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# W16a

Permit Expiration: 4/12/2010  
Extension Request Filed: 3/23/2010  
Staff: Kevin Kahn - SC  
Staff Report: 10/21/2016  
Hearing Date: 11/2/2016

## STAFF REPORT: CDP EXTENSION REQUEST

**Application Number:** A-3-MCO-04-054-E3

**Applicant:** Xiaoyun Chen Trust

**Project Location:** 250 Maher Road, Royal Oaks, North Monterey County (APN 127-252-009)

**Project Description:** Subdivision of a 25-acre agricultural parcel into 10 lots ranging in size from 1.0 to 7.8 acres; development of a mutual water system; construction of four 15,000 gallon water tanks; demolition of an existing mobile home, barn, and greenhouse; conversion of an existing mobile home to a senior citizen's unit; and associated improvements.

**Staff Recommendation:** Deny the Extension

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### SUMMARY OF STAFF RECOMMENDATION

Coastal Commission coastal development permit (CDP) approvals typically allow two years for a Permittee to exercise their CDP pursuant to the terms and conditions of the CDP adopted by the Commission. If a Permittee has not so exercised their CDP, then the CDP expires. However, the Commission's regulations also provide that a Permittee can request an extension of that deadline of up to a year. Extension requests such as these can only be granted provided the Commission finds that there are no changed circumstances that would affect the consistency of the development with the policies of the Coastal Act and/or the applicable Local Coastal Program (LCP).

In this case, the Commission approved a CDP and the Permittee has not yet exercised that CDP, and is requesting an extension of the expiration deadline. Staff recommends that the CDP extension **NOT** be granted because changed circumstances exist that affect the development's consistency with the policies and standards of the certified Monterey County LCP, as described below.

First, like virtually all development located within predominantly rural, agricultural North Monterey County, the approved 10 lot subdivision project would receive its potable water supply from wells extracting groundwater from the Pajaro Valley Groundwater Basin (Basin). The North County segment of the LCP only allows development that can be supported by water sources that do not result in extractions that would exceed the safe yield of the underlying groundwater basin. The LCP does not contain a specific numeric safe yield amount for each groundwater basin, but instead requires hydrologic reports and the most updated resource information sources to determine appropriate safe yields and thus the amount of new development such a yield can support.

Since the time of the Commission's original CDP approval in 2006 (and subsequent extensions), the Pajaro Valley Water Management Agency updated its *Basin Management Plan* (Basin Plan) for the first time since 2002. The new Basin Plan, updated in 2014, now calculates Basin overdraft at 12,100 acre-feet per year (AFY), and identifies conservation (and not imported water via new pipelines from the Federal Central Valley Project, as was relied upon in the 2002 Basin Plan) as a primary tool to abate this overdraft condition and to bring the Basin into its safe yield state. Furthermore, in 2014, the Governor signed into law the Sustainable Groundwater Management Act (SGMA), which requires the Department of Water Resources (DWR) to identify overdrafted groundwater basins and requires groundwater management agencies overseeing those identified basins to develop plans to bring those basins into sustainable usage levels. DWR has designated the Pajaro Valley Groundwater Basin as being "critically overdrafted" as the law defines that term under the 2014 SGMA.

Both the 2014 updated Basin Plan and the 2014 SGMA constitute changed circumstances with respect to the approved project's consistency with LCP groundwater resources and water supply protection policies. The updated Basin Plan and the SGMA affect the understanding of the health of the Basin, including by quantifying the extent of its overdraft and by also identifying the actions necessary to bring the Basin to its safe yield state. The updated Basin Plan provides current overdraft information, further affirming the ongoing overdraft condition and the need to take proactive and aggressive measures to reduce and ultimately eliminate it, including through robust conservation measures to make up for the removal of previously relied upon imported Central Valley Project water. Furthermore, the SGMA's passage reflects a fundamental shift in the State's management of groundwater resources, proclaiming that sustainable groundwater use is a paramount statewide concern, and as such agencies overseeing SGMA-designated "critically overdrafted" basins (as is the case here) are now required to develop enforceable policies and mechanisms to bring those basins into a sustainable state. The 2014 Basin Plan's updated information and the new 2014 SGMA both materially affect the way in which this project may or may not be able to be found consistent with the LCP.

Second, the Commission's approval was subject to exacting conditions related to water supply. In fact, the Commission first denied the project in 2004 based on inconsistencies with LCP groundwater and water supply policies, as well as policies related to ESHA and drinking water quality.<sup>1</sup> The Commission only subsequently approved the CDP in 2006 as a pilot case to help evaluate whether a water retrofit/offsetting program would be an effective tool in addressing North Monterey County's significant groundwater overdraft problems.<sup>2</sup> In other words, the Commission's approval was explicitly designed to evaluate the hypothesis that the project could meet the intent of the LCP's water supply and groundwater resources policies by completely offsetting its estimated water usage through conservation retrofitting of non-agricultural existing development in the North Monterey County area. However, the Permittee has been unable to meet this condition, including because of a lack of opportunity to retrofit enough non-agricultural development within the area to completely offset the project's anticipated water usage. In fact, the water purveyor for the area indicates that there are no significant retrofit opportunities that can satisfy the CDP's requirements. The Permittee has been unable to successfully implement the envisioned offset program, and it appears as though it will not be possible to do so, thereby failing to meet a fundamental condition of the Commission's approval. The inability of the Permittee to meet this critical condition constitutes another changed circumstance affecting the approved project's consistency with the LCP.

Third, when the Commission approved the project in 2006, the LCP allowed senior citizens' units and caretakers' units, in addition to a single-family residence, on any parcel in any zoning district that allowed single-family residences, subject to certain limitations. The Commission's approval of the project allowed for the conversion of an existing mobile home to a senior citizen's unit. In 2015, the County approved and the Commission certified LCP amendment number LCP-3-MCO-15-0022-1 that replaced the LCP's previously allowed "senior citizens' units" and "caretakers' units" with accessory dwelling units (ADUs), and prohibited ADUs within the entire North County coastal zone due to water supply inadequacies and the need to restrict development in such water scarce areas. The fact that senior citizens' units are no longer an LCP-allowed land use, and that ADUs are not allowed in the North County area at all, represents additional changed circumstances affecting consistency with the LCP.

Finally, to the extent that the site's drinking water supply has suffered from additional nitrate contamination (i.e., because this was the case originally), that the extent and delineation of central maritime chaparral ESHA on the parcel has changed (such ESHA was identified on the site originally), and/or that Monterey County's discretionary approvals for the project from 2004, including its tentative map, are not still valid, all of which seem likely, such issues would constitute additional changed circumstances affecting the project's consistency with the LCP.

In sum, there are numerous changed circumstances that affect the project's LCP consistency.

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<sup>1</sup> The Commission also denied a subsequent reconsideration request in February 2005.

<sup>2</sup> There were several subdivisions pending at that time in the North Monterey County area, and the Commission was interested in evaluating through a case study whether there may be a way of meeting LCP requirements through such retrofit that may be applied to these cases as well.

Therefore, staff recommends that the Commission make a finding of changed circumstances, thereby denying the extension request. In order to deny the extension request, at least three Commissioners must determine that there are changed circumstances that affect the development's consistency with the Monterey County LCP. The motion is found on page 6 below.

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### EXHIBITS

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Exhibit 3 – Approved Staff Report and Conditions of A-3-MCO-04-054

Exhibit 4 – Map of North Monterey County Groundwater Basins

Exhibit 5 – Map of Department of Water Resources-designated Critically Overdrafted  
Groundwater Basins

Exhibit 6 – Correspondence from Pajaro-Sunny Mesa Community Services District

Exhibit 7 – 14 CCR Section 13169

## **I. MOTION AND RESOLUTION**

Staff recommends that the Commission find that there are changed circumstances that affect the consistency of the development with the policies of the certified Monterey County LCP, and therefore recommends that the Commission deny the extension request. To implement this recommendation, staff recommends a **YES** vote on the following motion. An affirmative vote of three Commissioners is needed to deny the extension request and adopt the following resolution and findings.

***Motion:** I move that the Commission find that there are changed circumstances that affect the consistency of the development approved in Coastal Development Permit Number A-3-MCO-04-054 with the policies of the certified Monterey County Local Coastal Program, and I recommend a yes vote.*

***Resolution to Deny the Permit Extension Request:** The Commission hereby denies the request to extend the time in which development must commence under Coastal Development Permit Number A-3-MCO-04-054 in order for the permit not to expire, and adopts the findings set forth below on the grounds that there is sufficient evidence of changed circumstances that affect the consistency of the development approved in this permit with the certified Monterey County Local Coastal Program.*

## II. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

### A. PROJECT LOCATION, HISTORY, AND DESCRIPTION

The project site is located on a 25-acre agricultural parcel in the Royal Oaks area of North Monterey County at 250 Maher Road (APN 127-252-009), approximately one mile south of the Tarpey Road/Maher Road intersection (see **Exhibit 1**). Royal Oaks is a rural area of rolling hills consisting of open space covered by grasslands, maritime chaparral, and oak forest habitat; agricultural uses, including for both grazing and row crops; and very low density residential development. Royal Oaks, and North Monterey County more broadly, serves as a rural, agricultural, pastoral buffer along the mid-Monterey Bay area, in between urban Santa Cruz County to the north and the Monterey Peninsula to the south.

In July 2004, Monterey County approved a CDP to subdivide the 25-acre agricultural property into 10 lots, along with demolition of an existing mobile home, barn, and greenhouse; conversion of another existing mobile home to a senior citizen's unit; construction of two water tanks and development of a mutual water system; and associated grading. In September 2004, the Commission found that the County's approval raised substantial LCP conformance issues with respect to LCP groundwater resources and water supply, water quality, and environmentally sensitive habitat area (ESHA) protection policies, thus taking jurisdiction over the CDP application. The Commission subsequently denied the application in December 2004 due to inconsistencies with these same LCP policies. In its denial decision, the Commission specifically found that the proposed project was inconsistent with LCP groundwater resources and water supply policies. Critically, the Commission found that because the underlying groundwater basin from which the future residences would receive water was already severely overdrafted, then there was no identifiable, available, and long-term water supply to serve these future residences, as is required by the LCP. In addition, the Commission determined that the project would impermissibly commit low-LCP priority residential development to groundwater resources that were already extracted beyond their LCP-required safe-yield state. The Commission also found the project inconsistent with LCP water quality requirements, including due to potential nitrate contamination issues in the project's drinking water supply, and ESHA protection requirements, including allowing development within central maritime chaparral and oak woodlands. In addition, the Commission subsequently denied the Permittee's reconsideration request and affirmed its previous denial decision, finding that there was no relevant new information or any error of fact or law which could have altered the Commission's denial decision.<sup>3</sup>

After the Commission's CDP denial and reconsideration denial, the Permittee sued the Commission in Monterey County Superior Court.<sup>4</sup> In early 2006, the Commission and the Permittee entered into a settlement agreement, agreeing to re-hear the CDP application with new proposed conditions aimed at ensuring the project's water neutrality, along with other conditions protecting ESHA and visual resources, in exchange for the Permittee dismissing the lawsuit. In

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<sup>3</sup> A-3-MCO-04-054-R, denied by the Commission in February 2005.

<sup>4</sup> Stephen S. Bradshaw v. California Coastal Commission, 2005, Case No. M73177.

April 2006, the Commission approved the CDP pursuant to the settlement agreement, which is the project subject to this extension request.<sup>5</sup>

The Permittee's project includes the subdivision of the 25-acre agricultural parcel into ten lots ranging in size from 1.0 to 7.8 acres (see **Exhibit 2** for the approved lot configuration). Where not covered by central maritime chaparral ESHA and oak woodland, the rest of the property is currently used for agriculture, including strawberry production, as well as a single-family residence, two mobile homes, and agricultural structures. The approval also authorizes 2,000 cubic yards of grading; development of a mutual water system; construction of four 15,000 gallon water tanks; demolition of an existing mobile home, barn, and greenhouse; and conversion of an existing mobile home to a senior citizen's unit. The existing 2,500-square-foot, two-story single-family dwelling and one of the mobile homes would be retained on what would be Lot #1, with the mobile home becoming a senior citizen's unit. The other mobile home currently on the property would be removed, leaving nine new vacant residential parcels. As approved, a 21-foot-wide access road (within a 30-foot-wide road and utility easement) would enter the property from Maher Road along the southern property boundary and then head north across the middle of the property to reach the other newly created lots. The project includes construction of the road, underlying utilities, and stub outs to each lot. Separate CDPs would be required for construction of residences on each of the nine newly created lots.

In addition, pursuant to the settlement agreement, the Commission's approval included numerous special conditions intended to address LCP groundwater, ESHA, and visual resource protection policies. Specifically, Special Condition 1 included extensive water use limitation requirements, including that each parcel created by the subdivision shall be required to completely offset its water usage by retrofitting existing offsite non-agricultural development within North Monterey County. To accomplish such a requirement, Special Condition 2 requires the Permittee to submit, for Executive Director review and approval, a "Water Use Monitoring, Management, and Retrofit Plan," the purpose of which is to identify the anticipated water usage for each new parcel, describe the types and locations for offsite water retrofitting, develop a reporting and monitoring program, and establish a fee program in case identified water usage limits are exceeded. To protect ESHA and visual resources, Special Condition 3 prohibits development within 100 feet of maritime chaparral, within the edge of oak woodland canopies,<sup>6</sup> on all slopes greater than 25%, and in any areas where the development would create a silhouette on the ridgeline. See **Exhibit 3** for the approved CDP's conditions.

As noted previously, the Commission extended the CDP two previous times, the last of which was in 2009. After the 2009 extension, Commission staff continued to work with the Permittee on meeting the CDP's terms and conditions, including on the water offset conditions described above. In addition, at that time the County was processing other similar North County residential subdivision projects. Commission staff was reviewing and commenting on these projects, including voicing concern with the County's interpretations on various LCP policies and the assumptions being made with respect to available water supplies. Additionally, numerous water supply projects and programs were either being proposed or were under construction, which could have affected the area's water resources and groundwater supply. Thus, Commission staff

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<sup>5</sup> After the 2006 approval, the Commission extended the permit two previous times, the last of which was in May 2009.

<sup>6</sup> The approval did authorize limited oak woodland removal for creation of the access road.



felt it prudent to work with the County on the subdivision projects moving through the local process, including to come to resolution with County staff on how the LCP's policies relate to the development potential in North County. Furthermore, Commission staff felt it necessary to understand the efficacy of the various water supply projects, and whether those projects would abate the area's groundwater overdraft and thus affect the terms and conditions of the CDP.

While undertaking this outreach with the County and monitoring the area's water situation, staff did not hear from the Permittee for many years. In fact, Commission staff did not hear from the Permittee until 2015, when staff contacted the Permittee and asked whether he still intended to move forward with this project. The Permittee indicated he still desired to do so, and Commission staff subsequently worked with the Permittee over the course of the year identifying project issues, and stating that the Commission's November 2016 hearing in nearby Half Moon Bay would be an appropriate time and venue to hear the extension request before the Commission.

## **B. CHANGED CIRCUMSTANCES DETERMINATION**

### **Coastal Commission CDP Extension Regulations**

Coastal Commission CDP approvals typically allow two years for a Permittee to exercise their CDP pursuant to the terms and conditions of the CDP adopted by the Commission. If a Permittee has not so exercised their CDP, then the CDP expires. However, the Commission's regulations<sup>7</sup> also provide that a Permittee can request an extension of that deadline of up to a year (CCR Section 13169; see **Exhibit 7**). Extension requests such as these can only be granted provided the Commission finds that there are no changed circumstances that would affect the consistency of the development with the policies of the Coastal Act and/or the applicable Local Coastal Program (in this case the Monterey County LCP). The Executive Director is tasked with evaluating such extension requests, and making a recommendation to the Commission regarding the changed circumstances question. Upon receipt of the Executive Director's recommendation, CCR Section 13169(d)(1) provides that if at least three Commissioners determine that there are changed circumstances that affect the consistency of the development with the policies of the certified Monterey County LCP, the extension request shall be denied.

In this case, the Executive Director has determined that there are changed circumstances affecting the project's consistency with the Monterey County LCP, and is recommending that the Commission find changed circumstances and deny the CDP extension request. If the Commission does so, the regulations provide that the application be set for new hearing once the Permittee has paid the requisite fee and has provided the information necessary to evaluate the effect of the changed circumstances with respect to LCP consistency.

### **Applicable LCP Policies**

The Monterey County LCP is divided into four segments, each with its own Land Use Plan (LUP) and Implementation Plan (IP).<sup>8</sup> The subject property is located within the North County LCP segment, an area with severe groundwater overdraft problems. Virtually all of the

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<sup>7</sup> Title 14, Division 5.5 of the California Code of Regulations (CCR).

<sup>8</sup> The County's four LCP segments are: North County, Del Monte Forest, Carmel Area, and Big Sur.

agricultural, commercial, and residential development in North Monterey County relies on groundwater pumped from local wells. As such, the North County LCP includes numerous policies addressing water supply and new development, with a particular emphasis on development's impact on groundwater resources and agriculture. Specifically, the North County LUP and its associated IP contain numerous policies and standards that protect North County's groundwater resources, including (where text in **bold** format means emphasis added):

*North County LUP Policy 2.5.1 - Key Policy. The water quality of the North County groundwater aquifers shall be protected, and **new development shall be controlled to a level that can be served by identifiable, available, long term-water supplies**. The estuaries and wetlands of North County shall be protected from excessive sedimentation resulting from land use and development practices in the watershed areas.*

*North County LUP Policy 2.5.2.3. New development shall be phased so that the existing water supplies are not committed beyond their safe long-term yields. Development levels that generate water demand exceeding safe yield of local aquifers shall only be allowed once additional water supplies are secured.*

*North County LUP Policy 2.5.3.A.2. The County's long-term policy shall be to limit ground water use to the safe-yield level. The first phase of new development shall be limited to a level not exceeding 50% of the remaining build-out as specified in the LUP. This maximum may be further reduced by the County if such reductions appear necessary based on new information or if required in order to protect agricultural water supplies. Additional development beyond the first phase shall be permitted only after safe-yields have been established or other water supplies are determined to be available by an approved LCP amendment. Any amendment request shall be based upon definitive water studies, and shall include appropriate water management programs.*

*North County IP Section 20.144.070.E.11. Development shall not be permitted if it has been determined, **through preparation of a hydrologic report, or other resource information, that: a) the development will generate a water demand exceeding or adversely impacting the safe, long-term yield of the local aquifer; and, b.) there are no project alternatives and/or mitigation measures available that will reduce the development's water use to a level at which it will not exceed or adversely impact the safe, long-term yield of the local aquifer.***

*North County LUP Policy 4.3.5.4. Where there is limited land, water, or public facilities to support development, **coastal-dependent agriculture, recreation, commercial and industrial uses shall have priority over residential and other non-coastal-dependent uses.***

*North County IP Section 20.144.140.A.1. Development of non-coastal dependent uses shall require availability of adequate sewer, water, and transportation services. Prior to the application being deemed determined complete, the applicant shall demonstrate adequacy of water, sewer, and transportation services.... **Where services are determined not to be adequate for the proposed non-coastal dependent use, only coastal dependent uses shall be permitted.***

***North County LUP Policy 4.3.5.7. New subdivision and development dependent upon groundwater shall be limited and phased over time until an adequate supply of water to meet long-term needs can be assured. In order to minimize the additional overdraft of groundwater accompanying new development, water conservation and on-site recharge methods shall be incorporated into site and structure design.***

Specifically, the LUP includes policies that require all new development to be served by an identifiable, available, and long-term water supply (LUP Policy 2.5.1), including by only authorizing development at an amount that can be served while still maintaining the safe-yield level of the underlying groundwater basin (LUP Policies 2.5.2.3 and 2.5.3.A.2). The LCP does not contain a specific numeric safe yield amount for each groundwater basin, but instead requires hydrologic reports and current resource information sources to determine appropriate safe yields and thus the amount of new development such a yield can support (IP Section 20.144.070.E.11).

Consistent with the above-discussed policies, the LCP also requires development to be phased so that water supplies are not committed beyond their safe yield and, if the safe yield is already exceeded, only allows additional development to proceed once additional water supplies are secured that will bring the basin back into LCP-required safe yield state (LUP Policy 2.5.2.3). The LUP further requires that where there is limited water supply to support development, coastal-dependent uses (such as coastal-dependent agriculture, recreation, commercial, and industrial uses) shall have priority over residential and other non-coastal-dependent uses (LUP Policy 4.3.5.4). Finally, LUP Policy 4.3.5.7 requires new subdivisions and development dependent upon groundwater to be limited and phased over time until an adequate supply of water to meet long-term needs can be assured. Should the resource information show that the underlying groundwater basin is being extracted in a manner exceeding its safe, long-term yield, then the LCP affirmatively requires denial of a proposed project, particularly low-LCP priority residential subdivisions (as non-coastal dependent uses), unless and until additional water supplies are secured and the safe yield level is reached (IP Sections 20.144.070.E.11 and 20.144.140.A.1, and LUP Policy 2.5.2.3).

In sum, these policies and standards only authorize a level of development that can be supported by the safe yield extraction level of the underlying groundwater basin, and do not allow non-coastal dependent uses, particularly residential subdivisions, when such uses cannot be served by water within the safe yield level.

Overall, these policies are intended to implement applicable Coastal Act policies that require new development to be served by adequate public services, and in a manner that does not impact groundwater and other coastal resources.

### **Project Background Information**

The North County LUP area is divided into two groundwater basins: the Salinas River Groundwater Basin and the Pajaro Valley Groundwater Basin. Within these two basins are five sub-basins, two of which are part of the Salinas River basin: Highlands South and Granite Ridge; and three of which are part of the Pajaro Valley basin: Springfield Terrace, Highlands North, and Pajaro. The project at issue here is located within the Highlands North sub-basin of the Pajaro

Valley Groundwater Basin (see **Exhibit 4** for a location map of the area's groundwater basin geography), and would receive its water from this sub-basin and store this water in four 15,000 gallon water tanks.

Since the time that the LUP was certified in 1982, the County has sponsored more definitive studies to determine the safe yield levels of North County's groundwater basins and sub-basins. The first study commissioned by the County was conducted in 1995<sup>9</sup> and calculated the groundwater overdraft for the area's five groundwater sub-basins on the order of 11,700 acre-feet per year<sup>10</sup> (AFY), based off a defined sustainable groundwater withdrawal yield of 14,410 AFY and an actual extraction of 26,110 AFY. Subsequently, the 2002 *North Monterey County Comprehensive Water Resources Management Plan* (CWRMP)<sup>11</sup> updated the 1995 analysis and calculated the overdraft to be as much as 16,340 AFY due to an increase in estimated water usage.<sup>12</sup> In the Highlands North sub-basin, in which the approved project is located, the 1995 Fugro West study calculated a sustainable yield of 2,920 AFY and a historical groundwater demand of 4,780 AFY, resulting in a deficit of 1,860 AFY. Updated values provided in the 2002 CWRMP identified the same sustainable yield of 2,920 AFY, but updated the water demand estimates for the sub-area to be 5,621 AFY, resulting in an estimated overdraft of 2,701 AFY.

The Commission's 2004 denial of the project at issue here was predicated on these reports' quantification of the groundwater basin's severe overdraft conditions and commensurate LCP policies that do not allow non-coastal dependent uses (such as residential subdivisions) when groundwater basins are extracted beyond their safe yield state. The Commission's 2006 approval (which should be understood in the context of the litigation over the Commission's 2004 denial) and approval of subsequent CDP extensions also acknowledged the information detailed in these two definitive groundwater studies. In its 2006 approval, the Commission recognized the area's groundwater limitations, the associated fundamental LCP inconsistencies associated with the residential subdivision, and the findings accompanying the Commission's 2004 denial. Specifically, the Commission found:

*The basic factual situation described in the preceding paragraphs remains unchanged. Hence, in general, the Commission would not be able at this time to support the creation of new lots that would result in new, permanent, long-term water use in North County.*  
(see page 4 of **Exhibit 3**)

However, the Commission approved the project in 2006 acknowledging the overdraft state and LCP inconsistencies by allowing the Permittee the opportunity to mitigate resultant coastal resource impacts with conditions of approval requiring that, prior to issuance of the CDP, any new water use from the future residences allowed on the newly created parcels would be completely offset by retrofitting existing non-agricultural development in the North

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<sup>9</sup> Fugro West, Inc., 1995. *North Monterey County Hydrogeologic Study, Vol. 1: Water Resources*; Table 11. Prepared for Monterey County Water Resources Agency, October 1995.

<sup>10</sup> An acre-foot is equivalent to 326,700 gallons of water.

<sup>11</sup> Monterey County Water Resources Agency and EDAW, Inc., 2002. *North Monterey County Comprehensive Water Resources Management Plan*, January 2002.

<sup>12</sup> The 2002 *Comprehensive Water Resources Management Plan* identified the same sustainable yield of about 14,410 AFY as the 1995 Fugro West study, but estimated extraction to 30,750 AFY, resulting in an overdraft in North Monterey County of 16,340 AFY.

