, DRIVEWAYS, SIDEWALKS AND APPURTENANCES THERETO.

WE ALSO HEREBY DEDICATE FOR PUBLIC USE THOSE CERTAIN EASEMENT, FOR STORM WATER DETENTION POND AND STORM DRAINAGE LINES AS SHOWN WITHIN LOTS 1 AND DESIGNATED "PARCH 1" UPON SAID MAP.

WE ALSO HEREBY DEDICATE FOR PUBLIC USE THOSE CERTAIN EASEMENTS, FOR SANITARY SEWERS, WASTEWATER, PIPELINES AND THAT EASEMENT FOR HOUSEHOLD WATER WELL DURING PLANT, STORAGE TANKS, PIPELINES AND APPURTENANCES DESIGNATED "PARCEL 2", TOGETHER WITH THAT CERTAIN EASEMENT FOR INGRESS AND EGRESS APPURTENANT THERETO, ALL AS SHOWN UPON SAID MAP.

WE FURTHER HEREBY DEDICATE TO THE COUNTY OF MONTEREY ANY AND ALL RIGHTS OF ACCESS TO ALL TRAFFIC TO AND FROM SAN BERNARDINO ROAD ACROSS PORTIONS OF LOTS 1, 2, 4, AND 9, ALL AS SHOWN ON THE HEREIN MAP AND DESIGNATE A T-NON-ACCESS STRIP

SUBJECT TO THE FOLLOWING INTERESTS WHICH CANNOT RIFEN INTO THE SIGNATURES OF WHICH ARE NOT REQUIRED PURSUANT TO SECTION 66456 (C) (1) OF THE GOVERNMENT CODE.

F.G&E. CO., A CALIFORNIA CORPORATION, AS EASEMENT HOLDER BY DOCUMENT RECORDED IN VOLUME 722 OF OFFICIAL RECORDS OF MONTEREY COUNTY, CALIFORNIA, AT PAGE 51.

WASHINGTON UNION SCHOOL DISTRICT AS EASEMENT HOLDER BY DOCUMENT RECORDED IN REEL 25 OF O.R., PAGE 329.

OWNERS:
FERRINI OAKS LLC,
A CALIFORNIA LIMITED LIABILITY COMPANY
BY *Raymond McDaniel Jr.*

STATEMENT OF APPROVAL BY SECRETARY OF MONTEREY COUNTY PLANNING COMMISSION

I, *Alanna S. Krasinski*, SECRETARY OF THE MONTEREY COUNTY PLANNING COMMISSION HEREBY STATE THAT I HAVE EXAMINED THIS MAP, THAT THE SUBDIVISION AS SHOWN HEREON IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP, AND ANY APPROVED ALTERATION THEREOF, AS APPROVED BY THE MONTEREY COUNTY BOARD OF SUPERVISORS, ON *MAY 6, 2008*, THAT ALL THE PROVISIONS OF THE CALIFORNIA "SUBDIVISION MAP ACT" AS AMENDED, AND THE MONTEREY COUNTY CODE, TITLE 18 HAVE BEEN COMPLIED WITH AND THAT THIS MAP IS TECHNICALLY CORRECT.



Alanna S. Krasinski 6-14-08
SECRETARY, MONTEREY COUNTY PLANNING COMMISSION, COUNTY OF MONTEREY, STATE OF CALIFORNIA.

STATEMENT OF APPROVAL OF THE CLERK OF BOARD OF SUPERVISORS

I, *Christine*, CLERK OF THE BOARD OF SUPERVISORS OF MONTEREY COUNTY, HEREBY STATE THAT SAID BOARD APPROVED THE WITHIN MAP ON *6/14/08*, AND ACCEPTED ON BEHALF OF THE PUBLIC ALL OFFER OF DEDICATION FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF THE OFFER OF DEDICATION.

Christine
CLERK OF THE BOARD OF SUPERVISORS
STATE OF CALIFORNIA

NOTARY STATEMENT

STATE OF CALIFORNIA) S.S.
COUNTY OF MONTEREY)
ON *6-23-08*, BEFORE ME, *Denise Johnson*, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED *Raymond McDaniel Jr.* AND SATISFACTORY EVIDENCE TO BE THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME IN THEIR AUTHORIZED CAPACITIES, AND THAT BY THEIR SIGNATURES ON THE INSTRUMENT THE PERSONS, OF THE ENTITY UPON BEHALF OF WHICH THE PERSONS ACTED, EXECUTED THE INSTRUMENT.

Denise Johnson
NOTARY PUBLIC IN AND FOR
THE COUNTY OF *Monterey*
MY COMMISSION EXPIRES *7-14-09*

COUNTY SURVEYOR'S STATEMENT

I, *David Williams*, COUNTY SURVEYOR OF MONTEREY COUNTY, HEREBY STATE THAT I HAVE EXAMINED THIS MAP, THAT THE SUBDIVISION AS SHOWN HEREON IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP, AND ANY APPROVED ALTERATION THEREOF, AS APPROVED BY THE MONTEREY COUNTY BOARD OF SUPERVISORS, ON *MAY 6, 2008*, THAT ALL THE PROVISIONS OF THE CALIFORNIA "SUBDIVISION MAP ACT" AS AMENDED, AND THE MONTEREY COUNTY CODE, TITLE 18 HAVE BEEN COMPLIED WITH AND THAT THIS MAP IS TECHNICALLY CORRECT.

David Williams
COUNTY SURVEYOR
MONTEREY COUNTY, CALIFORNIA

SURVEYOR'S STATEMENT

I, *Virgil L. Williams*, LICENSED LAND SURVEYOR (NO. 1000) HEREBY STATE THAT THIS MAP CORRECTLY REFLECTS A SURVEY MADE UNDER MY DIRECTION DURING *JANUARY 2006*, THAT THE SURVEY IS TRUE AND CORRECT AS SHOWN, THAT ALL MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR THEY WILL BE SET IN SUCH POSITIONS ON OR BEFORE ONE YEAR AFTER THE RECORDATEION OF THIS MAP BY THE MONTEREY COUNTY RECORDER, THE MONUMENTS ARE OR WILL BE SUFFICIENT TO ENABLE THE SURVEY TO BE RE-TRACED.



DATED: *1-19-2008*
Virgil L. Williams
LICENSED LAND SURVEYOR 02004
EXPIRES 6-30-2008

RECORDER'S STATEMENT

FILED FOR RECORD AT THE REQUEST OF *H.D. FERRINI CO. INC.* THIS *20th* DAY OF *JUNE*, 2008, AT *11* MINUTES PAST *9* A.M., IN VOLUME *723* OF "CITIES & TOWNS" AT PAGE *32*. RECORDS OF MONTEREY COUNTY, CALIFORNIA.

Stephen L. Vignini
COUNTY RECORDER
Steph L. Vignini
FEE \$ *15.00* E NO *2008058257*

TRACT *146*
THE OAKS
SUBDIVISION
(A PRIVATE ROAD SUBDIVISION)
SITUATE IN
RANCHO EL TORO
MONTEREY COUNTY, CALIFORNIA
APN *14-010-078*
PREPARED FOR
FERRINI OAKS LLC
BY



TRACT **1466**
THE OAKS
SUBDIVISION

(A PRIVATE ROAD SUBDIVISION)

