Introduced: 8/14/2014 **Current Status:** Agenda Ready

Version: 1 **Matter Type:** BoS Resolution

Public hearing, continued from May 13, 2014, to consider:

a. Request received from Harper Canyon Realty LLC for continuance of the hearing to a later date in order to perform well testing and analysis; and

b. A resolution with findings as directed by the Board of Supervisors to:
   1. Deny the appeal by Harper Canyon Realty LLC from the Planning Commission's denial of their application for a Combined Development Permit; and
   2. Deny the project consisting of a Combined Development Permit consisting of a Vesting Tentative Map for the subdivision of 344 acres into 17 lots and associated Use Permits.

(Appeal of Combined Development Permit - PLN000696/Harper Canyon Realty LLC, San Benancio Road and Meyer Road, Salinas, Toro Area Plan area)

PROJECT INFORMATION:

Planning File Number: PLN000696
Owner: Harper Canyon Realty LLC
Project Location: San Benancio Road and Meyer Road, Salinas
APN: 416-611-001-000, 416-621-001 and 416-611-002-000
Agent: Mike Cling
Plan Area: Toro Area Plan
Flagged and Staked: No
CEQA Action: EIR prepared

RECOMMENDATION:

It is recommended that the Board of Supervisors:

a. Consider the request received from Harper Canyon Realty LLC for a continuance of the hearing to a later date in order to perform well testing and analysis; and

b. Consider the resolution with findings as directed by the Board of Supervisors to:
   1. Deny the appeal by Harper Canyon Realty LLC from the Planning Commission's denial of their application for a Combined Development Permit; and
   2. Deny the project consisting of a Combined Development Permit consisting of a Vesting Tentative Map for the subdivision of 344 acres into 17 lots and associated Use Permits (PLN000696/Harper Canyon Realty LLC).

SUMMARY:

On May 13, 2014, the Board of Supervisors conducted a public hearing on the Harper Canyon project. The project consists of: 1) A Vesting Tentative Map for the subdivision of 344 acres into 17 residential lots ranging in size from 5.13 acres to 23.42 acres on 164 acres with one 180-acre remainder parcel; 2) Use Permit for the removal of approximately 79 Coast live oak trees over six inches in diameter for road and driveway construction; 3) Use Permit for

development on slopes in excess of 30 percent; 4) Use Permit for the creation of a public water system with a stand-alone treatment facility (Option B); 5) grading for net cut and fill of approximately 2,000 cubic yards; and Design Approval. The Board took public testimony, continued the public hearing, requested the Applicant, Harper Canyon Realty LLC, provide updated water quality and quantity testing data on the Applicant's well (New well), and directed staff to return with a draft resolution with findings and evidence to deny the appeal and deny the project. As of the writing of this staff report, the Applicant has not conducted the pump test. Per the Board's direction, staff has prepared a resolution for denial (**Attachment A**).

On August 11, 2014, attorney Michael Cling, on behalf of the Applicant, submitted a letter requesting a continuance to a later date in order to schedule and perform the well testing and to prepare a written analysis of the results (**Attachment B**). According to the letter, the testing and analysis is estimated to take 90 to 120 days. This continuance request is technically the second continuance request, as the applicant requested to postpone the first hearing to May 13, 2014. Per the Board's continuance policy, the Board is to consider the second request for a continuance if it was received by 5:00 p.m. on the Tuesday preceding the hearing (**Attachment C**).

FINANCING:
Funding for staff time associated with this project is included in the FY 14-15 Adopted Budget for RMA-Planning.

Prepared by: Laura Lawrence, RMA Services Manager, ext. 5148
Approved by: Mike Novo, Director, RMA-Planning, ext. 5192
Benny Young, Director Resource Management Agency

This report was reviewed by Mike Novo.

cc: Front Counter Copy; Laura Lawrence, RMA Services Manager; EHB, RMA-Public Works; MCWRA; Monterey County Regional Fire Protection District; County Counsel; Sheriff's Office; Harper Canyon Realty LLC, Owner; Mike Cling, Agent; The Open Monterey Project (Molly Erickson); LandWatch (Amy White); Mike Weaver; Richard Rosenthal; Rachel Saunders (Big Sur Land Trust); David Raye; Lauren and Bill Keenan; Beverly and Steve Bean; Julie Garvin; Mike Thompson; David Erickson; Steven Schmiess; Lowell Webster; Marianne Gennis; Raymond Lino Belli; Richard Dampier; Meyer Community Group; Laura Carley; The Highway 68 Coalition; Native American Heritage Commission; CRWQCB; MBUAPCD; TAMC; MPWMD; Caltrans District 5; Anthony Lombardo and Associates (Tony Lombardo); Project File PLN000696

The following attachments on file with the Clerk of the Board:

Attachment A	Draft Board Resolution
Attachment B	August 11, 2014 letter from Michael Cling requesting a continuance
Attachment C	Board policy relating to the Continuance of Public Hearings

(Note: The EIR was distributed with the May 13, 2014 staff report.)

DRAFT RESOLUTION

Before the Board of Supervisors in and for the County of Monterey, State of California

Resolution No.
Resolution by the Monterey County Board of Supervisors:)
1. Denying the appeal by Harper Canyon Realty LLC) from the Planning Commission's denial of their) application for a Combined Development Permit;) and)
2. Denying the application for a Combined) Development Permit (Harper Canyon Realty LLC/) PLN000696) consisting of: 1) A Vesting Tentative) Map for the subdivision of 344 acres into 17) residential lots ranging in size from 5.13 acres to) 23.42 acres on 164 acres with one 180-acre) remainder parcel; 2) Use Permit for the removal of) approximately 79 Coast live oak trees over six) inches in diameter for road and driveway) construction; 3) Use Permit for development on) slopes in excess of 30 percent; 4) Use Permit for) the creation of a public water system with a stand-) alone treatment facility (Option B); 5) grading for) net cut and fill of approximately 2,000 cubic yards;) and Design Approval.)

