



Legislation Details (With Board Report)

File #: 21-628 **Name:** Resolution Harper Recind
Type: BoS Resolution **Status:** General Government - Consent
File created: 7/13/2021 **In control:** Board of Supervisors
On agenda: 7/27/2021 **Final action:**
Title: Adoption of a resolution to set aside portions of Resolution No. 15-084 for the Harper Canyon (Encina Hills) Subdivision Project only as they relate to project wildlife corridor issues in compliance with the Second Amended Peremptory Writ of Mandate.

Sponsors:

Indexes:

Code sections:

Attachments: 1. Board Report, 2. Attachment A - Resolution Harper recind (final), 3. Attachment B. 460.21.07.1 Second Amended Peremptory Writ of Mandate

Date	Ver.	Action By	Action	Result
7/27/2021	1	Board of Supervisors	removed from agenda via additions and corrections	

Adoption of a resolution to set aside portions of Resolution No. 15-084 for the Harper Canyon (Encina Hills) Subdivision Project only as they relate to project wildlife corridor issues in compliance with the Second Amended Peremptory Writ of Mandate.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

The Office of the County Counsel recommends that the Board of Supervisors consider adoption of a resolution to set aside portions of Resolution No. 15-084 for the Harper Canyon (Encina Hills) Subdivision Project only as they relate to project wildlife corridor issues in compliance with the Second Amended Peremptory Writ of Mandate.

SUMMARY/DISCUSSION:

On April 7, 2015, the Board of Supervisors approved a 17-lot subdivision (the “Project”) proposed by Harper Canyon Realty LLC (“Harper”) on approximately 344 acres of land located south of State Route 68 and east of San Benancio Road in the Toro Area. To do so, the Board of Supervisors (the “Board”) adopted Resolution No. 15-084 which did the following: (1) certified the Final Environmental Impact Report (“FEIR”) for the Project; (2) adopted California Environmental Quality Act (“CEQA”) findings and a Statement of Overriding Considerations; (3) upheld the appeal by Harper from the Planning Commission’s denial of their application; (4) approved a Combined Development Permit consisting of a Vesting Tentative Map for the subdivision and associated Use Permits; and (5) adopted a Mitigation Monitoring and Reporting Plan.

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

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

On March 29, 2021, the Court of Appeal issued its opinion. The Court of Appeal denied Petitioners cross-appeal and found that the County’s analysis of groundwater resources in the Draft EIR was adequate. The Court of Appeal also held that CEQA did not mandate recirculation of the FEIR on the topic of groundwater resources prior to approval of the Project.

The Court of Appeal agreed with the trial court’s conclusion that the FEIR’s analysis of the Project’s impact on wildlife corridors was deficient and not supported by substantial evidence.

The Court of Appeal remanded the matter to the trial court with directions to vacate its original order, and to issue a new writ of mandate ordering the Board to vacate Resolution No. 15-084, and to vacate the Board’s approval and certification of the EIR for the Project only as it relates to wildlife corridor issue.

On July 1, 2021, the Superior Court issued its Second Amended Judgment Granting Peremptory Writ of Mandate (“Writ of Mandate”), and Second Amended Peremptory Writ of Mandate. The writ requires the Board do the following:

1. Set aside the portions of Resolution No. 15-084 certifying the FEIR for the Project as to project wildlife corridor issues only and reconsider the non-CEQA approvals in Resolution No. 15-084 and set them aside only to the extent they are dependent on project wildlife corridors issues.
2. To not take any further action to approve the Project without the preparation, circulation and consideration under CEQA of a legally adequate EIR with regard to the wildlife corridor issues discussed in the Court of Appeal Opinion.
3. Make and file a return to this writ within 60 days of taking such action, setting forth what it has done to comply.

To comply with the Writ of Mandate, the Board must adopt the attached resolution, and file the same with the Superior Court as part of the County’s Return to the Writ of Mandate showing the required action the County has taken. In accordance with the Court of Appeal Opinion, Harper has asked the County to prepare a revised EIR pertaining to wildlife corridors. Once that analysis has been completed in accordance with CEQA, the Board, which will retain jurisdiction over the Project application (File No. PLN000696), will reconsider the Project approvals only in light of that supplemental analysis pertaining to wildlife corridors.

OTHER AGENCY INVOLVEMENT:

The Housing and Community Development has been informed of this action.

FINANCING:

Adoption of the Resolution will have no impact on the General Fund.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Mark a check to the related Board of Supervisors Strategic Initiatives

- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

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Attachments:

Board Report

- A. Resolution
- B. Second Amended Writ of Mandate