SITUATE IN
RANCHO EL TORO
MONTEREY COUNTY, CALIFORNIA
APN: 16101076
PREPARED FOR
FERRINI OAKS LLC
BY



SCALE: 1"=400'
SHEET 2 OF 5

LEGEND

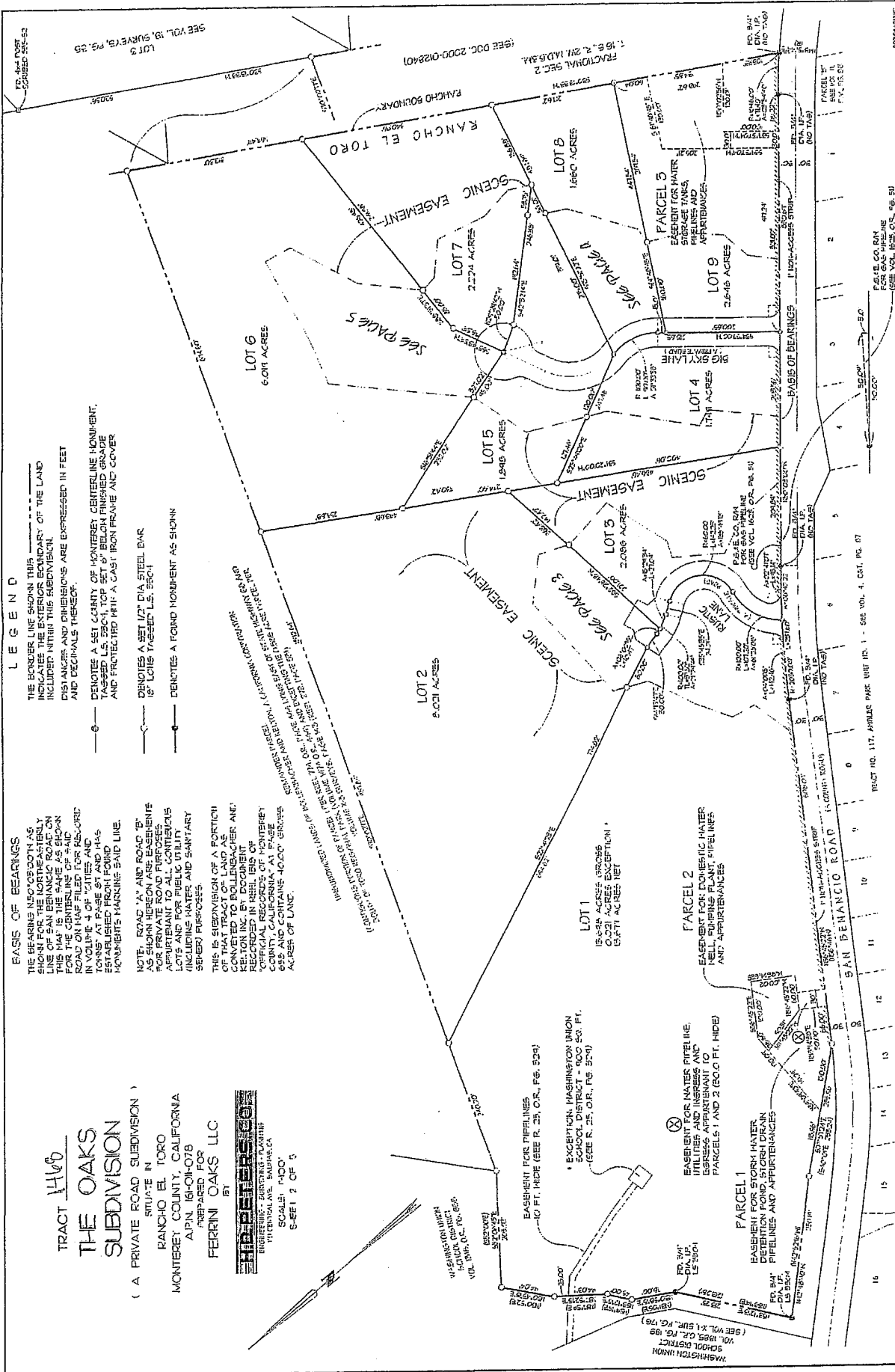
- THE BOUNDARY LINE SHOWN THIS WAY INDICATES THE EXTERIOR BOUNDARY OF THE LAND INCLUDED WITHIN THIS SUBDIVISION. DISTANCES AND DIMENSIONS ARE EXPRESSED IN FEET AND DECIMALS THEREOF.
- DEMONSTRATES A SET COUNTY OF MONTEREY CENTERLINE MONUMENT. CENTERLINE MONUMENT SET BY A CAST IRON FRAME AND COVER AND PROTECTED WITH A CAST IRON FRAME AND COVER
- DEMONSTRATES A SET 1/2" DIA STEEL BAR WITH 1/2" DIA NUTS AND WASHERS
- DEMONSTRATES A FOUND MONUMENT AS SHOWN

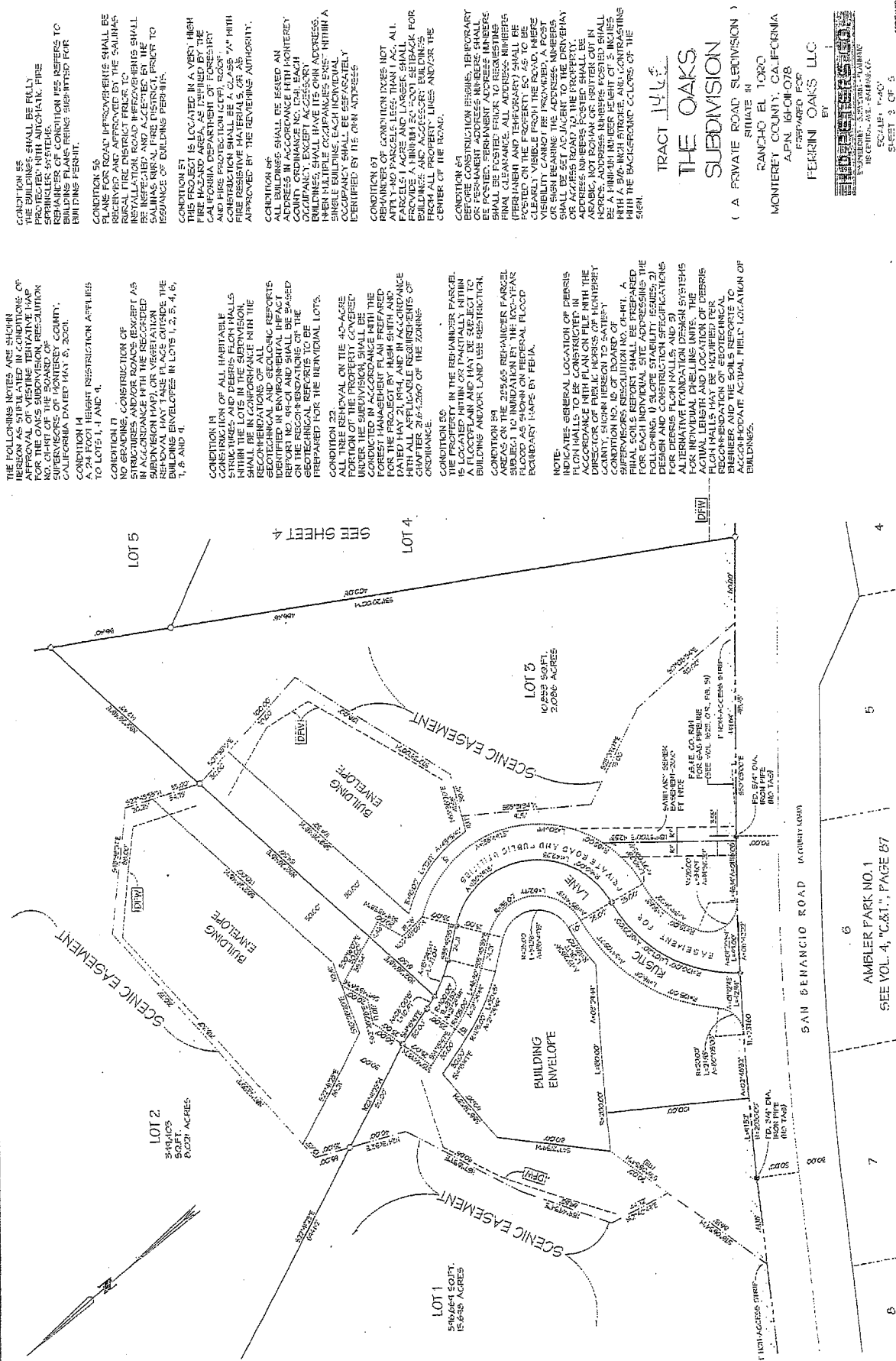
BASIS OF BEARINGS

THE BEARINGS SHOWN AS SHOWN FOR THE NORTHEASTERLY LINE OF SAN BENANCIO ROAD ON THIS MAP IS THE TRUE BEARING ON HAF FILED FOR RECORD IN VOLUME 4 OF "TIES AND TONGS" AT PAGE 57 AND HAS ESTABLISHED FROM FOUND MONUMENT'S MARKING AND LINE.