[Appeal of Combined Development Permit PLN000696/) Harper Canyon Realty LLC, Toro Area Plan])

An appeal by Harper Canyon Realty LLC from the Planning Commission's denial of the Harper Canyon (Encina Hills) application (PLN000696) came on for public hearing before the Monterey County Board of Supervisors on May 13, 2014 and August 26, 2014. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Monterey County Board of Supervisors finds and decides as follows:

FINDINGS

1. **FINDING:** **PROJECT DESCRIPTION** – The proposed project is a Combined Development Permit consisting of a 1) A Vesting Tentative Map for the subdivision of 344 acres into 17 residential lots ranging in size from 5.13 acres to 23.42 acres on 164 acres with one 180-acre remainder parcel; 2) Use Permit for the removal of approximately 79 coast live oak trees over six inches in diameter for road and driveway construction; 3) Use Permit for development on slopes in excess of 30 percent; 4) Use Permit for the creation of a public water system with a stand-alone treatment facility; 5) grading for net cut and fill of approximately 2,000 cubic yards; and Design Approval.

EVIDENCE: The application, project plans, and related support materials submitted

by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN000696.

2. **FINDING:** **CONSISTENCY** – The Project, as conditioned, is inconsistent with some of the applicable plans and policies.

EVIDENCE: a) The project has been reviewed for consistency with the text, policies, and regulations in the:

- 1982 Monterey County General Plan;
- Toro Area Plan;
- Monterey County Zoning Ordinance (Title 21);
- Monterey County Subdivision Ordinance (Title 19); and
- Monterey County Code Section 18.50.

Conflicts were found to exist as set forth below. The project application was deemed complete on November 22, 2002. Pursuant to the Subdivision Map Act (Government Code §66474.2) and 2010 General Plan Policy LU-9.3, subdivision applications deemed complete on or before October 16, 2007 are governed by the plans, policies, ordinances, and standards in effect at the time the application was deemed complete. Therefore, the 1982 General Plan, which was in effect when the application was deemed complete, applies to this application. The 2010 Monterey County General Plan (adopted 10/26/2010) does not apply to this subdivision application. References in these findings to the General Plan are to the 1982 General Plan.

b) The property is located east of San Benancio Road in the Toro area (Assessor's Parcel Numbers 416-611-001-000, 416-621-001 and 416-611-002-000), Toro Area Plan. The parcel is zoned "RDR/5.1-D," or Rural Density Residential, 5.1 acres per unit with Design Control Overlay and a small portion designated as LDR/1, or Low Density Residential, 1 acre per unit, which allows the subdivision of two parcels totaling 344 acres into 17 lots for 17 single-family homes, and one remainder parcel of 180 acres with a combined development permit.

c) The project is inconsistent with the following General Plan goal, objective and policies:

1. **<u>Goal 53 (Water Service)</u> – To promote adequate water service for all county needs.**
2. **<u>Objective 53.1</u> – Achieve a sustained level of adequate water services.**
3. **<u>Policy 53.1.3</u> – The County shall not allow water consuming development in areas which do not have proven adequate water supplies.**

   The project will be served by two existing wells, a well within the already-approved Oaks subdivision (the "Oaks well") and a well drilled on applicant's land (the "New well"). The new homes will use water and therefore are considered to be "water consuming development" under Policy 53.1.3. According to the project hydrogeology reports, the proposed project would have a water demand of approximately 12.75 acre feet per year (AFY) based on a demand value of 0.75 AFY per residence. Based on the MCWRA's water balance worksheet, which takes into account water demand

and loss of recharge, the proposed project will result in net negative change of -13.1 AFY.

The water quantity data for the project is outdated. A 72-hour pump test on the Oaks well was conducted in July 2000. A 72-hour pump test on the New well was conducted in June 2003. At the May 13, 2014 Board of Supervisors' hearing, the Board continued the hearing to August 26, 2014 and requested updated pump test and water quality data from the New well. Subsequent to the May hearing, Staff informed the applicant that in order to provide relevant updated data, pump test data would be needed from both wells since the Oaks well will be the primary source and the New well will be the back-up source for the proposed subdivision. The Applicant did not conduct the pump tests between the May 13, 2014 hearing and the continued hearing on the project on August 26, 2014. On August 11, 2014, the applicant requested additional time to perform the well testing. (August 11, 2014 letter from Harper Canyon, LLC, attached to as Attachment B to the August 26, 2014 staff report to the Board of Supervisors). . Without updated pump test data, the current groundwater production capacity from the project wells is unknown, and there is insufficient evidence that the wells will provide adequate water supply to the subdivision.

According to the 2007 *El Toro Groundwater Study*, prepared by Geosyntec Consultants ("Geosyntec Study"), the wells that would serve the proposed project are located within the Corral de Tierra subarea of the El Toro Planning Area and the El Toro Primary Aquifer System. According to the Geosyntec Study, water level data compiled and reviewed for the study indicate that the El Toro Primary Aquifer System is in overdraft. With continued overdraft conditions, groundwater production potential in portions of the El Toro Primary Aquifer System would likely decrease. At the May 13, 2014 Board of Supervisors' hearing, the Board received written comments and public testimony that water levels in the area have declined and that wells in the area have gone dry.

In order to support increased development with water pumped from the Geosyntec Study area, the project would need to rely on "mining" the groundwater in storage, according to the Geosyntec Study. Approving the creation of new lots in the Geosyntec Study area where groundwater would be "mined" to support the development is inconsistent with General Plan Goal 53, Objective 53.1, and Policy 53.1.3. See also **County Response b)** in **Finding 9 b)**.

d) The project is inconsistent with the following General Plan policy:
<u>Policy 26.1.4.3</u> – A standard tentative subdivision map and/or vesting tentative and/or Preliminary Project Review Subdivision map application for either a standard or minor subdivision shall not be approved until:
1) an applicant provides evidence of an assured long term water supply in terms of yield and quality for all lots which

are to be created through subdivision. A recommendation on the water supply shall be made to the decision making body by the County's Health Officer and the General Manager of the Water Resources Agency, or their respective designees.

