

# ATTACHMENT A DISCUSSION

## I. BACKGROUND

### Project Description

The proposed project includes the subdivision of 344 acres into 17 lots on 164 acres with one 180-acre remainder parcel. The residential lots would have an average density of one dwelling unit per 9.64 acres within the subdivided area, as lots would range in size from 5.13 acres to 23.42 acres. Improved lots would be sold individually for the construction of homes. The proposed project also includes Use Permits for grading on slopes greater than 30 percent, for creation of a public water system to be operated by California-American Water Company (Cal-Am), and for the removal of 79 Coast live oak trees (*Quercus agrifolia*).

The project applicant has committed to donating approximately 154 acres of the 180-acre remainder parcel by deeding the property to the County of Monterey as an expansion of the adjacent Toro Park pursuant to Section 66428(a)(2) of the Subdivision Map Act. No development is proposed on the remaining 26-acres of the remainder parcel at this time.

### Project Background and Environmental Review

The project site has been designated for residential growth at the current proposed density since 1992. 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 pursuant to the Subdivision Map Act and the Monterey County Subdivision Ordinance (Title 19). Monterey County deemed the application complete on November 22, 2002. The project is therefore subject to the 1982 General Plan.

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. As part of the Initial Study/Mitigated Negative Declaration process in 2003, the Toro Land Use Advisory Committee (LUAC) reviewed this project at its July 14 and July 28, 2003 meetings and the County Standard Subdivision Committee reviewed this project at the October 28, 2004 meeting.

On January 12, 2005, the Monterey County Planning Commission considered the project at their January 12, 2005 meeting and recommended that an EIR be prepared. The project applicant appealed the decision of the Planning Commission to the Board of Supervisors; however, prior to the Board's consideration of the appeal, the applicant withdrew its appeal and agreed to preparation of the EIR. The Initial Study/Mitigated Negative Declaration documents are included in Appendix A of the Draft EIR, which is included in **Attachment F-1**.

A Draft EIR (DEIR) was prepared in October 2008 and circulated for a 45-day public review period, which ended on December 12, 2008. Following the end of the DEIR public review period, County staff determined that significant new information existed regarding potential traffic impacts 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 (**Attachment F-2**).

A Final EIR (FEIR) was prepared in June 2010. On June 30, 2010 Planning Commission held a public hearing to review the Harper Canyon (Encina Hills) Subdivision and consider certification of the Final EIR. During the hearing, staff made a presentation, the applicant addressed the Commission, and persons from the public spoke to matters reflecting their concerns. No recommendations were made, and the hearing was subsequently continued to August 25, 2010. Subsequently, the Highway 68 Coalition (Coalition) filed a formal complaint with the California Public Utilities Commission (CPUC) against Cal-Am in August 2010. The Coalition contended that the Ambler Park water system (now owned by Cal-Am) was restricted to serving only customers within the historic service territory, and therefore not allowed to serve the proposed project. Cal-Am disagreed, arguing that it was prohibited to export water from Ambler Park to its Monterey district, but otherwise allowed to use the Ambler Park water treatment plant for new Ambler Park service territory customers. 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 final decision from the CPUC concluded, among other things, that the CPUC's previous Decision 98-09-038 does not prohibit the shared use of the Ambler Park water treatment plant among areas of the Ambler Park service territory, and that Cal-Am is not prohibited from pumping water from the territory annexed to the Ambler Park service territory for treatment at the Ambler Park water treatment plant and to supply water to the annexed territory. The CPUC has since dismissed the complaint against Cal-Am regarding the Ambler Park water treatment system. Resolution of this dispute was necessary before the County could continue to process the project, as it made clear that the CPUC did not preclude or prohibit applicant's proposal for water supply to the subdivision

From late 2010 and through 2011, other projects along the Highway 68 corridor have been reviewed and considered by the County. The Board of Supervisors also held a hearing to address water supply to the 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 has updated the Final EIR document (**Attachment F-3**) from the June 2010 version.

The FEIR was made available for public review at least 10 days prior to the public hearing of the Planning Commission. All environmental review documents are included in **Attachments F-1, F-2, and F-3**. The Monterey County Code designates the Planning Commission as the Appropriate Authority to consider certification of the EIR, adoption of CEQA findings and statement of overriding considerations, and action on the project. However, because the Planning Commission's decision to deny the project was appealed to the Board of Supervisors, the Board is the appropriate authority to consider the EIR.