NOTE: ROAD "A" AND ROAD "B" AS SHOWN HEREON ARE EASEMENTS FOR PRIVATE ROAD PURPOSES APPURTENANT TO ALL CONTIGUOUS LOTS AND FOR PUBLIC UTILITY INCLUDING WATER AND SANITARY SERVICES PURPOSES.

THIS IS A SUBDIVISION OF A PORTION OF THE LAND SHOWN ON THE MAP SHOWN TO BOLLEBAUGH AND KELTON INC. BY DOCUMENT RECORDED IN RHEL 1615 OF "OFFICIAL RECORDS OF MONTEREY COUNTY CALIFORNIA" AND CONTAINS ACCORDING TO THE OFFICIAL RECORDS OF MONTEREY COUNTY CALIFORNIA.





THE FOLLOWING NOTES ARE SHOWN IN CONNECTION WITH THE TENTATIVE MAP FOR THE OAKS SUBDIVISION, REEVALUATION NO. CHART OF THE BOARD OF SUPERVISORS OF SAN JOAQUIN COUNTY, CALIFORNIA DATED MAY 8, 2001.

- CONDITION 14. A 24 FOOT HEIGHT RESTRICTION APPLIES TO LOTS 1, 4 AND 5.
- CONDITION 17. NO GRADING, CONSTRUCTION OF STRUCTURES AND/OR ROADS (EXCEPT AS SHOWN ON THE TENTATIVE MAP) OR VEGETATION REMOVAL MAY TAKE PLACE OUTSIDE THE BUILDING ENVELOPES IN LOTS 1, 2, 3, 4, 5, 6, 7, 8 AND 9.
- CONDITION 18. CONSTRUCTION OF ALL HABITABLE STRUCTURES AND DEBRIS FLOW HALLS SHALL BE IN CONFORMANCE WITH THE RECOMMENDATIONS OF ALL GEOTECHNICAL AND GEOLOGIC REPORTS IDENTIFIED IN THIS MAP. ALL REPORTS ON THE RECOMMENDATIONS OF THE GEOTECHNICAL REPORTS TO BE PREPARED FOR THE INDIVIDUAL LOTS.
- CONDITION 22. ALL TREE REMOVAL ON THE 40-ACRE PARCELS SHALL BE IN ACCORDANCE WITH THE SUBDIVISION MAP BEING CONDUCTED IN ACCORDANCE WITH THE FOREST MANAGEMENT PLAN PREPARED FOR THE PROJECT BY HENRY AND ASSOCIATES, INC. (H&A), IN ACCORDANCE WITH ALL APPLICABLE REQUIREMENTS OF CHAPTER 21.61-22.00 OF THE ZONING ORDINANCE.
- CONDITION 26. THE PROPERTY IN THE REMAINDER PARCEL SHALL BE SUBJECT TO THE SAME AS A FLOODPLAIN AND THAT BE SUBJECT TO BUILDING AND/OR LAND USE RESTRICTIONS.
- CONDITION 34. AREAS ON THE 215.65-ACRE PARCEL SUBJECT TO REMOVAL BY THE 100-YEAR FLOOD MAPS SHALL BE SUBJECT TO THE FLOOD HAZARD MAPS BY FEMA.

CONDITION 35. THE BUILDINGS SHALL BE FULLY PROTECTED WITH AUTOMATIC FIRE SPRINKLER SYSTEMS. THE BUILDINGS SHALL BE FULLY PROTECTED WITH AUTOMATIC FIRE SPRINKLER SYSTEMS. THE BUILDINGS SHALL BE FULLY PROTECTED WITH AUTOMATIC FIRE SPRINKLER SYSTEMS.


CONDITION 56. PERSONS SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE SAN JOAQUIN COUNTY FIRE DISTRICT PRIOR TO INSTALLATION OF ANY DEVICES OR SYSTEMS. THE PERSONS SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE SAN JOAQUIN COUNTY FIRE DISTRICT PRIOR TO INSTALLATION OF ANY DEVICES OR SYSTEMS.

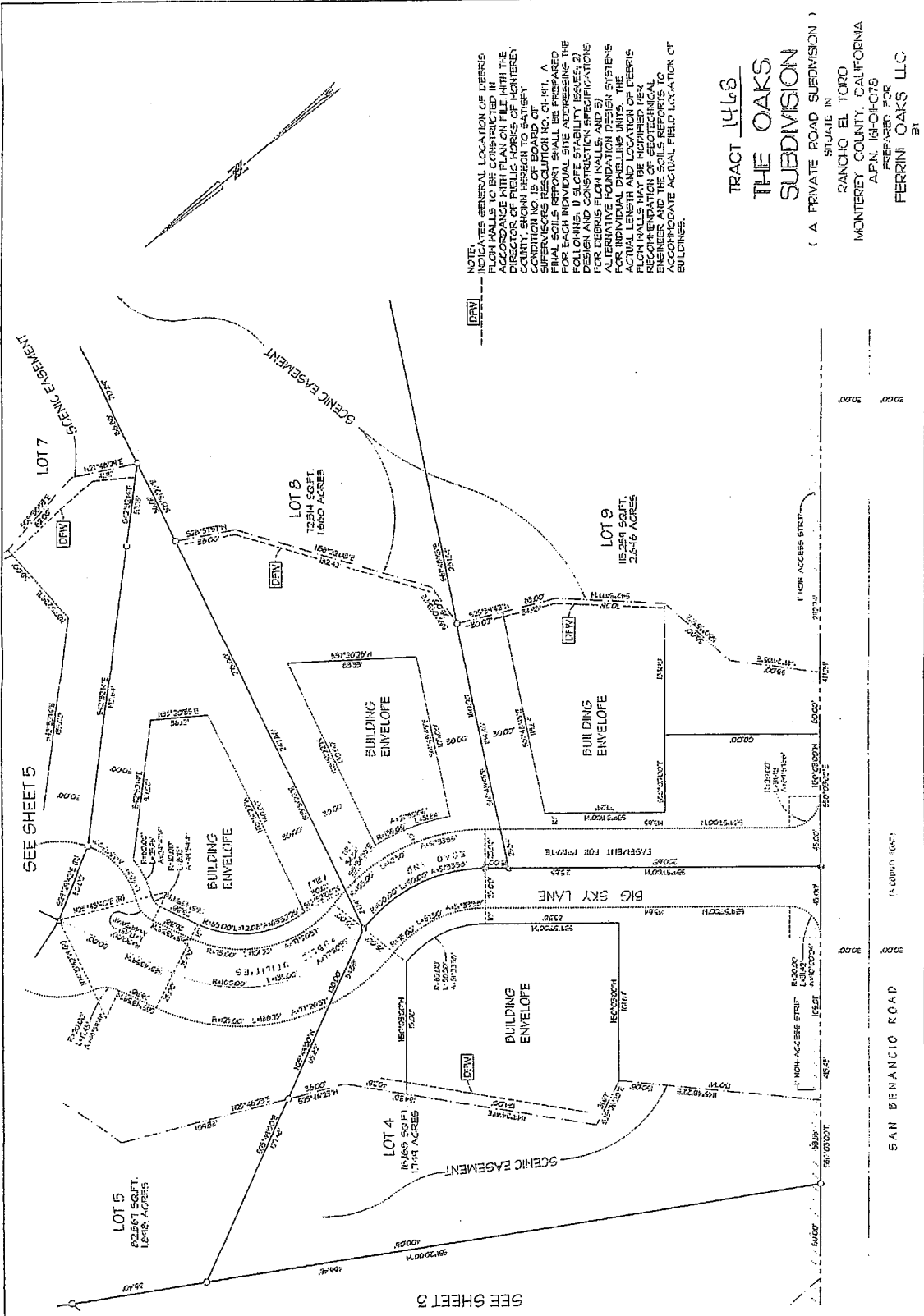
CONDITION 57. IS LOCATED IN A VERY HIGH FIRE HAZARD AREA AS DEFINED BY THE CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION (CDFP). ROOF CONSTRUCTION SHALL BE 2" OR 3" WITH AN UNDERLAYMENT APPROVED BY THE REVIEWING AUTHORITY.