2) the applicant provides proof that the water supply to serve the lots meets both the water quality and quantity standards as set forth in Title 22 of the California Code of Regulations, and Chapters 15.04 and 15.08 of the Monterey County Code subject to the review and recommendation by the County's Health Officer to the decision making body.

The Board finds that the project does not have an assured long term water supply. The water quantity data for the project is outdated. A 72-hour pump test on the Oaks well was conducted in July 2000. A 72-hour pump test on the New well was conducted in June 2003. At the May 13, 2014 Board of Supervisors' hearing, the Board continued the hearing to August 26, 2014 and requested updated pump test and water quality data from the New well. The Applicant did not conduct the pump tests between the May 13 hearing and the August 26 hearing on the project. On August 11, 2014, the applicant requested additional time to perform the well testing. (August 11, 2014 letter from Harper Canyon, LLC, attached as Attachment B to August 26, 2014 staff report to the Board of Supervisors). Without updated pump test data, the current groundwater production capacity from the project wells is unknown, and there is insufficient evidence of an assured long term water supply for the subdivision. See also discussion in **Evidence (c)** above.

The Geosyntec Study states that the water quality in the El Toro Planning area is considered poor. The Oaks well and New well were tested and determined to exceed Title 22 water quality standards for one and possibly two primary contaminants: arsenic and hexavalent chromium (chromium-6). The maximum contaminant level (MCL) for arsenic is 10 parts per billion (ppb). On July 1, 2014, the California Department of Public Health adopted a specific MCL of 10 ppb for chromium-6. The arsenic level in the New well is 28 ppb and the total chromium is 2 ppb. According to the most recent information County received from Cal-Am (which now owns the Oaks well), arsenic level in the Oaks well is 71 ppb and the total chromium is 76 ppb. Chromium-6 is a component of total chromium. The Oaks well has only been tested for total chromium; however, in groundwater, total chromium is usually mostly or completely in the form of hexavalent chromium. The project proposed to treat the water with its own treatment plant to improve the water quality in order to avoid relying on the treatment plant at Cal-Am's Ambler Park System that is located within the B-8 zoning district. As such, the small treatment plant could be costly for the future residents. Therefore, the project is inconsistent with General Plan Policy 26.1.4.3. Provision of potable water to the already-approved nine-lot Oaks subdivision has been addressed separately through adoption of a Memorandum of Understanding ("MOU") with Cal-Am which enables treatment of the water by Cal-

Am's Ambler Park System without intensifying water use in the County's B-8 zoning district. On May 6, 2014, the Board of Supervisors approved the Memorandum of Understanding between the County and Cal-Am pursuant to which Cal-Am agreed to balance the volume of treated water sent from the Ambler Park Water System to the Oaks subdivision and the raw water sent from the Oaks well to the Ambler Park Water System, so as to result in no net transfer of water. The Board approved the MOU due to the unique facts and circumstances and public health considerations requiring treatment of water to an already approved subdivision and stipulated in the MOU that it was not to be used to serve any other property.

e) Harper Canyon (Encina Hills) Subdivision Draft EIR prepared by PMC dated October 2008, Harper Canyon (Encina Hills) Subdivision Recirculated Draft EIR prepared by PMC dated December 2009, Harper Canyon (Encina Hills) Subdivision Final EIR prepared by PMC dated December 2013.

f) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN000696; the records of the May 13, 2014 and August 26, 2014 hearings maintained by the Clerk of the Board.

g) The staff reports, minutes, audio, and video recordings of the Subdivision Committee, Planning Commission and Board of Supervisors' hearings.

3. **FINDING:** **SUBDIVISION** – The subdivision must be denied because four of the findings requiring denial of the subdivision set forth in section 66474 of the California Government Code (Subdivision Map Act) and Title 19 (Subdivision Ordinance) of the Monterey County Code (MCC) can be made.

EVIDENCE:

a) Government Code section 66474 and Monterey County Code section 19.05.055.B require that a subdivision be denied if any one of the findings is made.

b) **The proposed map is not consistent with the general plan, area plan, coastal land use plan, or specific plan.** The vesting tentative map is inconsistent with Goal 53, Objective 53.1, Policies 53.1.3 and 26.1.4.3 of the Monterey County General Plan. See **Finding 2 c)** and **d)**.

c) **The design or improvements of the proposed subdivision are not consistent with the applicable general plan, area plan, coastal land use plan, Master Plan or specific plan.** The design or improvements of the proposed subdivision are not consistent with Goal 53, Objective 53.1, Policies 53.1.3 and 26.1.4.3 of the Monterey County General Plan. See **Finding 2 c)** and **d)**.

d) **That the design of the subdivision or type of improvements is likely to cause serious public health problems.** The design of the subdivision or type or improvements is likely to cause serious public health problems because the El Toro Primary Aquifer System is in overdraft and would remain in this condition with the implementation of the project. The applicant has not submitted evidence of an assured long term water supply in terms of yield for all lots which are to be created through subdivision.

The wells exceed Title 22 drinking water standards for arsenic and, possibly, chromium-6. See **Finding 2 c)** and **d)**.

e) **That the subdivision fails to meet any of the requirements or conditions imposed by the Subdivision Map Act or Title 19 (Subdivision Ordinance).** The subdivision does not meet the findings for approval as set forth in Government Code section 66474 and Monterey County Code section 19.05.055.B. See **Finding 2 c)** and **d)** and **Finding 3 b), c),** and **d).**

f) The application, tentative map and supporting materials submitted by the project applicant to the Monterey County Planning Department for the proposed development are found in Project File PLN000696.

4. **FINDING:** **HOUSING ACCOUNTABILITY ACT** – Disapproval of the proposed project does not violate the Housing Accountability Act (California Government Code section 66589.5.)