County area. In other words, the development would need to be water neutral (see subsequent sections of this report for additional discussion on this issue). The Commission only approved the CDP in 2006 as a pilot case to help evaluate whether a water retrofit/offsetting program would be an effective tool in addressing North Monterey County's significant groundwater overdraft problems, including as a means of providing information for then pending subdivision proposals in North Monterey County.<sup>13</sup> In other words, the Commission's approval was explicitly designed to evaluate the hypothesis that the project could meet the intent of the LCP's water supply and groundwater resources policies by completely offsetting its estimated water usage through conservation retrofitting of non-agricultural existing development in the North Monterey County area. With such a retrofit program, the Commission ultimately found:

*...the Sunridge Views project is a good candidate for implementing a pilot retrofit program. The applicant is willing to undertake such a program in order to settle his lawsuit. Results from such a program could be useful to determine if it could be applied on a broader scale in North County. Thus, for this one subdivision, with conditions to employ on-site water conservation measures and off-site compensatory retrofit measures, the Commission can find it consistent with the intent of the LCP's water supply provisions. (see page 5 of **Exhibit 3**)*

To summarize, although in 2004 the Commission had previously denied the CDP on the basis of the project's inconsistencies with LCP groundwater resource protection policies, in 2006 it found that conditional approval was appropriate in this particular case to both settle the Permittee's lawsuit and to use it as a pilot case to understand the efficacy of whether a water retrofit/offsetting program could avoid exacerbation of North Monterey County's groundwater overdraft problems. The Commission therefore approved the CDP subject to defined parameters for how to implement the water retrofitting program to ensure the approved project (i.e., including the nine new parcels to serve nine new residences) would remain water neutral.

However, in the time since the Commission's 2006 CDP approval and since its last CDP extension in 2009, the circumstances regarding the health of the groundwater basin and its safe yield level, as well as the potential for success of the Permittee's water retrofit efforts, have changed, as have LCP requirements specifying the allowable uses in North County due to the scarcity of water supplies in the area, all as described below.

## **Changed Circumstances Determination**

### ***1. Safe Yield, Overdraft Conditions, and Groundwater Management***

In 2014, the Pajaro Valley Water Management Agency (PVWMA)<sup>14</sup> adopted its *Basin Management Plan* (Basin Plan), its first update since 2002. The purpose of the Basin Plan is

<sup>13</sup> There were several subdivisions pending at that time in the North Monterey County area, and the Commission was interested in evaluating through a case study whether there may be a way of meeting LCP requirements through such retrofit that may be applied to these cases as well.

<sup>14</sup> The Pajaro Valley Water Management Agency is a state-chartered water management district formed to efficiently and economically manage existing and supplemental water supplies in order to prevent a further increase in, and to accomplish continuing reduction of, long-term overdraft. The Agency also works to provide and ensure sufficient water supplies for present and future anticipated needs within its boundaries, generally the greater coastal Pajaro Valley.

to serve as the principal document guiding all of PVWMA's major projects and programs, with the goals of quantifying and reducing overdraft, halting seawater intrusion, and improving and protecting water quality within the entire Pajaro Valley Groundwater Basin. The 2014 Basin Plan calculated the entire basin's 2013 total water usage to be roughly 61,000 AFY, and calculated its overdraft at 12,100 AFY.<sup>15</sup> To make up the remaining water budget shortfall, the 2014 Basin Plan lists a comprehensive set of projects, programs, and initiatives intended to increase supply (including through increased water recycling), optimize existing usage (including through upgrades at existing facilities) and reduce water demand (including through reduced consumption). Notably, one of the primary initiatives specified in the 2014 Basin Plan update is its reliance on conservation programs to reduce water demand, eliminate basin overdraft, and halt seawater intrusion. Unlike the previous Basin Plan, which relied heavily on new water supplies emanating from imported water from the Federal government,<sup>16</sup> the revised and updated 2014 Basin Plan eliminates the imported water allowance and instead relies heavily on reducing water demand through conservation strategies. The Basin Plan relies on conservation programs estimated to result in 5,000 AFY of reduced water consumption, or over 40% of the total water reduction necessary to eliminate basin overdraft. These conservation programs include agricultural irrigation efficiency projects, pricing strategies, and residential groundwater usage metering. In short, PVWMA has adopted a new comprehensive 2014 Basin Plan that provides updated quantification of the basin's overdraft, while also serving as the blueprint for identifying measures, particularly conservation measures, to reduce water demand and consumption, intended to address and resolve the Pajaro Valley Groundwater Basin's chronic overdraft and seawater intrusion problems.

Furthermore, the Sustainable Groundwater Management Act (SGMA) was signed into law by the Governor on September 16, 2014. The 2014 SGMA establishes a new structure for groundwater management in California, requiring all overdrafted groundwater basins to be managed under the purview of a Department of Water Resources (DWR)-approved Groundwater Sustainability Plan (GSP). The legislation's intent is to provide for sustainable management of groundwater basins, to enhance local management of groundwater, to establish minimum standards for sustainable groundwater management, and to provide local groundwater agencies with the authority and the technical and feasible assistance necessary to manage groundwater. SGMA defines "sustainable groundwater management" as the "management and use of groundwater in a manner that can be maintained during the planning and implementation horizon without causing undesirable results,"<sup>17</sup> and defines<sup>18</sup> "undesirable results" as any of the following effects caused by groundwater conditions occurring throughout the basin:

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<sup>15</sup> The Basin Plan quantified the overdraft condition of the entire Pajaro Valley Groundwater Basin, which extends into Santa Cruz County. The *North Monterey County Hydrogeologic Study* and the *North Monterey County Comprehensive Water Resources Management Plan*, the two previous studies on groundwater overdraft, quantified overdraft solely within the portions of the two groundwater basins (Salinas River and Pajaro Valley) located within the North County LCP area. Thus, the three reports share different geographic scopes, but all quantify overdraft within the project area.

<sup>16</sup> The 2002 Basin Plan relied on 13,400 AFY of new imported water from the United States Bureau of Reclamation-controlled Central Valley Project to address overdraft conditions. However, due to funding issues and other project constraints, in early 2010, the Agency took formal action to remove this import pipeline from project consideration.

<sup>17</sup> California Water Code Section 10721(u).

<sup>18</sup> California Water Code Section 10721(x)(1-6).

- Chronic lowering of groundwater levels indicating a significant and unreasonable depletion of supply
- Significant and unreasonable reduction of groundwater storage
- Significant and unreasonable seawater intrusion
- Significant and unreasonable degraded water quality
- Significant and unreasonable land subsidence
- Surface water depletions that have significant and unreasonable adverse impacts on beneficial uses of the surface water

Under the law, DWR is required to identify groundwater basins in “critical conditions of overdraft,” defined as when “continuation of present water management practices would probably result in significant adverse overdraft-related environmental, social, or economic impacts.” All groundwater basins currently designated as High or Medium Priority per DWR’s 2003 Bulletin 118<sup>19</sup> and designated as “critically overdrafted” by DWR would be designated as a basin in “critical conditions of overdraft” and would be required to be managed under a GSP by January 31, 2020. All other High or Medium Priority basins must have an approved GSP by January 31, 2022.<sup>20</sup>

In July 2015, DWR developed a draft list of 21 “critically overdrafted” basins and sub-basins. A groundwater basin was determined to be critically overdrafted if it is currently subject to one or more “undesirable results,” as that term is defined in the law (see bulleted list above). The draft list included the Pajaro Valley Groundwater Basin. As such, in September 2015, PVWMA elected itself to be the Groundwater Sustainability Agency (GSA) for the groundwater basin. As the official GSA, PVWMA will prepare, submit to DWR for adoption, and be the primary agency tasked with implementing the GSP. In January 2016, DWR officially designated the Pajaro Valley Groundwater Basin as “critically overdrafted” (see map of DWR-designated “critically overdrafted” groundwater basins in **Exhibit 5**). Since the Pajaro Valley Groundwater Basin has been deemed a “High Priority” basin in Bulletin 118 since 1980, the basin will be deemed in “critical conditions of overdraft” and required to have an approved GSP by 2020.

**The updated 2014 Basin Plan and the new 2014 SGMA (and related Pajaro Valley Groundwater Basin designations in 2015 and 2016) constitute changed circumstances with respect to the approved project’s consistency with LCP groundwater resources and water supply protection policies.** This is because they both affect the understanding of the health of the groundwater basin, including by quantifying its safe yield and thus the level of development that yield can support based on more recent data. Specifically, as previously described, because the LCP does not contain a specific numeric safe yield amount for each groundwater basin, but instead requires the term to be understood based on relevant hydrological reports or other resource information (IP Section 20.144.070.E.11), both the Basin Plan and the SGMA requirements provide an up-to-date understanding of the health

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<sup>19</sup> Bulletin 118 is DWR’s primary inventory of the state of groundwater basins in California, including the names and boundaries of basins and sub-basins, yield data, water budgets, and water quality.

<sup>20</sup> All other groundwater basins are encouraged, but not required, to prepare a GSP.

and status of the Pajaro Valley Groundwater Basin, including defining its safe yield, as well as the necessary actions to be taken to bring the basin into a safe yield state. In 2006, at the time of CDP approval, the best available information sources were the two studies from 1995 (Fugro West) and 2002 (CWRMP) that concluded that the Highlands North sub-basin, in which the approved project is located, was *already* overdrafted. The revised 2014 Basin Plan provides updated information with respect to the groundwater basin's overdraft, calculated at 12,100 AFY, further affirming the ongoing overdraft condition and the need to take proactive and firm measures to reduce and ultimately eliminate it. Whereas the previous Basin Plan relied heavily on new water supplies, including imported water from the Central Valley Project, to ameliorate the basin's overdraft and the coastal resource impacts associated with it, the updated Basin Plan calls for conservation as the primary tool to address this condition. These are fundamental changed circumstances that affect the consistency of the project with the LCP.

Furthermore, while implementation of SGMA's requirements has not yet resulted in calculation of a specific safe yield or overdraft amount for the Groundwater Basin, nor has it yet resulted in identification of specific actions to reduce overdraft conditions, in January 2016 DWR did state that the Pajaro Valley Groundwater Basin is "critically overdrafted" and will deem the Groundwater Basin in "critical conditions of overdraft". Against this context, per the LCP, when a groundwater basin is extracted beyond its safe yield level, the LCP affirmatively requires denial of a proposed non-coastal dependent project, such as a residential subdivision, until new water supplies ensure that the proposed development will not impair the safe yield state (IP Sections 20.144.070.E.11, 20.144.140.A.1, and LUP Policy 2.5.2.3). In short, the SGMA and its statutory requirements constitute new information sources to be used as tools to help define the state of the area's groundwater basins. The law's 2014 passage also reflects a shift in the State's management of groundwater resources, proclaiming that sustainable groundwater use is a paramount statewide concern and as such, agencies overseeing overdrafted basins are now required to develop enforceable policies and mechanisms to bring those basins into a sustainable state. In addition, the DWR determinations related to the Pajaro Valley Groundwater Basin in 2015 and 2016 (deeming it critically overdrafted) and thus requiring the preparation of a Groundwater Sustainability Plan by 2020, reflect an additional layer of information and regulation that must be countenanced in terms of LCP consistency as well.

In sum, both the updated 2014 Basin Plan and the new 2014 SGMA requirements (and related Pajaro Valley Groundwater Basin designations in 2015 and 2016) reflect an updated understanding of the Pajaro Valley Groundwater Basin and its management, and are informative in determining how to implement LCP requirements, including in terms of understanding what level of groundwater extraction is "sustainable," what actions are required and/or prohibited to bring the basin into sustainability, and what level of development the defined safe yield can support. The updated Basin Plan and the SGMA, including through their quantification of groundwater overdraft and safe yield, the programs necessary to bring the Basin into safe yield, and the allowable development supported by that safe yield amount, thus represent changed circumstances affecting the approved project's conformance with the LCP.



## 2. *Water Offsetting and Retrofitting Conditions*

As described previously, the Commission originally denied the project in 2004 based on inconsistency with the previously described LCP groundwater and water supply policies, as well as policies related to ESHA and drinking water quality.<sup>21</sup> The Commission only subsequently approved the CDP in 2006 as a pilot case to help evaluate whether a water retrofit/offsetting program would be an effective tool to avoid exacerbation of North Monterey County's significant groundwater overdraft problems.<sup>22</sup> In other words, the Commission's approval was explicitly designed to evaluate the hypothesis that the project could meet the intent of the LCP's water supply and groundwater resources policies by completely offsetting its estimated water usage through conservation retrofitting of non-agricultural existing development in the North Monterey County area. The CDP is thus subject to defined parameters for how to implement the water retrofitting program to ensure the approved project (i.e., including nine new parcels to serve nine new residences) would remain water neutral. Specifically, Commission-approved Special Condition 1(B) (see **Exhibit 3**) states "every newly created vacant parcel shall be subject to a requirement to implement off-site retrofitting prior to development, in accordance with the retrofitting requirements established by the approved Water Use Monitoring Management and Retrofit Plan required by Special Condition 2, below." Special Condition 2 describes the requirements for the Water Use Monitoring, Management, and Retrofit Plan (Plan), including that it must establish maximum water use limits for each new parcel based on average daily water use of a single-family residence using the best available data, must include a description of the specific types and location of offsite retrofitting opportunities (including that such retrofitting must occur within the Highlands North, Highlands South, Pajaro, or Springfield groundwater sub-basins of North Monterey County, with a preference for the North Highlands sub-basin); and that it must only retrofit non-agricultural development. On this last point, the Commission's findings supporting the 2006 approval made clear that reducing water usage through agricultural offsets is not allowed, including because agriculture is a high priority LCP land use. Specifically, the Commission found:

*LCP policies and subsequent planning do not direct that permanently eliminating commercial agriculture on this site is the way to address the water overdraft.... The acquisition of agricultural parcels would mean that they would no longer be used for irrigated cultivation. Such an approach... may cause a conflict because agriculture is a priority use under the Coastal Act and the LCP.... LCP policies and subsequent planning do not suggest that substituting residential use for agricultural use, as proposed by this project, is the way to address the overdraft. In describing the approach of allowing subdivision where there was no net increase in water use through an offset program, the North County Comprehensive Water Resources Management Plan noted that: "The Planning Commission rejected this approach because... agricultural lands could be taken out of production contrary to Coastal Plan policies...." (see page 28 of **Exhibit 3**)*

<sup>21</sup> The Commission also denied a subsequent reconsideration request in February 2005.

<sup>22</sup> There were several subdivisions pending at that time in the North Monterey County area, and the Commission was interested in evaluating through a case study whether there may be a way of meeting LCP requirements through such retrofit that may be applied to these cases as well.

Thus, the Commission, through its findings and in its conditions of approval throughout the permitting history of this project, made clear both that the project could only be approved with defined conditions specifying the reduction in its water use, and ensuring that such water reductions were performed by retrofitting non-agricultural development. And the Commission also made clear that the intent was to evaluate whether a water retrofit/offsetting program would be an effective tool in addressing North Monterey County's significant groundwater overdraft problems.

However, to date the Permittee has been unable to meet these retrofitting requirements. First, the Permittee has been unable to find enough existing development to retrofit within the North Monterey County area to offset the project's total estimated water usage of 1,214,720 gallons of water per year, or 3.73 AFY. In fact, to date, the Permittee has not identified a single potential retrofit candidate to the Commission. On this point, the Pajaro-Sunny Mesa Community Services District (PSMCSD), an entity overseeing groundwater usage in North Monterey County, recently concluded that there are no significant retrofit candidates or opportunities remaining in North Monterey County.<sup>23</sup> Due to other mandatory retrofit requirements, including Monterey County requirements mandating plumbing retrofits upon the sale of residential properties, it has become clear that the ability to offset offsite development of such a magnitude is simply infeasible in North Monterey County. Thus, the Permittee is unable to comply with the Commission's retrofitting conditions, and unable to successfully implement the envisioned offset program. Although the Permittee's inability to satisfy water offset and retrofitting requirements illustrates the inherent difficulty in achieving water neutrality in the Pajaro Valley Groundwater Basin, it is worth noting that the Permittee voluntarily agreed to accept these conditions of approval in order to pursue development of this project considering that without such conditions the project would be clearly inconsistent with the LCP.

As described previously, the water offset conditions were the key provisions for the Commission to be able to find the project consistent with the intent of the LCP's water supply and groundwater resources policies. The Commission approved the CDP in 2006 recognizing all of its 2004 denial findings, but sought to condition the project as a pilot case with the hope that this specific retrofit/offsetting program would be an effective tool in addressing groundwater resources constraints. Specifically, the Commission's 2006 approval noted:

*Although this could prove challenging, staff recommends that the Commission approve the Sunridge Views subdivision with the recommended special conditions, as a pilot project. (see page 4 of **Exhibit 3**)*

Thus, the Commission made clear the limitations and potential difficulties in a retrofit program, and the Permittee voluntarily accepted the Commission's conditions of approval in order to proceed with this project. As described above, the Permittee has been unable to successfully implement the envisioned offset program, illustrating the inherent difficulty in achieving water neutrality in the Pajaro Valley Groundwater Basin, and affecting a fundamental condition underpinning the Commission's 2006 approval and subsequent permit

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<sup>23</sup> Personal communication between Kevin Kahn (the Coastal Commission's Central Coast District Supervisor) with PSMCSD General Manager Don Rosa on August 24, 2016 (see also **Exhibit 6**).

extensions. The inability of the Permittee to meet this critical condition, coupled with the updated understanding of the overdraft condition of the Basin provided by the 2014 Basin Plan and 2014 SMGA requirements, constitutes changed circumstances affecting the approved project's consistency with the LCP.

### **3. Accessory Dwelling Units and Senior Citizens' Units**

When the Commission originally approved the project in 2006, the LCP allowed senior citizens' units and caretakers units, in addition to a single-family residence, on any parcel in any zoning district that allowed single-family residences, subject to certain limitations. The Commission's 2006 approval of the project allowed for the conversion of an existing mobile home to a senior citizen's unit. In 2015, the County approved and the Commission certified LCP amendment number LCP-3-MCO-15-0022-1, which replaced the LCP's previously allowed "senior citizens' units" and "caretakers' units" with accessory dwelling units (ADUs) in the entire coastal zone, and also prohibited ADUs within the entire North County coastal zone. The County found such a prohibition necessary due to the North County area's known water supply deficiencies, finding that allowing for ADUs (in essence, a potential doubling of allowable residential density) is not supportable given the area's water supply inadequacies. In October 2015, the Commission approved this LCP amendment. In doing so, the Commission made the following finding:

*Thus, the Commission concurs with the County's determination that allowing for additional growth beyond that which is already allowed within the North County coastal zone, including through such measures as authorizing accessory dwelling units and the subdivision of land, is not supportable by the area's potable water supply. The Commission concurs with the amendment's prohibition of ADUs within the North County coastal zone, and finds that doing so is consistent with LUP policies that do not allow development in areas with inadequate water supply. (LCP-3-MCO-15-0022-1, p. 17.)*

Because senior citizens' units are no longer an LCP-allowed land use in North Monterey County, and because ADUs are not allowed in the North County area at all, this constitutes changed circumstances affecting the approved project's consistency with the LCP.

### **4. Other Issues**

In addition to the above-identified changed circumstances regarding groundwater resources, water neutrality conditions, and accessory dwelling units, other issues may also have changed affecting the project's LCP consistency, including with respect to drinking water quality, the presence of ESHA, and other local government discretionary project approvals. Specifically, the area's water quality has suffered from nitrate contamination in the past, including having a well on the Permittee's property fail health tests due to nitrate contamination in 2000. This was noted in the Commission's approval in 2006, but the degree to which this condition may have worsened since that time is not known. The property also contains central maritime chaparral, which the LCP designates as ESHA. The Commission's 2006 approval recognized and addressed the extent of ESHA at that time, but it appears likely that the boundary of the ESHA is likely to have changed since then. Finally, it is unclear whether the County's other project approvals from the early 2000s, including the project's tentative map pursuant to the Subdivision Map Act, remain valid today. To the extent that the site's drinking water supply has suffered from additional nitrate contamination, the extent and delineation of central

maritime chaparral ESHA has changed, and/or Monterey County's discretionary approvals, including its tentative map, are not still valid, such issues would constitute changed circumstances affecting the project's consistency with the LCP.

***5. Changed Circumstances Conclusion***

There are changed circumstances affecting the project's consistency with the Monterey County LCP. These changed circumstances include new information with respect to the Pajaro Valley Groundwater Basin's overdraft condition and safe yield, the management policies and tools needed to bring the Basin into the safe yield level, the approved project's inability to meet necessary water offsetting conditions, and the approved project's allowance for now-LCP impermissible senior citizens' housing units. CCR Section 13169(d)(1) indicates that, following a determination of changed circumstances by at least three Commissioners, the development shall be set for a full hearing of the Commission. CCR Section 13169(d)(1) also requires the Permittee to pay an application filing fee as well as to submit "any information that the Executive Director determines is necessary to evaluate the effect of the changed circumstances".

Here, in addition to the filing fee, the Executive Director determines that, at a minimum, the Permittee must provide evidence of still-valid local government discretionary approvals, including in this particular case, evidence of a valid and approved tentative map by Monterey County. In addition, the Permittee must provide evidence of water availability, including a hydrogeologic report identifying water source, current and estimated water use and demand, and water quality, including showing consistency with all applicable drinking water quality standards. Finally, the Permittee must provide an updated biological resources report, including delineating the boundaries of central maritime chaparral habitat, oak woodland habitat, and any other sensitive resources on the project site. After the fee and this material has been received, the application will be set for a new hearing in front of the Coastal Commission as is provided for by the Commission's regulations.

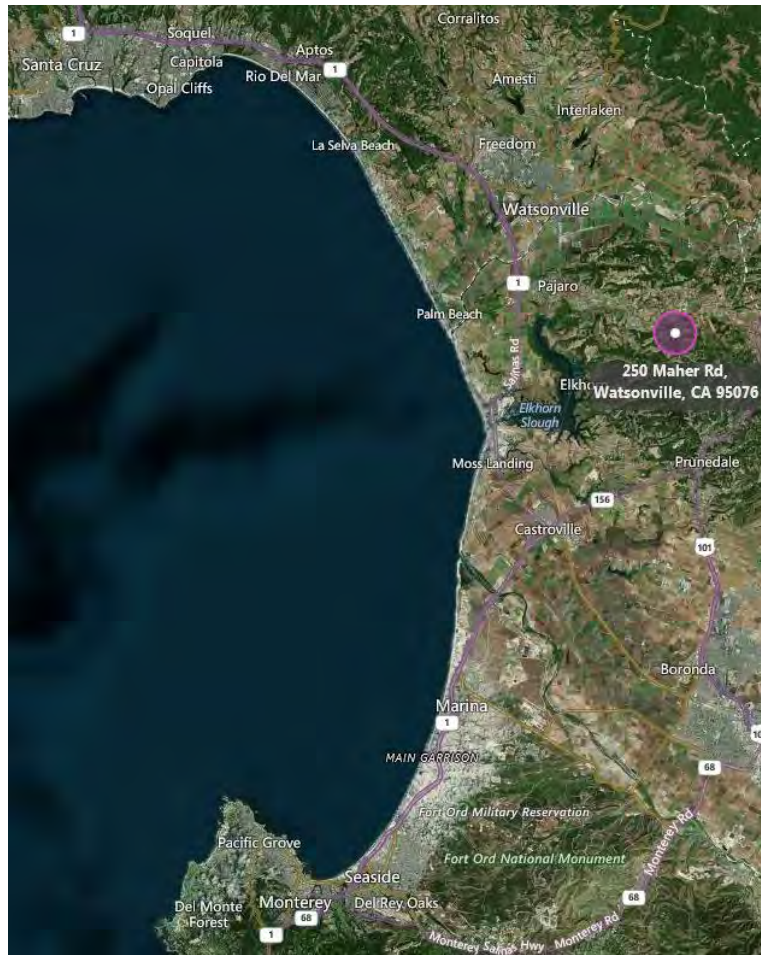
## **Appendix A – Substantive File Documents**

1. Fugro West, Inc., 1995. *North Monterey County Hydrogeologic Study, Vol. 1: Water Resources*. Prepared for Monterey County Water Resources Agency, October 1995.
2. Monterey County Water Resources Agency and EDAW, Inc., 2002. *North Monterey County Comprehensive Water Resources Management Plan*, January 2002.
3. Pajaro Valley Water Management Agency and Carollo Engineers, 2014. *Basin Management Plan Update*, February 2014.