CONDITION 63. SHALL BE ISSUED AN ADDRESS IN ACCORDANCE WITH MONTEREY COUNTY ORDINANCE NO. 154. EACH OCCUPANCY, EXCEPT ACCESSORY BUILDINGS, SHALL HAVE ITS OWN ADDRESS. SINGLE BUILDINGS, EACH INDIVIDUAL OCCUPANCY, SHALL BE SEPARATELY IDENTIFIED BY ITS OWN ADDRESS.

CONDITION 67. REMAINDER OF COMMON LOTS NOT APPLICABLE TO THIS PARCEL. ALL FARMS, FARMS AND LARGER FARMS SHALL BE SUBJECT TO THE SAME AS FOR BUILDINGS AND ACCESSORY BUILDINGS FROM ALL PROPERTY LINES AND/OR THE CENTER OF THE ROAD.

CONDITION 69. BEFORE CONSTRUCTION BEGINS, TEMPORARY OR PERMANENT ADDRESS NUMBERS SHALL BE POSTED PRIOR TO BEGINNING FINAL CLEARANCE. ALL ADDRESS NUMBERS (PERMANENT AND TEMPORARY) SHALL BE POSTED ON THE PROPERTY TO BE SEEN FROM ALL APPROXIMATE VIEWS. VISIBILITY CANNOT BE PROVIDED, A POST OR SIGN BEARING THE ADDRESS NUMBERS SHALL BE SET ADJACENT TO THE DRIVEWAY OR DRIVEWAY. ADDRESS NUMBERS SHALL BE ARABIC, NOT ROMAN OR WRITTEN OUT IN WORDS. ADDRESS NUMBERS POSTED SHALL BE A MINIMUM HEIGHT OF 5 INCHES WITH THE BACKGROUND COLORS OF THE SIGN.

TRACT 144.6
THE OAKS
 SUBDIVISION
 (A PRIVATE ROAD SUBDIVISION)
 SHIATE #1
 RANCHO EL TORO
 MONTEREY COUNTY, CALIFORNIA
 APN. 16101078
 PREPARED FOR
FERRINI OAKS LLC
 BY

 ESCALER, P. & C.
 ENGINEERING, SURVEYING, PLANNING
 1000 CALIFORNIA STREET, SUITE 200
 SAN JOAQUIN, CALIFORNIA 95376
 SHEET 3 OF 5



NOTE: GENERAL LOCATION OF DEBRIS FLOTHALLS TO BE CONSTRUCTED IN ACCORDANCE WITH PLAN ON FILE WITH THE DIRECTOR OF PUBLIC WORKS OF MONTEREY COUNTY. THIS PLAN IS SUBMITTED TO SATISFY SUPERVISOR'S RESOLUTION NO. CH-197. A FINAL SOILS REPORT SHALL BE PREPARED FOR EACH INDIVIDUAL SITE ADDRESSING THE FOLLOWING: 1) SOIL STABILITY; 2) ALTERNATIVE FOUNDATION DESIGN SYSTEMS FOR DEBRIS FLOTHALLS; AND 3) ACTUAL LENGTH AND LOCATION OF DEBRIS FLOTHALLS. THE SOILS REPORT SHALL BE PREPARED BY A REGISTERED GEOTECHNICAL ENGINEER AND THE SOILS REPORTS TO ACCOMPANY ACTUAL FIELD LOCATION OF BUILDINGS.

TRACT 1468
THE OAKS
 SUBDIVISION
 (A PRIVATE ROAD SUBDIVISION)
 SITUATE IN
 RANCHO EL TORO
 MONTEREY COUNTY, CALIFORNIA
 A.P.N. 18-011-078
 PREPARED FOR
FERRINI OAKS LLC
 BY

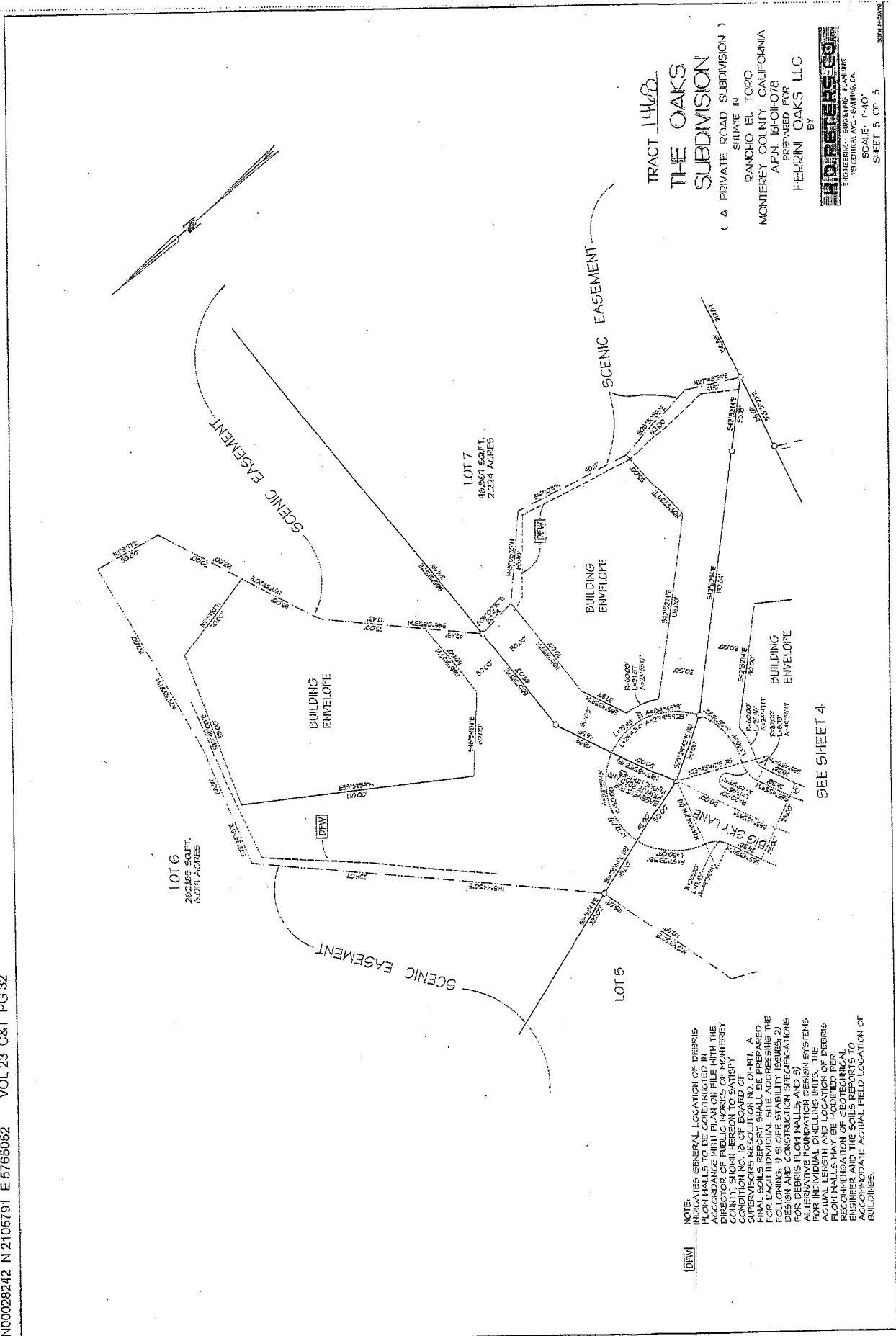
REGISTERED PROFESSIONAL ENGINEER
 BUSINESS ADDRESS: 1000 STREET 1, AVILA BEACH, CA 93426
 OFFICE ADDRESS: 1000 STREET 1, AVILA BEACH, CA 93426
 SCALE: 1"=40'
 SHEET 4 OF 5