EVIDENCE: a) Government Code section 65589.5 (d) related to disapproval of "very low, low, or moderate income households" is not applicable to the proposed project because the project does not provide affordable units. The project proposed to pay an in-lieu fee of $409,555.50 pursuant to Monterey County Inclusionary Housing Ordinance #3419 rather than provide on-site lots/units with affordability restrictions. Denial of the proposed project is consistent with the County's certified Housing Element, neither this project nor this property is identified as necessary to satisfy the County's Regional Housing Needs Allocation.

b) In adopting section 65589.5, the Legislature found that local agencies should encourage, to the maximum extent practicable, "in filling existing urban areas." The proposed project is not in an urban area and is not infill development.

c) California Government Code § 66589.5 (j) provides: "when a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower

density."

In this case, the County need not make findings under section 65589.5 (j) to disapprove the proposed project because the proposed project is not consistent with the general plan. The vesting tentative map is inconsistent with Goal 53, Objective 53.1, Policies 53.1.3 and 26.1.4.3 of the Monterey County General Plan. See **Finding 2 c)** and **d)** and **Finding 3 b)**.

d) Additionally, the proposed project would have a specific, adverse impact upon the public health or safety and cannot be feasibly mitigated to the extent that the El Toro Primary Aquifer System is in overdraft and would remain in this condition with the implementation of the project in its current form. See **Finding 2 c)** and **d)** and **Finding 3 d)**.

5. **FINDING:** **CEQA –** CEQA does not apply to the Board's action denying the proposed project.

EVIDENCE:

a) Pursuant to the Public Resources Code section 21080(b)(5) and CEQA Guidelines section 15270, CEQA does not apply to projects which a public agency rejects or disapproves. The County of Monterey prepared a Final Environmental Impact Report (Final EIR) in compliance with CEQA, but the Final EIR was not certified by the Board of Supervisors.

b) The Monterey County RMA-Planning prepared an Initial Study pursuant to CEQA. The Initial Study is on file in the offices of the Planning Department and is hereby incorporated by reference (PLN000696).

c) The Initial Study identified potentially significant effects to Aesthetics, Biological Resources, Cultural Resources, Geology and Soils, Land Use and Planning, Noise, and Transportation/Traffic, which could be reduced to a less than significant level with implementation of mitigation measures. At a hearing on the project on January 12, 2005, the Planning Commission directed staff to prepare an EIR. The project applicant appealed the Planning Commission's decision to the Board of Supervisors but ultimately withdrew its appeal and agreed to preparation of an EIR. An environmental impact report was subsequently prepared.

d) The Draft Environmental Impact Report (DEIR) was prepared in accordance with CEQA and circulated for a 45-day public review period from October 24, 2008 through December 12, 2008 (SCH#: 2003071157). Issues analyzed in the Draft EIR include: land use, population and housing, transportation and circulation, air quality, noise, groundwater resources and hydrogeology, surface hydrology and water quality, aesthetics and visual sensitivity, cultural resources, geology and soils, and public services and utilities.

e) Following the end of the DEIR public review period, County staff determined that significant new information existed regarding traffic and revised and recirculated relevant portions of the DEIR pursuant to Section 15088.5 of the CEQA Guidelines for a 45-day public review period ending on February 1, 2010. The Recirculated DEIR (RDEIR) was specifically limited to Section 3.10, Transportation and Circulation.

f) A Final EIR (FEIR) was prepared in June 2010. On June 30, 2010 the Planning Commission held a public hearing to review the Harper

Canyon Subdivision (Encina Hills) proposal. No recommendations were made, and the hearing was subsequently continued to August 25, 2010. In the fall of 2010, several other factors (including the formal complaint to the California Public Utilities Commission (CPUC) regarding the ability of Cal-Am to expand the service area served by the Ambler Park water treatment system) caused the project to be put on hold until the CPUC proceeding concluded. The CPUC has since dismissed the complaint against Cal-Am regarding the Ambler Park Water Treatment Facility. The Board of Supervisors also held hearings to address water supply to the Oaks subdivision on December 4, 2012 and directed staff to negotiate an MOU with Cal Am related to treatment of the raw water from the Oaks well for the purpose of providing potable water to the already-approved nine lot Oaks subdivision. These recent actions affected and necessitated an update to several of the County's previous responses to comments in the prior draft FEIR. Consequently, the County updated the Final EIR document from the June 2010 version and released an updated FEIR in December 2013.

g) The County prepared "Responses to Comments on the Harper Canyon (Encina Hills) Draft EIR." The Responses to Comments contains individual responses to each written and verbal comment received during the public review period for the DEIR and the RDEIR, as well as two "master responses" that address recurring comments submitted by more than one person. In accordance with State CEQA Guidelines Section 15088(b), the written responses describe the disposition of significant environmental issues raised. Together, the DEIR, RDEIR and Responses to Comments constitute the Final EIR on the project.

h) The EIR identified impacts to established native resident or migratory wildlife corridors resulting from implementation of the proposed project. These impacts were reduced to a less-than-significant level with the implementation of mitigation measures. At the May 13, 2014 Board of Supervisors' hearing, the Board received written comments and public testimony that the project could negatively impact biological resources. The Big Sur Land Trust testified that future development of the project will severely degrade a regionally-significant wildlife corridor between Toro Park and Highway 68. Habitat fragmentation and the loss of animals' ability to move across the landscape is a threat to biodiversity. Alternative 3 (the Modified Subdivision Design "B" Alternative which eliminates four residential units) reduces the development footprint and could remove some obstacles to wildlife movement across the project site. The Board declines to approve the 17-lot project due to its potential impact on wildlife corridors.