## **Appendix B – Staff Contacts with Agencies and Groups**

1. Applicant
2. Friends, Artists, and Neighbors of Elkhorn Slough
3. Pajaro-Sunny Mesa Community Services District
4. Pajaro Valley Water Management Agency
5. Monterey County Resource Management Agency
6. California Department of Water Resources

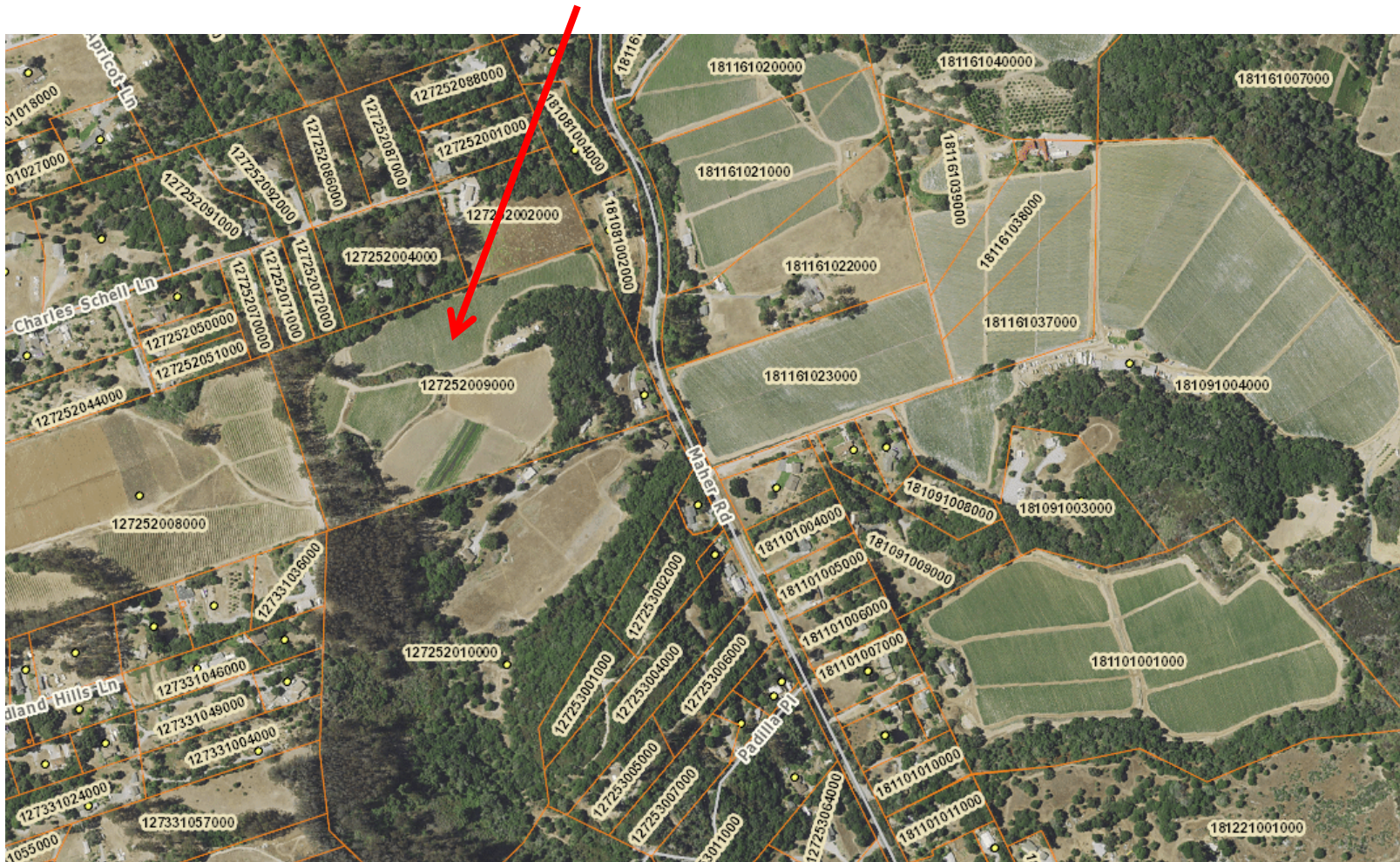
# Regional Location Map



# Regional Location Map



# Parcel Map





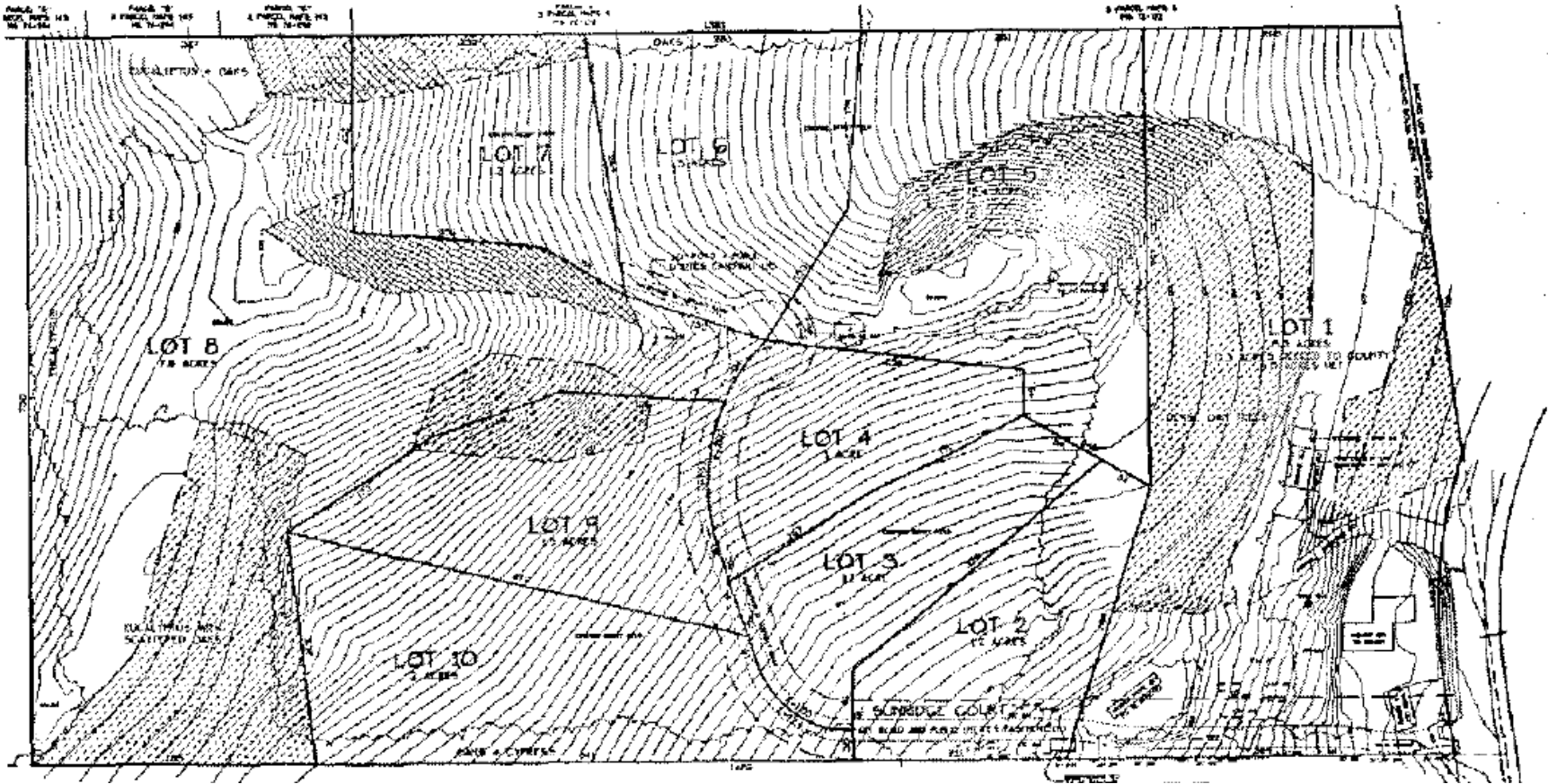
# Subject Property



# Subject Property



# Approved Parcel Map



## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(831) 427-4863

## ADOPTED

Includes changes to 3/29/06 staff report contained in the  
staff report addendum of 4/7/06.



Filed:	8/05/2004
49th day:	9/23/04
Staff:	RH-SC
SI Found:	9/08/2004
De Novo Staff Report:	11/23/2004
Denial Resolution:	12/9/04
Reconsideration Denial:	2/15/05
Lawsuit vs. CCC filed:	2/4/05
Settlement Agreement:	7/14/05
Remand Staff Report:	3/29/06
Hearing Date:	4/12/06
Adopted Staff Report prepared:	4/17/06

## STAFF REPORT: APPEAL- DE NOVO PERMIT

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**Appeal number** ..... **A-3-MCO-04-054, Sunridge Views Subdivision**

**Applicant**..... Mr. Steve Bradshaw

**Agent** ..... Mr. John Bridges, Law Firm of Fenton and Keller

**Appellants** ..... Law Office of William J. Yeates, representing Friends, Artists and Neighbors (FANS) of Elkhorn Slough; LandWatch, Monterey County; and Commissioners Sara Wan and Mike Reilly

**Local government**..... Monterey County

**Project location**..... 250 Maher Road (south of Tarpey Road), North Monterey County (APN 127-252-009) (see Exhibit 1)

**Project description** .....Subdivision of a 25 acre parcel into 10 lots ranging in size from 1 to 7.8 acres, 2,000 cubic yards of grading, development of a mutual water system, construction of two water tanks, demolition of an existing mobile home, barn, and greenhouse and conversion of an existing mobile home to a senior citizens unit (see Exhibit 2)

**Local approval**.....The Monterey County Board of Supervisors approved a Combined Development Permit, Resolution 04-256 (PLN990391), for the project on July 13, 2004 (see Exhibit 3)

**File documents**.....A-3-MCO-04-054 Adopted Substantial Issue & De Novo staff reports; Monterey County certified Local Coastal Program (LCP), including *North County Land Use Plan (No Co LUP)*; Monterey County permit file (PLN990391), including final Local Action Notice 3-MCO-04-240; Draft Findings of the Monterey County Local Coastal Program Periodic Review

**Staff recommendation** ...**Approval with Conditions**

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**Staff Note:** Based on a settlement agreement, this action is being remanded to the Coastal Commission



**California Coastal Commission**  
**April 12, 2006 Meeting in Santa Barbara**

Staff: Rick Hyman Approved by:

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ADOPTED 4.12.06.doc

Exhibit 3-Approved Staff Report and Conditions of A-3-MCO-04-054

A-3-MCO-04-054-E3 (Sunridge Views Subdivision) Page 1 of 52

with a recommendation to approve the proposed project with several special conditions. The Substantial Issue hearing on the project was conducted on September 8, 2004, at which time the Coastal Commission found that the County's approval of the project did raise a substantial issue with regards to protection of groundwater resources, water quality, and environmentally sensitive habitat areas. The Commission, therefore, took jurisdiction of the project, and continued the de novo hearing. The Commission denied the project on December 9, 2004 and a request for reconsideration on February 15, 2005. The applicant filed suit on February 4, 2005. The parties have entered into settlement agreement. As a result, the Commission is hearing the project on stipulated remand. The Commission retains discretion to change the proposed conditions of approval or to deny the application. If the applicant objects to changes to the staff recommendation that may be made by the Commission, the applicant may resume the litigation.

**Summary of Staff Recommendation:** Staff recommends approval with conditions. Recommended conditions strive for no net increase in water use (i.e., zero net demand on the underlying aquifer) as a result of this subdivision and subsequent development of the created lots. Other conditions protect environmentally sensitive central maritime chaparral habitat, protect scenic views, prevent erosion, and otherwise carry out Monterey County LCP requirements.

Staff recommends that the Commission find that the development, as conditioned pursuant to the settlement agreement, will be in conformity with the policies of the Monterey County LCP by minimizing new water use and completely offsetting the remaining projected water use by the proposed development by retrofitting existing properties. However, staff also recommends that approval of the permit pursuant to the settlement agreement not be used as a precedent given the uncertainty of success of the no-net water use approach and given that it does not address the current overdraft problem in North Monterey County. Therefore, staff recommends that the Commission not endorse the approach afforded by the settlement agreement as a global solution to allowing more lots to be created in North Monterey County.

As background, Monterey County approved the subdivision of a 25-acre parcel in North Monterey County (Elkhorn Slough watershed) into 10 lots ranging in size from 1 to 7.8 acres. The approval also allows 2,000 cubic yards of grading, development of a mutual water system, construction of two water tanks, demolition of a mobile home, barn, and greenhouse, and conversion of an existing mobile home to a senior citizens unit.

Appeals, submitted by Commissioners Wan and Reilly, Friends, Artists, and Neighbors (FANS) of Elkhorn Slough, and LandWatch, Monterey County (LandWatch), alleged that the project is inconsistent with the LCP due to (1) inadequate protection of groundwater resources; (2) inadequate long-term water supply and water quality due to overdrafted aquifers and the potential for nitrate contamination; (3) potentially adverse impacts to adjacent environmentally sensitive habitat areas; (4) impacts to visual resources; (5) conflicts with the residential zoning density requirements; and (6) procedural errors. After public hearing on September 8, 2004, the Coastal Commission found that the project did raise a substantial issue with respect to LCP policies requiring protection of ground water resources, water



quality and environmentally sensitive habitat areas, and assumed jurisdiction of the coastal development permit for the project.

Subsequently, on December 9, 2004, the Commission denied the project based on the following reasons, among others:

First, the project was found **inconsistent with LCP policies intended to protect groundwater resources**. The LCP requires protection of groundwater resources, especially within the North County planning area where severe and chronic groundwater overdrafts have led to saltwater intrusion and the need to abandon previously functional water supply wells.

The *North County LUP* provides, among other directives, that:

- New developments must be controlled to a level that can be served by an identifiable, available, and long-term water supply (*No Co LUP* Key Policy 2.5.1);
- Development levels that generate water demand exceeding safe yield of local aquifers are only allowed once additional water supplies are secured (*No Co LUP* Policy 2.5.2.3);
- New development is to be phased so that existing water supplies are not committed beyond their safe long-term yields (*No Co LUP* Policies 2.5.2.3, 4.3.5.7, 4.3.6.D.5); and,
- The County should reduce the remaining build-out to limit groundwater use to the safe-yield level or, if required, in order to protect agricultural water supplies (*No Co LUP* policy 2.5.3.A.2).

Taken together the LCP provisions seek to ensure that any groundwater extraction protects groundwater aquifers, wetlands and streams, and agricultural water supplies.

As originally proposed, the applicant's hydrologic study estimated a net aquifer overdraft reduction of 24 af/y by conversion of the current agricultural use on the site to expanded residential use. However, the North Highlands aquifer is already overdrafted by 1,860 acre feet (or 39 percent) beyond its annual safe yield. Thus, the reduction proposed by the project would have only accounted for about 1 percent reduction of the severe and chronic overdraft conditions in the North Highlands sub-area, and even this minimal reduction may be ephemeral. In contrast, the proposed residential use would require a long-term commitment to a permanent water supply, which is currently not guaranteed. The Pajaro Valley Water Management Agency (PVWMA) and Salinas Valley Water Project (SVWP) projects designed to improve long-term water supplies are still in the planning stages. They cannot be relied upon as a future long-term water supply until they are constructed and have shown that they have restored groundwater resources and can provide an adequate water supply for existing and new planned development without overdrafting the basin. Without an identifiable, available long-term water supply, the project would continue to draw from the severely overdrafted aquifer of the North Highlands sub-area. Therefore, the Commission previously found the project inconsistent with policy 2.5.2.3 because it would have allowed permanent commitment of water beyond its safe long-term yield for new development; was inconsistent



with policy 2.5.3.A.1 because it failed to protect groundwater supplies for coastal priority agricultural uses; and was inconsistent with policy 2.5.3.A.2 because it failed to account for a reduced build-out level necessary to protect groundwater resources in light of the severe overdraft situation existing in the North County area.

Second, the Commission found the project **inconsistent with LCP policies intended to protect water resources and water quality**. The LCP requires that new development be located and developed at densities that will not lead to health hazards on an individual or cumulative basis due to septic system failure or groundwater contamination (*North County LUP* Policy 2.5.2.5), and that the applicant “provide proof of an assured, long term water supply in terms of sustained yield and adequate quality for all lots which are proposed to be created through subdivision” (*Coastal Implementation Plan* (CIP) Section 19.03.015.L). The Hydrologic Assessment conducted for the project notes that nitrate levels in neighboring wells exceed State safe drinking water standards. The previous well, located immediately behind the house, was abandoned as a drinking water supply well due to nitrate levels above safe drinking water standards; a nitrate treatment system was required and the well is still used for irrigation. The new well drilled on site in 2002, currently meets State safe drinking water standards and provides water to the site. However, based on water quality testing from the on-site wells and other surrounding wells, nitrate levels in the on-site water supply well will continue to increase, and may exceed State safe drinking standard levels within the next 55 years, such that the existing water supply well may fail within the economic lifespan of the project. Thus the project was found to not demonstrate proof of an assured, long-term water supply in terms of adequate water **quality** as required by CIP Section 19.03.015.

Third, the Commission found the project **inconsistent with LCP policies intended to buffer and protect environmentally sensitive habitat areas (ESHA)**, because it includes development (construction of water tanks and landscaping) within 25 feet of environmentally sensitive maritime chaparral habitat, which may adversely impact the long-term maintenance of this environmentally sensitive habitat area.

Based on the settlement agreement, staff now recommends approval of the proposed subdivision project with several special conditions designed to eliminate the project’s previous inconsistencies with the LCP. The basic factual situation described in the preceding paragraphs remains unchanged. Hence, in general, the Commission would not be able at this time to support the creation of new lots that would result in new, permanent, long-term water use in North County. One way to ensure that there is no such increase in water use is through a compensatory water use reduction program that is intended to completely offset all water use on the property; i.e., for all water use approved, there would be a corresponding water use reduction somewhere else. For example, there could be a program to retrofit existing development with water-saving fixtures, appliances, and landscaping. Currently, there is no such program in operation in North County. Any such program would have to be designed with safeguards in such a manner that it would generate the projected water savings over time. Although this could prove challenging, staff recommends that the Commission approve the Sunridge Views subdivision with the recommended special conditions, as a pilot project. Given the unique circumstances of this project (e.g., moderate sized subdivision, existing substantial on-site water use



from both residential and agricultural water uses, which will either be eliminated or completely offset by the retrofit program, and a new well), the Sunridge Views project is a good candidate for implementing a pilot retrofit program. The applicant is willing to undertake such a program in order to settle his lawsuit. Results from such a program could be useful to determine if it could be applied on a broader scale in North County. Thus, for this one subdivision, with conditions to employ on-site water conservation measures and off-site compensatory retrofit measures, the Commission can find it consistent with the intent of the LCP’s water supply provisions.

Additionally, as designed, incorporating most County conditions of approval, and as further conditioned, the project can be found consistent with environmentally sensitive habitat, visual resource protection, and other relevant LCP provisions. The following table summarizes the effects of these conditions on the site’s resources:

**Table 1. Summary of Resource Protection Measures Required by Recommended Conditions**

Resource/Constraint	Permitted Uses	Protective Measures	Buffer
Central maritime chaparral sensitive habitat	No development other than landscaping/habitat maintenance/restoration	Place in conservation easement	100 foot setback also placed in conservation easement
Oak woodland	No development other than landscaping/habitat maintenance/restoration & access road	Place in conservation easement	50 foot setback also placed in conservation easement
25+% slopes	No development other than landscaping/habitat maintenance/restoration & access road	Place in conservation easement	none
Ridgeline	No development other than landscaping/habitat maintenance/restoration	Place in conservation easement	none
Remaining open space outside of road & building envelopes	Landscaping; no structural development	Deed restriction	none





## Staff Report Contents

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**Exhibits:**

- 1 Project Location Maps
- 2 Annotated Proposed Tentative Map
- 3 Annotated Monterey County Conditions of Approval
- 4 Historic Aerial Photographs of Project Site
- 5 Annotated Biological Map

### I. Procedural History

On July 13, 2004, the Monterey County Board of Supervisors approved a Coastal Development Permit to subdivide a 25-acre parcel into 10 lots ranging in size from 1 to 7.8 acres. The permit also approved 2,000 cubic yards of grading, development of a mutual water system, construction of two 20,000 gallon water tanks, demolition of a mobile home, barn, and greenhouse, and conversion of an existing mobile home to a senior citizens unit. The proposed Tentative Subdivision Map is attached as Exhibit 5. The Board denied a request to remove a 30-inch cypress tree.

The County approval was subsequently appealed to the Coastal Commission by: 1) Commissioners Wan and Reilly; 2) Mary Aken, from the Law Office of William J. Yeates, representing Friends, Artists and Neighbors (FANS) of Elkhorn Slough; and 3) Gary Patton, Executive Director of LandWatch, Monterey



County (LandWatch), on the grounds that the project was not consistent with LCP policies designed to protect groundwater resources, water quality, environmentally sensitive habitat areas, visual resources, zoning requirements and procedural issues. The Commission heard the appeal on September 8, 2004 and took jurisdiction of the project after finding that the County's approval of the project did raise a substantial issue with regards to protection of groundwater resources, water quality, and environmentally sensitive habitat areas. The Commission then considered the project *de novo* and denied it on December 9, 2004. Subsequently, the applicant sued the Commission, and the parties entered into a settlement agreement. This report recommends that the Commission approve the project with several special conditions designed to eliminate the project's previous inconsistencies with the LCP, pursuant to the terms of that agreement.

## II. Standard of Review:

The Commission found that the project approved by the County raised a substantial issue, and therefore has jurisdiction over the de novo coastal development permit (CDP) for the proposed project. The standard of review for this CDP determination is the Monterey County's Local Coastal Program, including policies of the *North County Land Use Plan* and Regulations provided in the *Coastal Implementation Plan*.

## III. Staff Recommendation on De Novo Coastal Permit

The staff recommends that the Commission, after public hearing, **approve** the coastal development permit by making the following motion and adopting the following resolution:

### **MOTION:**

3) **“I move that the Commission approve Coastal Development Permit No. A-3-MCO-04-054 pursuant to the staff recommendation.”**

4)

### **STAFF RECOMMENDATION OF APPROVAL WITH CONDITIONS:**

5) Staff recommends a **YES** vote. Passage of this motion will supersede the Commission's previous denial and result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### **RESOLUTION:**

The Commission hereby **approves** a permit for the proposed development as conditioned below, and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the Monterey County Local Coastal Program. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been



incorporated to avoid or substantially reduce any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would avoid or substantially reduce any significant adverse impacts of the development on the environment.

## IV. Recommended Conditions of Approval

### A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date this permit on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### B. Special Conditions

1. **On-Site Water Use Limitations, Conservation, and Retrofitting Requirements.** Each parcel created by the subdivision shall be subject to on-site water use restrictions, and shall be subject to a requirement to retrofit existing development in the North County Planning Area to offset completely all on-site water use, and participate in future water management and conservation programs, as follows.

#### A. Water Use Limits and Conservation:

- 1) New development shall be limited to one single-family residence (no senior citizen or other second units), except on proposed Parcel #1 that is proposed to maintain two residences (main residence plus one senior citizen unit). Guesthouses and ancillary structures containing water fixtures shall be prohibited.



- 2) To minimize indoor water use, all new and existing dwelling units shall be equipped and maintained with low flow toilets and showerheads and water efficient appliances (e.g., clothes washer and dishwasher). Additionally all new dwelling shall be equipped and maintained with recirculating hot water systems.
- 3) To minimize outdoor water use, all landscaping shall be drought tolerant. Irrigation shall be limited to temporary drip irrigation systems necessary to allow for the establishment of an approved drought tolerant landscape plan. Such temporary irrigation systems shall be removed within three years of installation.
- 4) To prevent on-site water use from exceeding the minimum amount necessary to serve a single-family residence with water conserving fixtures and drought tolerant landscaping, all property owners shall be responsible for complying with the approved Water Use Monitoring Management and Retrofit Plan required by Condition 2, below, and subject to the fees established by said plan for non-compliance.

B. Off-site retrofitting requirements. Every newly created vacant parcel shall be subject to a requirement to implement off-site retrofitting prior to development, in accordance with the retrofitting requirements established by the approved Water Use Monitoring Management and Retrofit Plan required by Special Condition 2, below.

C. Participation In Future Water Management and Conservation Program. Every parcel shall be subject to a requirement to participate in any future comprehensive water management/conservation program(s) that may be established for the affected groundwater basin or sub-basin, including but not limited to the payment of assessments or fees and/or implementation of additional on-site measures that may be identified to address groundwater overdraft in North Monterey County.

2. **Water Use Monitoring, Management, and Retrofit Plan.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for Executive Director review and approval, a plan for monitoring and managing water use on the parcels created by this subdivision, and for completely offsetting the amount of water used by each parcel through the retrofitting of existing non-agricultural development with water conserving fixtures and appliances, and/or installation of drought tolerant landscaping. Concurrently, the applicant shall submit for Executive Director review and approval the CC&Rs required by incorporated Monterey County Combined Permit PLN990391 condition #3 and the water conservation measures required by incorporated Monterey County Combined Permit PLN990391 conditions #65, consistent with the plan. The plan shall include, but not be limited to the following components:

A. Parcel Specific Water Use Limits. The Plan shall establish maximum water use limits for each parcel by calculating the anticipated average daily water use associated with a single-family residence with water conserving fixtures and drought tolerant landscaping. Average daily water



use of a single-family residence shall be based on established formulas using the best available data. Monetary fees for exceeding water use limits shall be established by the Plan, and applied towards the implementation of water conservation measures within the North County coastal planning area, as detailed below. The Plan shall also describe the method by which prospective buyers will be notified of water use limits and the fees for exceeding these limits.

- B. **Retrofitting Requirements.** The Plan shall detail the specific necessary retrofitting measures that must be undertaken as to completely offset the maximum amount of water use allowed on each parcel pursuant to part A of this condition. This shall include a detailed description of the specific types and locations of offsite retrofitting opportunities available to comply with these requirements, using sites that already have their water use monitored, unless the applicant provides evidence that using such sites is infeasible, and a quantification of the amount of water that will be saved through the identified retrofitting opportunities. The Plan shall identify the process under which the applicant will document successful implementation of retrofitting requirements, to the satisfaction of the Coastal Commission's Executive Director, prior to commencing development.

Retrofitting shall occur within the Highlands North, Highlands South, Pajaro, or Springfield subareas of North Monterey County with a preference for the North Highlands subarea.

- C. **Monitoring and Reporting Requirements.** Water meters shall be installed on all parcels in the subdivision. The plan shall provide for annual water use monitoring of each parcel of the subdivision to identify actual water use. The plan shall also provide for data collection and quantification of the amount of annual water savings achieved through retrofitting efforts for a minimum of five years. Annual monitoring reports compiling the on-site and (for at least five years) the off-site water uses shall be provided to the Central Coast District Office of the California Coastal Commission and to the Director of Monterey County Planning and Building Inspection Department for the life of the development, or until such time as a comprehensive long-term water management program for North Monterey County is approved by the Monterey County Board of Supervisors and the portion within the coastal zone is certified by the California Coastal Commission as an amendment to the North County LCP. If other agencies (e.g., the Pajaro Valley Water Management Agency: PVWMA) participate in monitoring and/or become responsible for future program administration, implementation and oversight may be transferred to that agency, where appropriate, provided that the transfer is reviewed and approved by the Executive Director.

In the event that annual monitoring reports indicate that the requirement to prevent no net demand on groundwater is not being achieved, the Plan shall be updated to the satisfaction of the Executive Director, as necessary to comply with this requirement.