SEE SHEET 3
 SEE SHEET 5
 SEE SHEET 4, "C&T", PAGE 87

SAN DENANCIO ROAD

AMBLER PARK NO. 1

1
 2
 3
 4
 5



TRACT 1462
THE OAKS
SUBDIVISION
 (A PRIVATE ROAD SUBDIVISION)
 SHUVE IN
 RANCHO EL TORO
 MONTEREY COUNTY, CALIFORNIA
 APN. 161-011-078
 PREPARED FOR
 FERRINI OAKS LLC
 BY

FERRINI OAKS LLC
 ENGINEERING - SURVEYING - PLANNING
 199 CENTRAL AVE. - SANBROS, CA
 SCALE: 1"=40'
 SHEET 5 OF 5

NOTE:
 INDICATES GENERAL LOCATION OF DEBRIS FLOW HALLS TO BE CONSTRUCTED IN ACCORDANCE WITH PLAN ON FILE WITH THE COUNTY ENGINEER. THE DEBRIS FLOW STUDY SHALL BEGIN TO SATISFY CONDITION NO. 18 OF BOARD OF SUPERVISORS RESOLUTION NO. 01871. A FINAL SOILS REPORT SHALL BE PREPARED FOR EACH INDIVIDUAL DWELLING UNIT. THE DESIGN AND CONSTRUCTION SPECIFICATIONS FOR DEBRIS FLOW HALLS, AND 3) ALTERNATIVE FOUNDATION DESIGN SYSTEMS FOR INDIVIDUAL DWELLING UNITS. THE DEBRIS FLOW HALLS MAY BE MOORED PER RECOMMENDATION OF GEOTECHNICAL ENGINEER AND THE SOILS REPORTS TO APPROPRIATE ACTUAL FIELD LOCATION OF BUILDINGS.

SEE SHEET 4

EXHIBIT B

Introduction

This matter comes before the Board today to obtain the Board's preliminary direction, subject to environmental review and further subsequent consideration, regarding the appropriate mechanism to supply the Oaks subdivision with water that meets drinking water standards, is consistent with the County's zoning, and respects the right, title and interest of the existing lot owners.

The Oaks subdivision created nine residential lots. Following the Board's acceptance of the final map in 2006, the subdivider sold three lots into individual ownership, and three homes have been built. A successor-in-interest to the original subdivider owns the remaining six lots, which are vacant. Pursuant to Condition 34 of the tentative map, the subdivider conveyed the Oaks' well and water infrastructure to California American Water Company (Cal Am), who now owns the well and water infrastructure.

When the tentative map was approved, a well on the subject property was to be the source of water for the nine lots. Between the tentative and final map approvals, the federal "Maximum Contaminant Level" (MCL) – the drinking water standard-- for arsenic was reduced from 50 parts per billion (ppb) to 10 ppb. The federal standard became effective on February 22, 2002, and water systems were required to comply with the new standard by January 23, 2006. (The State of California was also obligated beginning in 2002 to begin the process of developing a revised drinking water standard for arsenic; following debate whether to adopt a standard more stringent than the federal standard, the state in 2008 adopted the federal standard of 10 ppb.) The Oaks' well tested at 35 ppb arsenic in year 2000. This level of arsenic met the federal standard at the time the County approved the tentative map, but it does not meet the new standard. Arsenic in the drinking water above the MCL raises the risk of cancer, among other effects. (California Department of Public Health; see www.cdph.ca.gov.)

Compliance with the new arsenic drinking water standard and protection of the public health required treatment of the water from the Oaks' well. Staff arranged for Cal Am through its Monterey District Ambler Park system to serve the Oaks lots on the basis that Cal Am would draw water from the Oaks' well, treat the water for high arsenic at the Ambler Park water treatment plant, and then supply the treated water to the Oaks' lot. In 2006, Cal Am committed to monitoring the Oaks' well production and the Oaks lots' consumption for this purpose. It has since been clarified that, while the same molecules of water would not be sent for treatment and returned, the same result can be accomplished by exchanging the same amount of water by pumping from the Oaks well into the Ambler system the same amount of water that the Ambler system is providing to the nine Oaks lots, resulting in no net transfer of water.

In 2010, while gathering documents related to another subdivision application, staff learned that Cal Am had begun to serve the Oaks' homes without yet bringing the Oaks' well on line. Cal Am must amend its permit from the state Department of Public Health to include the new water source. Staff put a hold on building permits on the remaining six vacant lots in the Oaks' subdivision until the situation could be resolved. In discussions with Cal Am, Cal Am

said it would honor its 2006 commitment to balance the water served to Oaks from Ambler with water pumped from the Oaks well into the Ambler system. Cal Am has informed the County that Cal Am has made application to the state to include the Oaks well in its water system.

In order to formalize the arrangement with Cal Am for Cal Am to serve the Oaks with no net transfer of water, staff recommends processing a Memorandum of Agreement with the California American Water Company (Cal Am). The MOU would memorialize Cal Am's commitment to pump an amount of water from the Oaks' well into the Ambler system equal to the amount Ambler provides to the Oaks' lots, so as to result in no net transfer of water. The MOU would create a binding contractual obligation on the part of Cal Am and flesh out the details of implementation and monitoring.

Save Our Peninsula Committee (SOPC) contends that the Oaks subdivision is out of compliance with conditions 34 and 35 of the tentative map approval and contends that therefore County is out of compliance with a settlement agreement in a lawsuit, *Save Our Peninsula Committee v. County* (Monterey County Superior Court Case No. M110694). Under the settlement agreement, if the County identifies non-compliance with mitigation measures imposed on the Oaks' subdivision, County must remedy the non-compliance after conducting a noticed public hearing before the Board of Supervisors. SOPC argues that this provision has been triggered and has brought a motion to enforce the settlement agreement. County staff had informed SOPC that staff intended to bring forward the MOU for the Board's consideration. SOPC has agreed to the County conducting this noticed public hearing and requests that the Board consider a number of alternatives other than the MOU to provide water to the Oaks.

This report further describes the chronology of events, describes the pending legal issue raised by SOPC, and analyzes the options for water service to the Oaks' lots.

Chronology of Events

The following table provides more factual detail on the chronology of events pertaining to the Oaks' water supply. Supporting documentation is on file and can be made available to the Board upon request.