i) The EIR identified a significant unavoidable impact to traffic circulation. Accordingly, pursuant to CEQA Guidelines section 15093, the Board must weigh the economic, legal, social, technological, or other benefits of the project against its unavoidable environmental risks when determining whether to approve the project. Per section 15093, if the benefits outweigh the unavoidable adverse environmental effects, the adverse effects may be considered acceptable. The Board has weighed the project benefits against the unavoidable adverse environmental effects of the project and finds, based on substantial

evidence, that the benefits do not outweigh the significant unavoidable environmental impact. A potential benefit that staff had identified was applicant's proposal to donate 154 acres of land to the County for expansion of Toro Park. At the May 13, 2014 Board of Supervisors' hearing on the project, the Board received written comments and testimony challenging the benefit of this donation because the County does not have the funding to manage additional park lands. The donation of 154 acres does not come with an endowment of funds to assist in managing the additional acreage.

j) Harper Canyon (Encina Hills) Subdivision Draft EIR prepared by PMC dated October 2008, Harper Canyon (Encina Hills) Subdivision Recirculated Draft EIR prepared by PMC dated December 2009, and Harper Canyon (Encina Hills) Subdivision Final EIR prepared by PMC dated December 2013. These documents are on file in the RMA-Planning Department (PLN000696) and are hereby incorporated herein by reference.

6. **FINDING:** **PROCEDURAL BACKGROUND** – The County complied with all procedural requirements in processing the subject Combined Development Permit (PLN000696/Harper Canyon (Encina Hills)).

EVIDENCE:

a) On August 16, 2001, the project applicant, Harper Canyon Realty, LLC submitted an application for a Combined Development Permit for a Vesting Tentative Map in order to subdivide land into 17 lots. The project application was deemed complete on November 22, 2002. An Initial Study/Mitigated Negative Declaration (IS/MND) was prepared in July 2003 and circulated for a 30-day public review period from July 24, 2003 through August 22, 2003.

b) The project was referred to the Toro Area Land Use Advisory Committee (LUAC) for review. The LUAC reviewed this project at its July 14 and July 28, 2003 meetings. The LUAC conducted a site visit July 28, 2003 and voted on two motions. One motion to approve failed 2-2, and the second motion to deny also failed 2-2.

c) On October 28, 2004, the Monterey County Standard Subdivision Committee held a duly-noticed public hearing to consider the analysis of project consistency. The Standard Subdivision Committee recommended 3-0 with 3 abstentions that the Planning Commission approve the project subject to findings and conditions.

d) On January 12, 2005, the Planning Commission conducted a public hearing on the project and recommended that an EIR be prepared.

e) On April 20, 2005, the applicant filed a timely appeal from the Planning Commission's determination that an EIR be prepared to the Board of Supervisors. The applicant withdrew the appeal at the Board of Supervisors' meeting held on September 13, 2005. Subsequently, an EIR was prepared.

f) The Planning Commission conducted a public hearing on June 30, 2010, to review project and consider certification of the Final EIR. The project was continued to a future hearing to address concerns raised by the public and a complaint filed with the California Public Utilities Commission regarding the ability of Cal-Am to expand the service area of the Ambler Park Water System.

g) In December 2013, a revised Final EIR was released to the public. The EIR was completed in compliance with CEQA. See **Finding 5**.
h) On December 26, 2013, the notice of the Planning Commission hearing was published in the *Monterey County Weekly*. The public hearing notices were mailed on December 20, 2013 and posted on December 27, 2013.
i) On January 8, 2014, the Planning Commission conducted a public hearing on the project. The Commission adopted a resolution of intent to deny the project.
j) On February 12, 2014, the Planning Commission denied the project.
k) On February 24, 2014, the Applicant filed a timely appeal from the Planning Commission's decision to deny the project.
l) On March 11, 2014, the Appellant's agent, Michael Cling, requested to postpone the public hearing until May 13, 2014 to accommodate his client's schedule (Attachment L of the May 13, 2014 Board of Supervisors staff report).
m) On May 1, 2014, the notice of the Board of Supervisors' hearing was published in the *Monterey County Weekly*. The public hearing notices were posted and mailed on April 30, 2014.
n) On May 13, 2014, the Board of Supervisors conducted a duly noticed public hearing on the project. The Board continued the public hearing (open), requested the applicant to provide updated water quality and quantity testing data on the New well, and directed staff to return on August 26, 2014 with findings and evidence denying the appeal and the project application.
o) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN000696; the records of the May 13, 2014 and August 26, 2014 hearings maintained by the Clerk of the Board.
p) The staff reports, and minutes, audio, and video recordings of the Subdivision Committee, Planning Commission and Board of Supervisors' hearings.

7. **FINDING:** **APPEAL –** The appeal was filed timely pursuant to Chapters 19.16 and 21.80 of the Monterey County Code.
a) On February 24, 2014, the Applicant filed a timely appeal from the Planning Commission's decision to deny the project.
b) Said appeal was filed with the Clerk of the Board of Supervisors within the 10-day time period prescribed by Monterey County Code Chapters 19.16 and 21.80.
c) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN000696; the records of the May 13, 2014 and August 26, 2104 hearings are maintained by the Clerk of the Board.

8. **FINDING:** **APPEAL –** The Board of Supervisors has conducted a duly noticed, timely, fair, and impartial hearing on the appeal.
a) The public hearing before the Board of Supervisors on the appeal is de

novo (Monterey County Code section 21.80.070.B). The appeal has the effect of staying the proceedings and the effective date of the decision of the Planning Commission until the appeal is resolved by the Board of Supervisors.

b) On March 11, 2014, the Appellant's agent, Michael Cling, requested to postpone the public hearing until May 13, 2014 to accommodate his client's schedule (Attachment L of the May 13, 2014 Board of Supervisors staff report). On May 1, 2014, the notice of the Board of Supervisors' hearing was published in the *Monterey County Weekly*. The public hearing notices were posted and mailed on April 30, 2014.

c) On May 13, 2014, the Board of Supervisors conducted a duly noticed public hearing on the project, and the applicant and all members of the public wishing to testify had an opportunity to be heard. The Board continued the public hearing (open), requested the applicant to provide updated water quality and quantity testing data on the new well, and directed staff to return on August 26, 2014 with findings and evidence denying the appeal and the application.

d) On August 11, 2014, the Applicant submitted a request to continue the hearing to a later date in order to provide additional time to perform testing of the wells and prepare an analysis. The Board considered the continuance request at the hearing on August 26, 2014.

e) The staff reports, minutes, audio, and video recordings of the Board of Supervisors' hearings.

f) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN000696; the records of the May 13, 2014 and August 26, 2104 hearings are maintained by the Clerk of the Board.