### Project Issues

### **Hydrogeology, Water Supply and Water Treatment**

The Planning Commission denied the project based on the goal of promoting adequate water service for all county needs was better served by not approving new lots in addition to a determination that the project does not have an assured long term water supply. They based their 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**). The public presented Figure 1-50 (between pages 1-22 and 1-23 in **Attachment I**); 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 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**). Simply put, the HBA was silent on the benefits (or lack of benefits) to the Fort Ord/Toro Subarea. In the years since the HBA was prepared, more current data by Geosyntec has been analyzed and documents the connectivity between the Salinas Valley Groundwater Basin's subbasins (Geosyntec 2010 Supplement – **Attachment H**).

Groundwater, and the effective treatment and delivery of groundwater to service the proposed subdivision, has been a central issue related to the proposal and is addressed at length in the FEIR (**Attachment F-3**). The FEIR includes information to clarify facts regarding hydrogeology, water supply and water treatment. FEIR Master Response 1, regarding water supply, explains the relationship of the *El Toro Groundwater Study* (also referred to as the Geosyntec Study) to the proposed project; clarifies the groundwater basin setting; describes the decision issued by the CPUC (Decision 11-09-001 regarding Case #10-08-022 filed August 31, 2010) regarding the Highway 68 Coalition's complaint against California American Water Company; and further clarifies the proposed water system and options for water treatment. The FEIR also includes revisions to Section 3.6 of the DEIR to clarify the groundwater setting, and treatment options for potable water. This information is summarized below.

### *Hydrogeology and Water Supply*

The project proposes to be supplied water from two wells, one on the Oaks Subdivision site (“Oaks well”/Well B) and one located on the project site (“New well”/Well C). The project site, the Oaks well, and the New well are located within the San Benancio Gulch subarea as identified in the Geosyntec Study.

The Geosyntec Study was prepared for Monterey County Water Resources Agency (MCWRA) by Geosyntec in 2007, and supplemented in June 2010. According to the Geosyntec Study, the “primary aquifer system” of the El Toro Planning Area – which includes both the Santa Margarita sandstone and Paso Robles formations - is in overdraft. Long term trends predict lower groundwater levels in the study area as a whole into the future (Geosyntec, page ES-3).

However, according to the Geosyntec Study (Geosyntec, Figure ES-4), the wells for the proposed project are located in an area noted as having good potential for groundwater production due to a saturated thickness of over 600 feet. Section 3.6 (Groundwater and Hydrogeology) of the EIR has been revised to clarify the context of the Geosyntec Study relative to other groundwater information, such as the 2002 Project-Specific Hydrogeological Report.

The project site lies within the Salinas Valley Groundwater Basin, which is divided into eight subbasins (FEIR Figure 3.6-1 in **Attachments F-3 and G**). The project site lies within two subbasins: the Corral de Tierra Area subbasin and 180/400-Foot Aquifer (Pressure) subbasin. The wells that would serve the proposed project are located within the Corral de Tierra Area subbasin. These subbasins are defined and recognized by both the Monterey County Water Resources Agency (MCWRA) and California Department of Water Resources, and are based on hydrogeologic features below the surface. This subbasin boundary is based on hydrogeologic (subsurface) features and does not match the study area and the “subbasin” boundaries, as defined in the Geosyntec Study, which are based on topographic and watershed features.

The Geosyntec Study area is divided into subareas, and portions of these subareas are located within the B-8 zoning district. The County’s B-8 zoning overlay district, with some exceptions, restricts development and/or intensification of land use where, due to various infrastructure constraints, the development or intensification is found to be detrimental to the health, safety and welfare (Monterey County Code Section 21.42.030). Although portions of the San Benancio Gulch subarea are within the B-8 Zoning District, the project site, the Oaks well and the New well are not located within the B-8 Zoning District. The project site, the Oaks well, and the New well are all located in MCWRA Zone 2C and in a location with good groundwater production. Staff has therefore concluded that the project has a long-term water source and would not impact adjacent wells.

As stated above, County staff, in recommending approval of the project, considered evidence within several reports related to local groundwater conditions in the immediate area where the project’s primary and backup well are located. These reports demonstrate that the project has an assured long term water supply and support the County’s recommendation for approval.

