

Attachment B

This page intentionally left blank.

MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

Carl P. Holm, AICP, Director



LAND USE & COMMUNITY DEVELOPMENT | PUBLIC WORKS & FACILITIES | PARKS

1441 Schilling Place, South 2nd Floor

(831)755-4800

Salinas, California 93901-4527

www.co.monterey.ca.us/mia

April 1, 2020

Mr. Paul Hart
Moncrief and Hart
16 West Gabilan St.
Salinas, CA 93901

RE: Vista Nadura Subdivision, Cam1el Valley, PLN990274

Dear Mr. Hart:

This letter is in response to your request that the above referenced subdivision application be deemed complete as of 2002-2003. Staff has reviewed the project file and your contentions, and staff has confirmed its prior determinations that the application is incomplete. As further outlined below, you may submit the information required to make this application complete, or you may appeal the incompleteness determination to the Monterey County Planning Commission.

There is no dispute that under the Subdivision Map Act, the subdivision application is subject to the ordinances, policies, and standards in effect when the application is deemed complete, with some exceptions not at issue here. (Government Code section 66474.2(a).) In this case, the application has been incomplete since 2002 and remains incomplete. Therefore, the application will be subject to such County ordinances, policies and standards rules in effect when it is deemed complete, including but not limited to the 2010 General Plan, including the updated Cannel Valley Master Plan. Review of a completeness determination is factually based.

County staff, predominantly RMA and Environmental Health, have conducted an in-depth review of the application materials and project files over the past 20 years, as well as the extensive supplemental information your office provided. Staffs determination is based on project specific facts. **Exhibit A** provides a summary of key dates and actions that support this determination.

County records show that the formal application was filed on August 26, 2002. By letter dated September 26, 2002, staff informed the applicant that the application was incomplete because the applicant had not submitted proof of adequate water supply, and additional information, as required by the County's subdivision ordinance in order to deem the application complete.

You contend the subdivision application should not have been deemed incomplete due to the failure to include in the application material evidence as to the existing availability of full water rights to serve the entirety of the proposed project. You contend this was not the proper procedure or standard in place at that time, rather, the application should have been deemed

complete when the applicant *"pointed to a proposed source of water supply. The actual sufficiency and viability of the water supply was not a precondition of deeming the application complete, rather it was an issue to be evaluated and examined during the project review and approval/denial process."* (Email of August 6, 2019 to Craig Spencer, RMA Services Manager).

Research found that on September, 2000, the County Board of Supervisors adopted a "Proof of Water" ordinance requiring that all proposed subdivisions show adequate source of water prior to an application being deemed complete. The ordinance amended portions of Title 19, and stated that these new provisions were not retroactive to projects for which an application had already been deemed complete prior to June 26, 2000. Per the ordinance adopted in September 2000, County regulations require submission of a hydrogeological report for a subdivision application to be complete. Section 19.03.015.L.3.A of the Monterey County Codes (Title 19, Subdivisions, non-coastal) states, in part: ***"Prior to an application being deemed complete, a hydrogeologic report based on a comprehensive hydrological investigation shall be prepared by a certified hydrogeologist, selected by the County and under contract with the County, at the applicant's expense, if required by this Section..."*** This requirement has been in place since before your client submitted its formal application in 2002.

In contrast, you provided as evidence the application evaluation process for the September Ranch property, located nearby, which you contend was not required to provide proof of water supply before being deemed complete for processing. However, the original September Ranch subdivision (PC95062) application was submitted and deemed complete in 1995. The EIR was revised (PLN050001) subsequently as a result of litigation, but since the revision of the EIR was to satisfy the court directives, the September Ranch project retained its original completion date and was processed under the pre-2000 Subdivision Code. Nonetheless, a very thorough analysis of water supply and water demand was required and done for the September Ranch project.

Based on the information I have reviewed, it is staff's determination that the Vista Nadura Subdivision application is incomplete and, therefore, subject to Monterey County Code Section 19.03.015.L.3.A and the 2010 General Plan, and the Carmel Valley Master Plan, as incorporated into the 2010 General Plan and amended in 2013, as well as any other County plans, rules and regulations applicable to the project that are in effect when the application is deemed complete.