August 2000	Oaks' well sample taken. Shows arsenic level is 35 ppb (parts per billion). This level complies with the federal standard for arsenic at that time, which standard was 50 ppb.
May 8, 2001	Board of Supervisors approves vesting tentative map for Oaks subdivision. (Resolution No. 01-197) Condition 34 provides: "Prior to the recordation of the final map, the subdivider shall provide a signed written agreement between the subdivider and Ambler Park Water Utility (APWU) requiring: a) the subdivider to convey a newly constructed well complete with water distribution infrastructure and fire flow water supply; and b) APWU to operate the system as a satellite or stand alone system providing

	<p>domestic and fire flow water supply to the subdivision in accordance with title 22 and the California Public Utility Commission standards. The total costs for item "a" is to be born [sic] by the developer and not APWU or its customers. If at any point in the future, the Toro B-8 zoning overlay is removed, and this stand alone system is to be consolidated with any other system, pumping of water (produced by this well) outside of Monterey County Water Resources Agency zones 2 & 2A is prohibited except in the case of emergency." [timing column: Prior to Recording Final Map]</p> <p>Condition 35 provides: "Design the water system improvements to meet the standards as found in Title 22 of the California Code of Regulations and as found in the Residential Subdivision Water Supply Standards. Submit engineered plans for the water system improvements and any associated fees to APWU for review and approval prior to installing (or bonding) the improvements. Provide evidence that APWU has reviewed and approved the plans. Applicant shall pay all Land Use review fees prior to filing the final map." [timing column: Prior to Recording Final Map]</p>
February 22, 2002	Federal Maximum Contaminant Level (MCL) for arsenic at 0.010 mg/L (10 ppb) goes into effect. Federal rule provides for 5-year implementation period. MCL compliance required by January 23, 2006.
July 22, 2003	Board of Supervisors approves three-year extension of the tentative map.
September 10, 2003	Environmental Health Department advises applicant's attorney that staff has reviewed documents submitted by the applicant for conditions 34, 35, and 36 and staff has not cleared the conditions. Staff requests revisions to the draft agreement submitted for condition 34 and additional information and documentation.
January 23, 2006	Date that federal regulation requires compliance with federal MCL standard for arsenic
January 24, 2006	Applicant (Bollenbacher and Kelton, Inc.) submits to John Hodges of Environmental Health a copy of letter dated September 2005 to Environmental Health. The September 2005 letter submits two documents to demonstrate compliance with conditions 34 and 35. For condition 34, applicant submits a revised memorandum of agreement executed in October 2004 by Cal Am and applicant whereby applicant agrees to construct a well and water distribution system for the subdivision and to convey same to Cal Am (Cal Am had acquired the Ambler Park Water Utility referenced in condition 34). For condition 35, applicant submits a letter dated March 26, 2004 from Cal Am to Environmental Health stating that Cal Am has reviewed and approved the plans, dated February 2004, for the Oaks Subdivision Water System.
January 31, 2006	Environmental Health staff notifies Planning staff that condition 34 has been satisfied and condition 35 has been satisfied except for posting of the bond for subdivision improvements. Environmental Health staff requests Public Works staff to inform him when subdivision improvements have been bonded.
April 3, 2006	Department of Public Works receives application by Ferrini Oaks, LLC for encroachment permits to install 4" and 8" water lines and sewer line in County roadways for Oaks subdivision

June 20, 2006	Board of Supervisors accepts the final map for Oaks subdivision and directs Chair of the Board of Supervisors to sign the Subdivision Improvement Agreement, among other related actions.
June 21, 2006	Chair of the Board of Supervisors executes subdivision improvement agreement, per Board of Supervisors' authorization. Agreement requires bonding for water system improvements
June 29, 2006	County issues four encroachment permits to Ferrini Oaks, LLC for work in County roadways, including permit to allow excavation of trench on San Benancio Road "to install underground eight inch water main facilities located on subject road per attached plans titled "Oaks Subdivision Water System" and permit to allow excavation of trench on Paseo Vaqueros "to install underground eight inch water main facilities located on subject road per attached plans titled "Oaks Subdivision Water System." The plans show both the 8" and 4" mains. The 8" main is the line from Ambler to the Oaks lots, and the 4" main is the raw water main from the Oaks well to the Ambler treatment plant. Evidence shows that both 8" and 4" water mains have been installed.
June 30, 2006	Final map is recorded.
August 10, 2006	Work in roadway begins. County requires work to be halted to investigate complaints that water lines are being installed to run between Ambler treatment plant and the Oaks well. Work allowed to proceed based on staff understanding that water from Ambler treatment plant and water from Oaks well will be in balance.
August 2006	General Manager of Monterey County Water Resources Agency (MCWRA) informs applicant's attorney that work does not violate Zone 2C on the understanding that the water from the Oaks well will be treated at the Ambler treatment plant and returned in dedicated lines. Staff understanding is that raw water from the Oaks well and the treated water will be in balance; staff confirms with Cal Am that meters are being installed and seeks a reporting mechanism to monitor and ensure the water balance transfer.
October 20, 2006	Letter from Cal Am to MCWRA in which Cal Am commits to quarterly monitoring of: 1) the production records from the new Ambler Oaks well; and 2) the water consumption as recorded by Cal Am water meters for the 9 lots in the Ambler Oaks subdivision. Cal Am commits to provide records to MCWRA on a quarterly basis, with such monitoring to begin as soon as the first property is ready for a water service connection.
February 26, 2008	Board of Supervisors accepts the Oaks Subdivision improvements as complete and releases performance bonds based on certification that improvements have been completed in conformance with the approved improvement plans.
April 1, 2009	Building Permits finalized for single family dwelling on three lots (APNs 161-013-005, 161-013-008, and 161-013-009)
August 2010	In gathering documents related to a different project application, Environmental Health learns that Cal Am has been serving at least one home in the Oaks subdivision without bringing the Oaks well on line for the equal exchange.
August 31,	Highway 68 Coalition files complaint with the California Public Utilities

2010	Commission (Case 10-08-022) challenging Cal Am annexation of Oaks subdivision area into Ambler Park service territory.
September 8 and 9, 2010	Environmental Health contacts Cal Am to remind Cal Am that Cal Am must monitor the flow from the Oaks well into Ambler Park treatment plant and the flow going back to the Oaks system.
September 28, 2010	Letter from Environmental Health to Cal Am informing Cal Am that per the conditions of approval for the Oaks subdivision, water from the B-8 zone cannot be used to supply an area outside B-8 boundaries; that water from the Oaks well must be metered to the Ambler treatment facility, treated for arsenic, and metered back to Oaks on a one to one basis; that Cal Am will operate the Oaks system as a stand-alone system; and that Cal Am will be required to submit monthly reports of meter readings to Environmental Health for review.
October 10, 2010	Planning staff places hold on occupancy or final or construction permit for vacant lots in the Oaks subdivision.
February 3, 2011	Letter to Ferrini Oaks, LLC (owner of the six remaining lots) informing owner of the potential code violation and hold on building permits due to Cal Am's water service to the Oaks without a corresponding transfer of water from the Oaks well to Cal Am and due to pending PUC proceeding challenging Ambler service to the Oaks.
September 12, 2011	Decision Resolving Complaint issued by PUC in The Highway 68 Coalition v. California American Water (Case 10-08-022). PUC denies the complaint. Findings of fact include: "Cal Am proposes to pump water from the annexed territory, treat the water at the Ambler Park water treatment plant, and then return the same quantity of water back to the annexed territory" and "In 2006, Cal Am agreed to monitor water production and consumption in the Ambler Oaks subdivision, and to make quarterly reports to the County." (finding nos. 7 and 12, at page 14.)
March 7, 2012	County staff proposes to Cal Am for Cal Am and County, with Board of Supervisors' approval to enter into an MOU to delineate Cal Am's obligation to balance the volume of treated water sent from the Ambler Park water system to the Oaks subdivision with an equal volume of raw water sent from the Oaks well to the Ambler Park water system and to monitor and report on same. Cal Am representatives agree to consider the MOU, based on Cal Am's 2006 commitment to the no net transfer.
March 26, 2012	In response to inquiry from Mike Weaver, County Resource Management Agency informs Mr. Weaver that County staff has determined that the subdivision is not in violation of conditions but County is working with Cal Am to address and enforce County's requirement of no net import/export of water from the County's B-8 zone such that the amount of water drawn from the Oaks well would be equal to the amount of water treated and supplied to the Oaks subdivision by the Ambler Park water treatment plant. Letter states that County and Cal Am anticipate entering into an MOU, and staff intends to bring the MOU to the Board of Supervisors for its consideration in open session.

