



# County of Monterey

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

## Legislation Details (With Board Report)

<b>File #:</b>	RES 21-151	<b>Name:</b>	Vacate the portions of Resolution No. 15-084 only
<b>Type:</b>	BoS Resolution	<b>Status:</b>	Passed - County Counsel Office
<b>File created:</b>	8/16/2021	<b>In control:</b>	Board of Supervisors
<b>On agenda:</b>	8/24/2021	<b>Final action:</b>	8/24/2021

**Title:** Adopt a resolution to:

- a. Rescind portions of Resolution No. 15-084 only to the extent they are dependent on wildlife corridor issues, including: certifying the Harper Canyon (Encina Hills) Project Final Environmental Impact Report (EIR), adopting the findings, approving the Combined Development Permit, and adopting the Mitigation Monitoring and Reporting Plan for the Project;
- b. Suspend any and all activities related to the Project except the preparation, circulation, and consideration under CEQA of a legally adequate EIR with regard to the wildlife corridor issues discussed in the Court of Appeal opinion;
- c. Comply with CEQA by the preparation, circulation and consideration of a legally adequate EIR with regard to the wildlife corridor issues discussed in the Court of Appeal opinion before taking any further action on the Project; and
- d. Authorize and direct the Office of the County Counsel to file with the Superior Court a return to the Second Amended Peremptory Writ of Mandate with a copy of this Resolution attached thereto, and take any other actions necessary to fully and promptly comply with the Writ.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Board Report, 2. Attachment A -Resolution Harper recind -1 (final 8.24.pdf, 3. Attachment B - Resolution No. 15-084, AR 3-116, 4. Attachment C -Second Amended Peremptory Writ of Mandate, 5. Completed Board Order and Resolution Item No. 56

Date	Ver.	Action By	Action	Result
8/24/2021	1	Board of Supervisors	adopted - county counsel	Pass

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- d. Authorize and direct the Office of the County Counsel to file with the Superior Court a return to the Second Amended Peremptory Writ of Mandate with a copy of this Resolution attached thereto, and take any other actions necessary to fully and promptly comply with the Writ.

**RECOMMENDATION:**

The Office of the County Counsel recommends that the Board of Supervisors consider adoption of a resolution to:

- a. Rescind portions of Resolution No. 15-084 only to the extent they are dependent on wildlife corridor

issues, including: certifying the Harper Canyon (Encina Hills) Project Final Environmental Impact Report (EIR), adopting the findings, approving the Combined Development Permit, and adopting the Mitigation Monitoring and Reporting Plan for the Project;

- b. Suspend any and all activities related to the Project except the preparation, circulation, and consideration under CEQA of a legally adequate EIR with regard to the wildlife corridor issues discussed in the Court of Appeal opinion;
- c. Comply with CEQA by the preparation, circulation and consideration of a legally adequate EIR with regard to the wildlife corridor issues discussed in the Court of Appeal opinion before taking any further action on the Project; and
- d. Authorize and direct the Office of the County Counsel to file with the Superior Court a return to the Second Amended Peremptory Writ of Mandate with a copy of this Resolution attached thereto, and take any other actions necessary to fully and promptly comply with the Writ.

#### 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 issues.

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

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

To comply with the Writ, 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

Prepared and Approved by:

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Kelly Donlon, Senior Deputy County Counsel Ext. 5313

Attachments:

Board Report

- A. Draft Resolution
- B. Resolution No. 15-084
- C. Second Amended Peremptory Writ of Mandate