- D. **Fees.** The Plan shall provide a formula for calculating the amount of monetary fees that will be applied if the water use limits established by the Plan are exceeded. The method for calculating



fees shall, at a minimum, be adequate to fund the additional retrofits necessary to offset the amount of water being used in excess of the water use limits established by the Plan. The Plan shall describe the process under which fees will be calculated, collected, and applied towards implementing the additional retrofits needed to offset exceedances of water use limits. In addition to the information required by Part C of this condition, annual monitoring reports shall identify any exceedances of water use limits, describe the type and location of additional retrofits and water meters installed (if feasible) to offset such exceedances, and include available water use monitoring data for these additional retrofit sites for a minimum of five years. Fees for exceeding minimum water use limits may be increased by the Executive Director if annual monitoring reports indicate that such limits are routinely being exceeded.

- E. Responsibilities. The Plan shall detail the respective responsibilities that the applicant subdivider and the subsequent owners of the lots created by the subdivision each have to implement its provisions. The initial offsite retrofits shall be installed by the applicant prior to sale of the lots. The Plan shall include measures to bind subsequent lot owners to implement its remaining and on-going provisions.

**3. Protection of Maritime Chaparral ESHA, Oak Woodland, Visual Resources, and Steep Slopes.**

A. No development, as defined in section 30106 of the Coastal Act, shall occur in the following “resource protection area”: areas within at least 100 feet from the maritime chaparral plant communities contained on the site; areas within at least the edge of oak woodland canopies; all slopes greater than 25%; and any areas where development conforming with the height and bulk limitations of the Local Coastal Program would create a silhouette on the ridgeline (see Exhibits 2 and 5). An exception for the access road to cross the oak woodland and a 25% slope is allowed pursuant to incorporated Monterey County Combined Permit PLN990391 condition MM#4. An exception for landscaping and habitat restoration and maintenance to occur in the resource protection area is also allowed pursuant to Special Condition #4.

B. PRIOR TO THE ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOTICE OF INTENT TO ISSUE THIS PERMIT the applicant shall submit, for the review and approval of the Executive Director, final subdivision plans identifying both the “resource protection area” and areas of development, accompanied by an updated biological report and visual assessment. The biological report shall include delineations of the maritime chaparral habitat areas and oak woodlands by a biologist, along with a written and photographic description of the extent and conditions of these habitats. The visual assessment shall include an analysis of building envelopes and above ground infrastructure (e.g., water tanks) that documents compliance with the prohibition against ridgeline development. “Ridgeline development is development on the crest of a hill which has the potential to create a silhouette or other substantially adverse impact when viewed from a common public viewing area (*Monterey County Code* Section 20.144.020.BBB).” The visual assessment shall include photographs of the site, taken from



locations that represent the full range of public views of the site, after all building sites and above ground infrastructure improvements have been staked and flagged. Stakes and flagging shall show the maximum allowable height for all structural development, which shall be identified by the final subdivision plans and remain within the maximum height limits established by the Monterey County Local Coastal Program. If the Executive Director's analysis of the staking and flagging indicates that ridgeline development would occur, the siting and design of the building envelopes shall be adjusted to eliminate ridgeline development.

The final plans for the subdivision shall clearly delineate all existing and future residential building/disturbance envelopes and roadways (including driveways), as well as all necessary infrastructure such as water tanks and utility lines. The development indicated on the final plans for the subdivision, including any vegetation clearing necessary to meet fire protection requirements that would be inconsistent with the requirements for the "resource protection areas" (see Special Condition #4) shall be located completely outside of the "resource protection area" as defined in Special Condition 3 paragraph A.

C. The scenic conservation easement required by incorporated Monterey County Combined Permit PLN990391 conditions # 14, 16, 17, and MM#1 to be granted to the County shall be extended to encompass the entire "resource protection area" and may also be extended to cover the remaining areas outside of the building envelopes and roadways. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit the easement for Executive Director review and approval. The recorded document shall include legal descriptions of both the applicant's entire parcel and the easement area. The recorded document shall incorporate the requirements of Special Condition 3 paragraph A.

D. In order to comply with this and other conditions, the final plans for the subdivision may show revised parcel configurations, provided no more than ten residential lots are shown.

4. **Habitat Maintenance and Landscaping Requirements.** **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for Executive Director review and approval, a master landscape and erosion control plan for the entire property pursuant to and including the materials required by incorporated Monterey County Combined Permit PLN990391 conditions #19, #34, MM #7, and MM #8. This plan shall (a) detail the immediately required erosion control plantings and their maintenance until parcel-specific landscaping occurs and (b) outline the parameters of the future parcel-specific landscaping. **PRIOR TO THE COMMENCEMENT OF ANY DEVELOPMENT ON THE PARCELS CREATED BY THIS SUBDIVISION**, the applicant for such development shall submit, for Executive Director review and approval, the parcel-specific landscape plans and associated materials required by incorporated Monterey County Combined Permit PLN990391 conditions #40-46, 65b and MM #6. These parcel-specific plans shall cover the entire parcels, except for buildings and pavement, and be consistent with the master landscaping and erosion control plan. Both the master landscape and erosion control plan and the subsequent individual parcel-specific landscape plans



shall be prepared by qualified professionals, including input from biologists; comply with the water conservation requirements established by Special Conditions 1 and 2 above; and ensure the protection of sensitive habitats as follows:

- A. All plant species shall be selected to be natives (no non-natives are allowed), be indigenous to the surrounding maritime chaparral habitat, prevent the spread of exotic invasive plant species, and avoid contamination of the local maritime chaparral plant community's gene pool;
- B. Within the delineated maritime chaparral and oak woodland areas and within shallow, rocky soils along the ridgeline where the biologist has identified chaparral species as likely to recolonize, activities shall be limited to removal of invasive plants and replanting of native species found in the respective chaparral and woodland areas on bare areas that have not regenerated on their own;
- C. All areas outside of the development areas (i.e., building envelopes and roads) and habitat areas shall be planted with a suite of native grassland species, including, for example, purple needlegrass and California oatgrass, obtained from locally collected seed. Planting of oak trees, obtained from a local seed source, is permissible except within the maritime chaparral habitat or buffer area. Structural development is prohibited in these areas;
- D. Parcel-specific landscaping plans shall be accompanied by specific performance and success criteria, as well as monitoring and maintenance provisions, that will be used to maintain landscaped areas in good growing conditions throughout the life of the development. The plans shall include, at a minimum, the following components:
  - 1) A map showing the type, size, and location of all plant materials, temporary irrigation systems (if any), topography of the developed site, and all other landscape features;
  - 2) A schedule for installation of initial plantings no later than within the first growing season after completion of construction; and,
  - 3) A five year landscape monitoring, maintenance, and reporting program, to be implemented by a qualified professional, that establishes specific performance and success criteria such as percent coverage requirements and elimination of exotic invasive species, includes maintenance measures necessary to control exotic plant species and replace unsuccessful plantings, and provides for bi-annual inspections of all landscaped areas. The landscape monitoring, maintenance, and reporting programs shall also provide for the submittal of the five annual reports to the Executive Director. The annual monitoring reports shall be prepared by the qualified professional responsible for implementing monitoring and maintenance provisions. The reports shall include photographic documentation, describe whether performance and success criteria are being





obtained, and identify the corrective actions that have and will be implemented to comply with established performance and success criteria that are not being met.

- 4) Pursuant to incorporated Monterey County Combined Permit PLN990391 Condition #42 that all landscaped areas and plant material be continuously maintained, those areas that have been established as grasslands shall be mowed annually or semi-annually at least until the grasses have been fully established.

F. WITHIN 30 DAYS OF COMPLETION OF THE LANDSCAPING INSTALLATION AND NO LATER THAN 30 DAYS AFTER THE FIRST GROWING SEASON AFTER COMPLETION OF CONSTRUCTION, each parcel owner shall submit to the Executive Director a letter from the qualified professional that prepared the landscape plan, indicating that plant installation has taken place in accordance with the approved plan. The deadline for submittal of the subsequent annual monitoring reports required above shall be established from the date of the letter indicating that the approved landscaping plan has been successfully installed.

G. FIVE YEARS FROM THE DATE ON WHICH THE APPROVED INITIAL PARCEL-SPECIFIC LANDSCAPING HAS BEEN SUCCESSFULLY INSTALLED, each parcel owner shall submit a final monitoring report for Executive Director review and approval. If the final monitoring report indicates that the performance standards and success criteria established by the approved landscape plan have not been met, the report shall be accompanied by a revised or supplemental landscape plan, prepared by a qualified professional, for the review and approval of the Executive Director. The revised or supplemental landscape plan shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan, and shall provide for an extended monitoring and reporting program, which shall be implemented until such a time that the Executive Director is satisfied that the approved landscape plans have become successfully established.

5. **Deed Restrictions.** PRIOR TO SALE, TRANSFER, OR DEVELOPMENT OF ANY OF THE PARCELS CREATED BY THE APPROVED SUBDIVISION, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcels governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions, including incorporation of Monterey County Combined Permit PLN990391 permit conditions, as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as



either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

6. **Monterey County Conditions.** Conditions and mitigation measures of Monterey County Combined Development Permit PLN990391 are implemented in the following ways (See Exhibit 3):

- A. All conditions and mitigation measures of PLN990391 become conditions of approval of this coastal development permit A-3-MCO-04-054, except for #38 (Inclusionary Housing), #39 (Indemnification), #62 (Water System), #71 (Mitigation Monitoring Plan) and #72 (Fish and Game).
- B. This action has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act; i.e., PLN990391 conditions #38, 39, 62, 71 and #72. with the following modifications.
- C. The following incorporated conditions are modified to be consistent with this approval:
  - Condition #8 is re-worded to incorporate this Commission's approval and conditions;
  - Condition #9 is re-worded to apply to proposed Lot #1 only;
  - Conditions #53 and 54 are re-worded to also apply to percolation (not just detention) facilities;
  - Condition #57 is reworded to state that the referenced recommendations to be followed must be implemented in a manner so that any conflicts with Special Conditions # 3 and 4 above are resolved in favor of those conditions.
- D. The applicant shall provide evidence of compliance with each incorporated condition and mitigation measure of Monterey County Combined Development Permit PLN990391 to the Executive Director at the time period for compliance indicated by the condition.

## V. De Novo Findings and Declarations

The Commission finds and declares as follows:

### A. Project Location

The project site is located in the Royal Oaks area of North Monterey County at 250 Maher Road (APN 127-252-009), west of Maher Road and approximately 1 mile south of the Tarpey Road/Maher Road intersection (Exhibit 1). The Royal Oaks area consists of low rolling hills and numerous small canyons and valleys covered by grasses, maritime chaparral and oak forest habitat. Extensive land clearing for agricultural and residential use has occurred in the past. The surrounding unincorporated area includes rural residential, agricultural, and limited commercial development.



The 25-acre property ranges in elevation from 120 feet above mean sea level near the southeastern property boundary, to about 320 feet on the northwest. Most of the parcel slopes gently eastward toward Maher Road, up to a ridgeline about 100 to 200 feet from the western property boundary, and then slopes westward. The property site contains a 2,500 sq.ft. single-family dwelling, barn, two mobile homes, and greenhouse, all located on the eastern side of the property. The site also contains several unpaved access roads. Organic strawberries are currently grown on approximately 14 acres of the project site, and four acres are currently fallow agricultural land. The remainder of the project site is covered in oak woods, eucalyptus groves, and central maritime chaparral. A dense grove of Coast live oak trees are situated near the eastern end of the property, and eucalyptus and scattered oaks are found on the western end and along the ridgeline, with patches of maritime chaparral located in the southwestern portion of the property flanking either side of the mixed eucalyptus/coast live oak habitat in this area.

### B. Project Description

Monterey County approved the subdivision of a 25-acre parcel into 10 lots ranging in size from 1 to 7.8 acres. The approval also includes 2,000 cubic yards of grading, development of a mutual water system, construction of two water tanks; demolition of an existing mobile home, barn, and greenhouse and conversion of an existing mobile home to a senior citizens unit. The proposed Tentative Subdivision Map is attached as Exhibit 2.

According to the Draft EIR (DEIR), dated December 8, 2003, there are three existing residences on the project site: a 2,500 square foot home and two mobile homes. The two-story single-family dwelling and one of the mobile homes would be retained on what would be lot 1, with the mobile home becoming a senior citizen unit. The other mobile home currently on the property would be removed, leaving 9 new vacant residential parcels. As approved, a 21-foot wide access road (within a 30-foot wide road and utility easement) would enter the property from Maher Road along the southern property boundary and then head north across the middle of the property to reach the other newly created lots. The County’s approval required that the access road avoid removal of a landmark 30-inch cypress tree located in the southeast corner of the site. The County separately denied the applicant’s request to remove the cypress tree. Denials are not appealable and hence the tree removal is not part of the project description subject to this approval.

Table 2 shows the size and development planned for each of the 10 proposed lots.

**Table 2. Proposed Lot Sizes and Potential Development for Sunridge Views Subdivision**

Lot Number	Acres	Proposed Development
1	5.0	Existing single family dwelling; Conversion of existing mobile home to senior unit
2	1.2	Future single family dwelling
3	1.1	Future single family dwelling



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4	1.0	Future single family dwelling
5	2.4	Future single family dwelling
6	1.5	Future single family dwelling
7	1.2	Future single family dwelling
8	7.8	Future single family dwelling Four 15,000-gallon water tanks
9	1.5	Future single family dwelling
10	2.0	Future single family dwelling
Misc.	0.3	Area dedicated for County Right-of- Way
<b>Total</b>	<b>25.0</b>	<b>9 future single family dwellings and four 15,000-gallon water tanks</b>

Septic tanks and a well currently serve the house and mobile homes. The current water supply well, recently drilled in 2000, is located uphill from the existing structures, and is capable of producing water at 60 gpm. A former well, located immediately behind the house, was abandoned as a drinking water supply well due to nitrate contamination; a nitrate treatment system was required and the well is still used for irrigation.

While the original project description included two 20,000-gallon water tanks, the applicant has revised the project to include four 15,000-gallon water tanks, to be constructed on Lot 8, in a 50-foot by 100-foot tank lot easement located approximately 25 feet from the maritime chaparral habitat in the southwestern corner of the property. No other building or septic envelopes are shown on any of the proposed lots that would result from the subdivision.

### C. Local Coastal Program (LCP) Consistency Review

#### 1. Protection of Groundwater and Agricultural Resources

The project involves subdivision of an existing 25-acre parcel into 10 lots ranging in size from 1 to 7.8 acres, and development of a mutual water system (and increased pumping from an existing well) to provide for development of nine new residential units on Lots 2-10, and continued use of two existing residential units (existing home and mobile home) on Lot 1. However, North Monterey County has an estimated groundwater overdraft of more than 16,000 acre-feet per year,<sup>1</sup> which has led to seawater intrusion problems in nearly half of the North County area causing wells to be abandoned and alternative water supply solutions to be sought. The project site is not served by any other water source, or

<sup>1</sup> Monterey County Water Resources Agency and EDAW, Inc., *North Monterey County Comprehensive Water Resources Management Plan*, January 2002.



municipal water system, and so has no identified, available, long-term water supply. Approvals of increased residential development in this area would further deplete groundwater resources, putting existing water supplies for other uses (including priority agricultural use) at further risk of failure. While conversion from agricultural to residential land use may reduce current water demand, the project still generates a permanent, long-term water demand beyond the safe yield of available water supplies, since the area is already in severe overdraft conditions. Furthermore, conversion from agricultural to residential land use would create a permanent, long-term water demand that cannot be adaptively managed in ways that agricultural water use can (e.g., by crop rotation, fallowing or dry farming practices when water is scarce). Since water levels are already well below safe yield, there is not enough water to even support 50% of the originally projected build-out in this area, thus any further development should be phased so that water does not continue to be committed beyond the safe long-term yield.

a. Applicable Policies

The County's LCP requires the protection of groundwater resources, especially within the North County where severe and chronic groundwater overdrafts have led to saltwater intrusion and the need to abandon previously-functional water supply wells. The *North County LUP* requires, among other things, that:

- New developments be controlled to a level that can be served by an identifiable, available, and long-term water supply (*North County LUP* Key Policy 2.5.1);
- Development levels that generate water demand exceeding safe yield of local aquifers are only allowed once additional water supplies are secured (*No Co LUP* Policy 2.5.2.3);
- New development be phased so that existing water supplies are not committed beyond their safe long-term yields (*No Co LUP* Policies 2.5.2.3, 4.3.5.7, 4.3.6.D.5); and,
- The County should reduce the remaining build-out to limit groundwater use to the safe-yield level or, if required, in order to protect agricultural water supplies (*No Co LUP* policy 2.5.3.A.2).

Taken together the LCP provisions seek to ensure that any groundwater extraction protects groundwater aquifers, wetlands and streams, and agricultural water supplies.

Specifically, *North County Land Use Plan* provisions state:

***North County LUP Action 2.3.4.1. A comprehensive natural resource and water basin management plan should be prepared for North County. The plan should include recommendations for monitoring residential and industrial runoff, regulation of discharges into coastal wetland and stream courses, in-stream flow protection, regulation of spoils disposal, development of best management practices for control of non-point discharge and erosion. Criteria should be set for adequate setbacks and development practices to protect environmentally sensitive habitats.***



**North County LUP Policy 2.5.1 Key Policy.** *The water quality of the North County groundwater aquifers shall be protected, and new development shall be controlled to a level that can be served by identifiable, available, long term-water supplies. The estuaries and wetlands of North County shall be protected from excessive sedimentation resulting from land use and development practices in the watershed areas.*

**North County LUP Policy 2.5.2.3.** *New development shall be phased so that the existing water supplies are not committed beyond their safe long-term yields. Development levels that generate water demand exceeding safe yield of local aquifers shall only be allowed once additional water supplies are secured.*

**North County LUP Policy 2.5.3.A.1** *The County's Policy shall be to protect groundwater supplies for coastal priority agricultural uses with emphasis on agricultural lands located in areas designated in the plan for exclusive agricultural use.*

**North County LUP Policy 2.5.3.A.2** *The County's long-term policy shall be to limit ground water use to the safe-yield level.<sup>2</sup> The first phase of new development shall be limited to a level not exceeding 50% of the remaining build-out as specified in the LUP.<sup>3</sup> This maximum may be further reduced by the County if such reductions appear necessary based on new information or if required in order to protect agricultural water supplies. Additional development beyond the first phase shall be permitted only after safe-yields have been established or other water supplies are determined to be available by an approved LCP amendment. Any amendment request shall be based upon definitive water studies, and shall include appropriate water management programs.*

**North County LUP Action 2.5.4.1** *The County Flood Control and Water Conservation District, in cooperation with the County Planning Department should develop a system of monitoring the effects of increasing development on the groundwater resources. The County should establish a fee as part of permit applications (or some other financial arrangement) in order to provide a*

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<sup>2</sup> While the term “safe-yield” is not defined in the LCP, the *North Monterey County Comprehensive Water Resources Management Plan* defines “sustainable yield” as “the available groundwater supply that may be pumped without inducing additional groundwater declines or causing seawater intrusion (vertical migration from the slough or horizontal migration from the ocean) beyond conditions that existed in 1992.” However, since there were already groundwater problems before 1992, this definition may not be totally adequate. A more appropriate definition in terms of Coastal Act concerns would be: “the amount of naturally occurring ground water that can be withdrawn from an aquifer on a sustained basis, economically and legally, without impairing the native ground-water quality or creating an undesirable effect such as environmental damage,” from Fetter, C.W., *Applied Hydrogeology*, Fourth Edition, 2001, p. 447. Additionally, any water that is extracted from ground water (or intercepted before it can become ground water) will reduce the amount of ground water available. Even if the aquifer remains saturated to the same levels, ground water flow will change and the amount that is recharged (to streams, to marshes, to the ocean) will change as a result of any interception or extraction of ground water. Thus, from a Coastal Act perspective the amount of acceptable groundwater extraction may be less than what is calculated in this study as “sustainable yield.”

<sup>3</sup> As described in *Coastal Implementation Plan* Section 20.144.140.B3, 50% of the remaining build-out was calculated by subtracting the number of existing units from the maximum potential build-out and dividing that number in half (i.e., 7,835 maximum units – 3,750 units existing at the time the LUP was certified = 4,805 units x 50% = 2,043 units).



*fund to support monitoring of groundwater use and to support further studies of groundwater resources or potential surface water projects that could serve the North County.*

***North County LUP Action 2.5.4.2.*** County growth management studies now in progress should recognize the water supply limitations in the North County Coastal Zone as a chief factor and resource constraint in determining an appropriate annual-growth rate for the area. ***An ordinance should be drafted by the County to phase development at a level compatible with the availability of groundwater supplies.***

***North County LUP Action 2.6.4.1.*** Monterey County shall develop a comprehensive agricultural management plan for existing and future agricultural uses in North Monterey County, in coordination with other appropriate public and private agencies, including but not limited to the County Agricultural Commissioner, Agricultural Extension, Soil Conservation Service, Monterey Coast Resource Conservation District, and the Farm Bureau. The goal of this plan would be the protection of long-term agricultural production, groundwater availability, water quality, and public welfare.

***North County LUP Policy 4.3.5.4*** Where there is limited land, water, or public facilities to support development, coastal-dependent agriculture, recreation, commercial and industrial uses shall have priority over residential and other non-coastal-dependent uses.

***North County LUP Policy 4.3.5.7.*** New subdivision and development dependent upon groundwater shall be limited and phased over time until an adequate supply of water to meet long-term needs can be assured. In order to minimize the additional overdraft of groundwater accompanying new development, water conservation and on-site recharge methods shall be incorporated into site and structure design.

***North County LUP Policy 4.3.6.D.1*** Land divisions for residential purposes shall be approved at a density determined by evaluation of site and cumulative impact criteria set forth in this plan. These include geologic, flood, and fire hazard, slope, vegetation, environmentally sensitive habitat, water quality, water availability, erosion, septic tank suitability, adjacent land use compatibility, public service and facility, and where appropriate, coastal access and visual resource opportunities and constraints.

***North County LUP Policy 4.3.6.D.5*** Where public facilities or water supply necessary to support residential development are limited, residential growth should be phased to allow sufficient time for these essential elements to be provided.

***Code Section 20.144.070 WATER RESOURCES DEVELOPMENT STANDARDS:*** The intent of this Section is to provide development standards which will ***protect the water quality of the North County surface water resources aquifers, and groundwater, control new development to a level that can be served by identifiable, available, and long-term water supplies,*** and protect North County streams, estuaries, and wetlands from excessive sedimentation resulting from land use and development practices in the watershed areas. (Ref. Policy 2.5.1).



**Code Section 20.144.070.E.10.** *Development shall not be permitted if it has been determined, through preparation of the hydrologic report, or other resource information, that: a) the development will have adverse impacts to local agricultural water supplies, such as degrading water quantity or quality; and, b) there are no project alternatives and/or mitigation measures available that will reduce such impacts to levels at which the long-term maintenance of local coastal priority agricultural water supplies is assured. (Ref. Policy 2.5.3.A.1 t A.2)*

**Code Section 20.144.070.E.11.** *Development shall not be permitted if it has been determined, through preparation of a.) hydrologic report, or other resource information, that: a) the development will generate a water demand exceeding or adversely impacting the safe, long-term yield of the local aquifer; and, b.) there are no project alternatives and/or mitigation measures available that will reduce the development's water use to a level at which it will not exceed or adversely impact the safe, long-term yield of the local aquifer.*

**North County LUP2.6.3.8.** *Conversion of uncultivated lands to crop lands shall not be permitted on slopes in excess of 25% except as specified in policy 2.5.3(4) of this plan and shall require preparation and approval of an Agricultural Management Plan. Conversion of uncultivated lands to crop lands on lands where 50% or more of the parcel has a slope of 10% or greater shall require a use permit. Approval of the use permit shall follow the submission of an adequate management plan. These plans should include analysis of soils, erosion potential and control, water demand and availability, proposed methods of water conservation and water quality protection, protection of important vegetation and wildlife habitats, rotation schedules, and such other means appropriate to ensure the long-term viability of agriculture on that parcel.*

b. Analysis of Consistency with Applicable LCP Policies

Available Long-term Water Supply

The subject site is located in North Monterey County, which has severe groundwater overdraft problems. Virtually all of the agricultural, commercial and residential development in North Monterey County relies on groundwater pumped from local wells, with agriculture using approximately 85 percent of the water demand.

When the *North County LUP* was written in the early 1980's, it acknowledged that the area had been experiencing overdraft problems for some time, but was not able to quantify the amount of overdraft or determine what the safe yield was at the time. Rather, it noted that:





*A study for the State Department of Water Resources in 1977 indicated a general groundwater overdraft of about 15,500 acre-feet annually in the North County area. A more detailed study by the U.S. Geological Survey in 1980 confirmed the overdraft of the Aromas Sand Aquifer. The report estimated a study area annual overdraft in the North County area of about 1,500 to 8,000 acre-feet. However, due to the depth of the water-bearing Aromas Sands, its high storage capacity, and the overall complexity of geologic and hydrologic considerations, the long-term safe yield of the aquifer is difficult to estimate...*

*It is evident that continued overdraft in the North County will lead to increasing saltwater intrusion and lower water tables. In some areas, water shortages may occur. Managing the demand for water generated by agricultural use and residential and commercial development within the limits of attainable long-term water supply sources will be a major challenge for the area in the coming years. Additional information is urgently needed to help determine the long-term safe yield of North County aquifers. The opportunities for obtaining a surface water supply should also be investigated.*

Thus, while there was no agreement on the magnitude of the problem or on how to quantify the safe yield at the time the LCP was certified, the County attempted to manage the demand for water by establishing policies that phased development relative to safe yield and limited increased residential development (beyond one home per legal parcel) by placing an interim threshold on residential development, until that safe yield level could be determined. An interim threshold of 50% of residential build-out was established, to allow for partial build-out while the County pursued efforts to quantify the problem and arrive at a solution.