#### *Water System and Treatment Options*

As noted above, the project would be served by two wells. The Oaks well would serve as the primary well and the New well would serve as a secondary (backup) well for the proposed project. The Oaks well was originally going to supply the project without treatment, until the maximum contaminant level (MCL) for arsenic was made stricter. Due to the need to treat the water to meet federal and state MCL for arsenic, it has been proposed that the Ambler Park Treatment Facility provide water to the Oaks subdivision, with the understanding that equivalent water pumped from the Oaks well must be transferred to the Ambler system at a 1:1 ratio. The Oaks well and well infrastructure have been transferred to Cal-Am pursuant to conditions of approval of the Oaks subdivision. Cal-Am is applying to the California Department of Public Health to include the Oaks well in their system. On May 6, 2014, the County Board of Supervisors is scheduled to consider a Memorandum of Understanding (MOU) between Cal-Am and the County of Monterey to formalize and implement Cal-Am’s agreement to offset Cal-Am’s service to the Oaks’ Subdivision with an equal amount of water from the Oaks’ well (taking into account treatment loss), with monitoring and reporting requirements, so as to ensure

there is no net transfer of water from the B-8 zoning district. This report was written prior to that date, so the outcome of the meeting is not included in this report.

For similar reasons as the Oaks well, water from the New well would also require treatment to meet drinking water standards. There are two water treatment options for the proposed project: Option A – treat at the existing Ambler Park Facility as proposed and described below; or Option B – a new satellite water treatment system that would serve the proposed project and previously approved Oaks subdivision only.

Under Treatment Facility Option A, the proposed project would be provided water from the Ambler Treatment Facility in exchange for an equivalent amount of water from the Oaks well and New well. Water pumped from the wells would be conveyed to the Ambler Park Treatment Facility to treat the water to meet drinking water standards. A main extension agreement would be required to convey the New well and new water infrastructure to the water purveyor (Cal Am). An MOU, similar to that considered for the Oaks subdivision, would be necessary for the proposed project under Option A. Although technically and legally feasible to deliver water in this manner, an equally viable option is to require the project to build a treatment facility outside of the B-8 zoning district to treat the water from the Oaks well and New well, with the developer responsible for the fair share cost of building this treatment plant.

Under Treatment Facility Option B, a new treatment facility would be constructed on the project site within Zone 2C. Several treatment methods (system designs) are identified in the FEIR. A new treatment facility would be within an enclosed structure, designed to look similar to a barn or rural structure on the exterior. The construction of the new treatment facility would be under the jurisdiction of Monterey County Health Department, Environmental Health Bureau. The well and any new water treatment facility, if determined necessary, would then be transferred and operated by Cal-Am. This option would eliminate the physical involvement of water from the B-8 zoning district and eliminate the need for continuous reporting to the County regarding the equal exchange of water served to the subdivision with water pumped from the wells.

Although Option A is legally and technically feasible, County staff recognizes the potentially negative perception of moving water back and forth between Zone 2C and the B-8 area and the administrative burden of ongoing monitoring and reporting that is required for Option A. Ambler service to the Oaks lots and the associated MOU provide a necessary solution to providing potable water to the Oaks subdivision because the lots are already in existence. However, the Oaks MOU, per prior direction given by the Board of Supervisors at a December 4, 2012 hearing on the Oaks' water supply, is intended to solve an existing problem and is limited to the already-approved Oaks lots.

A new subdivision presents a different situation than the already existing Oaks lots. Unlike when Oaks' tentative map was approved, the stricter MCL standard for arsenic is in existence and the need for treatment of the well water is known. Accordingly, the County can require the subdivider to construct a treatment plant on the project site to serve the new subdivision as a condition of approval. This option eliminates the complexity of the equal exchange and associated monitoring and reporting and eliminates any physical connection to water within the B-8 zoning district. Because the Harper Canyon project relies upon the Oaks well and New well, the treatment plant would be sized to treat the water from both wells, and hence could serve both the Harper Canyon subdivision and the already existing Oaks lots. This may not eliminate the need for the Oaks MOU for an interim period, but if and when the treatment plant was built and

operational, the Board could revisit the Oaks MOU. The project applicant would be required to pay their fair share towards the cost of constructing the treatment plant, which would be transferred to and operated by Cal-Am. Therefore, staff is recommending approval of the Harper Canyon subdivision **only upon the condition that a new satellite treatment plant be constructed within Zone 2C, and that the treatment plant is sized only to service both the Oaks and Harper Canyon subdivision.**