Compliance with Conditions 34 and 35 and SOPC's motion to enforce Settlement Agreement

Under a settlement agreement in *Save Our Peninsula Committee v. County of Monterey et al* (Case No. M110694) involving mitigation monitoring under CEQA, the County agreed to analyze ten approved land use projects to determine "whether they are in compliance or non-compliance with mitigation measures imposed upon the project." (paragraph 3 of Settlement Agreement attached to Judgment pursuant to Stipulation for Entry of Judgment, filed September 21, 2011.) One of the ten projects is the Oaks subdivision (listed as Bollenbacher & Kelton, Inc. (Ferrini Oaks Subdivision/PLN94170)). Under the settlement agreement, if the County determines that the project is not in compliance with any mitigation measure imposed on the project, the County "shall remedy such non-compliance or will modify the applicable mitigation measure(s) as may be allowed pursuant to CEQA or other applicable law after conducting a noticed public hearing before the Board of Supervisors." (Paragraph 3.) SOPC contends that the Oaks subdivision does not comply with conditions 34 and 35 of the vesting tentative map, that County has not brought the matter to the Board to remedy the non-compliance, and therefore, the County has violated the settlement agreement. On June 27, 2012, SOPC filed a motion with the court to enforce the terms and conditions of the judgment, and the court hearing on that motion is currently set for October 26, 2012.

While the change in the arsenic standard necessitated treatment of the water, the evidence shows that the subdivider met the literal terms of the conditions and that the arrangement for treatment of the water with an equal exchange of water is in substantial compliance with the conditions. Prior to the Board's acceptance of the final map, staff determined that the subdivider had complied with conditions 34 and 35. The subdivider met the literal terms of the conditions. Condition 34, which is quoted in full in the chronology above, required the applicant to provide a signed written agreement between the subdivider and Ambler Park Water Utility (APWU) requiring the subdivider to convey the newly constructed well and water distribution infrastructure upon certain terms to Ambler. The subdivider provided a copy to staff of that executed agreement as part of condition compliance prior to final map acceptance. (Cal Am has purchased Ambler Park; therefore, the agreement is between Cal Am and the County.) Condition 35 required the subdivider to design the water system improvements to meet certain state and County standards and provide evidence that Ambler had reviewed and approved the plans. As part of the condition compliance process and prior to final map acceptance, the subdivider provided a letter from Cal Am stating that it had reviewed and approved the plans for the Oaks subdivision water system. SOPC points out that staff did not at that time fill out the Verification of Condition Compliance forms required by the Board's adopted mitigation monitoring procedures; however, as described in the chronology, the omission of the particular forms did not mean that staff failed to determine compliance. Staff "cleared" the conditions after receiving copies of the documentation required by the conditions.

SOPC contends that the fact that the water system was designed to have the water treated by Ambler violates the conditions and violates the County's B-8 zoning. County staff maintain that the arrangement to have the water supplied by the Oaks' well, treated by Ambler, and then returned to the Oaks substantially complies with the conditions, is necessitated by the new federal standard for arsenic, and does not violate B-8 zoning. The purpose of the B-8 zoning district is to "restrict development and/or intensification of land use in areas where, due to water

supply ... or similar measurable public-facility type constraints, additional development and/or intensification of land use if [sic] found to be detrimental to the health, safety, and welfare of the residents of the area, or the County as a whole.” The Oaks’ well is not within the County’s B-8 zone. Ambler’s water supply is located in the County’s B-8 zone. Because Cal Am will offset the water it supplies to the Oaks subdivision by an equal transfer of water from the Oaks’ well into the Ambler system, Ambler’s service to the Oaks does not result in intensification of water use in the B-8 zone. Conversely, the Oaks’ well lies within Monterey County Water Resources Agency’s benefit assessment “Zone 2C,” which does not allow the export of water out of Zone 2C. The Ambler treatment plant lies outside Zone 2C. Because Cal Am will ensure that the volume of water it pumps from the Oaks’ well into the Ambler Park water system does not exceed the amount of water supplied from Ambler to the Oaks, pumping water from the Oaks well into the Ambler system does not result in export of water out of Monterey County Water Resources Agency’s benefit assessment Zone 2C. This manner of implementation protects the public health while meeting the intent of condition 34 not to intensify water use in the County’s B-8 zone and not to export water out of MCWRA’s benefit assessment Zone 2c and thus is in substantial compliance with the conditions.

SOPC has brought a motion to enforce a settlement agreement in *SOPC v. County* on grounds that the Oaks subdivision is not in compliance with conditions 34 and 35. The settlement agreement requires the County to analyze the Oaks subdivision and certain other approved projects to determine whether they are in compliance with mitigation measures imposed on the project and, if determined to be non-compliant, to remedy the non-compliance after conducting a noticed public hearing before the Board of Supervisors. As already explained, County determined that conditions were met when the final map was accepted in 2006. There were no conditions or mitigation measures that required on-going monitoring of the water system. Staff’s analysis is that the no net transfer requirement, whereby Cal Am serves the Oaks and offsets that service by pumping an equal amount of water from the Oaks’ well into the Ambler system, constitutes substantial compliance with all applicable regulations and conditions. Although County is not compelled to hold this noticed public hearing if the settlement agreement does not apply, in light of the dispute between the County and SOPC, this noticed public hearing will fulfill the requirement under the settlement agreement.

Independent of and prior to SOPC’s filing the motion to enforce, County staff had been in discussion with Cal Am regarding development of an MOU between County and Cal Am and subject to the Board of Supervisors’ approval to memorialize Cal Am’s 2006 commitment of no net export of water out of the B-8 or out of Zone 2C when serving the Oaks subdivision. SOPC has requested that the Board consider options other than the MOU. Therefore, staff requests that the Board consider the MOU and other alternative mechanisms to providing safe potable drinking water to the Oaks subdivision and provide direction to staff.

Options for Provision of Safe, Potable Water to Oaks lots

In examining options, the Board must be cognizant of the legal and other considerations that arise from the fact that the final map has already been accepted, lots sold, and the water system conveyed to Cal Am. Pursuant to the agreement entered by the subdivider and Cal Am to

comply with condition 34 of the Oaks' tentative map, the subdivider conveyed the Oaks well and water infrastructure to Cal Am, and Cal Am now owns and operates the Oaks' well and water infrastructure. Cal Am has annexed the Oaks subdivision into its service area. Cal Am is currently serving the three homes that have been built in the Oaks subdivision.

Under the Subdivision Map Act, recordation of the final map allowed the subdivider to sell lots, and as noted, three of the nine lots of the Oaks subdivision have been sold into individual ownership. Recognizing the property rights of owners who have taken title to property, the Map Act limits the ability of a local agency to amend conditions of a map after the map has been recorded. The County may modify the final map only if the County finds that "there are changes in circumstances that make any or all of the conditions of the map no longer appropriate or necessary and that the modifications do not impose any additional burden on the fee owners of the real property, and if the modifications do not alter any right, title, or interest in real property reflected on the recorded map." (Gov't Code sec. 66472.1, emphasis added.) Thus, any alternative the Board directs staff to pursue must not impose any additional burden on the current owners of the nine lots and not alter any of their rights, title, or interest in their property.

These factors affect the feasibility of the options, as discussed below. The options that staff or SOPC have identified are the following:

1. MOU between the County and Cal Am

The MOU would implement Cal Am's agreement to offset Cal Am Monterey District Ambler Park's water service to the Oaks subdivision with an equal amount of water to be pumped from the Oaks well into the Ambler Park water system, so as to result in no net transfer of water. A draft of the MOU is attached to the October 9, 2012 staff report to the Board of Supervisors. Cal Am staff has agreed in principle to an MOU and is reviewing the terms. The MOU is, in staff's view, the most feasible option, at least in the short term. It protects public health by ensuring treatment of water by a water system with the technical, managerial, and financial resources to ensure on-going treatment of the water to meet state and federal drinking water standards. It respects the property rights of the lot owners and is consistent with the Map Act because it does not impose an additional burden on the property owners, does not affect their right, title or interest in their property and does not disturb their water supply. It also does not intensify water use in the B-8 zone or export water out of Zone 2c because Cal Am is required to pump from the Oaks well into the Ambler system the exact same amount of water it is serving to the Oaks.