LUP policy 2.5.2.3 thus potentially allows up to 50% of maximum build-out to occur (i.e., 2,043 units or lots) prior to the availability of a new water supply.<sup>4</sup> Currently 582 units or lots remain until that threshold is reached. However, that is a maximum threshold, and LUP policy 2.5.3.A.2 includes a caveat that requires the remaining build-out threshold to be reduced to limit groundwater use to the safe-yield level or if required in order to protect agricultural water supplies. Thus, while the 50% build-out level may have been an optimistic threshold to use, the County did have the foresight to establish this threshold not as an absolute number, but rather as a maximum that could be changed in order to protect groundwater resources once more was known.

Since the time that the LUP was written in the early 1980's (and the LCP certified in the late 1980's), the County has sponsored more definitive studies to determine the safe yield and, in the meantime, has allowed some new development to occur while studies were conducted to more thoroughly address the issue.

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<sup>4</sup> This policy applies to new lots and second units on existing lots; one home per vacant parcel is permitted.



The first study commissioned by the County, conducted in 1995 by Fugro West<sup>5</sup>, calculated the groundwater overdraft on the order of 11,700 acre-feet per year (af/y)<sup>6</sup>. Since that time, the 2002 *Comprehensive Water Resources Management Plan*, prepared by Monterey County Water Resources Agency and EDAW,<sup>7</sup> updated the 1995 analysis and calculated the overdraft to be as much as 16,340 af/y<sup>8</sup>.

Thus these studies not only quantified the sustainable yield, they also showed that the current overdraft is more than what was first estimated and that as a result of continued overdraft, the extent and severity of the resultant problems (e.g., extent of seawater intrusion, increased water contamination problems, and number of abandoned wells) have increased over time.

For example, in the North Highlands hydrogeologic sub-area, in which the Sunridge Views proposed subdivision is located, the 1995 Fugro-West study calculated a sustained yield of 2,920 af/y<sup>9</sup> and historical groundwater demand of 4,780 af/y, resulting in a deficit of 1,860 af/y, or a demand that was 39 percent more than available groundwater supplies. Updated values, provided in the 2002 *Comprehensive Water Resources Management Plan*, calculated a sustained yield of 2,920 af/y, and current demand of 5,621 af/y resulting in a current deficit of 2,701 af/y, or a current demand that is 48 percent more than available groundwater supplies.

The 2002 *Comprehensive Water Resources Management Plan* (CWRMP) also shows that long-term over-commitment of the aquifer threatens water supplies and other existing users due to the risk of lowered groundwater levels and seawater intrusion. Water level trend analysis conducted as part of the Fugro West study identified a general long-term trend of declining water levels in the area over the last 20 years, with 1994 water levels in some portions of the Highlands area being more than 40 feet below mean sea level (near Prunedale). Seawater intrusion results when wells pumped near the coast cause the water table elevation (or groundwater level) to drop below sea level. Once the water table elevation drops below sea level, seawater can migrate into the aquifer (from the ocean as well as from the tidally influenced Elkhorn Slough system) and mix with freshwater, which increases the chloride concentrations in the groundwater pumped from these wells. A concentration of 500-mg/l of chloride is the Secondary Drinking Water Standard upper limit and so is used as a measure of impairment of water, and is therefore used as a basis for determining seawater intrusion in wells. Figure 8 of the *Comprehensive Water Resources Management Plan* includes a map of Seawater Intrusion in North Monterey County,

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<sup>5</sup> Fugro West, Inc., 1995. *North Monterey County Hydrogeologic Study, Vol. 1: Water Resources*; Table 11. Prepared for Monterey County Water Resources Agency, October 1995.

<sup>6</sup> The 1995 Fugro West study estimated a sustainable yield of 14,410 af/y, but with extraction of 26,110 af/y resulted in an overdraft in North Monterey County of 11,700 af/y.

<sup>7</sup> Monterey County Water Resources Agency and EDAW, Inc., 2002. *North Monterey County Comprehensive Water Resources Management Plan*; January 2002.

<sup>8</sup> The 2002 *Comprehensive Water Resources Management Plan* estimated a sustainable yield of about 14,410 af/y, but extraction of 30,750 af/y, results in an overdraft in North Monterey County of 16,340 af/y.

<sup>9</sup> See footnote 2.



showing that 500-mg/l-chloride contour has moved landward over time, from between 1,650 to 3,300 feet over the period between 1979 and 1993.

Seawater intrusion threatens both agricultural and residential water uses. According to the *Comprehensive Water Resources Management Plan*, the Springfield Terrace area (in the northwestern portion of North Monterey County) and other areas near the Elkhorn Slough have been the most impacted by elevated chloride ion concentrations as a result of seawater intrusion, and many agricultural producers have had to abandon their water supply wells, mix salty well water with fresher water to reduce the chloride concentrations, or purchase reclaimed water for irrigating agricultural lands (personal communication, PVWMA staff). Other agricultural and residential wells have had to be abandoned and drilled to deeper depths to reach unaffected portions of the aquifer.

The Commission's recent draft Periodic Review also reviewed the hydrogeologic studies conducted to date and past permit activity in North Monterey County, and noted that in light of the continuing worsening groundwater overdraft, it is clear that a multi-pronged approach is needed to work toward preventing groundwater depletion and also giving priority to agricultural production on suitable soils. The draft Periodic Review thus recommended the County clarify and implement a policy against further subdivision until there is an adequate water supply, only allow development on vacant lots that does not further contribute to groundwater overdraft, continue to work with farmers on conserving water for agricultural use, establish and adopt a policy that governs any attempts to fallow agricultural land to ensure that such programs protect prime agricultural land and result in actual water reductions rather than just offsets that would allow for more subdivisions [or increased use elsewhere]. The draft Periodic Review also recommended that the County work to bring new water supplies on line and/or reduce existing demand to achieve a groundwater balance with out adverse impacts, and that such programs be accomplished in a manner that protects coastal resources.

As a result of studies requested by the County and additional new information since the LCP was certified, more is known now than was previously known at the time the LUP was written and these policies were put into effect. The 2002 *Comprehensive Water Resource Management Plan* shows that current water demand already exceeds safe yield throughout North County by more than 16,000 af/y. While policy 2.5.3.A.2 requires that build-out not exceed the interim threshold of 50%, even that number is beyond what the groundwater resources can support. Further residential development would commit to long-term withdrawals, which, without a concomitant reduction in groundwater pumping and comprehensive water conservation program, will continue to increase groundwater overdraft, and exacerbate the saltwater intrusion problems that adversely affects priority agricultural use.

Policy 2.5.3.A.2 provides that the 50% threshold may be further reduced if such reductions appear necessary, based on new information or if required to protect agricultural water supplies. Since new information shows that groundwater extractions are harming agricultural water supplies, and the trend is that continued groundwater withdrawals will lead to increased overdraft and seawater intrusion, it now appears necessary that build-out needs to be commensurately reduced to protect these supplies.



The County at least temporarily implemented this requirement of policy 2.5.3.A.2 by establishing an urgency moratorium on new subdivisions from September 2000 to August 2002. But State law allows moratoria established by urgency ordinances to last only two years. For a more permanent solution, County staff and Planning Commissioners crafted a new General Plan/local coastal program that would have mostly extended the ban on creating new residential lots within rural North County by increasing minimum parcel sizes to 40 acres, however the Board of Supervisors has not yet adopted a new General Plan. Meanwhile, subdivisions, like Sunridge Views, originally proposed before the moratorium, are now being approved by the County.

Thus, with new information at hand from the hydrogeologic studies conducted since the LCP was certified, and other information obtained since that time, the Commission would be remiss if it did not say that it was time to reduce the 50% threshold and prohibit development that requires additional groundwater withdrawals. If the Commission proceeds to incrementally approve residential subdivisions without addressing the known planning problems, the result will be a groundwater basin that is still in severe overdraft, with the limited water being allocated to residential development, rather than priority agricultural use, in a haphazard fashion. Furthermore, until the groundwater basin is brought back into equilibrium, future water use by even existing users will continue to exacerbate the already critical and chronic situation. Cumulatively, new development, particularly the creation of additional residential lots, will draw groundwater levels into further overdraft. Required payment of in-lieu fees to the Water Resources Agency may help fund further study and perhaps partially fund implementation of possible solutions, but it does not adequately mitigate for the continued over-drafting of the North Monterey County aquifers, based on what is now known about the severity of the problem. Thus, pursuant to policy 2.5.3.A.2, since the safe yield is already exceeded, any new development should only be approved with a commensurate, guaranteed reduction in water use (e.g., through a comprehensive water conservation program that requires retrofit of existing residential development, like that currently used in Cambria, which also has a severe water shortage).

#### Water Demand

The project proponents originally suggested that, based on conversion of agricultural to residential land use, the project would reduce overall groundwater demand, and the amount of groundwater overdraft attributable to water use on the property. Based on the water budget analysis (conducted by Todd Engineers and included in the December 2003 Draft EIR, or DEIR), it was determined that water use would be reduced from a current water use of 47.12 af/y to a proposed water use of 7.85 af/y (assuming that no agricultural use would continue and no water would be used for landscaping or irrigation). The water balance analysis took into consideration changes in water withdrawal and total infiltration (water recharge) following use of that water, and calculated a water use reduction of approximately 24 af/y. The project proponents suggested that over a 30-year time frame, such a water savings could “promote the protection of agricultural water supplies by reducing water demand” by about 720 acre feet (factoring a reduction in water use of 24 af/y times 30 years).

While at first glance this appeared to be an appealing argument, further analysis revealed that it was not persuasive and did not ameliorate several inconsistencies with LCP policies. In contrast to the current



agricultural use (the water consumption of which has varied and can be more easily controlled), the proposed subdivision represented a permanent commitment of an estimated 7.85 af/y (acre feet/year) of water from a severely overdrafted groundwater basin to a rural residential use. This is not a priority use under the LCP (nor Coastal Act).

No matter whether the proposed subdivision would result in less overall water demand on this particular site, there is no guarantee that it could be served by an available, long-term water supply, as required by cited Key policy 2.5.1. The project relies on a well that will draw from the severely overdrafted North Highlands aquifer. Even if the site's well is able to supply potable water over the long-term, the originally proposed subdivision would not have complied with LCP provisions to protect groundwater resources because the use of the well would affect, and would be affected by, the entire groundwater basin in which it is located. Approving the creation of new lots that rely on groundwater from an overdrafted basin appears inconsistent with LUP policy 2.5.2.3, which requires that new development be phased so that existing water supplies are not committed beyond their safe long-term yields, and goes on to state that "development levels that generate water demand exceeding safe yield only be allowed once additional water supplies are secured." The estimated 24-af/y water use reduction that might result from the proposed conversion of agricultural to residential use standing alone (i.e. absent the Special Conditions), is actually less than one percent of the current annual deficit of 16,340 af/y (based on the 2002 *North County Comprehensive Water Resources Management Plan*) and so would be negligible in providing any real improvement in reducing groundwater overdraft either now or in 30 years from now.

#### Residential Water Use Versus Agricultural Water Use

Moreover, the LCP policy issues could not have been overlooked simply because the originally proposed project was estimated to use less water per year than the current strawberry operation. The site's existing water use for 2002 was estimated to be 47.12 af/y. Residential use was estimated at 2.35 af/y based on a typical 0.78 af/y per dwelling unit (times the three units currently on the site). Agricultural use was estimated at 44.77 af/y based on 3.2 af/y per acre of berry cultivation (times 14 acres in production in 2002). Due to recharge from infiltration, the estimate net draft on the aquifer would have been 24.05 af/y (i.e., 23.08 af/y of extracted water is estimated to infiltrate back into the aquifer). Future water use after Sunridge Views was built out was estimated to be 7.85 af/y (0.78 af/y per dwelling unit times 10 units). Due to recharge from infiltration, the estimate net draft on the aquifer would have been 0.05 af/y (i.e., 7.8 af/y of extracted water is estimated to infiltrate back into the aquifer). Although there would have been a reduction of 39.27 af/y in estimated water use and a reduction of 24 af/y in net draft on the aquifer, this estimated reduced water use as a result of agricultural conversion to residential use, standing alone, was not necessarily certain, long-term, nor the best outcome for the site for at least six reasons.

First, historic photos (shown in Exhibit 4) show that agricultural use has varied over time, with regards to both the type of agricultural production and the amount of land under cultivation, indicating that water use has not remained constant over time. They also show that strawberry cultivation on site is a relatively recent phenomenon; in the not too distant past, irrigated agriculture was not practiced in this area. An aerial photo of the site, taken in 1931, shows that the site was used for agricultural production



prior to establishment of the Coastal Act, apparently for some type of orchard use.<sup>10</sup> However, other aerial photos, taken in subsequent years (1956, 1971, 1980, and 1999) show that agricultural production on the property has varied over time, with orchard production ceasing some time after May 1956 and much of the site not in production in 1971. The 1980 photo shows that only about half of the existing area now under cultivation appears to have been farmed at that time, and the 1999 aerial photo shows that cultivation had expanded into the northern half of the site, similar to that currently under cultivation. Since crop acreage and crop type have changed over time, it is reasonable to conclude that water demand has likely changed over time as well. Thus, while the extent and type of agricultural use may result in a relatively high water use now, the historic photos show that this has not consistently been the case. According to the project's hydrologic report, in 1999 only 9 acres of the site was in production; while according to the final EIR only 4.5 acres were in cultivation in 1998 and 1999. Actual water use in those two years was 13 and 14 acre-feet respectively.<sup>11</sup> Thus, even if the estimated net draft on the aquifer of 24 af/y approximated reality, that figure is only from one period of time. The actual annual amount of water savings may be an overestimate if it is based only on the removal of strawberry production currently on site, instead of compared to the average water use that has occurred on the property over time.

Second, the estimated net reduction in water consumption was not guaranteed, in part because the estimates regarding existing and proposed water demand provided in the project's hydrologic report assumed that the new SFD development would not use any water for landscaping and gardening. The project's hydrologic report estimated zero future irrigation use for landscaping. This assumption seemed unreasonable. While residential use would severely restrict the potential for continued commercial use of the site, actual residential water use could be much greater than estimated if individual, future property owners irrigate their land for personal use (e.g., for landscaping and/or gardening). Future owners could also have decided to build second (senior) units, which would also have added to water use on site.

Third, the estimated current and future draft on the aquifer was also by no means certain. These figures are based on estimated infiltration. Only 37% of crop irrigation water is estimated to infiltrate back into the groundwater basin, while 50% of residential water use is estimated to infiltrate back into the groundwater basin. Additional infiltration is estimated from precipitation that enters into the ground. The 50% figure for residential use is based on aquifer recharge from septic systems. However, septic leach fields are shallow, and it would take many years for the leachate to reach the groundwater basin, relative to the rate at which groundwater is pumped out for daily residential use. Conversely, the use of drip irrigation for watering strawberries could result in lower evaporation rates and consequently higher than estimated infiltration rates.

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<sup>10</sup> Since historic aerial photos, obtained after the substantial Issue report was released, show agricultural use of the site prior to enactment of the Coastal Act, prior discussion regarding the potential for agricultural use in violation of the Coastal Act, as outlined in the Substantial Issue report, is no longer relevant.

<sup>11</sup> A meter was installed on the well in 1998. No actual water use figures from metered wells is available in the County record from 2000 on.



Fourth, as long as the property were to stay primarily in agricultural use, water consumption could be more easily adjusted or even terminated, especially if there is ever a supply or quality problem. Water use for agriculture can vary greatly based on the type of crops grown. For example artichokes use only 1.75 af/y/acre and Brussels sprouts use only 2.5 af/y of water per acre of crop. Grazing may not require any irrigation. There are also initiatives underway and planned to practice more aggressive conservation measures in crop irrigation to reduce water consumption. In contrast to agricultural water use, which can be adaptively managed over time, ongoing residential use requires a commitment to a permanent long-term water supply, which could not be served with the same flexibility to adapt to changing climatic and groundwater storage conditions.

Fifth, the LCP policies and subsequent planning do not direct that permanently eliminating commercial agriculture on this site is the way to address the water overdraft. The latest in a series of studies is the County's *North County Comprehensive Water Resources Management Plan*. This plan, which, despite its name, is lacking in details, broadly calls for four alternatives to be pursued in parallel:

- Acquisition of agricultural parcels to reduce demand;
- An expansion of the Salinas Valley Water Project for agricultural water
- Use of the Salinas Valley Water Project for “urban” water
- Construction of a desalination plant and piping some of its water to “urban” uses in North County.

The acquisition of agricultural parcels would mean that they would no longer be used for irrigated cultivation. Such an approach, as one component of an overall agricultural management plan (required by No Co LUP action 2.6.4.1, but not yet prepared) and water supply plan, may have merit in reducing both water use and erosion. However, it may cause a conflict because agriculture is a priority use under the Coastal Act and the LCP. Thus, any agricultural reduction or fallowing program should be on land determined to be unsuitable for long-term cultivation based on resource protection criteria, not on ad hoc decisions on individual parcels, as is the case here. And, any such reduction or fallowing should contribute to arriving at an aquifer in balance to protect the agricultural use that is to remain. Absent the details of such a program being approved, including a likely LCP amendment, there is no guarantee that the subject project would result in a net decrease in water use because equivalent new or expanded agriculture on a nearby site could cancel it out. Also, absent the details of such a program being approved it is premature to conclude that the subject property is an appropriate one on which to permanently restrict agriculture compared to all other properties in the sub-basin that are under cultivation. The site is zoned low density residential, (LDR/CZ 2.5), but this designation does provide for row crop cultivation as a principal permitted use. The property is also sloping, but the strawberry fields are mostly on lands less than the 25%. Since cultivation on slopes greater than 25% is prohibited, there may be other irrigated cultivation occurring elsewhere on steep slopes or less viable land than the subject site that should be taken out of production first, before fallowing land on this site.

Sixth, the LCP policies and subsequent planning do not suggest that substituting residential use for agricultural use, as proposed by this project, is the way to address the overdraft. In describing the



approach of allowing subdivision where there was no net increase in water use through an offset program, the *North County Comprehensive Water Resources Management Plan* noted that:

*The Planning Commission rejected this approach because no mitigation measures were specified, no mechanism for local land use control or implementation was defined, agricultural lands could be taken out of production contrary to Coastal Plan policies, and there were no quantified or meaningful reductions in demand. One key problem was leaving the development of the water mitigation plans up to project proponents without any guidelines or specific procedures to ensure compliance. These issues could be resolved and a viable means of reducing overdraft developed through a coordinated effort to define and manage the mitigation efforts, make the process legally defensible, and quantify the savings.*

If the County were to develop such an offset program it would have to determine not only which parcels should never have agriculture (as described above), but also which are priority for other uses and what those uses are. Under the LCP (and Coastal Act) priority is for coastal dependent uses and concentration of development in or near urbanized areas. Absent the details of such a program being approved, it is premature to conclude that the subject site has a priority for being subdivided into low-density residential parcels.

#### Future Water Supply Projects

Project proponents have indicated that future water supply projects (i.e., the Pajaro Valley Water Management Agency's (PVWMD) *Revised Basin Management Plan* and the Salinas Valley Water Project (SVWP)) have the potential to provide long-term water supplies. Monterey County Water Resources Agency also has indicated that these projects could provide North County with a long-term water supply. The County staff report even notes "the County anticipates that these projects would be relied upon in the future as an additional assurance of a long-term sustainable water supply."

While both these projects have the potential to lessen the groundwater overdraft in the North County area over time, neither of these projects would directly supply potable water to the Sunridge Views neighborhood.<sup>12</sup> The PVWMD improvement projects are to use surface and imported water to substitute for agricultural wells along the coast in areas currently experiencing salt-water intrusion. Similarly, the

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<sup>12</sup> The PVWMA has plans to address saltwater intrusion, by reducing agricultural water withdrawals in the lower portion of the watershed and substituting that water with supplemental water taken from the upper Pajaro Valley watershed and water imported from the Central Valley. The PVWMA, as designed, is intended primarily to improve water supplies for agricultural use within the Pajaro Valley groundwater basin; the only direct benefit to domestic water supplies from this water supply project could go to the Aromas Water District which has an agreement with the PVWMA for 400 af/y, however since much of the water supplied is likely to be recycled water, the Aromas Water District may not actually make use of the agreement (personal communication, Mary Bannister, PVWMA). The SVWP is currently only in design phase, has had approvals for tax assessments, but the design is not complete, and so is not permitted or constructed yet. Based on discussions with County Water Resources Agency staff, the SVWP is currently in 8-10 month design phase and the regulatory process has not yet begun, thus construction is not expected to be complete before at least the year 2008. Monitoring would then need to be conducted for some period of time to determine if either of the projects actually stops groundwater overdraft, and builds up groundwater levels to a point where there is more water available than is being withdrawn, before allowing additional, non-priority development to depend on this water as an assured long-term water supply.





SVWP would use surface water to substitute for agricultural wells and to replenish aquifers hydraulically linked to the Salinas River.

Furthermore, both of these projects are still in the planning stage. Neither the PVWMD nor SVWP projects has completed the permitting process, let alone has all its financing.<sup>13</sup> At this time, there is no assurance that either project will actually be implemented. No estimates have even been given as to how long it will take to resolve the seawater intrusion problem and recharge the groundwater aquifers back to an equilibrium condition, let alone to increase the water table levels so that additional groundwater storage can occur to serve the LCP's planned build-out. If and when the projects are ever constructed, it would take some time and monitoring to determine if they have been successful at halting groundwater overdraft and restoring groundwater reserves to sustainable yields. Only then could a determination be made that there was an adequate long-term water supply available to serve additional development. Thus the Commission does not agree that these water supply projects can be counted and relied upon at this time as secure, available long-term water supplies.

#### c. Conclusion

The cumulative impact of approving projects, such as the Sunridge Views subdivision as originally considered by the Commission would be to exacerbate the groundwater overdraft situation. At first glance it is tempting to consider a project that purports to reduce water use in an area of known, severe overdraft to be positive and worthy of approval. But the estimated water reduction based on conversion from agricultural use to residential use that the project would provide would be less than one percent of the existing overdraft, and so of slight assistance in reducing groundwater overdraft. However, the trade-off in allowing the project as originally proposed is a net gain of nine new rural residential parcels, each requiring a permanent commitment of potable water, currently only available from overdrafted basins. Thus, the Commission concluded on December 9, 2004, "Possibly, as part of a detailed program, which spelled out where agriculture would continue versus where it would be prohibited in the context of an overall solution that would guarantee that the groundwater basins would achieve equilibrium, this trade-off would be acceptable. But no such program has been advanced to date."

#### Settlement Agreement

After the Commission denied this project as originally proposed, the applicant filed a lawsuit against the Commission, challenging the Commission's denial (*Steven S. Bradshaw v. California Coastal Commission*, Superior Court of California County of Monterey Case No. M73177). Subsequently, the

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<sup>13</sup> Based on the latest information from Monterey County Water Resources Agency (as described by Alana Knaster, of the Monterey County Planning and Building Inspection Department, on October 19, 2004) project designs for the SVWP will not be completed till Spring 2005, with financing to be put together by September 2005, and construction expected to begin by April 2006. Since the regulatory process for the SVWP has not yet begun on any finalized plans, this may be an overly optimistic schedule. Be that as it may, in either case, construction of the SVWP could not be expected to be complete before at least the year 2008. Furthermore, the SVWP cannot be relied upon as a future long-term water supply until it has been constructed and found to actually increase groundwater levels so that saltwater intrusion is halted and groundwater resources are available to supply safe yield for planned development. Similarly, updated information regarding the PVWMA BMP indicates that proposed water supply project would not be constructed before 2007.



parties entered into settlement negotiations. The negotiations resulted in a settlement agreement, which provides that, if the Commission approves the permit with the special conditions specified in Part IV.B of this staff report, which are designed to eliminate inconsistencies with the LCP, then the applicant will dismiss the pending lawsuit against the Commission.

Accordingly, the staff recommends that the Commission approve this coastal development permit, but still subject to the parameters and limitations of its previous findings. As conditioned pursuant to the settlement agreement, the applicant will be required to minimize new water use and completely offset the remaining projected water use of the project by retrofitting other properties. Thus, there should not be any net water use as part of the project. In line with the Commission's findings, the required retrofit is for non-agricultural water uses. Although the result will be no more agricultural water use on site, that reduction cannot count as a compensatory reduction for the reasons outlined above. Rather, the proposed special conditions require retrofitting to achieve a baseline water use of zero.

