

SECTION 7 OTHER CEQA CONSIDERATIONS

7.1 Significant Unavoidable Impacts

According to CEQA Guidelines Section 15126, an EIR must disclose the significant unavoidable impacts that will result from a project. Moreover, these guidelines state that an EIR should explain the implications of such impacts and the reasons why the project is being proposed, notwithstanding such impacts. Implementation of the September Ranch project will result in alteration of the physical environment. Section 4, Environmental Setting, Project Impacts, Mitigation Measures, and Level of Significance After Mitigation, and Section 5, Cumulative Impacts, of this Draft REIR provide a description of the potential environmental impacts of the September Ranch project, as well as measures to reduce the environmental impacts to the maximum extent feasible. After implementation of the September Ranch project and the project related mitigation measures, it has been determined that all project related impacts can be feasibly mitigated to a level that is considered to be less than significant. In addition, the project does not result in any significant unavoidable direct, indirect, or cumulative impacts.

7.2 Significant Irreversible Changes

The environmental effects of the September Ranch project are discussed in Sections 4 and 5 of this Draft REIR and are summarized in Table 2-1, Executive Summary. Implementation of the September Ranch project will require the long-term commitment of natural resources, as described below.

Approval and implementation of the actions related to the development of the September Ranch project will result in an irretrievable commitment of non-renewable resources such as energy supplies. The energy resource demands will be used for construction, heating and cooling of buildings, transportation of people and goods, as well as lighting and other energy associated needs.

Non-renewable resources will be committed primarily in the form of fossil fuels, and will include fuel, oil, natural gas, and gasoline used by vehicles and equipment associated with construction of the September Ranch project. Accidental spillage of fuels, paint, or other construction-related materials may occur at the project site during construction. However, these types of accidents are anticipated to be limited because experienced construction workers would be overseeing construction activities. These types of potential spills would not result in irreversible conversion of the property and certainly would not convert more land necessary for development of the project itself. The consumption of other non-renewable resources or slowly renewable resources will result from development of the September Ranch project. Those resources include, but are not limited to, lumber and other forest products, sand and gravel, photochemical construction materials, steel, copper, lead, and water. Moreover, development of the proposed project would result in an irreversible environmental change at the project site. Since alternative energy sources such as solar and wind energy are not currently in widespread use, it is unlikely that any real savings in non-renewable energy supplies (e.g., oil and gas) will be realized in the immediate future.

7.3 Growth Inducing Impacts

CEQA requires that an EIR discuss the ways in which the proposed project could foster economic or population growth or the construction of additional housing, either directly or indirectly, in the surrounding environment. The EIR must address the potential for a project to remove an obstacle to growth as well as discuss characteristics of the project which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment. (CEQA Guidelines Section 15126.2[d]).

A project is growth-inducing if it is reasonably foreseeable that it will encourage construction of additional development. This encouragement may occur directly or indirectly by, for example, providing infrastructure that removes an obstacle to growth (such as a new road into an undeveloped area or a wastewater treatment plant with excess capacity).

The September Ranch project will result in development of 109 residential units. This development is consistent with the County of Monterey General Plan and the Carmel Valley Master Plan (CVMP), which set forth the goals and policies for the project area. Development within the CVMP area is based upon a quota system that allocates the number of units that may be developed annually. Implementation of the September Ranch project will introduce infrastructures such as roadways, public services, and utilities that theoretically have the potential to indirectly induce growth; however, several considerations negate the potential for growth inducement here. First, indirect growth spurred by project-related infrastructure improvements and extensions would be limited by the CVMP quota system. Second, General Plan and CVMP policies relating to traffic, drainage, water supply, and sewage disposal may further limit the extent and timing of development in the Carmel Valley. Finally, no additional open space lands suitable for development are located adjacent to the project site, further reducing the potential for growth-inducement.

7.3.1 Water Supply

In *Save Our Peninsula Committee v. Monterey County Board of Supervisors*, the appellate court directed the County to discuss in the REIR whether water supply aspects of the September Ranch project will have growth inducing impacts. In particular, although the court did not make a determination that water supply aspects will have growth inducing impacts, the court cast the issue as follows: “Can a riparian right underlying one portion of the property be the basis for a private mutual water company providing water to an entire subdivision? Does the exercise of such a right create a precedent for other subdivisions and thus result in a growth inducing impact?”

As discussed in Section 4.3, Water Supply and Availability, Kennedy/Jenks Consultants (KJC) prepared a hydrology analysis which concluded that the SRA is best characterized as percolating groundwater, and therefore that the September Ranch parcel has overlying rights by virtue of its location. As also discussed in Section 4.3, the County has also concluded that even if the contrary were true and the SRA was actually a subterranean stream, the September Ranch parcel would have riparian rights.