This is an incompleteness determination pursuant to Government Code section 65943. In order to move the application forward, two options are open to you:

- A. Submit the information required to make the Vista Nadura Subdivision application complete. To render the application complete, you must submit the information required by the Monterey County Health Department Environmental Health Bureau (EHB) related to adequate public water supply, as specified in the attached Memorandum (dated 11/4/2019). As delineated in the memo, EHB has modified its requirements in response to your request that some of the information would be addressed in the EIR process; however, EHB requires you to submit certain information prior to application completeness. Additionally, as a prerequisite to a complete application, the subdivision description needs confirmation as to number of lots and subdivision design, given revisions to the application which applicant submitted in 2016.
- B. Appeal the determination: Pursuant to Government Code section 65943(c), you have the right to appeal this incompleteness determination to the Monterey County Planning Commission. If you desire to file an appeal, you must submit an appeal in writing to the Resource Management Agency and pay the applicable appeal fee. The appeal must specify

the grounds for the appeal. Upon receipt of the appeal, Resource Management Agency would set the appeal for hearing before the Planning Commission within 60 days of the hearing, unless the COVID-19 emergency requires additional time. Please note the appeal would be limited to the issue of application completeness and would not be a hearing on the application itself.

Sincerely

John M. Dugan, FAICP
RMA Deputy Director of Land Use and Community Development

EXHIBIT A- KEY DATES/ACTIONS

6/10/1999	Application Request submitted, assigned case number PLN990274
09/2000	BOS adopts Ordinance 4082 amending MCC Chapters 19.03 and 19.04 setting forth procedures for a tentative map, including a hydrogeological report required prior to an application being deemed complete.
8/1/2001	Application Checklist "Given Out"
8/26/2002	Application Submitted
9/26/2002	Incomplete letter issued noting 1) the subdivision is located in water sub basins 31 and 32. Sub basin 32 is subject to a subdivision prohibition adopted by the County in Feb. 1983., 2) no documentation of source of water supply, 3) Lack of soils study and report for each lot.4) Project description is not complete.
11/4/2002	Supplemental letter from Environmental Health Office reiterating that the applicant must provide map overlays showing the proposed subdivision location in the two sub basins, and related soil percolation test results. Also reiterated was the requirement for a project-specific hydrogeological report to demonstrate the existence of a long-term water supply for the subdivision. The report was to be prepared by a hydrogeologist under contract with the County. It was specifically stated the application would be deemed incomplete until such report was completed and accepted by Environmental Health.
4/15/2003	Letter from Bestor Engineers (Applicant's engineer) urging reconsideration of requirement of the hydrogeological report to demonstrate long range water supply. based on historic land use of the property and their related water consumption. Health Department notes they have no record of this letter and marked it received on November 9,2007.
4/6/2006	Bestor Engineers submits supplemental data for water system.
4/20/2006	Letter from County Planning regarding additional information needed.
8/3/2006	Letter from County Planning stating all departments have deemed the application complete except the Health Department. Health Department requires information on 1) Complete project description related to sub basins, 2) Additional soils information, 3) Documentation of water supply, 4) Method of sewage disposal and proposed Community Septic System not acceptable.
11/9/2007	Information submitted by applicant to Health Department addressing required data.
11/30/2007	Detailed letter from Health Department identifying incomplete information for: wastewater management, water supply, project description, and related tentative map requirements.
12/27/2007	Reissued letter from County Health Department reiterating the application is incomplete due to lack of information listed in their referral of 7/31/2006.(Listed in County Planning letter of 8/3/2006.
2/21/2008	Bestor Engineers submits response to County Health Department letter of 12/27/2007. Response clarified the project description is to include 7 inclusionary housing units on lot 20; 1982 map showing subdivision location in sub watersheds; soil and percolation testing reports, well pump test, drain-field and septic information; statement that water credits from existing horse operations (2.48 acre feet) can be used for water plus use of sub-potable water from aquifer underlying the Carmel Valley aquifer.
3/18/2008	County Health Department stating the project description was now satisfactory, but none of the other required information had been received in the form or detail required: 1. Sub basin and proposed subdivision overlay map, 2. Soils and