9. **FINDING:** **APPEAL -** The Board of Supervisors has reviewed, evaluated, and considered the appeal and responds as follows:

EVIDENCE: a) **Appellant's Contention a): <u>Lack of Fair or Impartial Hearing.</u>** *The Planning Commission (Commission) failed to consider all relevant evidence and to act as neutral and impartial decision-makers when acting on the project. In particular, the Commission acted arbitrarily and without consideration of proper planning criteria and with the seemingly sole and specific purpose of denying the development. As a result, the applicant was denied a fair and impartial hearing.*

County's Response a): The Appellant contends that the Planning Commission failed to consider all relevant evidence and to act as neutral and impartial decision-makers when acting on the project and, as a result, the applicant was denied a fair and impartial hearing. The County disagrees with this contention. Procedurally, the Appellant was given due process. The Planning Commission held two duly noticed public hearings on January 8, 2014 and February 12, 2014. The Applicant (Appellant) and all members of the public who attended the hearing had an opportunity to testify and be heard. The Appellant testified at both hearings. The Applicant was also afforded and availed itself of the opportunity to appeal the Planning Commission decision to the Board of Supervisors. The Board of Supervisors' hearing is a de

novo hearing, where the Applicant has had an opportunity to be heard. See also **County's Response b**.

b) **Appellant's Contention b): <u>Findings, Decision, or Conditions Not Supported by Evidence.</u>**

In its resolution purporting to deny the project, the Commission found the project to be inconsistent with General Plan Goal 53, Objective 53.1 and Policy 53.1 as well as Toro Area Plan Policy 26.1.4.3. In general, those policies require applicants to provide evidence of an assured long-term water supply in connection with new development. The project site and project wells are located in Zone 2C and receive benefits of sustained groundwater levels attributable to the operation of the Nacimiento Reservoir and the San Antonio Reservoir as well as the Salinas Valley Water Project. In addition, the Monterey County Health Department, Environmental Health Bureau determined that there is an adequate longterm water supply for the project. County staff has similarly acknowledged that the project wells are in a location with good groundwater production and determined that the project thus has an adequate water supply. The evidence in the administrative record, including the Environmental Impact Report (EIR) prepared by the County's expert environmental consultant and opinions expressed by County staff and staff of the Monterey County Water Resources Agency, demonstrates that the project does indeed have an assured long-term water supply. See, e.g. Staff Report to Commission on project dated December 20, 2013.

In contrast to this substantial evidence, the Commission purported to base its finding of denial on unsubstantiated testimony of project opponents that the subarea where the proposed project's wells will be located does not receive hydrological benefits from the Salinas Valley Water Project. The testimony of project opponents and/or their counsel is speculation not supported by expert opinion or fact. It is not evidence let alone substantial evidence as is required. Thus, the findings made by the County are not supported by the evidence.

The Commission similarly made cursory findings unsupported by the evidence purporting to justify its denial of the vesting tentative map. The Commission purported to find that the proposed map was not consistent with the General Plan, the design or improvements of the proposed subdivision were not consistent with the General Plan and the subdivision did not meet the requirements or conditions of the Subdivision Map Act and County Subdivision Ordinance. There is no evidence to support any of these findings. Instead, the Commission's resolution purporting to deny the project merely contends that the project is inconsistent with the aforementioned policies. For reasons similar to those outlined above, the Commission's findings in this regard are not supported by the evidence. The Commission's resolution also states that the subdivision does not meet the findings for approval as set forth in Government Code §66474 and Monterey County Code § 19.05.055.B. Yet, those sections outline the grounds for denial of a subdivision map, and the purported grounds cited above are not

supported by the evidence.

County's Response b): The Appellant contends that in its resolution purporting to deny the project, the Planning Commission found the project to be inconsistent with General Plan Goal 53, Objective 53.1 and Policy 53.1 as well as Toro Area Plan Policy 26.1.4.3. The County begins with one correction: the Toro Area Plan Policy 26.1.4.3 identified was incorrect—the correct reference is General Plan Policy 26.1.4.3 which requires evidence of an assured long term water supply. The provision of a long term water supply was the central issue of concern in the Planning Commission's reasoning and decision to deny. The Planning Commission also determined as a policy matter that the goal of promoting adequate water service for all county needs was better served by not approving new lots. The Board of Supervisors concurs. The basis for the County's denial is summarized below:

Groundwater Basins and Well Locations

The project site, the Oaks Well and the New Well are located within Zone 2C benefit assessment zone established for the Salinas Valley Water Project. More specifically, according to the 2007 *El Toro Groundwater Study*, prepared by Geosyntec Consultants ("Geosyntec Study"), the wells that would serve the proposed project are located within the Corral de Tierra subarea of the El Toro Planning Area and the El Toro Primary Aquifer System. According to the Geosyntec Study, water level data compiled and reviewed for the study indicate that the El Toro Primary Aquifer System is in overdraft. With continued overdraft conditions, groundwater production potential in portions of the El Toro Primary Aquifer System would likely decrease. At the May 13, 2014 Board of Supervisors' hearing, the Board received written comments and public testimony that water levels in the area have declined and that wells in the area have gone dry.

In order to support increased development with water pumped from the Geosyntec Study area, the project would need to rely on "mining" the groundwater in storage. Approving the creation of new lots in the Geosyntec Study area where groundwater would be "mined" in order to support the development is inconsistent with General Plan Goal 53, Objective 53.1, and Policy 53.1.3. Therefore, the project does not have an assured long-term water supply. See **Finding 2 c)** and **d)**.