#### Outline of a Retrofit Program for No Net Water Use

The no-net-water use approach would operate in the following way. An estimate would be made of the future water use of each lot in Sunridge Views. A typical new home uses 800 gpd. of water<sup>14</sup> in areas of North County that are designated one home per parcel of one to ten acres. Since water saving appliances and fixtures must be installed, each lot in Sunridge Views should use less than the typical amount of water. The projection would be for a 40% reduction in water use, resulting in 480 gpd. gross use.<sup>15</sup> For

<sup>14</sup> *North Monterey County Comprehensive Water Resources Management Plan*. The estimate is for 800 gpd. of gross water use. This plan estimates that some water use would be returned to the groundwater aquifer; e.g., from septic tanks and outside irrigation. This estimate is for a 50% return. Thus, the net use is 400 gpd. Of the gross 800 gpd., about 210 gpd. gross use is indoor and 590 gpd. is outdoor. This estimate is derived from assuming indoor per capita use is about 70 gpd. based on the following: (1) City of Santa Cruz is about 60 gpd.; (2) Palm Springs is 135 gpd. (Source: <http://www.csnetwork.com/waterusagecalc.html>); (3) Tampa, FL is 64 gpd.; (4) US as a whole daily indoor per capita use in the typical single family home with no water-conserving fixtures is 74 gallons (Source: [http://www.jnf.org/site/PageServer?pagename=PR\\_IALC\\_080803\\_Water\\_Facts](http://www.jnf.org/site/PageServer?pagename=PR_IALC_080803_Water_Facts)); (5) another U.S. general estimate for daily indoor use for a typical single-family home is 69 gallons per capita per day based on averages published in *Handbook of Water Use and Conservation* (Vickers 2001). (Source: [http://www.tampagov.net/dept\\_water/conservation\\_education/Customers/Water\\_use\\_calculator.asp](http://www.tampagov.net/dept_water/conservation_education/Customers/Water_use_calculator.asp))

Next, assuming about 3 people live in each house on average based on 3.1 is the overall persons per household established in the "California State Department of Finance Population and Housing Estimates" (May 1, 1999) for the unincorporated area of Monterey County. [http://www.co.monterey.ca.us/gpu/information/northcounty.html#Population\\*](http://www.co.monterey.ca.us/gpu/information/northcounty.html#Population*). Then, 70 x 3 = equals about 210 gpd. per house for indoor use. Subtracting the 210 gpd. indoor from the 800 gpd. total leaves 590 gpd. as outdoor use.

<sup>15</sup> Both indoor and outdoor water use could be reduced about 40%. This would result in projected gross indoor water use of 126 gpd. and gross outdoor water use of 354 gpd. The resulting use would be 480 gpd. gross use, or a net use of 240 gpd. per lot created, assuming the 50% return.

For indoor water use the assumption of about a 40% reduction is based on: (1) The Tampa Water Department Residential Water Conservation Study The Impacts Of High Efficiency Plumbing Fixture Retrofits Single-Family Homes concluded: The logged mean daily indoor demand, which was 198.8 gpd. per household during the baseline period, dropped **46.3** percent to 106.7 gpd. after the installation of new high efficiency toilets, clothes washers, showerheads, and faucets. (2) The Seattle Water Conservation Retrofit Study, 1999-2000 demonstrated that indoor home water use can be reduced by more than a third - to under 40 gallons per person per day simply by installing water-efficient plumbing fixtures and appliances. Building on the AWWA Research Foundation's Residential End Uses of Water study, and with funding from EPA, Seattle Public Utilities used the innovative flow trace analysis technology to measure precisely how cold and hot water was used inside 37 homes. Then, after the homes were outfitted with water-efficient



each Sunridge Views lot, the applicant would then have to retrofit existing development to completely offset the water demand from the Sunridge Views subdivision, for example, by finding existing homeowners willing to have their homes retrofitted to the extent that the retrofits would result in 480 gpd. less than current water use. This could be achieved in various ways. One way would be to perform a complete indoor and outdoor retrofit of 1.5 existing homes for each vacant lot created by the subdivision based on the assumption that the existing homes used the North County average of 800 gpd. The calculation is as follows: 800 gpd. x .4 (40%) savings = 320 gpd. x 1.5 homes = 480 gpd. Another way would be to perform a complete indoor retrofit of 5.7 existing homes. The calculation is as follows: 210 gpd. indoor x .4 (40%) savings = 84 gpd. x 5.7 = 478 gpd. Although more existing homes would be required to be retrofitted using this second method, it may be easier to find existing homeowners willing to have their indoor plumbing and appliances retrofitted, as opposed to having their outdoor landscaping redone. Water use would be monitored and if more water use occurs than the targets, then additional retrofitting would have to be performed.

#### Limitations of a Retrofit Approach

While a no-net water use condition may appear to be an attractive option for other subdivisions in North County that raise similar long-term water supply concerns, it has two significant limitations. First, it is difficult to guarantee such an approach will succeed and second, such an approach does not make a dent in addressing the current overdraft situation.

It is difficult to guarantee that such an approach, being based on estimates, will succeed for several reasons. An estimate is made of how much water each home in the Sunridge Views subdivision will use, but actual water use depends on the behavior of subsequent owners. For example, each home may be equipped with a water saving washing machine that boasts a 50% water saving; but the future occupants may wash clothes twice as often as typically projected. Similarly, the amount of compensatory retrofitting of an existing home is based on an estimate of both how much water it currently uses (since homes in North County are not metered) and how much it is estimated to use after retrofit. Furthermore,

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appliances and fixtures, water use was measured again, showing **37%** savings. Equally important -customers tended to be more satisfied with their new high efficiency fixtures than they were with their old equipment. The study included selected brands of efficient clothes washers, toilets, showerheads, and faucet aerators. Seattle Public Utilities and the U.S. EPA funded this project. (Source: <http://www.aquacraft.com/Services/water%20conservation.htm>)

For outdoor water use the assumption of about a 40% reduction is based on: (1) "A Five-Year Investigation Into The Potential Water And Monetary Savings Of Residential Xeriscape In The Mojave Desert" reported, "a host of studies being conducted in the 90's which have generally pegged savings associated with xeriscaping between **25 and 42%** for implementation in the residential sector (Bent 1992, East Bay Municipal Utility District. CA; Testa and Newton 1993 *An Evaluation of a Landscape Rebate Program*. AWWA Conserv'93 Proceedings, December. 1763 – 1775. Mesa, AZ.; Nelson 1994. *Water Saved By Single Family Xeriscapes*. 1994 AWWA Annual Conference Proceedings, June. 335-347. North Marin Water District, Novato, CA1994; Gregg, T. et. al., 1994. *Xeriscaping: Promises and Pitfalls*. City of Austin. Austin, TX.1994). The variation in savings estimates is due to a large number of variables ranging from the different climates of each study locality to the methodologies employed. (Xeriscape is based on seven principles: Sound Landscape Planning and Design; Limitation of Turf to Appropriate Areas; Use of Water-efficient Plants; Efficient Irrigation; Soil Amendments; Use of Mulches; Appropriate Landscape Maintenance.) (2) The aforementioned Mojave Desert study itself achieved **33%** reduction. [http://www.snwa.com/assets/pdf/xeri\\_study\\_preliminary.pdf](http://www.snwa.com/assets/pdf/xeri_study_preliminary.pdf). (3)"A well-planned Xeriscape™ can reduce outdoor water consumption by **60 percent**," <http://www.newcastlecolorado.org/index.asp?SID=183>.



these estimates are based on initial physical plumbing and appliance installations. They could change over time; for example a future occupant of either the new or retrofitted home could add additional water using fixtures or appliances. As time passes and fixtures and appliances age, they may not continue to perform as originally envisioned, especially if not adequately maintained, and eventually may be replaced. The replacements could require a different amount of water than the original fixtures and appliances were estimated to use. Enforcement of the approach requires effort on the part of the occupants and Coastal Commission staff in terms of reading, reporting, and addressing water metering results. As time goes on, new occupants may be unaware of the original program, while staffing and record-keeping constraints may limit enforcement. At this time, there is no agency implementing such a program in North County. However, the Pajaro Valley Water Management Agency and the County Water Resources Agency directors have indicated potential interest in administering such a program and, hopefully, can assist the Commission with implementation of these permit conditions.

The no-net water-use approach also does not address the current severe overdraft situation described previously. While implementation of this approach hopefully will not result in any new groundwater demand, it still leaves the status quo overdraft situation untouched. Absent new supplies, to reach equilibrium would require each user on the average to reduce water use by 48%. And to replenish aquifers to their historical levels could take decades or require additional reductions of water use. At this time, the Commission finds that it would be inequitable to require the ten Sunridge Views lots to participate in retrofit programs that result in the equivalent of ten existing homes reducing water use by 48% in addition to the no-net water use. There needs to be a programmatic approach to addressing the overdraft situation throughout the affected groundwater basins. If such a programmatic approach is implemented, for example requiring all North County landowners to employ additional conservation measures or pay a fee toward a new water source, then the ten Sunridge Views lots would participate in such a program, and not be exempt just because they resulted in no net water use. Special Condition #1C requires this to occur.

#### Retrofit Approach as Experiment for Sunridge Views: No Precedent

Given the uncertainty of success with the no-net water use approach and given that it does not address the overdraft problem, the Commission does not endorse the approach afforded to Sunridge Views as a global solution to allowing more lots to be created in North Monterey County. Applying this approach more broadly would not satisfy LCP Key Policy 2.5.1, which requires having an available, long-term water supply. Since County approval of Sunridge Views in July 2004, Monterey County Water Resources Agency has now determined that there is not currently an available long-term water supply to serve new subdivisions in North Monterey County (personal communication from Curtis Weeks, Director). Commission staff has suggested that the Board of Supervisors endorse this finding in a Resolution or LCP amendment but they have not yet done so. Were the Board to do so, then the Commission would be open to working with the County on a strategy to address pending applications for subdivisions and second units (as well as single-family homes on vacant lots which also cumulatively contribute to exacerbating the overdraft situation). As the following Table 3 shows, there are various



pending applications for the coastal zone totaling some 431 lots of the remaining approximately 582<sup>16</sup> that are potentially allowed under LCP policy 2.5.3.A.2.

**Table 3: Pending Applications for New Lots or Second Units in North County Coastal Zone**

<b>Application</b>	<b>New Lots</b>	<b>Date Applied</b>	<b>Application Completed</b>	<b>Status at County</b>
Gorman/Tanglewood PC96036	<b>5</b>	5/9/96	9/1/96	Approved 6/4/02; on appeal to Coastal Commission; needs LCP amendment
Monterey Bay Investors PLN970077	<b>87</b>	2/07/97	05/11/97	Tabled with applicant’s consent after 2/17/00 scoping meeting
Monterey Bay Scouts PLN970360	<b>1</b>	7/31/98	12/28/98	Continued with applicant’s consent after 9/28/00 minor subdivision committee hearing,
Oetiker PLN9700163	<b>1</b>	3/1/98	12/28/98?	Pending EIR after Board denial, lawsuit, & subsequent settlement agreement
Oetiker PLN970108	<b>2</b>	2/19/98	06/01/99	Pending EIR after Board denial, lawsuit, & subsequent settlement agreement
Rancho Roberto PLN980685	<b>25</b>	11/10/99	1/10/00	Approved 3/1/05; on appeal to Coastal Commission
Rancho Los Robles PLN970159	<b>102</b>	8/22/00	9/21/00	DEIR under preparation
Pajaro Valley Golf Course PLN980571	<b>166</b>	10/27/98	7/05/02 <sup>17</sup>	DEIR under preparation
Duran PLN000229	<b>7</b>	3/19/01	8/15/02	Tabled by applicant
Spanish Congregation. ZA06672	<b>3</b>	11/15/01	10/10/03	Pending minor subdivision committee hearing; staff recommendation for denial
Mayr PLN000260	<b>1</b>	4/25/03	5/11/05	Set for 4/27/06 minor subdivision committee hearing
Aslan PLN040598	<b>1</b>	6/28/05	9/27/05	Pending
Miller/Whitehead PLN990333	<b>7</b>	8/15/00	Incomplete	N/a
Sylvan Acres II	<b>13</b>	7/27/00	Incomplete	N/a

<sup>16</sup> The County has provided a chart showing that 1,461 new lots or units subject to the cap of 2,043 have been approved. Some of those subdivisions have never happened and their permits are now expired and abandoned.

<sup>17</sup> The applicant has submitted a letter contesting that the date should be July 1999. The Board of Supervisors will have to decide whether that is correct.



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PLN000020				
Tate PLN000136	<b>5</b>	7/22/02	Incomplete	N/a
Jones PLN040216	<b>1</b>	2/24/05	Incomplete	N/a
Fregosi PLN020201	<b>1</b>	9/30/05	Incomplete	N/a
Robles & Neamoy PLN050576	<b>1</b>	10/10/05	Incomplete	N/a
Malone PLN050258	<b>2</b>	11/4/05	Incomplete	N/a
<b>Total</b>	<b>431</b>			

At this time, the Commission’s approval of Sunridge Views is not intended to be a precedent to approving any of other projects that are now on appeal to the Commission (i.e., Rancho Roberto and Gorman-Tanglewood) or that might be appealed to the Commission in the future. Each would have to be judged both on its own merits and on progress toward agreement with the County on a comprehensive approach to addressing the North County groundwater overdraft issue. But, meanwhile, since the applicant cannot be responsible for getting the County to agree on a comprehensive solution, in order to address the pending litigation, and since Sunridge Views already has an existing, functional on-site well, the Commission is conditionally approving Sunridge Views. Since the LCP has been certified, County tallies showing that 1,461 new lots or units subject to the cap of 2,043 have been approved. Given the current overdraft situation, the Commission finds that Policy 2.5.3.A.2 (allowing the cap to be reduced if necessary) should require at this time reducing the cap to the existing level of development plus the additional Sunridge Views increment of nine (ten new minus one already existing) lots. Sanctioning this small increase over the existing approved development (0.7% increase) allows experience to be gained at an appropriate scale to determine if the no-net water use through compensatory retrofitting approach can be successful in North Monterey County. Since senior citizen units are considered separate residential units that use water and can only be approved if they fall within the LUP’s buildout cap (Code Section 20.64.180.E), they cannot be sanctioned at this time beyond the continued use of the existing mobile home (see Special Conditions #1 and 6.) Given the previously described limitations of the retrofit approach, other necessary conditions require water saving devices, fixtures, and landscaping; water use metering; fees if water use estimates are exceeded to apply to additional compensatory water use reductions; and participation in any future programs to address the current overdraft situation. As so conditioned by Special Conditions # 1, 2, 4, and 6, this limited project approval is consistent with the intent of LCP policies 2.5.2.3, 2.5.3.A.1, and 2.5.3.A.2.

### 2. Potable Water Quality

The project also raises the issue of conformance with the LCP’s policies for providing a suitable water supply with regards to water quality because of concerns regarding nitrate contamination, since a previous well on site and other wells in the area have been abandoned, new wells have been drilled to deeper depths to avoid nitrate contaminated groundwater, bottled water has been necessary to use, and water treatment has been required.



## a. Applicable Policies

***North County LUP Policy 2.5.2.5.*** *New rural development shall be located and developed at densities that will not lead to health hazards on an individual or cumulative basis due to septic system failure or contamination of groundwater. On-site systems should be constructed according to standards that will facilitate long-term operation. Septic systems shall be sited to minimize adverse effects to public health, sensitive habitat areas, and natural resources.*[emphasis added]

***Code Section 19.03.015.L Subdivision Ordinance.*** *...Hydrological evidence shall be submitted to the Director of Division of Environmental Health to show evidence of water quality and quantity. The applicant shall also provide proof of an assured, long-term water supply in terms of sustained yield and adequate quality for all lots, which are proposed to be created through subdivisions...*[emphasis added]

## b. Analysis of Consistency with Applicable LCP Policies

*North County LUP Policy 2.5.2.5* requires that new development be located and developed at densities that will not lead to health hazards on an individual or cumulative basis due to septic system failure or groundwater contamination.

Section 19.03.015 of Title 19 (Subdivision Ordinance) of the *Monterey County Code* requires that the applicant “provide proof of an assured, long term water supply in terms of sustained yield **and adequate quality** for all lots which are proposed to be created through subdivision” (emphasis added).

According to the Hydrologic Assessment conducted for the project by Todd Engineers (Technical Memorandum dated December 19, 2002, and Technical Addendum dated July 21, 2003), the subject parcel had previously been served by a well located immediately behind the house. After testing high for nitrates (a water sample collected and analyzed in early January 2000 indicated a nitrate concentration of 82 parts per million (ppm.), which dropped down to 46 ppm. only after 4 hours of flushing, both of which exceed the California drinking water standard for nitrate, set at 45 ppm.) the well was abandoned as a residential water supply well, and a new well, located further up the hill, was drilled in February 2000. While the depth and screening levels of the earlier well are not known, the new well has been drilled to a depth of 500 feet below surface grade (bsg.), is sealed to 300 feet bsg., and screened below 340 feet bsg.

None of the water samples collected from the new well have shown high nitrate levels to date. According to data shown in the Technical Addendum, which includes additional data points provided by Monterey County Health Department, three water samples from the new well, taken in 2000 (presumably the February 2000 sample), 2001, and 2003, all had nitrate levels apparently below detection levels. Following the September 2004 hearing when the Commission found Substantial Issue on the appeal, the project proponents also submitted additional information regarding water quality testing from samples collected from the new well. This data shows that water samples collected from the new well were



tested and nitrates were found below safe water drinking levels of 45 ppm. on February 24, 2000 (<0.5 ppm.); March 14, 2003 (<1 ppm.); June 11, 2003 (not detected); and January 15, 2004 (<1 ppm.).

With regards to bacteriological levels, project proponents also submitted a memorandum from the Monterey County Health Department, dated March 1, 2000, showing that following construction of the new well, all chemical and bacteriological tests conducted met County and State standards. Subsequent bacteriological testing conducted on June 11, 2003, found *E. coli* and total coliforms present, however, retesting on June 19, 2003 found *E. coli* and total coliforms absent, and testing conducted in January 2004 does not note any bacteriological problems.

The former well was abandoned as a drinking water supply well due to nitrate contamination, a nitrate treatment system was required, and the well is still used for irrigation. Samples from the new well were used to estimate the amount of time it would take for nitrate levels on the site to exceed safe drinking water standards, which was estimated to be 55 years, or by the year 2055 (assuming a non-detection level of about 0.5 mg/l to be the existing nitrate concentration, and an average annual increase of 0.85 mg/l based on averaging of all other wells sampled in the area). However the Hydrologic Assessment notes that using an average annual increase is probably not wise since the average yearly increase varies greatly from well to well in this area (ranging from an increase of -.305 to +2.75 ppm per year) depending on the depth of the well and the depth of perforations.

The Hydrologic Assessment, Technical Addendum (dated July 21, 2003) notes that four properties just north of the subject site have exceeded State safe drinking water standards. Two of the properties north of the subject site both had shallow wells (the first drilled to a depth of 124, perforated between 80 and 120 feet, the second drilled to a depth of 240 feet, with perforations at 200-232 feet), and both required drilling of new, deeper wells due to high nitrate levels. A third property (with a well drilled to 380 feet, perforated between 303 and 347 feet) was placed on bottled water until further notice, and the fourth property (for which well depth and perforations were not given) was required to install a nitrate treatment system. A property to the south of the subject site (with well depth of 325 feet and perforations at 220 to 300 feet), based on the last sampling reported from 2001, had nitrate levels below the State drinking water standards. Based on these surrounding properties, wells drawing from as much as 347 feet have had nitrate levels that exceeded safe drinking water standards. As described above, the new well at the subject property has been drilled to a depth of 500 feet, with perforations below 340 feet.

The Hydrologic Assessment also notes that future water quality will most likely be impacted by nitrates from past and current fertilizer applications, and that, although nitrate fertilizer usage will effectively cease once the property is developed, nitrate in the soil will continue to leach to groundwater. The Technical Addendum concludes that the 2055 date was based on only three sample analyses and an average nitrate increase for the entire Maher Road area. However, local groundwater nitrate increases are more variable (with four properties north of the site already exceeding the 45 mg/l level, and one property south of the site not predicted to exceed the level until 2030). While the Technical Addendum notes that shallow groundwater is already contaminated with nitrates (i.e., wells drawing from depths <100 feet exceed the 45 mg/l nitrate level), some wells with deep screens (>300 feet) are already over





the safe drinking water levels or will be within the next few years, and not that nitrate concentration in deeper wells are increasing overall.

Additional information recently submitted by the project proponents (email from Alana Knaster to John Bridges, dated July 12, 2004 regarding Todd Engineering nitrate analysis) indicates that an additional regression analysis was conducted to look at “depth of perforation” versus average “linear rate of nitrate increase,” which found that the new well at the site, drilled to a depth of 300 feet, might not experience nitrates in excess of 45 mg/l until the year 2240. The actual Hydrologic Assessment Technical Addendum, dated July 21, 2003, states that both the simple difference calculation and regression analyses were calculated, with summary diagrams plotted, and that

*“...both plots show a positive relationship between time and depth of well perforations. In other words new wells are being drilled deeper to avoid nitrate. In addition, the simple difference equation indicates that by 2242 the MCL will be exceeded for all wells with perforations at 300 feet. For regression analysis this date is projected to be 3174. The very large variation in time is due to low  $R^2$  values.”*

The Hydrologic Assessment Technical Addendum conclusions note that a regression analysis could not be obtained for the subject site because the nitrate concentrations for the three analyses conducted since the new well was drilled were below the method of detection limits. The conclusions further state that

*“the extremely variable nitrate concentrations over time, and correspondingly low  $R^2$  values of the linear regression suggest that nitrate is leaching to the groundwater in varying amounts over time. Therefore, individual well monitoring for nitrate is more important than an average yearly nitrate increase for predicting when groundwater nitrate will exceed the 45 mg/l safe drinking water standards.”*

The Hydrologic Assessment Technical Addendum thus concluded that:

- (1) *...Groundwater from the new well should not exceed the nitrate MCL [maximum concentration level] until 2055. However this date is based on only three sample analyses and an average nitrate increase for the entire Maher Road Area...local groundwater nitrate increases are more variable, e.g., groundwater underlying four properties just north of 250 Maher Road have already exceeded the 45 mg/l nitrate MCL but the well to the south (at 247 Maher Road), nitrate concentrations are predicted not to exceed the MCO until 2030.*
- (2) *Shallow groundwater already is contaminated with nitrate; wells with shallow screens (<100 feet) are above the 45 mg/l MCL*
- (3) *Some wells with deep screen (>300 feet) are already above the MCL or will be above the MCL within the next few years*
- (4) *Nitrate concentrations in deeper wells are increasing overall*



(5) *Nitrate leaching rates vary with time and location (geology, land use, topography, etc)*

Hence, given the simple difference calculation used, there is a very real potential that the new water supply well will exceed nitrate standards within the economic lifespan of the project, due to residual nitrate fertilizer that exists in the soils. Thus ongoing monitoring should be conducted in order to more accurately predict when nitrate levels would exceed safe drinking water standards. However, this implies that adequate water quality might not be available at some time in the future, possibly even prior to 50 years. Other wells close to the site have already experienced nitrate contamination and have been forced either to use other water sources (e.g., bottled water), treatment systems, or have been abandoned. Even a well drawing from depths between 300 and 347 feet deep has experienced nitrate levels exceeding safe drinking water standards. Drilling of deeper wells may give an owner more time before nitrate levels exceed safe drinking water levels, but the regression analyses still show that nitrates are leaching down to deeper depths over time. Such conditions would eliminate the long-term water supply the project would depend upon, and could lead to health hazards and further groundwater contamination, inconsistent with *Coastal Implementation Plan (CIP) Section 19.03.015*.

c. Conclusion

The Hydrologic Assessment conducted for the project notes that nitrate levels in neighboring wells exceed State safe drinking water standards. A previous well on site was abandoned as a drinking water supply when nitrate levels were found to exceed State safe drinking water standards. The new well, drilled on site in 2002, currently meets State safe drinking water standards and provides water to the site. However, nitrate levels will continue to increase, and may exceed State safe drinking water standard levels within the next 55 years, which is considered to be within the economic lifespan of the project. Thus, the project well may fail within the economic lifespan of the project.

However, if the well fails the applicant (or successor owner/operator of the well) could take measures to secure another safe source of water, such as re-casing the well, deepening the well, drilling a new well, or treating the water. The County Health Department has independent authority to ensure that future residents of the subdivision are not drinking contaminated water. Since there are methods to address any future contaminated water, the Commission finds that the proposed project is consistent with the intent of the cited LCP sections related to a long-term water supply of adequate quality.

### 3. Environmentally Sensitive and Other Habitat Areas

The project includes locating two water storage tanks on Lot 8, which contains Central Maritime Chaparral (maritime chaparral), a plant community classified as ESHA by the LCP. Siting development within or in close proximity of maritime chaparral may adversely impact the long-term health of this environmentally sensitive habitat. Additionally, placement of the access road, and future residential development may have potential impacts to oak woodland, which is also protected by LCP policies. Erosion from the site as a result of the project also has the potential to impact aquatic habitats in Elkhorn Slough watershed.