- percolation testing reports for proposed lots, 3. Water supply information verifying water rights, report from Monterey Peninsula Water Management District, well pump test data.
- 6/4/2008 County Health Department letter to applicant summarizing required information on the: sub basins overlaid by the subdivision proposed septic fields, wastewater management, water supply verifying water rights for existing well and other data as detailed in March 18, 2008 letter.
- 9/4/2008 Letter from Health Department to applicant confirming a phone conversation of 8/28/2008 wherein applicant stated he wished to address sewage issues by deleting drain fields and connecting to Carmel Area Wastewater District (CAWD). Letter stated Can and Will Serve Letter from CAWD required to be documented. Water supply issues still not addressed.
- 12/10/2010 Letter from Environmental Health Department documenting phone conversation regarding letters sent to applicant by the Planning Department. Staff was directed by the Board of Supervisors to recommend denial of all proposed subdivisions in Carmel Valley. On October 26, 2010, the Board of Supervisors adopted the 2010 Monterey County General Plan. Carmel Valley projects that remain incomplete as of Oct. 16, 2007 are to comply with the 2010 General Plan policies LU-1.19, CV-1.6, CV-2.18, CV-2.19 and CV-5.5. Previously documented reports and technical information remain outstanding. Regarding wastewater disposal, an Oct 23, 2008 letter from the Carmel Area Wastewater District stated the project will have to apply to amend the CAWD Sphere of Influence in order to be annexed into the district.
- 11/15/2011 Memorandum from Roger Van Horn, Environmental Health Dept. to Robert Schubert, Planning Department stating that Environmental Health considers the project incomplete with recommendation for denial due to lack of proof of a sustainable long-term potable water supply.
- 5/31/2016 Project Referral Sheet from Environmental Health Bureau stating the application is incomplete. Can and Will Serve Certification from CAWD has not been submitted by the applicant to show CAWD will provide sewer service to the project. Proof of Long-Term Sustainable Water Supply and Adequate Water Supply System pursuant to General Plan policy PS 3.2 has not been submitted.
- 1/24/2018 Letter from John M Dugan, RMA Deputy Director summarizing a history of the project and requesting evidence that the Health Bureau information requirements had been met to deem the project application complete.
- 3/19/2019 Letter from Paul Hart of Moncrief and Hart responding to the letter of 1/24/18 and requesting a Director's Interpretation which would find the application Complete prior to October 16, 2007. Documentation provided which applicant contends supports their contention that the application should have been deemed complete sometime in 2002 or 2003.
- 11/4/2019 Memorandum from Bryan Escamilla Environmental Health Bureau restating and partially revising (ie, reducing) items required to be addressed prior to the project being deemed complete.



MEMORANDUM

**COUNTY OF MONTEREY
HEALTH DEPARTMENT
ENVIRONMENTAL HEALTH BUREAU**

NOVEMBER 4, 2019

**To: John Dugan, AICP, Deputy Director
Monterey County Resource Management Agency**

**From: Bryan Escamilla, REHS
Environmental Health Review**

Subject: PLN990274, Agha Durrell DTr

As previously requested by Environmental Health Bureau staff, the follow items are required to be addressed prior to the project being deemed complete:

1. Written verification from Carmel Area Wastewater District (CAWD) stating the sewer service can and will be provided for the proposed property/project.

Information and/or agreements as to how the sewer main will be connected to this project (both financially and logistically) and additional review from the Local Agency Formation Commission of Monterey County (LAFCO) for annexation into the CAWD district will be necessary for the wastewater expansion. This review may take place through the BIR process.

2. This project will require proof of a Long Term Sustainable Water Supply and an Adequate Water Supply System pursuant to General Plan policy PS 3.2. This review can be done through a contracted Hydrogeological Study through RMA or through the BIR process.
3. Official documents verifying water rights for the existing well due to location within Carmel River Basin have not been supplied to EHB. The proposed project would also meet the definition of a Public Water System and as a result, a suitable secondary water source shall be identified and tested to determine that it meets quality and quantity requirements. Monterey Peninsula Water Management District (MPWMD) also needs to be advised of this project so they may make comments regarding any specific concerns they might have as to water use intensification.
4. Chemical test results for the existing well, dated Feb 12, 2009, detected Fluoride at 6 mg/L (three times the MCL of 2 mg/L) subsequently, quarterly conformation samples for Fluoride should have been taken to demonstrate Fluoride thresholds. The applicant met with EHB staff in April 2011 and a conformation sample was taken. The result was 3.48 mg/L, which is still over the MCL. Quarterly confirmation samples are required.