A riparian or overlying right attaches to the entirety of a single parcel holding the right. Assuming the applicable right has not been legally severed from a portion of the parcel, water may be used anywhere on the parcel. Riparian rights and overlying rights are treated analogously under State

water law. Here, as discussed in Section 4.3, the County has retained counsel which has determined that the water right associated with September Ranch has not been severed. The applicant proposes to form a mutual water company which would hold the water right for the entire parcel and deliver water to the subdivided properties under an essentially contractual relationship. This is one of two common models for mutual water companies in the State (under the other model, the landowners pool their individual water rights). (See, for example, discussion at *City of Glendale v. Crescenta Mutual Water Co.* (1955) 135 Cal.App.2d 784, 801-02.)

The determination of whether a riparian or overlying right exists at a particular parcel is fact-specific and unique to each parcel. Accordingly, the fact that the September Ranch parcel has either overlying (County's conclusion) or riparian rights cannot influence the overlying or riparian status of any other parcel in the County. Moreover, even if the County ultimately approves the proposed project, it would not be "approving" the exercise of an overlying or riparian right. Both overlying and riparian rights are real property rights held pursuant to the laws of the State of California. The County has no authority to approve or disapprove the existence of an overlying or riparian right and, absent unreasonable method of use, significant impacts under CEQA, or a threat to public health, safety or welfare—none of which are present here—the County likewise has no authority to approve or disapprove the exercise of an overlying or riparian right, or the formation of a mutual water company to deliver water under the right to subdivided parcels. The water right either exists or does not exist as a matter of real property law, and where the right exists its exercise is protected by, among other things, the state and federal Constitutions. A binding determination of whether an overlying or riparian right exists may only be made by a court of competent jurisdiction, and there are constitutional limits on the ability to constrain the exercise of property rights such as overlying or riparian water rights without just compensation.

As noted, the use of a mutual water company to deliver water under a single, pre-existing right is accepted under State law. Even if this were not true, it would not change the growth-inducing analysis. As described in Section 4.3 and the Hydrogeologic Report, the County has determined that the September Ranch Aquifer is best characterized as percolating groundwater. Consequently, even if it were ultimately determined by a court of competent jurisdiction that any of the subdivided parcels did not retain an overlying right, those parcels would be entitled to use water under an appropriative groundwater right. An appropriative groundwater right is acquired by virtue of use alone and may only be regulated by State courts. An appropriative groundwater right entitles any person to use water from any groundwater basin, regardless of the location of their property with respect to the basin, provided the basin has adequate supply to satisfy senior rights within that same basin. Section 4.3 and the Hydrogeologic Report demonstrate that the September Ranch Aquifer can supply both existing demand and the demand of the proposed project, with excess water available; consequently, water from the SRA may be used on any subdivided parcel under the proposed project regardless of whether the County approves that use or not.

In short, property owners who possess overlying or riparian rights currently have the ability to exercise these rights on the entirety of their parcels for reasonable and beneficial purposes regardless of any action taken by the County with respect to the proposed project. The use of water for residential purposes is generally considered reasonable and beneficial, and as discussed in Section 4.3, Water Supply, the applicant's proposed use would be reasonable and beneficial. The County reserves the right to evaluate the reasonableness of proposed residential uses of water proposed by other projects on a case-by-case basis.

To the extent that the County's approval of the proposed project, if it occurs, might be perceived as an "approval" or support for the existence of an overlying or riparian right on the property or, alternatively, for a landowner's ability to use overlying/riparian rights as a water supply for a proposed subdivision, this also does not have a precedential growth-inducing effect. The exercise of an overlying or riparian right cannot be considered growth-inducing simply because others might observe and, based on that observation, decide to exercise their own overlying or riparian right. This would be akin to concluding that the applicant's use of its land for subdivision development is growth-inducing because that other people in Monterey County might observe this action and likewise decide to subdivide their land. In both examples, there is no logical causal connection between one property owner's decision to exercise a right of real property and a decision by another real property owner to exercise his or her own right. Both examples are speculative in light of the record, and distinct from the circumstances envisioned by CEQA in which a project's characteristics might encourage or facilitate other activities that could significantly affect the environment by, for example, over-sizing expansion of a wastewater treatment plant, or constructing roads for one development that would improve access to undeveloped (and developable) adjacent property, adjacent property, or constructing a substantial amenity next to undeveloped and developable property.

As described in Section 4.3, the applicant's proposed use of water is not wasteful, and there is no evidence suggesting that use of a riparian or overlying right to serve residential purposes is an unreasonable use of water. There is also no evidence that any other property owners would seek to rely on an approval of September Ranch as precedent. Even if there were such potential, the new applicants would have no legal right to rely on the County's approval of this project as precedent for their own projects, and their requests would be considered on a fact-specific, case-by-case basis. As noted above, the County reserves the right to evaluate water use on a fact-specific, case-by-case basis.

For all of the foregoing reasons the County concludes that its approval of the proposed project would not directly or indirectly induce growth other than that contemplated by the proposed project itself, remove an obstacle to additional growth, set a precedent that would induce growth, or otherwise encourage and facilitate activities that could significantly affect the environment, either individually or cumulatively.