## a. Applicable Policies

North County general ESHA policies relevant to this project include the following:

**North County LUP Policy 2.3.2.1.** *With the exception of resource dependent uses, all development, including vegetation removal, excavation, grading, filling, and the construction of roads and structures, shall be prohibited in the following environmentally sensitive habitat areas: riparian corridors, wetlands, dunes, sites of known rare and endangered species of plants and animals, rookeries, major roosting and haul-out sites, and other wildlife breeding or nursery areas identified as environmentally sensitive. Resource dependent uses, including nature education and research hunting, fishing and aquaculture, where allowed by the plan, shall be allowed within environmentally sensitive habitats only if such uses will not cause significant disruption of habitat values.*

**North County LUP Policy 2.3.2.2.** *Land uses adjacent to locations of environmentally sensitive habitats shall be compatible with the long-term maintenance of the resource. New land uses shall be considered compatible only where they incorporate all site planning and design features needed to prevent habitat impacts, upon habitat values and where they do not establish a precedent for continued land development, which, on a cumulative basis, could degrade the resource.*

**North County LUP Policy 2.3.2.6.** *The County shall ensure the protection of environmentally sensitive habitats through deed restrictions or dedications of permanent conservation easements. Where land divisions or development are proposed in areas containing environmentally sensitive habitats, such restrictions or easements shall be established through the development review process. Where development has already occurred in areas supporting sensitive habitat, property owners should be encouraged to voluntarily establish conservation easements or deed restrictions.*

**North County LUP Policy 2.3.2.8.** *Where development is permitted in or adjacent to environmentally sensitive habitat areas (consistent with all other resource protection policies), the County, through the development review process, shall restrict the removal of indigenous vegetation and land disturbance (grading, excavation, paving, etc.) to the minimum amount necessary for structural improvements.*

**North County LUP Policy 2.3.2.3.** *New development adjacent to locations of environmentally sensitive habitats shall be compatible with the long-term maintenance of the resource. New subdivisions shall be approved only where significant impacts to environmentally sensitive habitats from development of proposed parcels will not occur.*

**North County LUP Policy 2.3.2.4.** *To protect environmentally sensitive habitats and the high wildlife values associated with large areas of undisturbed habitat, the County shall maintain significant and, where possible, contiguous areas of undisturbed land for low intensity recreation, education, or resource conservation use. To this end, parcels of land totally within*



*sensitive habitat areas shall not be further subdivided. On parcels adjacent to sensitive habitats, or containing sensitive habitats as part of their acreage, development shall be clustered to prevent habitat impacts.*

**Code Section 20.144.040.B.2.** *Development on parcels containing or within 100 feet of environmentally sensitive habitats, as identified on the current North County Environmentally Sensitive Habitat resource map, other resource information, or planner's on-site investigation, shall not be permitted to adversely impact the habitat's long-term maintenance, as determined through the biological survey prepared for the project. Proposals shall be modified for siting, location, bulk, size, design, grading vegetation removal, and/or other methods where such modifications will reduce impacts to an insignificant level and assure the habitat's long-term maintenance. Also, the recommended mitigation measures of the biological survey will be considered by the decision-making body and incorporated into the conditions of approval as found necessary by the decision-making body to implement land use plan policies and this ordinance and made conditions of project approval. (Ref. Policy 2.3.2.2)*

**Code Section 20.144.040.B.5.** *Subdivision of parcels containing an environmentally sensitive habitat area, as identified on the current North County Environmentally Sensitive Habitat resource map, other resource information or planner's on-site investigation, shall only be permitted where such subdivision not result in adverse impacts to the habitat's long-term maintenance, as determined through the biological survey. **Such subdivisions shall incorporate techniques, such as clustering, appropriate setbacks from the habitat, building envelopes, and conservation easements,** in order to mitigate adverse impacts to the habitat. As well, large and, where feasible, contiguous areas and corridors of native vegetation shall be placed in conservation easement so as to provide sufficient vegetative habitat for the long-term maintenance of its associated wildlife. Further conditions of project approval shall include: a) **establishment of building envelopes on each approved parcel which allows for the least impact on and vegetation removal within and adjacent to the environmentally sensitive habitat;** b) **recordation of the building envelopes on the final map or record of survey;** c) placement of a note on the final map stating that no grading, structures, roads, animal grazing, vegetation removal, or other activities may take place outside of the building envelope; and, d) recordation of a notice with the County Recorder stating that a building envelope has been established on the parcel, and that no grading, structures, roads, animal grazing, vegetation removal, or other activities may take place outside of the envelope. (Ref. Policy 2.3.2.4 and 2.3.3.C.1 & C.2)*

**North County LUP Policy 2.3.3.A.2.** *Maritime chaparral is an uncommon, highly localized and variable plant community that has been reduced in North County by residential and agricultural development. Further conversion of maritime chaparral habitat to agricultural uses is highly discouraged. **Where new residential development is proposed in chaparral areas, it shall be sited and designed to protect the maximum amount of maritime chaparral.** All chaparral on land exceeding 25 percent slope should be left undisturbed to prevent potential erosion impacts as well as to protect the habitat itself.*



***North County LUP Policy 2.3.3.A.3.*** Domestic livestock should be managed and controlled in areas where they would degrade or destroy rare and endangered plant habitats, riparian corridors, or other environmentally sensitive habitats.

***North County LUP Policy 2.3.3.A.4.*** Oak woodland on land exceeding 25% slope should be left in its native state to protect this plant community and animal habitat from the impacts of development and erosion. Development within oak woodland on 25% slope or less shall be sited to minimize disruption of vegetation and habitat loss.

***Code Section 20.144.040.C.1.e.*** ...Where the proposed project includes a subdivision..., the proposed lots shall be configured so as to result in a building site requiring a minimized amount of oak tree removal. In all cases, proposals shall be modified for size, location, siting, design, bulk, grading and proposed lot boundaries where such modifications will result in reduced oak tree removal while also maintaining the resource protection standards of the North County Land Use Plan and this ordinance. (Ref. Policy 2.3.3.A.4)

b. Analysis of Consistency with Applicable LCP Policies

The LCP requires protection of ESHA by, among other means, prohibiting non-resource dependent development in ESHA (LUP 2.3.2.1), limiting the amount of vegetation and land that can be disturbed (LUP 2.3.2.8), and requiring deed restrictions or permanent conservation easements over ESHA (LUP 2.3.2.6). The LCP also requires that development adjacent to ESHA be compatible with the long-term maintenance of the resource (LUP 2.3.2.2) and protect the maximum amount of maritime chaparral (LUP 2.3.3.A.2). The LCP only allows new subdivisions where significant impacts to ESHA will not occur, and where the long-term maintenance of the habitat will not be adversely impacted (CIP Regulation 20.144.040.B.2, 20.144.040.B.5). Finally, the LCP also protects oak woodland by requiring that development be sited to minimize disruption of vegetation and habitat loss.

Site Habitat Characterization

According to the biological report conducted for the site by Randall Morgan (dated July 19, 1999), the subject parcel includes remnants of two distinct plant communities that had originally covered the site, including Coast Live Oak woodland, on the eastern slope, and maritime chaparral on the upper slope and ridgetop. The majority of the site was cleared, some time in the past, for agricultural use. It now contains a fairly large stand of live-oak woodland near the lower, eastern end of the property (in proposed lots 1, 2 & 5) and a smaller patch of maritime chaparral at the upper, southwestern end of the property (entirely within proposed lot 8) (See Exhibit 5).

Central maritime chaparral is an uncommon vegetation type that has been identified as a rare plant community by the California Department of Fish and Game. Section 2.3 of the *North County LUP* considers rare and endangered species habitat as environmentally sensitive habitat areas, and also lists maritime chaparral as environmentally sensitive habitat. At one time, central maritime chaparral covered extensive areas in north Monterey County. However, in the past forty years much of this habitat has been converted to agriculture and rural residential uses, so that less than 1,700 acres remain in North



County. Habitat loss and concomitant fragmentation leave the remaining patches susceptible to increased edge effects due to the invasion of non-native species.

Central maritime chaparral habitat is frequently dominated by brittleleaf manzanita (*Arctostaphylos tomentosa*) plus one or more of four endemic manzanita taxa including: Pajaro manzanita (*Arctostaphylos pajaroensis*), Hooker's manzanita (*Arctostaphylos hookeri ssp. hookeri*), sandmat manzanita (*Arctostaphylos pumila*) and Monterey manzanita (*Arctostaphylos montereyensis*).<sup>18</sup> At some locations, stand dominance is shared with chamise (*Adenostoma fasciculatum*). Other species that comprise this plant community include: black sage (*Salvia mellifera*), poison oak (*Toxicodendron diversilobum*), and coyote brush (*Baccharis pilularis*).

The biological report for the project site indicates that maritime chaparral in the southwestern part of the site contains several special status shrub species, including Pajaro manzanita (*Arctostaphylos parjaroensis*), Monterey ceanothus (*Ceanothus cuneatus var. rigidus*), and Eastwood's goldenbush (*Ericameria fasciculata*), all of which are growing on or near the relatively open margins of the main chaparral patch in the southern half of proposed Lot 8. As shown on the biological map included in the Draft EIR (see Exhibit 5), the remaining maritime chaparral on site is located at the edges of the mixed eucalyptus and coast live oak habitat that extends along the ridgetop on the western portion of the site. The biological report indicates that the eucalyptus stand began as a row of planted trees but has since spread by seed so that they now dominate most of the remaining chaparral area. French broom (*Genista monspessulana*) is another invasive plant species that has become established in the maritime chaparral area.

#### Habitat Maintenance Needs

Long-term maritime chaparral habitat maintenance requires intact, uncleared vegetated areas, periodic fire, freedom from disease (such as, possibly, Sudden Oak Death syndrome<sup>19</sup>), and absence of invasive species. Since chaparral can naturally transition to oak woodland when fire is absent, this may explain why the lower portion of the site is now oak woodland. The entire parcel may have once been in maritime chaparral.<sup>20</sup> Depending on how much soil disturbance has occurred from agricultural operations over the years, chaparral may regenerate naturally when cultivation ceases, if the seed stock remains in the soils. Chaparral should regenerate around the ridgetop where the soil is shallow and rocky.

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<sup>18</sup> Griffin, J. R., *Maritime chaparral and endemic shrubs of the Monterey Bay Region*, Madroño, 1978, pp 65-112.

<sup>19</sup> Coastal Commission, *Draft Findings of the Monterey County LCP Periodic Review*, December 2003, p. 163.

<sup>20</sup> Van Dyke, Eric and Karen Holl (for the US Fish and Wildlife Service), *Mapping the Distribution of Maritime Chaparral Species in the Monterey Bay Area*, April 26, 2003. Van Dyke and Holl found that the current extent of *Arctostaphylos pajaroensis*, including occurrences located in successional woodland canopy, in fragmented areas, and in isolated remnants, corresponds somewhat conservatively with the extent of Arnold soils (Aromas red sands), often used as a proxy to represent the extent of maritime chaparral community and so can be used, as we have done, to represent the historic extent of North County maritime chaparral (personal communication, Eric Van Dyke, August 4, 2003).



Minimizing disruption of oak woodland benefits from setting back development 50 feet in order to protect the trees' root structures, avoid overwatering, allow for growth of the trees, allow for new trees to sprout and protect wildlife use of the habitat.

#### Potential Project Impacts

As proposed, Sunridge Views cannot be determined to be fully consistent with all of the above cited LCP ESHA provisions. With regard to central maritime chaparral (which is an ESHA that must be fully protected, buffered, and maintained over the long-term), water tank installation, future residential development, and tree removal could conflict with maritime chaparral protection.

The Tentative Map approved by the County did not show the location of the two 20,000-gallon water tanks proposed for the project. Since proposed Lot 8 contains environmentally sensitive central maritime chaparral habitat, tank installation could adversely impact the habitat, either directly, if the tanks are located within the habitat, or indirectly if they are located in close proximity to the habitat or if construction or future maintenance interferes with the habitat. In response, the applicant submitted a proposed Tank Lot Easement Map (presented to Commission staff on November 9, 2004), showing four 15,000 gallon steel water tanks (for a total of 60,000 gallons of water, in response to Fire Department water supply requirements), each of which are 14.5 feet wide by 20 feet tall. As shown on the map, the tank lot easement is 50 feet by 100 feet, and includes a note that it is located approximately 25 feet north of the maritime chaparral habitat. This is still within the LCP's required 100 ESHA buffer.

Future residential development in Sunridge Views would also have the potential to directly impact the environmentally sensitive maritime chaparral habitat if it resulted in removal of vegetation for structures, driveways, septic systems, and the like. Indirect impacts could occur from future landscaping that has the potential to introduce invasive, non-native species in the area, which could out-compete the native plant communities. Erosion, introduction of plant diseases, and prevention of fire are among other possible occurrences that could indirectly impact the chaparral.

A beneficial aspect of the proposed project is the removal of invasive eucalyptus trees in the chaparral and oak woodland habitats. However, such removal has the potential to impact these habitats if not performed in a careful manner.

Also, with regard to oak woodlands (which are to be left intact on slopes over 25% and otherwise have disruption and habitat loss minimized), the proposed project includes installation of an access road through coast live oak woodland. The Final EIR (FEIR) states, "up to 21 coast live oak trees along the access road corridor are close enough to the proposed access road that they could require removal or be damaged during road construction." As the live oak woodland spans proposed Lots 2, 3, 4, and 5, future development (e.g., homes, septic systems, driveways) could also adversely impact the oak forest habitat.

With regard to landmark trees (which shall not be permitted to be removed unless there are no alternatives such as re-siting, relocation or reduction in development area), the proposed project also involved removing a large 30-inch Monterey cypress tree for construction of the access road. However, the County separately denied that aspect of the project. Thus, it is no longer part of the project that the Commission is approving.



Another potential indirect impact discussed in the FEIR is future construction activity possibly disturbing nesting raptors and loggerhead shrike in the vicinity.

#### Measures to Comply with LCP Policies

A ten-lot subdivision, as proposed, could be designed and conditioned to meet the cited habitat and tree protection policies. In general such measures would both prohibit development within the habitats and limit nearby development and activities to prevent indirect adverse impacts, such as by imposing habitat buffers.

To prevent development in the habitats, the County approval required scenic easements for “*portions of the property where sensitive habitat (chaparral and oaks habitat) exists*” (County condition 17; see also County Condition 14), and required a final map “*that excludes all improvements, including water tanks and distribution lines, from the central maritime chaparral habitat on Lot 8*” (County Mitigation Measure #1). Non-intrusion into the habitat can be further assured by requiring a biologist to update the habitat mapping and then delineating all existing and future residential building envelopes, roadways, (including driveways), and all necessary infrastructure (e.g., water tanks and utility lines) on the final subdivision map outside sensitive habitat and buffer areas, as required by Special Condition #3. There are portions of the parcel where the water tanks could be sited outside of environmentally sensitive habitat areas and their buffers. Also important is to incorporate any Fire Department vegetation clearance requirements outside of the delineated habitat areas that would conflict with preserving the habitat areas. For example, since the Fire Department may require clearing of flammable vegetation within a certain distance of a home, and since some of that vegetation could be a crucial component of the oak forest understory, actual home footprints would have to be located that required distance from the edge of the forest understory. Any non-native vegetation removal in the habitat area would need to be undertaken in a manner that avoids disturbance of chaparral plants, as specified in County Condition #MM4d.

To buffer the habitat the County approval required a conservation easement that would include a 25-foot buffer around the maritime chaparral. County Mitigation Measure #1 also required temporary exclusionary fencing along the conservation easement boundary, and prohibited removal or disturbance of native chaparral vegetation, grading, roads, animal grazing, and other activities that could adversely affect the habitat. It allowed activities necessary to reduce the potential risk of wildfires, to remove non-native plants, or “*to otherwise ensure the long-term maintenance of the habitat.*” To ensure full consistency with the LCP, Special Condition #3 requires a 100-foot buffer around the maritime chaparral. Special Condition #3 also requires building (and other disturbance envelopes, e.g., for septic systems) to be delineated outside of these buffer areas.

To protect the oak trees, the County approval required final road grading plans to determine whether any oaks would be at risk, then redesign of the road if necessary, and tree replacement at three to one as a last resort (County Mitigation Measures #4 and 6), along with taking protective measures during road construction (County Condition #45 and Mitigation Measure #5). All relevant County conditions are incorporated by reference into Special Condition # 6.





Given that the project will result in a 25 acre site about one-third covered with intact vegetated areas, ten homes and associated driveways, and the remainder former cultivated land, a substantial amount of landscaping will be necessary. As required by Special Condition #4, landscaping installation and maintenance must ensure that non-native species do not intrude on the sensitive habitats by:

- requiring landscaping with plant species that are compatible with the surrounding maritime chaparral habitat and oak woodland; preventing the spread of exotic invasive plant species; and avoiding contamination of the local maritime chaparral plant community's gene pool,
- designing the landscape plans to protect and enhance existing chaparral communities, and to provide a transitional buffer between native habitat areas and authorized development,
- accompanying the landscaping plans with specific performance and success criteria, as well as monitoring and maintenance provisions, that will be used to maintain landscaped areas in good growing conditions throughout the life of the development,
- implementing a landscape monitoring, maintenance, and reporting program that: (a) establishes specific performance and success criteria such as percent coverage requirements and elimination of exotic invasive species; (b) includes maintenance measures necessary to control exotic plant species and replace unsuccessful plantings; (c) and provides for bi-annual inspections of all landscaped areas.

Some suite of native grassland species, including, for example, purple needlegrass and California oatgrass, should be satisfy these criteria, and are also fire resistant and aesthetically pleasing. Native grasses likewise help control erosion and support biodiversity. The grasses should come from locally collected seed. Planting in late fall to take advantage of winter rain would mean no supplemental irrigation would be required. The grasses would take about five years to become established. After that time, annual or semi-annual mowing should ensure long-term health of the grasses.

All of these requirements are contained in Special Condition #4.

Another mitigation measure imposed by the County (MM#2) requires surveying for nesting raptors or loggerhead shrikes prior to grading or construction activities, and if found, delaying construction until nesting is concluded. This measure is incorporated into Special Condition # 6.

#### c. Conclusion

The project as proposed does not include enough detail to ensure that development (construction of four 15,000 gallon water tanks, residential dwellings and landscaping) will not be sited within and/or adjacent to environmentally sensitive maritime chaparral habitat, and thus has the potential to adversely impact the long-term maintenance of this plant community, inconsistent with LCP policies. Similarly, without additional plan detail and protective measures, the project may also be inconsistent with LCP policies designed to protect oak woodland habitat. These potential inconsistencies can be remedied by drawing more precise final plans, buffering the chaparral, avoiding oak tree removal or damage, and not disturbing raptors during construction. As conditioned to incorporate the noted County conditions and as further conditioned, as described above, to achieve the noted habitat protection objectives, the proposed project is consistent with LCP ESHA policies.



#### 4. Visual Resources

The project includes development that may be located in the scenic viewshed. Adequate screening would be required for the project to be consistent with viewshed protection policies.

##### a. Applicable Policies

**North County LUP Policy 2.2.1. Key Policy-** *In order to protect the visual resources of North County, development should be prohibited to the fullest extent possible in beach, dune, estuary, and wetland areas. Only low intensity development that can be sited, screened, or designed to minimize visual impacts, shall be allowed on scenic hills, slopes, and ridgelines.*

**North County LUP Policy 2.2.2.3.** *Property containing land on scenic slopes, hills, and ridgelines when proposed for subdivision, should be subdivided so that the lots are situated to allow the highest potential for screening development and access roads from view. Lots and access roads should also be sited to minimize tree removal and visually intrusive grading during development. During the subdivision process, scenic or conservation easements should be required to the fullest extent possible for wooded ridge, hill, and areas of 30% slope or more.*

**North County LUP Policy 2.2.2.4.** *The least visually obtrusive portion of a parcel should be considered the most desirable site for the location of new structures. Structures should be located where existing topography and vegetation provide natural screening.*

**North County LUP Policy 2.2.2.5.** *Structures should be located to minimize tree removal, and grading for the building site and access road. Disturbed slopes should be restored to their previous visual quality. Landscape screening and restoration should consist of plant and tree species complementing the native growth of the area.*

**North County LUP Policy 2.2.2.6.** *Agricultural uses on highly erodible slopes should be discouraged due to the visual degradation that results from runoff problems and resultant erosion scars.*

**North County LUP Policy 2.2.3.1.** *The scenic areas of North County, including ... ridges shall be zoned for scenic conservation treatment.*

**North County LUP Policy 2.2.3.4.** *New roads providing residential, recreational, or agricultural access should be considered only where it has been demonstrated that common use of neighboring roads is not feasible. Access roads should not be allowed to intrude upon public views of open frontal slopes or ridgelines visible from scenic routes or viewpoints. Roadways shall be designed to conform to the natural topography in order to minimize grading, erosion, and the scarring of hillsides.*

**North County LUP Policy 2.2.3.5.** *New overhead utility and high voltage transmission lines that cannot be placed underground should be routed to minimize environmental and scenic impacts.*



**County Code Section 20.144.030.B.6.** *Development constituting “Ridgeline development” shall not be allowed unless a Use Permit is first obtained. Ridgeline development is development on the crest of a hill which has the potential to create a silhouette or other substantially adverse impact when viewed from a common public viewing area. A use permit for such development may only be granted if the decision-making body is able to make findings that: 1) there are no alternatives to development so as to avoid ridgeline development; 2) the proposed development will not have significant adverse visual impacts due to required landscaping, required modifications to the proposal, or other conditions; or, 3) development on the ridge will minimize grading, tree removal, or otherwise better meet resource protection policies of the North County Land Use Plan or development standards of this ordinance. The proposed development shall be modified for height, and/or bulk, design, size, location, and siting, shall incorporate landscaping or other techniques so as to avoid or minimize the visual impacts of ridgeline development as viewed from a public viewing area.*

**County Code Section 20.144.030.B.7.** *New subdivisions and lot line adjustments shall not configure a lot so as to create a building site that will result in ridgeline development. Where initial application review indicates that ridgeline development may result on a proposed lot, the applicant shall demonstrate that there is a building site and building height(s) available which will not create ridgeline development. As such, possible building site dimensions and roof heights shall be delineated by poles with flags, subject to an on-site investigation by the planner prior to the application being considered complete. A condition of project approval shall be the establishment of a building site and a building height envelope that provides specifications for nonridgeline development on the lot(s) in question. Both envelopes shall require approval of the Director of Planning and an on-site investigation by the project planner prior to such approval.*

b. Analysis of Consistency with Applicable LCP Policies

The North County LUP policies require that low intensity development be allowed on scenic hills, slopes and ridgelines only if it can be sited, screened or designed to minimize visual impacts (LUP key policy 2.2.1), that land containing scenic hills, slopes and ridgelines be subdivided in a way that provides the highest potential for screening development and access roads (LUP 2.2.2.3), that structures be located where existing topography and vegetation provide natural screening (LUP 2.2.2.4), that lots and access roads be sited to minimize tree removal and visually intrusive grading (LUP 2.2.2.5), and that scenic or conservation easements be required over wooded ridges and areas of 30% slope (LUP 2.2.2.3). LUP 2.2.3.5 also provides that new overhead utility and transmission lines be placed underground or routed to minimize environmental and scenic impacts.

As described above, the project proposes subdivision of a 25-acre parcel into 10 lots, with an access road that extends west, from Maher Road to the middle of the site, along the southern property boundary, and then northward through the middle of the parcel. The road would be located within a 30-foot wide road and public utilities easement. The proposed project includes 2,000 cy of grading for roadway access and utility development. As previously mentioned, the location of the water tanks has not been established, and no building envelopes are shown on the Tentative Subdivision Map.



According to the Initial Study,

*Existing topography and vegetation provide substantial visual screening of most of the project site from Maher Road. Only small portions of the project are readily visible from public viewpoints of the project site. The existing single-family house and driveway are the most prominent features as viewed from Maher Road. A dense stand of oak trees beyond the house minimizes views to upper portions of the project site. The project site extends a short way to the west of the ridge, and the trees along the western edge of the project site are visible from San Miguel Canyon Road, and screen the ridge top from view. Strawberry fields on the adjacent property to the west provide a clear view up towards the ridgeline from San Miguel Canyon Road.*

#### Impacts

Since the proposed project does not identify any building envelopes, it cannot be determined to be fully consistent with all of the above cited LCP visual resource provisions. The Initial Study further notes that:

*Project plans include the removal of some of the eucalyptus trees on the project site. If the eucalyptus trees along the western boundary of the project site were removed, there is the potential that the house on Lot 8 could result in ridgeline development as viewed from San Miguel Canyon Road.*

The Initial Study does not anticipate any other potential inconsistencies:

*The other proposed project lots would be screened from public view by dense oak woodland that would not be disturbed. The entry driveway would be somewhat visible from Maher Road, but not out of character with other driveways in the area. The project site is approximately two miles from Royal Oaks County Park, and would be only marginally visible, if visible at all, from the park. The proposed project would not be visible or potentially visible from any other public viewing areas.*

Nevertheless, since the proposed project does not identify any building envelopes, this conclusion may need additional evaluation.

#### Mitigations

With the identification of building envelopes, the ten lot subdivision, as proposed, could be designed and conditioned to meet the cited visual resource policies. Any building envelope on proposed Lot 8 would most likely have to be placed on the eastern slope, where it would not be on the ridgetop and additionally may have to be screened so as not to create a ridgeline silhouette when viewed from San Miguel Canyon Road or any other common public viewing area (as specified in Special Condition #3). Water tanks could similarly be located so as not to create a ridgeline silhouette. This objective can be determined by a visual assessment-- including staking, flagging, photographing-- of building envelopes and above ground infrastructure (as also specified in Special Condition #3).



Examples of other visual protection measures would include landscaping plans designed to screen development from the public view, deed restrictions to maintain existing vegetation that is necessary to screen development, a scenic easement over steep slopes (as specified in County Condition #16), lighting controls (e.g., installing unobtrusive lighting that is harmonious with the local area, limiting exterior lighting to low voltage fixtures, or requiring that lighting be screened so as not to be visible from off-site locations; as specified in County Condition #35), requiring colors and materials that blend into the surroundings, and undergrounding of utilities (as specified in County Condition #37). These conditions are incorporated into Special Condition # 6. Since this approval is just for a subdivision, then all subsequent home development would also require approval of a coastal development permit. Therefore, the County would have the opportunity to evaluate visual resource impacts of proposed development at that time (by means of required staking and flagging for any proposed structures).

#### c. Conclusion

The project as proposed does not include enough detail to ensure that development (construction of four 15,000 gallon water tanks, residential dwellings and landscaping) will be sited to protect the scenic viewshed. However, as conditioned to incorporate the noted County conditions and as further modified by the noted Special Conditions, to achieve the visual protection objectives outlined above, the proposed project is consistent with LCP visual policies.

## 5. Other Issues: Geology, Erosion, Hazards, and Archaeology

The Monterey County LCP as it pertains to North Monterey County has provisions to ensure geologic stability, prevent erosion, protect against fire hazards, and protect archaeological resources. For example, areas over 25% slope are not to have roads or otherwise be developed in new subdivisions such as Sunridge Views, which should help prevent erosion. (e.g., *No Co LUP* policy 2.5.3.C.3.a; *Code* Sections 20.144.030.B.8.c and .1.b). Exceptions are allowed for roads on over 25% slopes where there are no alternatives or where the resource protection policies of the LCP are better achieved (*Code* Section 20.144.070.E.2.a).