Staff concludes that the benefit of a stand-alone treatment plant that eliminates the need to exchange water between zones outweighs the inefficiencies of adding a satellite plant to Cal-Am's network of infrastructure facilities. A technical memorandum requested of Cal-Am by the County (Carollo Engineers, December 5, 2013 in **Attachment F-3** as Exhibit F) describes the range of treatment system options that would be feasible for a small (15,000 gallon per day) treatment facility focused on arsenic removal.

Currently, the California Department of Public Health (CDPH) maximum contaminant level (MCL) for total chromium is 50 parts per billion (ppb). Chromium-6 (hexavalent chromium) is also regulated under the 50 ppb standard. In August 2013, CDPH proposed a specific MCL for chromium-6 of 10 ppb. On April 15, 2014, the new MCL was submitted to the State of California Office of Administrative Law for review. If approved, the new MCL will be in effect on July 1, 2014. The total chromium levels in the New well are 2 ppb and would not exceed the proposed MCL for chromium-6; however, the total chromium levels within project's primary well (Oaks well) may exceed the proposed standard based on well data provided by Cal-Am (Carollo Engineers, December 5, 2013 in **Attachment F-3**). For this reason, Carollo and Cal-Am recommend that the applicant consider Ion Exchange (IX) or Coagulation Filtration (C/F) treatment technologies, which would treat for both arsenic and hexavalent chromium. Both of these system types are considered Best Available Technologies (BAT) as recognized by the United States Environmental Protection Agency (EPA).

Section 3.6 (Groundwater and Hydrogeology) of the DEIR has been modified to make minor clarifications and amplifications as noted in Section 3.0, Amendments of the EIR. Mitigation measures MM 3.6.2a-c have been modified in the EIR to address the two treatment options. Staff is recommending that the Board incorporate Mitigation Measure MM 3.6-2b (Option B – treatment plant) as a condition of approval and not include Mitigation Measure MM 3.5-2a (Option A – agreement for equal exchange of water).

Upon review by Staff, Option B poses no additional significant environmental impacts not already analyzed in the EIR. The new water treatment facility can be sited on the project site on proposed Lot 17 southwest of Meyer Road or on Assessor's Parcel Number 416-621-007-000 which is owned by the project applicant. Both locations are located within Zone 2C, are out of the viewshed of Highway 68, are in areas that avoid tree removal, and are void of environmentally sensitive resources. See Condition No. 100 (Mitigation Measure 3.6-2b).

Given that the new water treatment facility would be enclosed in a structure that is subject to design control regulations, is subject to mitigation measures provided within the EIR that address construction impacts, and the location being on the project within Zone 2C, impacts from construction and operation of the facility (including routine maintenance and waste disposal) are considered de minimus and within the scope of environmental review. Regular maintenance of the facility and waste disposal in accordance with local, state and federal laws will be required. Staff is aware that past waste disposal practices of a water treatment plant within the County

have been addressed and proper disposal practices have been implemented. There is no basis to assume that waste disposal would be an issue for the proposed treatment plant. Different treatment technologies result in different waste streams and maintenance schedules. Regardless of the technology chosen, the facility will be required to dispose of all waste in accordance with applicable laws and regulations and has been conditioned as such in Condition Nos. 27 and 30.

### **Wastewater Treatment Capacity**

In response to comments on the DEIR regarding wastewater system capacity, the FEIR included modifications to Mitigation Measure MM 3.9-4:

**MM 3.9-4** Prior to filing of the Final Subdivision Map, Monterey County Bureau ~~Division~~ of Environmental Health shall require that the project applicant prepare and submit for review and approval wastewater collection improvement plans and calculations prepared by a registered engineer that demonstrate adequate capacity. The wastewater collection improvement plans shall be subject to approval by California Utility Service, Monterey Bay Unified Air Pollution Control District, and the County of Monterey. Upon review of the design, the project applicant shall be required to enter into a wastewater main extension agreement with California Utility Service.