This option would require negotiation with and agreement by Cal Am. Cal Am representatives acknowledge that Cal Am made a commitment to the no net transfer arrangement and have expressed a willingness to negotiate an MOU with the County.

2. Install a new treatment plant

SOPC has suggested installing a new arsenic treatment plant outside of County's B-8 zone and within zone 2C to enable treatment of the Oaks' well water without any physical

transfer of water out of the B-8 zone or out of zone 2C. This option would require resolution of several questions: 1) what authority does County have at this juncture to require either the property owners or Cal Am to build a treatment plant to serve the Oaks; 2) who would build the treatment plant and bear the cost of construction; and 3) who would maintain the treatment plant and bear the cost of maintenance.

The Board could not impose this requirement on the lot owners under the Map Act unless the Board could find that this requirement does not impose any additional burden on the property owners or affect their right, title, or interest in property; this finding would be difficult to make because requiring the lot owners to build a treatment plant would be costly. A rough estimate from Cal Am is that installation of a treatment plant for the nine lots would cost \$75,000 to \$150,000. Additionally, if only the nine Oaks' homes were funding the maintenance and operation of the plant, Environmental Health Bureau is concerned that such a small customer base would not be able to support the capital cost and ongoing expense for operation of the treatment plant based on EHB's experience with similar small water systems; the strategy to send the raw water from the Oaks well to the Ambler Park treatment plant was created due to the concern that nine lots could not feasibly fund and support the building and maintenance of a treatment plant. For these reasons, requiring the current property owners to build and operate a new treatment plant on the Oaks' side of San Benancio Road is not a feasible option.

A second variant would be to require Cal Am to build the treatment plant because Cal Am already owns the well and water infrastructure and thus Cal Am, not the developer or homeowners, would be the appropriate party to decide to build a new plant rather than treat the Oaks well at the Ambler plant. The County may not have the legal authority to require Cal Am to build a new treatment plant in connection with the Oaks lots given that the lots have already been created and the water system conveyed to Cal Am; however, this option may be available if Cal Am were to agree to it. The County could require a future subdivider to build a treatment plant as a condition of approval, and the Oaks may then be able to connect to such a treatment plant, but this scenario is contingent on the County approving future subdivisions. Unless a developer pays for construction of the plant, Cal Am would need permission from California Public Utilities Commission to construct the plant. The cost of construction could be passed on to ratepayers, if and as allowed by the PUC, which could result in higher costs to ratepayers. Additionally, installation of a treatment plant would take time; the amount of time is difficult to estimate because timing would depend on a number of factors. Thus, installation of a new treatment plant on the "Zone 2C" side of San Benancio Road may be a long term option to explore, but it is not a feasible solution to the immediate need to provide potable water to the already existing nine Oaks lots. Entering into the MOU does not foreclose the long term possibility of a new treatment plant because the draft MOU allows for the possibility of termination of the MOU if an alternative mechanism is put in place (paragraph 8 of the draft MOU).

3. Require a new well be drilled on the Oaks' site.

There are places to drill a new well within the subdivision; however, fractured rock is prevalent in this area, and a new well is not guaranteed to meet water quality and quantity standards. In fact, information about other wells in the vicinity suggests that a new well would

likely also be high in arsenic. Given information from the surrounding area, indications are that other wells within the subdivision boundary would experience similar characteristics. A study of the El Toro groundwater primary aquifer system, where the Oaks site is located, concluded that the groundwater in this area generally contains arsenic at concentrations exceeding the primary drinking water standard of 10 µg/l (ppb). (*El Toro Groundwater Study* (Geosyntec consultants, July 2007) at page 29.) The three production wells in the Ambler Park Water System exceed the 10 ppb standard for arsenic and require treatment. (*Id.* at page 13.) Of the 40 wells that provide water to water systems in the San Benancio Canyon area for which the Environmental Health Bureau has records, 25 wells (62%) exceed the Maximum Contaminant Level. Therefore, a new well on the Oaks' site would more likely than not have the same water quality problem as the existing Oaks' well.

Another factor affecting feasibility of requiring a new well is determining who would bear the cost of drilling the new well. To impose the cost on the owners of the nine lots, the Board would have to amend the final map condition, which would require the Board to find that the amendment does not impose an additional burden on the property owners, a finding that would be difficult to make because drilling a new well would be an added expense. Cal Am currently owns the well and water system for the Oaks, and there may be jurisdictional issues in regard to whether the Board has the jurisdiction to require Cal Am to drill a new well. If Cal Am were to agree voluntarily to drill the new well, the company may seek to recover the cost through its rates, if and as allowed by the PUC. Thus, there would be additional regulatory requirements and additional costs to be borne by either the homeowners or the Ambler Park ratepayers more broadly. In conclusion, this option would have added costs with potentially no benefit inasmuch as the new well has a high probability of being high in arsenic.

4. Provide water from Zone 2c from a different water utility.

Cal Water, another investor owned private utility regulated by the CPUC, has water supply wells in Zone 2c. Cal Water currently serves County Toro Park. Cal Water facilities currently do not abut the Oaks subdivision. Cal Water is identified as the future purveyor for the proposed Ferrini Ranch subdivision that would abut the Oaks subdivision, but that subdivision application has not been approved, and there is no certainty that said subdivision would be approved. If approved, the topography would make it extremely difficult and costly to connect that water system to the Oaks.

Even if the Ferrini Ranch subdivision were approved and a system were designed to connect the water systems through the hills, Cal Am currently owns and operates the Oaks well and water infrastructure and has extended its service area to include the Oaks subdivision. A different water utility would have to meet certain requirements to serve the Oaks, including permission from the PUC. Staff would have to do additional research to determine whether a different water utility, such as Cal Water, could serve the Oaks, given that Oaks is already in the service area of Cal Am. This option is not feasible for the immediate need to provide potable water to already existing lots.

5. Require water to be trucked into the Oaks lots.

This alternative is inconsistent with the County's General Plan and therefore not legally feasible. Both the 1982 General Plan and the 2010 General Plan do not allow hauling of water as a long term water supply. (See Policy PS 3.2 of the 2010 General Plan.) Environmental Health has allowed homes to be served by trucked water only as a temporary, emergency fix. The ability to obtain potable water depends on financial capabilities of each resident because this is a costly solution. Hauled water does not qualify as an adequate water supply.

Staff Recommendation

Staff is requesting that the Board provide direction to staff as to the preferred option. Staff would then conduct environmental review on the preferred option and bring the matter back to the Board for further action.

Staff recommends the MOU. Subject to environmental review and obtaining agreement from Cal Am, the proposed MOU is the method of providing safe, potable drinking water to the Oaks subdivision that is the most feasible, most capable of success, and therefore most protective of public health. Cal Am through its Ambler Park water treatment plant has the technical, managerial and financial capability to treat water. Cal Am also has the ability to serve the Oaks subdivision because Cal Am already owns the Oaks' well and its infrastructure and has extended its Monterey District Ambler Park service area to include the Oaks subdivision. Because the MOU enforces no net transfer of water from Ambler to the Oaks and vice versa, it would not intensify water use in Cal Am's Monterey District Ambler Park service area. It is also the option least costly to ratepayers because it relies on a well and water infrastructure whose cost was already borne by the Oaks' subdivider and would require no new construction. It is also the least disruptive to the existing owners of the nine lots because the obligations to balance the water supply would fall entirely on Cal Am and would cause no disruption of service to the homeowners. The MOU would create a binding contractual obligation on the part of Cal Am to offset Cal Am Monterey District Ambler Park's water service to the Oaks subdivision with an equal amount of water to be pumped from the Oaks well into the Ambler Park water system, so as to result in no net transfer of water. The MOU would flesh out the details of implementation and monitoring.