Portions of the subject site have slopes over 25% and are highly susceptible to erosion. The site is also in a very high fire hazard zone. An archaeological report did not reveal any evidence of artifacts, but the site is in an area known to have been inhabited by native peoples, according to the EIR.

In order to further the noted objectives, Monterey County conditioned its combined development permit as follows:

- # 13: all development on the parcels must have a drainage and erosion control plan prepared by a registered civil engineer to address on-site and off-site impacts;
- # 16: a scenic easement must be conveyed to the County over those portions of the property where the slope exceeds 30 percent;



- #19: comply with the recommendations of the Erosion Control Plan as reviewed by the Soils Conservation Service and the Director of Planning and Building Inspection. These recommendations include the requirement that all cut and/or fill slopes exposed during the course of construction must be covered, seeded, or otherwise treated to control erosion during the course of construction; and the requirement to prevent and control of erosion, siltation and dust during and immediately following construction and until erosion control planting becomes established;
- #26: a geologic consultant must certify that all development has been constructed in accordance with the geologic report;
- #34: implement a schedule of measures for the prevention and control of erosion, siltation and dust during and immediately following construction and until erosion control planting becomes established and location of soil and equipment in an approved staging area;
- #54: a registered civil engineer must prepare a drainage plan to address on-site and off-site impacts; include detention facilities to mitigate the impact of impervious surface storm water runoff; and construct necessary improvements in accordance with approved plans;
- #55: require work to stop if archaeological resources are found and perform appropriate mitigation.

Monterey County also required Mitigation Measures #7- 9 that detail the elements of the required erosion control plan, landscaping and re-vegetation plan, and storm water system design. These conditions are incorporated into this approval. Additionally, since Monterey County permit LPN990391 incorporated a subdivision approval in addition to a coastal permit approval, its conditions remain in full force and effect, unless specifically superseded by this approval. Several other such conditions further the above objectives, such as those that detail future responsibility for landscape and drainage maintenance, require fire protection measures, and require a grading permit. As so conditioned to incorporate and maintain County conditions (Special Condition #6) and as further conditioned by Special Condition #3 to require final building envelopes and roads be mapped off of the steep slopes, the permit is consistent with the relevant LCP sections on these topics.

## 6. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would avoid or substantially reduce any significant adverse effect which the activity may have on the environment.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has analyzed the environmental impacts posed by the project and identified changes to the project that are necessary to avoid significant impacts or reduce such impacts to an insignificant level. Based on these findings, which are incorporated by reference as if set forth herein in full, the Commission finds



## Appeal A-3-MCO-04-054

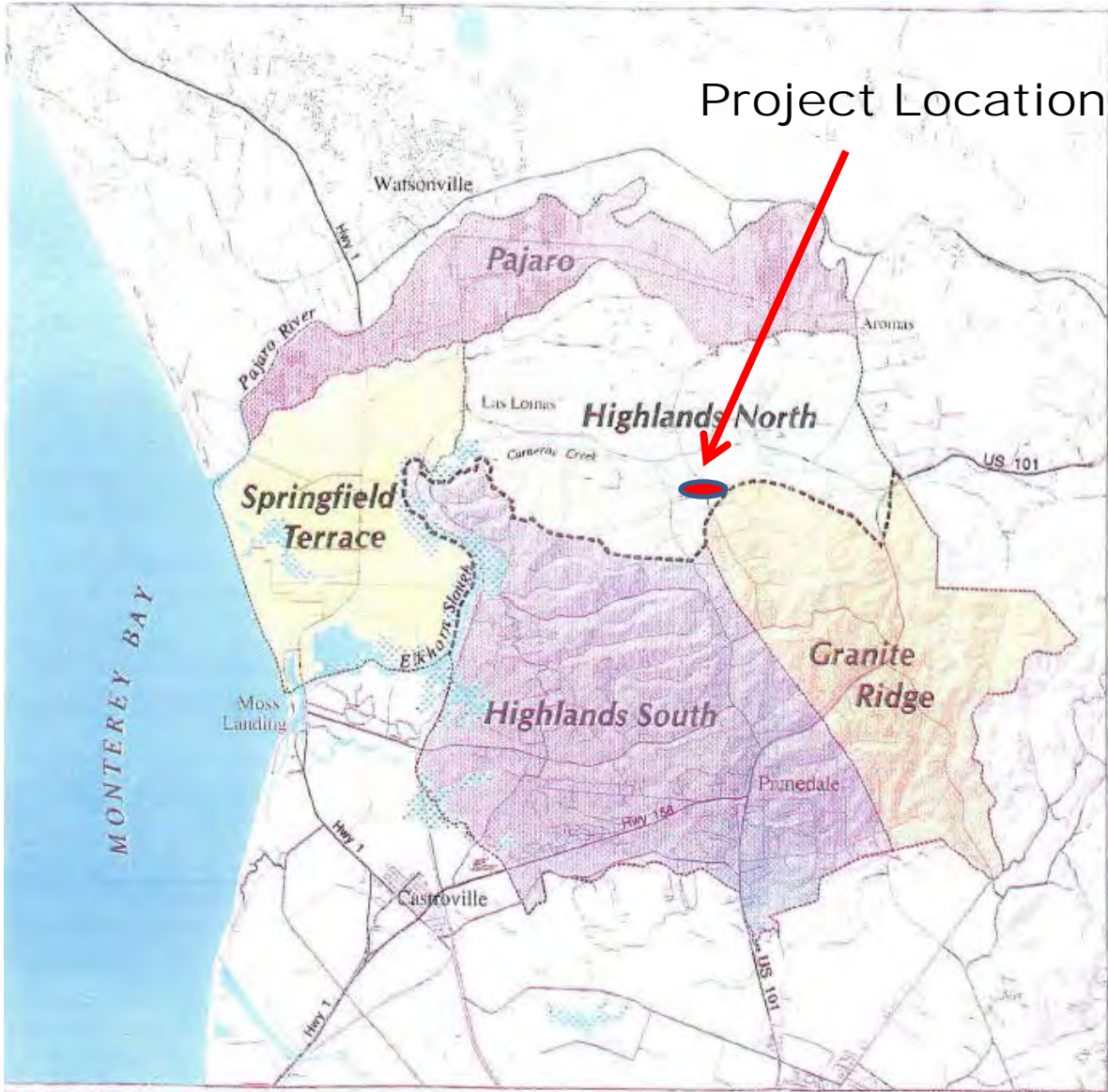
Sunridge Views Subdivision –Staff Report: Appeal: De Novo Permit for April 2006, Adopted 4.12.06  
Page 52

that only as modified and conditioned by this permit will the proposed project avoid or reduce significant adverse effects on the environment within the meaning of CEQA.





**California Coastal Commission**

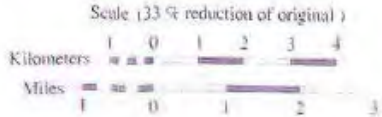
Exhibit 3-Approved Staff Report and Conditions of A-3-MCO-04-054  
A-3-MCO-04-054-E3 (Sunridge Views Subdivision) Page 52 of 52



North Monterey County  
 Comprehensive  
 Water Resources  
 Management Plan  
 (CWRMP)

**HYDROGEOLOGIC SUB-BASINS**

-  SUB-AREA BOUNDARY  
 ( named on map )
-  SUB-BASIN BOUNDARY



GIS Mapping by: **EDAW, Inc.** — San Francisco

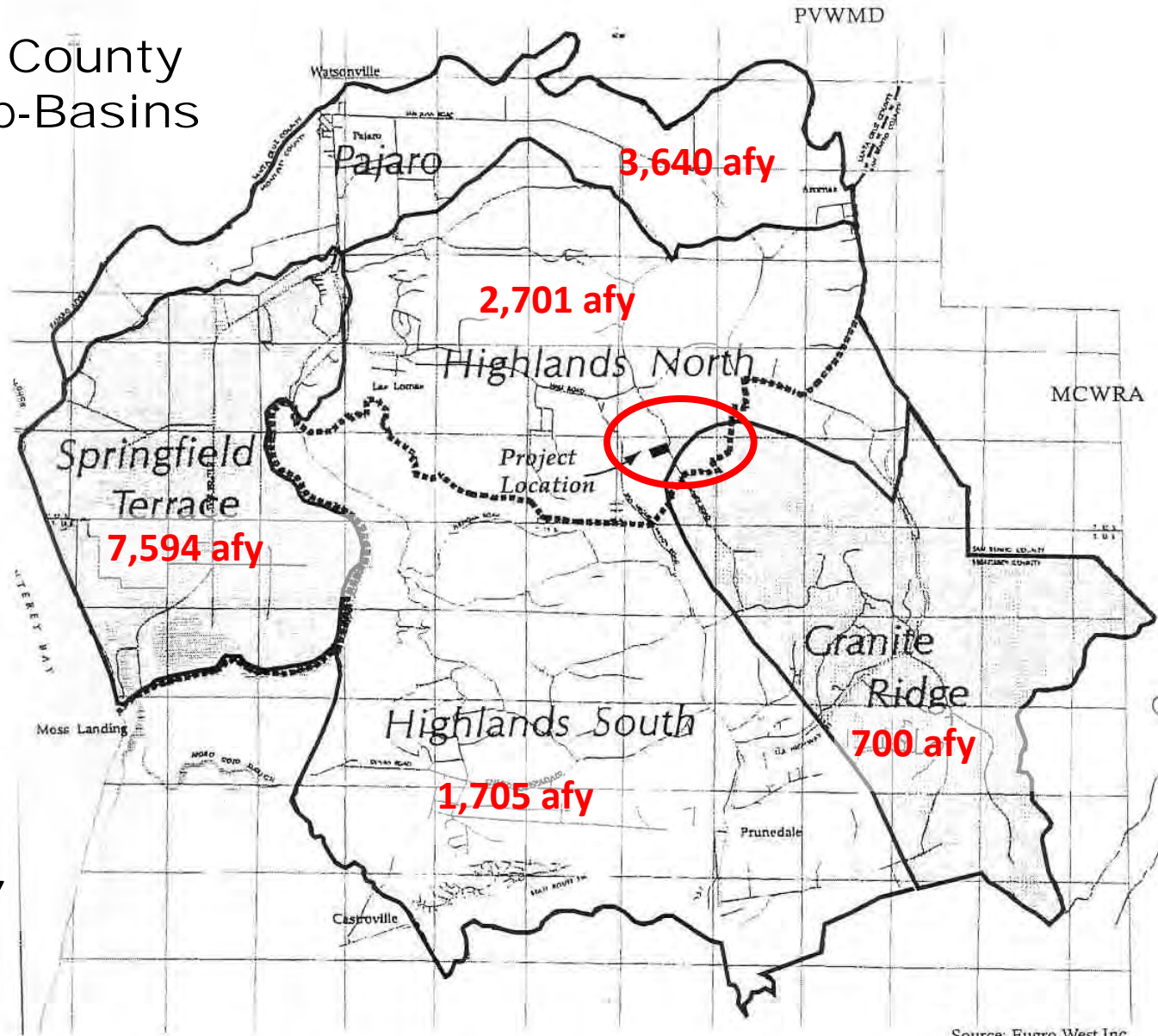
Exhibit 4-Map of North Monterey County Groundwater Basins  
 A-3-MCO-04-054-E3 (Sunridge Views Subdivision)  
 Page 1 of 2



# North Monterey County Groundwater Sub-Basins

**Numbers Reflect  
Overdraft in Acre  
Feet Per Year (AFY)  
Based on 2002  
CWRMP**

**Total Groundwater  
Overdraft for North  
County of 16,340 AFY**



Source: Fugro West Inc.



1 inch = 1.5 miles



PVWMD / MCWRA Boundary



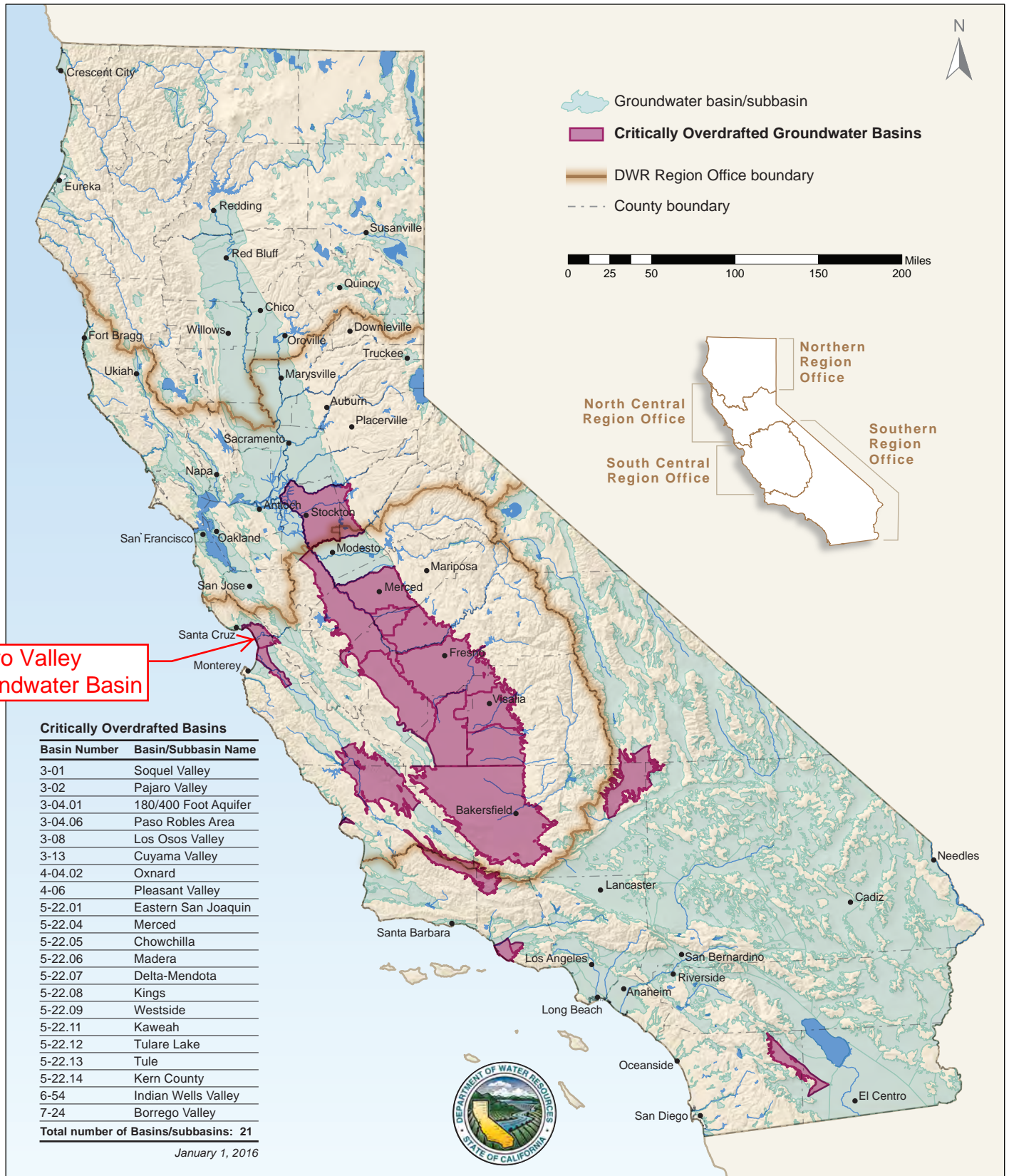
Sub-Basin Boundary

Exhibit B4 Map of North Monterey County Groundwater Basins

A-3-MCO-04-054-E3 (Sunridge Views Subdivision)

Page 2 of 2

# Critically Overdrafted Groundwater Basins – January 2016



# Critically Overdrafted Groundwater Basins – January 2016 — North Central and South Central Regions



# **PAJARO / SUNNY MESA**

**COMMUNITY SERVICES DISTRICT**  
136 San Juan Road, Royal Oaks, CA 95076  
(831) 722-1389 • (831) 663-2181 • Fax (831) 722-2137

**RECEIVED**

MAY 27 2008

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

May 23, 2008

To: Katie Morange, California Coastal Commission

From: Joseph Rosa, General Manager, Pajaro/Sunny Mesa Community Services District (PSMCSD)

Re: Sunridge Views Estates (Bradshaw Subdivision)

PSMCSD has been asked by Mr. Steven Bradshaw (Sunridge Subdivision) to provide to you additional information regarding the proposal to offset and retire a portion of our existing appropriative groundwater rights in the groundwater aquifers of the North Monterey County area, and to provide potable water to his property, so as to satisfy the conditional requirements of the California Coastal Commission on the Sunridge View Estates subdivision. These allocations of water, based on our water rights, result in water savings through offsets which are greater than the retrofits of existing water users in the area of the common aquifer.

It is our understanding that the water conservation condition placed upon the subdivision approval by the California Coastal Commission requires that Mr. Bradshaw secure and/or provide for retrofits of existing plumbing fixtures in the North Monterey County area. The purpose and intent of this condition, we understand, is both to result in the offset any new use of water by the subdivision and to not increase consumptive water demands upon the groundwater aquifers that underlie the subject subdivision.

It is our understanding that Mr. Bradshaw holds overlying correlative groundwater rights that run with the ownership of the subject property, and that he is entitled, without limitation, to exercise and use these rights as an overlying land owner. We also understand that these water rights have been exercised by Mr. Bradshaw and his predecessors – in – interest on the subject property for extended periods of time.

As PSMCSD discussed with Coastal Commission staff several months ago, PSMCSD has adopted and maintains an ongoing "Allocation Resolution" for distributing our excess appropriative groundwater supplies and rights. Due to the fact that PSMCSD is the largest holder of historic appropriative groundwater rights in North Monterey County, we maintain this ongoing "Allocation Resolution" and allotment program to insure that we protect and control our existing appropriative water supplies, and to properly control, and track the beneficial uses of our existing water supplies and rights.

Herewith attached is:

1. A copy of our current "Allocation Resolution", including the allotment approved unanimously by our Board of Directors for Sunridge Views Estates; and
2. A copy of the Draft Sunridge Views Water Use Monitoring, Management, and Retrofit Plan.

Mr. Bradshaw and his attorney approached our agency many months ago, seeking our assistance in securing retrofit water savings from our customers that could be used to offset permanent consumptive uses of groundwater that would result from the development of homes on the lots in his subdivision. He was not aware of the fact that our agency had already adopted an allocation plan that established allotment of our pre-existing rights and supplies by land use category for specific land uses.

One of the reasons that our Board developed the Allocation Resolution 9-01-06 was to limit increased extractions from our aquifers, and to provide an opportunity for potential water users to take advantage of our pre-existing appropriative rights that we have conserved.

Currently, there are no significant retrofit candidates or opportunities remaining in North Monterey County. The attached report from the Pajaro Valley Unified School District to Robert Bugalski shows that PVUSD had retrofitted all of their facilities in North Monterey County several years ago. These options no longer exist. PSMCSD, in our capacity as the largest retail water provider in North Monterey County, is aware of no other significant retrofit opportunities that can satisfy the requirements of the Sunridge (Bradshaw) subdivision in North Monterey County (Pajaro Valley aquifers).

The Monterey County Board of Supervisors instituted a mandatory plumbing retrofit ordinance upon the sale of residential properties in 1986. After over twenty years of mandatory retrofit activities and conservation, very, very little water savings remain to be realized from residential retrofit.

The PSMCSD has existing, perfected appropriative water rights that we are entitled to grant to our customers. This grant of water does not increase the historic consumptive use of groundwater from the local aquifer. This water is from our existing appropriative rights that are recognized as our "historic use" by state regulatory agencies that monitor the collective use of water from the aquifer. The utilization of a portion of our water allocation for the subdivision will eliminate the active use of Mr. Bradshaw's existing overlying groundwater rights, and will actually guarantee that there will be no "backsliding" or increase of consumptive use at previously retrofitted properties. This "new" allocation to Sunridge of our pre-existing water supplies from the basin will save water, because it will eliminate current use of water on the Bradshaw property for agricultural purposes. PSMCSD, as the public water agency in control of its fixed appropriative rights, will continually and permanently monitor the monthly consumptive use of the subdivision's houses, and ensure that the homeowners do not and will not exceed our allocation of water to them.

This program is part of PSMCSD's on-going efforts to establish and maintain long-term sustainability of the water resources within our jurisdiction and our basin. The 'offset' of water use that will result if the CCC accepts this proposal will result in a savings of 60% more water than will be permanently be used by the project.

Should you have any further questions, please contact our counsel, Marc Del Piero, at 831-626-4666 or 831-722-1389, and he will be happy to provide additional information to you. We look forward to your kind response to this proposal.

Respectfully,

A handwritten signature in black ink, appearing to read "Joe Rosa". The signature is written in a cursive style with a large initial "J".

Joe Rosa

**From:** [Kahn, Kevin@Coastal](mailto:Kahn, Kevin@Coastal)  
**To:** [Kahn, Kevin@Coastal](mailto:Kahn, Kevin@Coastal)  
**Subject:** FW: Sunridge  
**Date:** Thursday, October 15, 2015 11:35:34 AM

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**From:** Don Rosa [<mailto:donrosa@pajarosunnymesa.com>]  
**Sent:** Tuesday, September 29, 2015 11:51 AM  
**To:** Kahn, Kevin@Coastal  
**Subject:** Sunridge

Kevin,

I am not aware of any changes that would alter this statement/letter written by the former General Manager, Joe Rosa.

Thank you,

Don Rosa

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**From:** Kahn, Kevin@Coastal [<mailto:Kevin.Kahn@coastal.ca.gov>]  
**Sent:** Tuesday, September 29, 2015 11:27 AM  
**To:** Don Rosa <[donrosa@pajarosunnymesa.com](mailto:donrosa@pajarosunnymesa.com)>

Thanks, Don.

One other question for you about the Sunridge Views subdivision, a 10 unit subdivision approved by the Coastal Commission in 2006 located at 250 Maher Road in Prunedale. In a 2008 letter (attached), you said that there weren't any significant retrofit candidates or opportunities remaining in North Monterey County for the project to offset its anticipated water use. Is this still an accurate statement?

#### **14 CCR § 13169. Extension of Permits.**

(a) Prior to the time that commencement of development under a permit granted by either the regional commission or the commission must occur under the terms of the permit or Section 13156, the applicant may apply to the executive director of the commission for an extension of time not to exceed an additional one year period. The executive director shall not accept the application unless it is accompanied by all of the following:

- (1) evidence of an approved, unexpired permit,
- (2) evidence of the applicant's legal interest in the property involved in the permit,
- (3) the fee specified in section 13055(b)(1) of these regulations, and
- (4) stamped envelopes addressed to each person specified in section 13054 of these regulations and each person who testified, orally or in writing at prior permit hearing(s).

(b) For those applications accepted, the executive director shall determine whether there are changed circumstances that may affect the consistency of the development with the policies of Chapter 3 of the Coastal Act or with a certified local coastal program, if applicable. If the executive director determines that there are no changed circumstances that may affect consistency of the development, he or she shall mail notice of such determination including a summary of the procedures set forth in this section to all parties the executive director has reason to know may be interested in the application including all persons identified in section 13054 of these regulations and all persons who participated in previous permit hearings. The applicant shall post such notice at the project site within three (3) days of the executive director's mailing of the notice to interested parties. The executive director shall also report the determination to the commission to provide the commission with an opportunity to object to the executive director's determination. The time for commencement of development shall be extended for one year from the expiration date of the permit if both of the following occur:

- (1) no written objection to the executive director's determination is received within 10 working days after mailing notice, and
- (2) three commissioners do not object to the executive director's determination.

(c) If the executive director received a written objection to his or her determination but concludes that the objection does not identify changed circumstances that may affect the consistency of the development with the Coastal Act or a certified local coastal program, if applicable, the executive director shall report this conclusion to the commission at the same time that the executive director reports the determination to the commission in accordance with subsection (b) above. The executive director shall provide a copy of the letter(s) of objection to the commission with the report. If three commissioners object to the extension on grounds that there may be changed circumstances that affect consistency, the executive director shall schedule the extension for hearing(s) in accordance with subsection (d) below. If three commissioners do not object to the extension, the time for commencement of development shall be extended for one year from the expiration date of the permit.



(d) If the executive director receives an objection to his or her determination and concludes that the objection identifies changed circumstances that may affect the consistency of the development or if the executive director determines that due to changed circumstances the proposed development may not be consistent, the application shall be scheduled for a hearing on whether there are changed circumstances that affect consistency. The executive director shall provide notice of such hearing to any person(s) the executive director has reason to know would be interested in the matter. The executive director shall prepare a report for the hearing that describes any pertinent changes in conditions or circumstances relating to each requested permit extension.

(1) If three (3) commissioners determine that there are changed circumstances that affect consistency of the development with Chapter 3 policies of the Coastal Act or with a certified local coastal program if applicable, the extension shall be denied and upon payment of the filing fee specified in section 13055(a) of these regulations for an application for a coastal development permit the development shall be set for a full hearing of the commission pursuant to Subchapter 1 of these regulations. However, except as otherwise provided in the preceding sentence, the applicant shall not be required to file a new permit application but instead, shall submit any information that the executive director determines is necessary to evaluate the effect of the changed circumstances.

(2) If no such determination is made by three commissioners, the time for commencement of development shall be extended for one year from the expiration date of the permit.

(e) Any extensions applied for prior to the expiration of the permit shall automatically extend the time for commencement of development until such time as the commission has acted upon the extension request; provided, however, that the applicant shall not undertake development during the period of automatic extension provided in this section.

(f) The procedures specified in this section shall apply to extensions of all permits approved by the commission, including those approved on appeal, on the consent calendar and as administrative permits.

Note: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30600, 30604 and 30620.6, Public Resources Code