In addition, prior to approval of any building permits, the applicant shall verify that there is sufficient treatment capacity in the California Utilities Service, Inc. (CUS) wastewater treatment facility to address the wastewater needs of the proposed project. The project applicant shall submit proof to Monterey County that the existing wastewater treatment plant is meeting the current effluent limitations as required per Waste Discharge Requirement Order No. R3-2007-0008. If the CUS facility exceeds its permitted capacity, then the County of Monterey would not issue a building permit until such time as the CUS has attained a revised permit from the Regional Water Quality Control Board.

### **Other Existing Lots of Legal Record**

The FEIR includes *Master Response 2: 14 Legal Lots of Record* which addresses concerns regarding the adjacent 14 existing lots of record (“Broccoli lots or parcels”) that are owned by the project applicant. These lots were recorded in their current configuration in 1993, resulting from a lot line adjustment of 15 existing legal lots of record consisting of 14 lots and a “remainder” lot of approximately 344 acres. The latter is the Harper Canyon project site. The existing legal lots could be developed at any time if the proposed development (home sites) satisfy the County review and permit process. The development of the Broccoli lots is not dependent upon the approval of the proposed project nor is it dependent upon access easements, as all lots in question are held in single ownership. The proposed project does not remove any existing barriers to development of the existing 14 lots, nor would the subdivision “induce” new growth since the 14 lots legally exist and could be developed with or without the creation of Harper Canyon’s 17 lots. CEQA does not require re-analysis of a previously approved project unless ordered by a court of law following a successful challenge of the approval, or substantial changes are made to the project prior to proposed development that triggers such analysis. No

such conditions exist, no changes are being considered with respect to the 14 existing lots, and no specific development is proposed on the lots at this time.

The existing 14 lots have been documented and included in the analysis assumptions throughout the DEIR document, under background conditions as an “approved project” since the property owner could apply at any time for a building permit on those lots provided the property owner can meet conditions of approval and building requirements. With respect to the specific issue of water service for the 14 lots, these legal lots are located in Cal-Am’s service area. These lots are not subject to the MOU provisions for the Oaks subdivision as these lots were never intended to be served by their own well; they are entitled to receive water service from Cal-Am when developed. The lots are not within the B-8 zoning. The lots have been approved for the installation of septic systems.

### **Wildlife Corridors and Crossings**

In 2009, Connectivity for Wildlife prepared the *Central Coast Connectivity Project Northern Monterey County Linkages: Report on the Mount Toro to Fort Ord Reserve Study* for the Big Sur Land Trust. This study was funded by the Big Sur Land Trust to identify animal movement between the San Lucia Mountain range and Bureau of Land Management and former Fort Ord property located north of State Route 68. This study was prepared as a follow-up to previous studies prepared for the Marks Ranch, which is located northeast of the project site on the other side of Toro Park, and studies conducted within the former Fort Ord area. As part of the study, the State Route 68 Bridge that crosses El Toro Creek was monitored for animal movement. This study has not and is not intended to be adopted as an official habitat plan but was developed as a tool to understand wildlife movement in the area. The study did determine wildlife moves underneath the bridge; however, due to the distance from the project site and limited development proposed, the proposed project would not result in substantial adverse effect on this wildlife corridor. In order to remove obstacles that would impair movement of wildlife, keep the landscape as permeable as feasible to facilitate wildlife movement, and preserve wildlife corridors between Toro County Park and the Fort Ord National Monument, the project has been conditioned to require the Owner/Applicant to submit a Wildlife Corridor Plan (“Plan”) for all the lots on the vesting tentative map (Condition No. 21).

### **Water Tanks and Ridgeline Development**

Two water tank locations have been proposed on the Remainder Parcel as shown on the vesting tentative map (**Attachment C-2**). The FEIR includes amplifications to mitigation measure MM 3.1-2b to address visibility of water tanks. This mitigation measure requires the Applicant to clearly identify the location of water tanks prior to recording each final map. The final location shall be chosen to avoid vistas that have a direct line of site to State Route 68 to the maximum extent feasible and preserve existing screening vegetation. The Director of Planning shall review and approve the proposed location prior to recording the final map. The review process could include staking and flagging of the tank location to ensure that the visual character of the project site and surrounding area is preserved.