Project Relationship to the Salinas Valley Water Project (SVWP)

The Appellant contends that the Planning Commission purported to base its finding of denial on the unsubstantiated testimony of project opponents that the subarea where the proposed project's wells are located does not receive hydrological benefits from the Salinas Valley Water project. Information submitted by the public to the Planning Commission on January 8, 2014 challenging the project's location within an area of benefit was based on the *Salinas Valley Historic Benefits Analysis* (HBA) prepared for the County by Montgomery Watson in 1998 (Attachment I in the May 13, 2014 staff report). The public presented Figure 1-50 (between pages 1-22 and 1-23 in

Attachment I in the May 13, 2014 staff report); the Figure shows the results of the modeling used to quantify the hydrologic benefits associated with the operation of the Nacimiento and San Antonio reservoirs. The public testimony asserted that the Figure showed that that the area where the Harper Canyon Subdivision's wells are located (within the Fort Ord/Toro Subarea) does not demonstrate a benefit from the SVWP—that there was no increase in water levels within the Fort Ord/Toro Subarea with the reservoirs. County staff did not dispute the information at the Planning Commission hearing. However, staff researched the question and sought advice from the MCWRA after the hearing and reached a different conclusion. Although the Fort Ord/Toro areas were within Zones 2/2A (predecessor to Zone 2C), the HBA did not analyze the Fort Ord/Toro Subarea—in fact, the area was specifically excluded from the analysis "because Fort Ord and Toro areas are not believed to be part of the main ground water basin." (Page ES-4 in Attachment I in the May 13, 2014 staff report). Simply put, the HBA was silent on the benefits (or lack of benefits) to the Fort Ord/Toro Subarea. Therefore, the Board does not base its decision on the HBA.

Consistency with the General Plan and the Subdivision Map Act

The Appellant contends that there is no evidence to support the Planning Commission's findings that the proposed map was not consistent with the General Plan, the design or improvements of the proposed subdivision were not consistent with the General Plan and the subdivision did not meet the requirements or conditions of the Subdivision Map Act and County Subdivision Ordinance. The County disagrees with the Appellant's contention. See **County's Response b** above and **Findings 2** and **3**.

c) **Appellant's Contention c): Decision Contrary to Law.**

The Commission failed to make the necessary findings to deny the project. The Commission did not find that the project was inconsistent with the General Plan as a whole, as required. Instead, it found the project to be inconsistent with certain select policies of the General Plan, and those findings are not supported by the evidence as explained in Section [b] above.

If allowed to stand, the Commission's action would result in a taking of the owners' property since it would deny all economically viable use of the property and/or frustrate the owners' distinct investment backed expectations.

The Commission's denial of the project was arbitrary and irrational and not reasonably related to a legitimate government interest. It thereby deprives the owners of their constitutionally-protected right to due process.

The Commission's denial of the project failed to treat the owners in a manner comparable to that of other similarly situated property owners. Thus, the Commission's action deprived the owners of their right to

equal protection under the law.

County's Response c): The Appellant contends that the Planning Commission's findings that the project was inconsistent with the General Plan are not supported by the evidence. The Board finds that the project is inconsistent with the 1982 General Plan. While a project need not be in conformity with each and every policy to find that it is consistent with the General Plan, in this case, the project does not further the objectives and policies of the General Plan and would obstruct their attainment because of the importance of the water supply policies. See **County's Response b** above and **Finding 2 c)** and **d)**.

The Appellant contends that the Planning Commission's action would result in a taking of the owner's property. The County disagrees with this contention. The Commission's action to deny the project, if upheld by the Board, would not deny the applicant of all economically viable use of the property for the following reasons:

The property that is the subject of the Harper Canyon Subdivision application is a 344-acre "remainder lot" created when the County approved a lot line adjustment that resulted in the remainder lot and fourteen (14) existing lots of record ("Broccoli lots or parcels") that are located adjacent to the project site (see Exhibit MR2-1 **-** Attachments F-3 and G in the May 13, 2014 staff report). These 14 lots of record are owned by the project applicant, and were recorded in their current configuration in 1993. Fifteen (15) lots on this property existed prior to 1993, but were adjusted via a major lot line adjustment approved by the County Minor Subdivision Committee. Denial of the Harper Canyon Subdivision application would not impede development of the other 14 lots owned by the Applicant. The approval of the 1993 lot line adjustment contained several conditions of approval, and the approval was subject to the environmental and planning review procedures per the County's process in place at the time. A negative declaration was prepared, considered and approved as part of the Committee's action.

These 15 legal lots of record, owned by the applicant, already exist. As such, the lots could be developed at any time if the conditions of approval of the lot line adjustment are met and once proposed development (home sites) satisfy the County review and permit process. At any time the property owner could improve and extend Meyer Road and provide utility extensions to the existing 14 lots consistent with the terms of their approval. The development of the Broccoli lots is not dependent upon the approval of the Harper Canyon/Encina Hills Subdivision or dependent upon access easements, as all lots in question are held in single ownership. The 1993 lot line adjustment was approved with the understanding that the lots would be accessed by an improved Meyer Road.

The action to deny would not deny all economically viable use of the property, as the property held in title by the applicant includes not only the 344-acre remainder lot, but also the 14 existing lots of record. In addition, denial of this subdivision application does not mean that the County would deny other applications for development on the

remainder lot, such as a single family dwelling on the property or any other allowed uses pursuant to Monterey County Code section 21.16.030 (Regulations for Rural Density Residential Zoning Districts – Uses Allowed).

The Appellant contends that the Commission's denial of the project was arbitrary and irrational and not reasonably related to a legitimate government interest and it thereby deprives the owners of their constitutionally-protected right to due process. The County disagrees with this contention. As described in this resolution, the County has many legitimate reasons, supported by substantial evidence, to deny the project, and the County has provided due process to the Applicant.