### **Traffic Impacts**

The FEIR includes revisions to traffic mitigation. The Draft EIR and Recirculated DEIR identified significant and unavoidable traffic impacts as a result of the proposed project.



Mitigation Measures MM 3.10-1 through 3.10-6 will reduce certain impacts to transportation and circulation to a less than significant level and are required as conditions of approval. Mitigation Measure MM 3.10-1 requires the proposed project to contribute its fair share traffic impact fee to the TAMC Regional Development Impact Fee (RDIF) program, which includes the “State Route 68 Commuter Improvements” project. That project will widen a 2.3-mile section of SR 68 to four lanes between the existing 4-lane section adjacent to Toro Park and Corral de Tierra Road. That project would shorten the travel time on SR 68 in both directions; improve intersection operations at two locations from unacceptable to acceptable levels; and reduce the length of the queue on westbound SR 68 east of San Benancio Road during the weekday A.M. peak hour. However, the addition of up to 30 vehicle trips to SR 68 during the weekday A.M. and P.M. peak traffic hours will result in the further degradation of the operation of roadway segments and intersections along the SR 68 that currently operate below the acceptable level of service C. A Statement of Overriding Considerations (**Attachment C**) has been prepared for these impacts.

### **Project Study Report (PSR) as Mitigation**

The FEIR includes revisions to traffic mitigation. The option to contribute towards the preparation of a Caltrans Project Study Report (PSR) process for a 1.1 mile State Route 68 widening project has been eliminated because TAMC’s updated *Nexus Study for a Regional Development Impact Fee* includes two improvement projects recommended for Existing Conditions that eliminate the need for a PSR.

### Appeal

On February 12, 2014, the Planning Commission denied the Harper Canyon Realty LLC Combined Development Permit by a vote of 8-0 with two members absent. The Planning Commission denied the project based on the goal of promoting adequate water service for all county needs was better served by not approving new lots in addition to a determination that the project does not have an assured long term water supply. On February 24, 2014, the Applicant (Appellant) filed a timely appeal from the Planning Commission’s decision to deny the project. The Appellant requests that the Board grant the appeal. The Appellant alleges that they were denied a fair and impartial hearing, that the findings, or decision or conditions are not supported by the evidence, and that the decision was contrary to law. The contentions are contained in the Notice of Appeal (**Attachment B**).

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. In addition, 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 Policy 26.1.4.3. Finally, the Appellant contends that the Planning Commission’s findings that the project was inconsistent with the General Plan are not supported by the evidence; that Planning Commission’s action would result in a taking of the owner’s property and deny all economically viable use of the property; that Planning Commission’s decision 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; and the Planning Commission's denial of the project failed to treat the owners in a manner comparable to that of other similarly situated property owners and thus, the Commission's action deprived the owners of their right to equal protection under the law. Responses to the Appellant’s contentions are found in the draft board resolution (**Attachment C**) in **Finding 18**.

County staff, in recommending approval of the project, considered evidence within several reports related to local groundwater conditions in the immediate area where the project's primary and backup well are located. These reports include a project specific hydrogeologic report by Todd Engineers (2002 and 2003) (DEIR Appendix F in **Attachment F-1**) and a more recent, comprehensive regional study - the *El Toro Groundwater Study* - prepared in July 2007 by Geosyntec and supplemented in June 2010. This study is referred to as the "Geosyntec Study" (**Attachment H**). These studies demonstrate that the project has an assured long term water supply and support the staff's recommendation for approval.

### Recommendation

Staff is recommending that the Board of Supervisors adopt a resolution (**Attachment C**) to uphold the appeal by Harper Canyon Realty LLC from the Planning Commission's denial of their application for a Combined Development Permit; certify the EIR and adopt CEQA Findings and a Statement of Overriding Considerations; approve the Combined Development Permit consisting of a Vesting Tentative Map for the subdivision of 344 acres into 17 residential lots and the associated Use Permits, including the option of a stand-alone water treatment facility; and adopt a Mitigation Monitoring and Reporting Plan, including the deletion of Mitigation Measure MM 3.6-2a.

However, the Board could find that as a policy matter that the goal of promoting adequate water service for all county needs was better served by not approving new lots and thus deny the appeal. Should the Board make that determination, the Board would need to adopt a resolution of intent to deny the appeal and deny the project and continue the hearing to a date certain for staff to return with findings and evidence for denial.