The Appellant contends that the Commission's denial of the project failed to treat the owners in a manner comparable to that of other similarly situated property owner and thus, the Commission's action deprived the owners of their right to equal protection under the law. The County disagrees with this contention. The Appellant provided no evidence of similarly situated property owners to support this contention.

DECISION

NOW, THEREFORE, BASED ON THE ABOVE FINDINGS AND EVIDENCE, BE IT RESOLVED, THAT THE Board of Supervisors does hereby:

1. Deny the appeal by Harper Canyon Realty LLC from the Planning Commission's denial of their application for a Combined Development Permit; and
2. Deny the application for a Combined Development Permit (Harper Canyon Realty LLC/ PLN000696) consisting of: 1) A Vesting Tentative Map for the subdivision of 344 acres into 17 residential lots ranging in size from 5.13 acres to 23.42 acres on 164 acres with one 180-acre remainder parcel; 2) Use Permit for the removal of approximately 79 Coast live oak trees over six inches in diameter for road and driveway construction; 3) Use Permit for development on slopes in excess of 30 percent; 4) Use Permit for the creation of a public water system with a stand-alone treatment facility (Option B); 5) grading for net cut and fill of approximately 2,000 cubic yards; and Design Approval.

PASSED AND ADOPTED this 26th day of August, 2014 upon motion of Supervisor ____, seconded by Supervisor ____, by the following vote:

AYES:
NOES:
ABSENT:

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book___ for the meeting on _____.

Dated:

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By _____
Deputy

Pursuant to section 1094.6(f) of the California Code of Civil procedure, notice is hereby provided that the time within which judicial review must be sought of this decision is governed by section 1094.6 of the California Code of Civil Procedure.

MICHAEL D. CLING
ATTORNEY AT LAW
313 MAIN STREET, SUITE D
SALINAS, CALIFORNIA 93901
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EMAIL: mdc@michaelcling.com

August 11, 2014

Laura M. Lawrence
Planning Services Manager
Monterey County Resources Management Agency
168 W. Alisal Street
Salinas, CA 93901

Re: Applicant: Harper Canyon Realty
Project: Encina Hills Subdivision
Project No.: PLN000696

Dear Laura:

As I explained in our conversation last week, Todd Engineers is preparing a formal proposal for performing water level tests of the Oaks Well and the Encina Hills well. They estimate 90 to 120 days to schedule and perform the well testing and to prepare a written analysis of the results. Accordingly, on behalf of Harper Canyon Realty, this letter will serve as our formal request for continuance of the pending appeal with the Board of Supervisors to a later date to accommodate completion of the water level tests for the subject well.

Thank you for your attention to this matter.

Very truly yours,

Michael D. Cling

MDC/mmb

cc: Debbie Arvesen
Burt Forester
Matthew Francois

BEFORE THE BOARD OF SUPERVISORS IN AND FOR THE COUNTY OF MONTEREY, STATE OF CALIFORNIA

Adopt policy relating to the Continuance of Public Hearings)
Continued from July 22, 2003)

The Board of Supervisors considered three policy alternatives for continued public hearings as proposed in the staff report, and presented by Scott Hennessy, Planning and Building Director.

The Board discussed the matter. The Public Hearing was opened, and Lee Lotz and Pat Bernardi offered comments on the issues. The Chair closed the hearing, and the Board continued their discussion.

Following further discussion, Supervisor Johnsen moved Alternative No. 3 (See attached) and Supervisor Potter seconded the motion.

Supervisors Johnsen and Potter offered comments on the chosen alternative. Supervisor Calcagno requested clarification of the time in which to notice applicants and staff contacts. Charles McKee, County Counsel responded. Further discussion ensued. The Chair called for the vote, and the vote was as follows:

PASSED and ADOPTED this 26th day of August, 2003, by the following vote, to-wit:

AYES: Supervisors Calcagno, Lindley, Johnsen, Potter and Armenta

NOES: None

ABSENT: None

I, SALLY R. REED, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered into the minutes thereof at page X of Minute Book 71, on August 26, 2003.

DATED: August 27, 2003

SALLY R. REED, Clerk of the Board of Supervisors
County of Monterey, State of California

By _____
Barbara S. Grant, Deputy

cc: Planning and Building;
0602.200

POLICY ON THE CONTINUANCE OF PUBLIC HEARING (ALTERNATIVE #3)

It is the policy of the Board of Supervisors to conduct public hearings in a fair and expeditious manner and to consider all relevant information before reaching a decision. The Board recognizes that from time to time continuances may be necessary but that multiple continuances may hinder the public hearing process. Therefore, to minimize the potential detrimental effects of multiple continuances, the Board hereby adopts the following policy:

The Board of Supervisors will allow one continuance of any public hearing item without conducting a full public hearing on the item. A request by the applicant for a continuance must be received by the Clerk of the Board by 5:00 pm. the Tuesday preceding the hearing date. The Clerk of the Board shall note the continuance on the Board's agenda as "To Be Continued to _____" and notify the newspaper of local circulation.

The Board of Supervisors will consider a second continuance of any public hearing item. A request for a continuance must be received by the Clerk of the Board by 5:00 pm. the Tuesday preceding the hearing date. The Clerk of the Board shall note the continuance on the Board's agenda as "Request for Continuance to _____ Received" and notify the newspaper of local circulation.

After two continuances the Board will conduct a full public hearing on the item and take one of the following actions:

1. Approve the item.
2. Deny the item.
3. Continue the item to a subsequent date with specific direction to the staff as to the information needed for the subsequent public hearing.
4. Return the item to the original hearing body (if any) for reconsideration.
5. Table the item with specific direction to the staff as to the information needed for a subsequent, newly noticed public hearing.

The Board shall return the matter to the original hearing body for reconsideration if the project is significantly changed or if relevant new information becomes available.